Key Highway Provisions of the

Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 (S. 1072)

As Passed Senate February 12, 2004

TITLE I – FEDERAL-AID HIGHWAYS

Subtitle A – Funding

Authorization Level. The bill authorizes $255.8 billion in contract authority for the Federal-aid highway program for the period 2004-2009. In addition, the bill authorizes $3.4 billion in the Federal-aid Highway and research titles that is subject to appropriation. Funding levels for specific programs may be found in the authorization table. [§1101]

Obligation Limitation. The bill provides obligation limitation totaling $233.5 billion over the 6 years. The obligation limitation is subject to adjustment, up or down, based on actual receipts to the Highway Account of the Highway Trust Fund and forecasts of receipts made after enactment. The instructions for the distribution of the limitation are similar to those in TEA-21, including the "lop off" of contract authority in excess of the amount available for obligation for most allocated programs. Continues the use of no-year limitation for the Appalachian Development Highway System and 3-year limitation for research programs. Sets a limitation on administrative expenses (LAE) equal to the amount of contract authority authorized for administration. [§ 1102]

Administrative Funds. The bill replaces the administrative takedown on apportioned programs found in current law with a direct authorization of contract authority of $2.925 billion over the life of the bill, of which $24 million is reserved for planning capacity building initiatives. [§§ 1103, 1522]

Metropolitan Planning. The bill increases the current 1 percent setaside to 1.5 percent for metropolitan planning and applies the takedown to the following programs: Interstate Maintenance (IM), National Highway System (NHS), Surface Transportation Program (STP), Highway Bridge Program, Congestion Mitigation and Air Quality Improvement Program (CMAQ), and the Highway Safety Improvement Program (HSIP). In addition, Metropolitan Planning will receive a portion of the programmatic distribution under the Equity Bonus Program. [§§ 1103, 1104]

Equity Bonus. The Equity Bonus replaces TEA-21's Minimum Guarantee. The overall goal of the Bonus is to provide a 95 percent return on each State's share of contributions to the Highway

Account of the Highway Trust Fund. The calculation includes apportionments from the following programs: IM, NHS, Bridge, STP, HSIP, CMAQ, Metro Planning, Infrastructure Performance and Maintenance Program (IPAM), the Appalachian Development Highway System Program (ADHS), Recreational Trails, Safe Routes to Schools, Rail-Highway Grade Crossings, and the Equity Bonus itself. Special rules protect the calculations for 18 States with a population density of less than 20 persons per square mile, a population less than 1 million, or a median household income less than $35,000. Further, no State is to receive apportionments that amount to less than 110 percent of the average annual apportionments for specified programs during 1998-2003. There is a cap on the Equity Bonus such that no State may receive apportionments more than a specified percentage (120 percent for 2004 rising to 250 percent for 2009) of their average for 1998-2003. Notwithstanding the cap, no State's return on its share of contributions to the Highway Account may be less than 90.5 percent and no State is to receive a negative adjustment. Because of the caps, some States will not reach a 95 percent return until 2009. [§ 1104]

Revenue Aligned Budget Authority (RABA). The bill continues the concept of guaranteed funding, adjusting the amount of contract authority and obligation limitation whenever the budgetary firewalls are adjusted. The calculation of the adjustment is detailed in Title VI of the bill. The adjustment to contract authority can be either positive or negative and is to be made in the same year as any adjustment to the budgetary firewalls (Under current law, there would be a 1-year delay). [§ 1105]

Subtitle B – New Programs

Infrastructure Performance and Maintenance. The bill creates a new IPAM Program that would fund discretionary projects that either preserve or maintain existing highway infrastructure elements or provide operational improvements at traffic chokepoints, particularly those "ready-to-go" projects that will produce immediate benefits while avoiding long-term commitment of funds. In addition to these requirements, projects selected must also be eligible under the IM, NHS, STP, HSIP, Bridge or CMAQ Programs. The initiative allows States 180 days to obligate the program dollars. The program is authorized for FY 2004 only at a level of $2 billion. [§ 1201]

Future of Surface Transportation System. The Secretary of Transportation would be required to conduct a study of current condition and future needs of the surface transportation system and develop a conceptual plan with alternatives to ensure that the surface transportation system will continue to serve the Nation's needs. The report is to include recommendations regarding design and operational standards, Federal policies, and legislative changes. The Secretary would also establish a Technical Advisory Committee composed of representatives of several specified organizations and fields. The report, which has a wider scope than FHWA's longstanding *Conditions and Performance* study, is to be completed within four years of enactment. [§ 1202]

Freight-Transportation Gateway Program. The Secretary of Transportation is to establish a freight transportation gateways program to improve productivity, security, safety, access, and economic efficiency while mitigating congestion and community impacts. The bill calls for intermodal freight needs to be addressed in the project development process. States are to coordinate with metropolitan planning organizations (MPOs) and appoint a freight transportation coordinator to work with other States, localities and federal officials, including representatives of the Departments of Defense and Homeland Security. States and localities are encouraged to use innovative financing strategies for gateway improvements. The bill defines the eligibilities for freight transportation gateways under the Surface Transportation Program. For freight intermodal connectors on the NHS, the bill establishes a 2 percent NHS setaside, and exempts from the setaside States with adequate corridors. The bill provides for a Federal share of 90 percent for projects to support NHS intermodal freight connections. Finally, private freight rail facilities providing public benefit and public freight rail facilities, intermodal freight facilities are eligible for credit assistance under the Transportation Infrastructure Finance and Innovation Act. [§§ 1203, 1303]

<u>Construction of Ferry Boats and Ferry Terminal Facilities</u>. The bill codifies the Ferry Boat program and specifies the types of projects to be given priority. It does not extend the TEA-21 setaside from the program for ferry projects on the NHS. The program is funded at $100 million per year by two separate authorizations of $50 million each. [§§ 1204, 1101]

<u>Designation of Daniel Patrick Moynihan Interstate Highway</u>. Interstate Highway 86 in the State of New York is to be designated the Daniel Patrick Moynihan Highway. [§ 1205]

<u>State-by-state Comparison of Highway Construction Costs.</u> The bill would require FHWA to modify the current bid price index so that state-by-state comparisons of construction costs may be made and to rectify data collection deficiencies identified by General Accounting Office (GAO). An annual report to Congress is required that includes the cost in each State to construct a “standard” mile of roadway and a description of the competitive bidding procedures used in each State. [§ 1206]

Subtitle C – Finance

<u>Federal Share</u>. For most projects, the otherwise established Federal share may be increased up to 95 percent based on the percentage of a State’s land area that is nontaxable Indian land, public land, national forest or national park and monument. The provision adopts the Administration’s streamlined calculation of the adjustment, commonly referred to as the sliding scale. [§ 1301]

<u>Transfer of Highway and Transit Funds</u>. The bill clarifies the ability to transfer funds between FHWA and FTA and adds the authority to transfer State apportionments from one State to another if requested by the State. [§ 1302]

<u>Transportation Infrastructure Finance and Innovation Act (TIFIA)</u>. The bill continues the TIFIA credit program and provides contract authority for the estimated subsidy costs and the administration of the program at $130 million per year. The proposal expands TIFIA eligibility to public freight rail facilities or private facilities providing public benefit, intermodal freight transfer facilities, means of access to such facilities, and service improvements for facilities such as Intelligent Transportation Systems (ITS). The bill also reduces the minimum eligible project

size from $100 million to $50 million or 20 percent of a State's highway apportionments for the most recently completed fiscal year in which the project is constructed. [§ 1303]

National Commission on Future Revenue Sources to Support the Highway Trust Fund and Finance the Needs of the Surface Transportation System. Establishing an 11-member bipartisan commission to conduct a comprehensive study of the alternatives to replace or to supplement the fuel tax as the principal source of revenue to support the Highway Trust Fund over the next 30 years, the bill authorizes $3 million for FY 2004 for the costs of the commission and study. The Report to Congress is due on September 30, 2007. [§ 1305; see similar Commission in § 5502]

State Infrastructure Banks (SIBs). The bill expands the TEA-21 SIB program (which limits eligibility to California, Florida, Missouri, and Rhode Island) to any other State that seeks such an agreement. As under TEA-21, Federal requirements would apply to "recycled" funds. [§ 1306]

Public-private Partnerships Pilot Program. The bill establishes a new pilot program to demonstrate the advantages of public-private partnerships for critical capital development projects, including highway, bridge, and freight intermodal connector projects authorized under Title 23. The Secretary may select up to 10 projects. Authorized funding of $10 million per year is available to provide project sponsors assistance for development phase activities, to enhance project delivery and reduce overall costs. [§ 1307]

Subtitle D – Safety

Highway Safety Improvement Program (HSIP). Replacing the safety setaside from the Surface Transportation Program, the bill establishes the HSIP as a stand-alone, umbrella program for a total of $8.2 billion distributed by formula over the life of the bill. States are required to develop and implement a State strategic highway safety plan, in close consultation with stakeholders, by October 1 of the second fiscal year. All projects, by definition, are included in the plan. If a State fails to develop a strategic safety plan by October 1 of the second fiscal year, but demonstrates satisfactory progress to the Secretary, the State may continue to use HSIP funds but only for purposes currently eligible for rail-highway crossing and hazard elimination program funds. If a State has not adopted a strategic highway safety plan 2 years after enactment, the HSIP funds it would otherwise receive will be apportioned to other States using the STP formula. States with strategic safety plans may use up to 25 percent of their HSIP funds for other safety projects included in the strategic plan. The Federal share for projects funded by HSIP is 90 percent.

States must set aside from their HSIP apportionments funds for bicycle and pedestrian safety improvements based on the percentage of all fatal crashes in the State that involve bicyclists and pedestrians.

States must submit annual reports on their progress and performance in achieving strategic safety goals and describing not less than 5 percent of locations determined by the State to exhibit the most severe safety needs. The Secretary must post the reports on the World Wide Web. The reports are not subject to discovery and may not be admitted into evidence in a Federal or Sate court proceeding in any action for damages arising from an occurrence at any identified location. [§ 1401]

Railway-highway Crossings. The bill establishes a takedown from the HSIP of $200 million per year for hazard elimination and the installation of protective devices at rail-highway crossings. The funds are apportioned to the States using the HSIP formula and 50 percent of the funds apportioned to each State are set aside for protective devices. Program funds may be used for program related data compilation and analysis. [§ 1401]

Roadway Safety Improvements for Older Drivers and Pedestrians. A new program, authorized at $25 million per year, funds projects to improve traffic signs and pavement markings consistent with the recommendations in FHWA's Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians. The bill does not describe how the funds are to be distributed. [§ 1401]

Operation Lifesaver. Drawing from the HSIP rather than STP, the bill increases the takedown to $600 million annually for this grade crossing education and awareness program. [§ 1402]

Bus Axle-weight Exemption. The bill exempts over-the-road buses and intrastate public agency transit passenger buses on the Interstate from the axle-weight limitations. [§ 1404]

Safe Routes to Schools. Establishing a new program to enable and encourage primary and secondary school children to walk and bicycle to school, eligible activities include infrastructure-related and behavioral projects (at least 10 percent must be used for the latter). A $70 million annual takedown from the HSIP, apportioned to States by HSIP formula, would be available to State, regional and local agencies until expended with a federal share of 90 percent. [§ 1405]

Purchases of Equipment. The bill adds a requirement that States carrying out a project under Chapter 1 of Title 23 make comparisons of the costs of equipment purchase vs. leasing of the equipment. A written analysis is required to demonstrate the cost savings associated with purchasing the equipment. [§ 1406]

Workzone Safety. The provision adds to the list of methods that the Secretary shall use for improving safety at highway construction project sites a recommendation that 1) all federally-assisted projects in excess of $15 million enter into contracts only with work zone safety services and traffic control contractors that carry general liability insurance of no less than $15 million, 2) all such projects are monitored by a qualified vendor and monitored continuously; and 3) federally-funded projects fully fund not less than 5 percent of project costs for work zone safety and temporary traffic control measures. [§ 1407]

Worker Injury Prevention and Free Flow of Vehicular Traffic. The legislation calls upon the Secretary to promulgate regulations to decrease the probability of worker injury; require workers to wear high-visibility clothing, and other such worker-safety measures, as the Secretary deems appropriate. [§ 1408]

Identity Authentication Standards. Adds to Chapter 1 of Title 23 new requirements for authenticating the identity of applicants for commercial drivers' licenses by State departments of motor vehicles. [§ 1409]

Open Container Requirements. Effective with FY 2008 apportionments, the Secretary must withhold 2 percent of any amount to be apportioned to the State for Federal-aid highways if the State fails to enact and enforce a qualifying open container law. If a State whose funds have been withheld comes into compliance within 4 years of any withholding action, the funds may be restored to the State. The current law provision requiring the transfer of highway apportionments to safety programs is eliminated. [§ 1410]

Subtitle E– Environmental Planning and Review

Integration of Natural Resource Concerns into State and Metropolitan Transportation Planning. Intending to strengthen the integration of natural resource consideration and stakeholder participation in the metropolitan and statewide transportation planning processes, the bill adds water quality and the minimization of adverse health effects as planning factors. [§ 1501]

Consultation Between Transportation Agencies and Resource Agencies in Transportation Planning. Long-range transportation plans must include a discussion of potential habitat, hydrological and environmental mitigation activities as well as transportation strategies necessary to effect greater mobility. The proposal mandates that the MPO and State, respectively, consult with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation in the development of transportation plans. [§ 1502]

Integration of Natural Resource Concerns into Transportation Project Planning. In developing environmentally related NHS design criteria (in cooperation with State transportation departments), the Secretary must consider FHWA's Flexibility in Highway Design and Eight Characteristics of Process to Yield Excellence and the Seven Qualities of Excellence in Transportation Design. [§ 1503]

Public Involvement in Transportation Planning and Projects. The provision directs States and MPOs to share potential projects by holding public meetings at convenient and accessible locations and time, employing visualization techniques, and posting information on the World Wide Web. [§ 1504]

Project Mitigation. Specifying that States should establish habitat, stream, and wetland mitigation funds to encourage efforts for habitat, streams, and wetlands mitigation in advance of or in conjunction with highway or transit project, the bill allows States to deposit and use a portion of their NHS and STP apportionments in such a fund. [§1505]

Transportation Project Development Process. Establishing an alternative project development process for highway and transit programs, the provision lays out specific roles and responsibilities for Federal agencies (e.g., Lead and cooperating agencies) with specific consequences for certain actions or inaction by Federal agencies. The U.S. Department of Transportation is established as the lead agency in the environmental review process. The sponsor of a project may request that the lead agency carry out the environmental review process for a project under the alternative process. The process has certain prescribed steps, including collaborative development of flexible process and timeline work plans; purpose and need statements, project alternatives; and issue identification and resolution processes. [§ 1511]

Assumption of Responsibility for Categorical Exclusions. A State may assume responsibility for determining whether certain designated activities are categorically excluded from environmental assessment or impact statement requirements, following a three-year memorandum of understanding between the State and the Secretary, which would include the establishment of circumstances under which the Secretary would reassume responsibility. [§ 1512]

Surface Transportation Project Delivery Pilot Program. With a written agreement of the Secretary and a State, the Secretary may assign the environmental review responsibilities of the Secretary (with the exclusion of the Clean Air Act) for one or more highway projects. The State responsibility would not preempt U.S. DOT authority. Up to five states, including Oklahoma, may participate in the program. The Secretary will promulgate regulations within 270 days after enactment to carry out the program, in which States will compete to participate. U.S. district courts will have exclusive jurisdiction over any civil actions taken against a state carrying out these responsibilities. The Secretary will provide an annual report to Congress on the administration of the program. [§ 1513]

Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites ("4(f)"). The bill amends the preservation of parkland policy to allow the requirements to be satisfied if the Secretary finds that a program or project will have a de minimis impact on the protected area. In making determinations, the Secretary is to consider avoidance, minimization, mitigation, or enhancement measures included in the project. The Secretary must consult with appropriate agencies and receive written concurrence, for example from the Advisory Council on Historic Preservation for historic sites. The Secretary is required to promulgate new regulations to determine standards to define whether avoiding a protected resource is prudent and feasible. A joint study and a report to congress are required of the Secretary and the Transportation Research Board on the processes developed under this provision, the post-construction effectiveness of mitigation and avoidance measures, and the quantity of projects for which there have been de minimis findings. [§ 1514]

Regulations. The Secretary shall promulgate regulations necessary to implement the amendments made by Chapters 1 and 2 of Subtitle E (except the pilot program under section 1513) not later than one year of enactment. [§ 1515]

Critical Real Property Acquisition. The legislation allows states to use their highway apportionments to acquire any real property determined to be critical because the value of the property value is increasing significantly, there is imminent threat of development, and the property is necessary for the implementation of the goals stated in the proposal for the project. [§ 1521]

Planning Capacity Building Initiative. The bill directs the Secretary to carry out a planning capacity building initiative, funded at a total of $24 million from FHWA's administrative funds, to support enhancements in transportation planning to strengthen State, MPO and tribal transportation planning, especially those activities directed toward homeland security. The Federal share is 100 percent. [§ 1522]

Subtitle F - Environment

Environmental Restoration and Pollution Abatement; Control of Invasive Species and Establishment of Native Species. Expanding eligibility under both the STP and NHS programs for pollution abatement and environmental restoration activities, the bill establishes eligibility for the control of invasive plant species and establishment of native species. [§ 1601]

National Scenic Byways. Establishing America's Byways as an umbrella for promoting National Scenic Byways and All-American Roads, the bill provides a total of $220 million and clarifies the Secretary of Transportation's authority for research, technical assistance, marketing and promotion. [§ 1602]

Recreational Trails Program (RTP). Expanding permissible fund uses to trail assessment, trail crews, and trail training, the bill also provides a total of $360 million, amends the Federal share to be sliding scale rather than a strict 80 percent, allows RTP funds to match other Federal funds, and allows Federal share flexibilities for RTP projects sponsored by Federal agencies. It also adds a Youth Corps funding requirement of at least 10 percent of RTP. [§ 1603]

Exemption of Interstate System. The bill states that the Interstate system shall not be considered to be a historic site, regardless of whether it is listed on the National Register of Historic Places. However, a portion of the system that possesses an independent feature of historic significance, such as a historic bridge or a highly significant engineering feature that would qualify independently for listing on the Register shall be considered to be a historic site. [§ 1604]

Standards. Requiring the Secretary to encourage States to use context sensitive design, the bill allows exceptions from the Interstate and National Highway System design requirements, if the design is consistent with context sensitive design principles. [§ 1605]

Use of High Occupancy Vehicle (HOV) Lanes. Continues to define a vehicle qualifying to use high occupancy vehicle lane as one having at least two occupants. States must permit motorcycles to use HOV lanes unless a responsible agency certifies that use of the HOV lane by motorcycles would be safety hazard. States may allow single occupant vehicles (SOVs) that are both low emission and highly fuel efficient to use HOV lanes if the State establishes a method of marking such vehicles, monitors and reports on performance, and ensures that use by SOVs does not seriously degrade the performance of the facility. States may also permit public transportation vehicles to use HOV lanes. States may charge tolls on use of HOV lanes by vehicles that do not satisfy established high occupancy vehicle lane requirements (a.k.a. HOT Lanes). [§ 1606]

Bicycle Transportation and Pedestrian Walkways. Explicitly allowing STP and CMAQ funds to be used for nonconstruction pedestrian safety projects, the proposal continues $500,000 annual funding for a national, nonprofit pedestrian and bicycle safety clearinghouse (as a deduction from the STP rather than a separate line item). States must also allocate a portion of their HSIP funds for bicycle and pedestrian improvements based on the percentage of all fatal crashes in their respective States involving bicyclists and pedestrians. [§§ 1607, 1401]

Idling Reduction Facilities in Interstate Rights-of-Way. The bill would allow States to permit installation of electrification or other idling reductions facilities in rest areas within the Interstate right-of-way that could be used to provide heating, air conditioning, electricity, and communication to motor vehicles, even if used for commercial purposes. States may not charge or permit charges for the use of such facilities. [§ 1608]

Toll Programs. Amending the Interstate System Reconstruction and Rehabilitation Pilot Program, the proposal eases the test for eligibility if the use of tolls to finance the reconstruction or rehabilitation is the most efficient, economical or expeditious option to advance the project.

Additionally, the proposal includes a Fast and Sensible Toll (FAST) Lanes program that would allow tolling, subject to an agreement with the Secretary, to manage high levels of congestion, to reduce emissions in an air quality nonattainment or maintenance area, or to finance the addition of one or more lanes to a Interstate highway to reduce congestion. Eligible facilities are existing (at the time of enactment) toll facilities, existing facilities, including those that serve HOVs, facilities constructed or modified after enactment to create additional tolled capacity and, in the case of a previously untolled facility, only the new lane(s) added. States, public authorities, or public and private entities designated by a State may collect tolls to be used for 1) debt service, 2) a reasonable return on investment of any private financing, 3) operating and maintenance costs (including costs of 4R), and 4) highway and transit purposes eligible for Federal assistance under this Titles 23 and 49. A facility charging tolls under this provision may impose tolls that vary by time of day, and tolls on HOV facilities under this provision must vary by time of day. Tolls collected from motorists using a FAST lane must be collected using noncash electronic technology. The Secretary is to promulgate a final rule within 180 days of enactment specifying requirements, standards, and performance specifications for automated toll collection systems to maximize interoperability. Funding is authorized for pre-implementation and post-implementation evaluations of projects planned or implemented under this provision. The Secretary may use up to 2 percent of the funds for grants to promote program purposes and for technical support for entities considering or implementing FAST lanes. The Federal share for projects is 80 percent. [§1609]

Federal Reference Method. The Administrator of the Environmental Protection Administration (EPA) is to conduct a study of the ability of monitors to coarse particulate matter and to develop a method to measure directly the amount and composition of coarse particulate matter. [§ 1610]

Addition of Particulate Matter Areas to CMAQ. The bill establishes apportionment factors that modify existing values for ozone and carbon monoxide nonattainment and maintenance areas and account for new ozone and fine particulate matter nonattainment areas. [§ 1611]

Addition to CMAQ-Eligible Projects. The provision expands CMAQ funding eligibility to the purchase of alternative fuel or biodiesel and to the purchase of integrated, interoperable emergency communications equipment. The bill also directs that States are responsible for ensuring that sub recipients of CMAQ funds have emission reduction strategies for fleets used in construction projects located in nonattainment or maintenance areas when the projects are funded with Title 23 funds. CMAQ funds may be used for the deployment of the reduction strategies. Broadens the eligibilities for States receiving the minimum apportionment under CMAQ. Such States may use their CMAQ funds for any project eligible under the STP or any project that would be eligible under the CMAQ program if the project were in a nonattainment or maintenance area. [§ 1612]

Improved Interagency Consultation. The legislation requires the Secretary to encourage States and MPOs to consult with State and local air agencies regarding emissions benefits from proposed CMAQ programs and projects. [§ 1613]

Evaluation and Assessment of CMAQ Projects. In consultation with the EPA Administrator, the Secretary will evaluate and assess a representative sample of CMAQ projects to determine the direct and indirect impacts on air quality and congestion and to ensure the effective implementation of the program. The bill provides no direct funding for the evaluation. [§ 1614]

Synchronized Planning and Conformity Timelines, Requirements, and Horizon. Preserving the current practice of keeping Statewide and metropolitan planning and programming documents separate while providing synchronization, transportation improvement programs (TIPs) and State transportation improvement programs (STIPs) would cover at least four years and be updated at least every four years. FHWA would be required to promulgate regulations on Statewide and metropolitan planning within 18 months of enactment of the bill. New conformity determinations would be required within two years of new motor vehicle emissions budget. In air quality nonattainment and maintenance areas, metropolitan long-range transportation plans (LRTPs) would be updated and conformity determined at least every four years. In attainment areas, metropolitan LRTPs would be updated at least every five years (consistent with current regulations.) The conformity horizons for transportation plans would extend for the longest of: 10-year period of a plan, latest year in the State Implementation Plan that has the area's motor vehicle emissions budget, or the year after a regionally significant project is complete. [§ 1615]

Transition to New Air Quality Standards. This section addresses methods of conformity determination before an emissions budget is available for new nonattainment areas resulting from new standards. Areas that have not been in nonattainment before and have not been required to demonstrate transportation conformity before may use an emissions budget in a State implementation plan (SIP) for the prior standard for the same pollutant, if one is available. [§ 1616]

Reduced Barriers to Air Quality Improvements. The bill allows substitution or addition of transportation control measures (TCMs) without a SIP revision or new conformity determination, if the substitute measures achieve equivalent or greater emissions reductions. [§ 1617]

Air Quality Monitoring Influenced by Exceptional Events. Not later than March 1, 2005, the Administrator of the EPA shall publish regulations, after consultation with Federal land managers and State air pollution control agencies, governing the review and handling of air quality monitoring data influenced by exceptional events (such as a natural event that is unlikely to recur at a particular location). A Governor may then petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in determination by EPA with respect to exceedances or violations of the national ambient air quality standards. [§ 1618]

Conforming Amendments. The bill makes conforming amendments to the Clean Air Act. [§ 1619]

Highway Stormwater Discharge Mitigation Program. The provision requires that 2 percent of each State's STP apportionments be set aside to be used for, among other things, improving stormwater discharge water quality, attaining preconstruction hydrology, promoting infiltration of stormwater into groundwater, minimizing stream bank erosion, and enhancing natural filters. States shall give priority to projects sponsored by a State or local government that assists the State or local government in complying with the Federal Water Pollution Control Act. The Secretary must establish a highway stormwater discharge mitigation program to improve the quality of stormwater discharge from Federal-aid highways and related facilities and to enhance groundwater recharge. Finally, the Secretary, in consultation with the EPA Administrator, within 180 days of enactment will issue guidance concerning innovative technologies and non-structural best management practices to mitigate highway stormwater discharges. [§ 1620]

Exemption from Certain Hazardous Materials Transportation Requirements. Exempts agricultural producers with gross agricultural commodity sales of $500,000 or less from certain hazmat requirements under Title 49, Code of Federal Regulations. [§ 1621]

Subtitle G – Operations

Transportation Systems Management and Operations. The bill makes regional transportation operations collaboration and coordination activities eligible for STP funds and allows States to use STP funds to reduce traffic delays caused by motor vehicle accidents and breakdowns on highways during peak driving times. The provision calls upon the Secretary of Transportation to establish a new transportation systems management and operations program to ensure efficient and effective transportation systems management and operations on Federal-aid highways through collaboration, coordination, and real-time information sharing at a regional and statewide level. [§ 1701]

Real-Time System Management Information. The Secretary of Transportation will establish a real-time management information program and, within 1 year, establish formats for the exchange of data between jurisdictions. States are to institute a statewide, real-time incident reporting system within two years or within five years if the Secretary determines that adequate real-time communications capability will not be available within two years. [§ 1702]

Contracting for Engineering and Design Services. When contracting for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services for Federal-aid construction projects, States would be required to award contracts in the same manner as a contract for architectural and engineering services under chapter 11 of Title 40. Previously there was an option to use equivalent State qualifications-based requirements. Also eliminated is the current law option that allows some States to apply limits to the overhead rates of engineering firms, thus requiring all States to apply the overhead rates established by cognizant auditors. [§ 1703]

Off-duty Time for Drivers of Commercial Vehicles. The bill exempts from any requirements for off-duty time beyond those in section 345(a)(2) of the NHS Designation Act for drivers of vehicles used primarily for transportation and operation of ground water well drilling rigs. [§ 1704]

Designation of Transportation Management Areas. This provision supplements metro planning funds for the Lake Tahoe Region with a mandatory setaside of 1 percent of funds distributed under section 202 of Title 23 (Federal Lands Highway Program). It also requires that the urbanized areas of Norman and Oklahoma City, Oklahoma be treated as a single area for purposes of apportioning metro planning funds. [§ 1705]

Subtitle H – Federal-Aid Stewardship

Future Interstate System Routes. The bill amends current law to permit States 25 years to complete a designated Interstate System route. [§ 1801]

Stewardship and Oversight. The bill amends the definition of value engineering analysis and requires the use of value engineering or other cost-reduction analysis for Federal-aid projects with an estimated cost of $25 million or more or bridge projects estimated at $20 million and above.

The proposal mandates that the Secretary of Transportation monitor federal-aid project finances, perform annual reviews of State transportation departments' financial management systems and project delivery systems, and develop minimum standards for estimating project costs. Recipients with a project estimated to have a total cost of $1 billion or more shall submit a project management plan and an annual financial plan. States must prepare an annual financial plan for projects receiving $100 million or more in Federal funds and, upon request, make the plan available to the Secretary.

The Secretary must debar contractors convicted of criminal and civil offenses involving fraud. Any monetary recoveries by the Federal Government resulting from civil judgments or criminal prosecutions pertaining to highway or transit fraud are to be shared with the State or local transit agency involved to be used by these agencies for oversight of Title 23 and Title 49 programs. [§ 1802]

Design-Build Contracting. The bill eliminates the minimum dollar cost threshold for use of design-build contracting on a given project, including intermodal facilities. [§ 1803]

Program Efficiencies-Finance. The bill amends current advance construction provisions to eliminate the requirement that a State exhaust its available Federal funds before using advance construction and allows advance construction to be used for any project authorized under 23 USC.

It also codifies the current practices for tracking funds for the purpose of determining the lapse of funds and for reporting obligations net of any deobligations. [§ 1804]

Set-asides for Interstate Discretionary Projects. The proposal continues the $100 million per year setaside from the Interstate Maintenance Program authorization to be used for discretionary grants for the resurfacing, restoration, rehabilitation or reconstruction of portions of the Interstate System. [§ 1805]

Federal Lands Highways. Continuing the current law elements of the program, the legislation adds new categories for Safety and Recreation Roads and adds operation and maintenance of transit facilities as an eligible use of funds for all categories of Federal Lands Highways facilities except Refuge Roads.

Under the *Public Lands Highways (PLH) Program*, authorized at $300 million per year, the Secretary is directed to allocate 33-1/3 percent of sums authorized for the program among States having unappropriated or unreserved public lands, non-taxable Indian lands or other Federal reservations (the PLH Discretionary Program). Allocations are to be based on need upon application of the States and give preference to projects that are significantly impacted by Federal land and resource management activities that are proposed by a State that contains at least 3 percent of the total public land in the Nation. The Secretary shall allocate the remaining 66-2/3 percent of the authorized funds to the National Forest System with equal consideration to projects providing access to and within the Forest System with $15 million of the Forest Highways funds to be set aside for repair or removal of culverts and dams and bridges to facilitate fish passage.

Under the *Park Roads and Parkways Program*, with 6-year funding of $1.9 billion, the Secretary will give funding priority to roads National Parks used more than 1 million visitor days per year, especially roads constructed before 1940. Within this category, the Secretary shall give priority to roads for National Parks adjacent to a National Park in another country or that are located in more than one State.

Under the *Indian Reservation Road (IRR) Program*, with 6-year funding of $2.175 billion, funds are to be distributed by a formula developed by rulemaking by the Department of the Interior, using existing formula until the regulations are promulgated. The bill establishes a new demonstration project under which up to 15 selected tribal governments or consortia of tribal governments may receive IRR funds directly and carry out planning, contracts and agreements for planning, research, engineering and construction consistent in accordance with the Indian Self-Determination and Education Assistance Act.

The Bureau of Indian Affairs (BIA) may use not more than 6 percent of the funds it receives for its administrative expenses for the IRR program, including the administrative expenses related to individual projects.

In addition to the IRR Program funds, $15 million per year is authorized for Indian reservation bridges and the eligible use of the bridge funds is expanded to preconstruction costs.

The bill establishes a new *Safety Program* funded at $40 million per year, to fund safety activities, both infrastructure and behavioral on roads of the Bureau of Reclamation (BOR), BIA, Bureau of Land Management (BLM), Forest Service (FS), Fish and Wildlife Service (FWS), National Park Service (NPS) and the Corps of Engineers (COE).

The bill also establishes a new *Recreation Roads Program*, funded at $50 million per year, to fund maintenance or improvements to existing recreation roads of the BOR, BLM, FS, and COE. Also eligible are maintenance and improvements of projects that are located in or adjacent to Federal land under the jurisdiction of the Departments of Agriculture and Interior for transportation planning for tourism and recreational travel, parking areas, interpretive signage, provisions for pedestrians and bicycles, and roadside rest areas or to match other Federal funds for such projects. Funds may not be used for the design or construction of new recreation roads. [§ 1806]

<u>Highway Bridge Program</u>. Authorizing $33.7 billion over 6 years, the bill continues the program for the rehabilitation or replacement bridges and allows preventive maintenance on bridges not eligible for rehabilitation or replacement. Each year $150 million of the amount authorized is available at the discretion of the Secretary, with up to $25 million reserved for seismic retrofit. For FY 2004 only, $50 million each of the Bridge Discretionary Program is reserved for the State of Nevada to replace the bridge over the Hoover Dam and to the State of Missouri for the Mississippi River bridge connecting St. Louis with Illinois. The bill continues the setaside of 15 percent of each State's bridge program apportionments for bridges not on the Federal-aid highway system, but eliminates the current 35 percent cap on the amount available for off-system bridges. Completion of the Warwick (Rhode Island) Intermodal Station, including the construction of a people mover between the Station and the T.F. Green Airport, is eligible for the funds set aside for off-system bridges. The Federal share for the Bridge Program may be adjusted by the sliding scale. Under the Bridge Program (only), costs associated with actions to preserve, or reduce the impact of a project on the historic integrity of historic bridges is an eligible project cost, but if the bridge is no longer used for motorized vehicular traffic, the reimbursable costs may not exceed 200 percent of the estimated cost to demolish the bridge. The bill continues a requirement for annual reports in the Federal Register on construction materials used in new Federal-aid bridge construction and bridge rehabilitation projects. [§ 1807]

<u>Appalachian Development Highway System</u>. The program is continued and authorized at $590 million per year. The use of toll credits in lieu of the non-Federal share on Appalachian projects is prohibited. [§ 1808]

Multistate Corridor Program. With $1 billion authorized over 6 years, the Secretary is to carry out a new discretionary program to support and encourage multistate transportation planning and development and facilitate transportation decisionmaking and coordinate project delivery involving multistate corridors. Funds may be used for multistate highway and multimodal planning studies and construction. State transportation departments and MPOs are eligible to receive and administer the funding, with a federal share of 80 percent. [§ 1809]

Border Planning, Operations, Technology and Capacity Program. A total of $1 billion is authorized for the Secretary to establish and carry out a new formula program for specified States at the northern and southern borders of the U.S. Eligible activities are highway and multimodal planning studies; cross border port of entry (POE) and safety inspection improvements; technology and information exchange activities; right of way acquisition, design, and construction to enhance border POE and safety improvements and technology and information exchange activities, to decrease vehicle emissions at POEs and border inspection facilities and to increase highway capacity near international borders.

The funds are distributed to the border States based on the weight of cargo entering the State across an international border by commercial vehicle, the average trade value of all cargo imported or exported across the international border of the State, the number of commercial vehicles crossing an international border into the State, and the number of passenger vehicles so entering. No border state receives less than ½ percent. With a Federal share of 80 percent subject to sliding scale, projects may be constructed in Canada and Mexico if they adhere to applicable U.S. standards and will be properly maintained and used over the useful life of the facility. At the request of a State, funds may be transferred to GSA for project construction. In addition, the Secretary may transfer funds directly to the GSA for purposes of the program. The Committee Report indicates that such transfers should be designed and constructed in coordination with State transportation officials from the project State. [§ 1810]

Puerto Rico Highways. The program is continued with $911 million in funding over 6 years. The bill continues the requirement to distribute the lump sum authorized each year to programs in the same proportions that Puerto Rico received apportionments of such funds in 1997. The funds are subject to the penalties under Titles 23 and 49 that would apply to apportionments from the programs. [§ 1811]

National Historic Covered Bridge Preservation. The bill continues the program and codifies it in Title 23, authorizing $14 million annually from the General Fund. [§ 1812]

Transportation and Community and System Preservation (TCSP) Program. The program is continued and codified in Title 23, with $50 million provided for each fiscal year. In addition, eligibility for TCSP projects is specifically added to the list of eligible uses of STP funds. [§ 1813]

Parking Pilot Programs. The bill establishes two new parking pilot programs. The *Commercial Truck Parking Pilot Program,* funded at $10 million per year starting in 2005, is a discretionary program to address the shortage of long-term parking for drivers of commercial motor vehicles on the National Highway System. Funds may be allocated to States, MPOs, and local governments to construct safety rest areas that include truck parking, construction of commercial truck parking facilities adjacent to commercial truck stops and travel plazas, projects to improve access to truck parking on or near the NHS, improvements to seasonal parking facilities to enable year-round use, and projects to promote awareness of the availability of public and private truck parking on the NHS.

The *Corridor and Fringe Parking Pilot Program*, funded at $10 million per year starting in 2005, is a discretionary program to grants to States to provide parking capacity to support car pooling, van pooling, ride sharing, commuting, and high occupancy vehicle travel. Eligible for funding are construction and costs of opening corridor and fringe parking facilities, improvements to access to such facilities, and promotion of awareness of such facilities. [§ 1814]

Interstate Oasis Program. Within 180 days of enactment, the Secretary is to establish the Interstate Oasis Program, including development of standards for designating oases, including the appearance of facilities and the proximity to the Interstate. Oases must offer products and services to the public, 24-hour access to restrooms, and parking for automobiles and heavy trucks. State participation in the program is voluntary. [§ 1815]

Tribal-State Road Maintenance Agreements. An Indian Tribe and a State may enter into a road maintenance agreement for Indian reservation roads and roads providing access to Indian reservation roads in which the Tribe assumes the responsibilities of the State. [§ 1816]

National Forest System Roads. The legislation mandates that $15 million of annual National Forest System Highway funding (a portion of the Public Lands Highways funding) must be used by the Secretary of Agriculture to repair or replace culverts and bridges to improve fish passage. [§ 1817]

Territorial Highways. The program for the Northern Mariana Islands, American Samoa, Guam and the Virgin Islands is continued, funded by a $50 million annual takedown from the NHS Program. The bill codifies the program in Title 23. [§ 1818]

Magnetic Levitation Transportation Technology Deployment. The Secretary is permitted to solicit applications for financial assistance for planning, designing and construction of maglev projects. The legislation provides total funding of $90 million in contract authority and $2.5 billion in appropriated budget authority. [§ 1819]

Donations and Credits. The bill adds language permitting local governments to donate funds, materials, and services. [§ 1820]

Disadvantage Business Enterprises. The program is continued as in current law. [§ 1821]

Emergency Relief. The bill increases the current permanent Emergency Relief authorization from $100 million to $300 million per year. The funds are exempt from the obligation limitation. [§ 1822]

Priority for Pedestrian and Bicycle Facility Enhancement Projects. The provision directs the Secretary to encourage States to give priority for use of their Transportation Enhancement funds to pedestrian and bicycle facility enhancement projects that include a coordinated physical activity or healthy lifestyles program. [§ 1823]

Delta Regional Authority. The bill creates and codifies in Title 23 a new program, the Delta Region Transportation Development Program, a discretionary program funded at $80 million per year. The program would fund projects on the Federal-aid system in an area that is part of the Delta Regional Authority. Funds may be used for multistate highway and transit planning, development, and construction projects. The Federal share is 80 percent, subject to sliding scale, and funds supplied by the Delta Regional Authority may be used to match program funds. [§ 1824; see a related study requirement in § 5506]

Multistate International Corridor Development Program. The bill establishes a new discretionary program under which the Secretary to make grants to State DOTs and MPOs with a goal of developing international trade corridors to facilitate the movement of freight from international ports of entry and inland ports through and to the interior of the U.S. No funds are specifically authorized for this program. Eligible corridors are those with significant levels or increases in levels of truck traffic volume related to international freight movement, connect to at least one international or inland port, traverse at least three States, and are identified as high priority corridors on the NHS in section 1105(c) of ISTEA. Any activity eligible under Title 23 is eligible for funding, but priority is to be given to enabling States and other jurisdictions to work together on multistate and multi-jurisdiction transportation decisionmaking and to studies that emphasize multimodal planning. [§ 1825]

Authorization of Contract Authority for States with Indian Reservations. The bill provides $1.8 million per year to be shared equally by States (except Arizona) having an Indian Reservation over 10 million acres, effectively New Mexico and Utah. Counties in those States may apply to the State for funds for roads that are maintained by the county and are within, adjacent to or provide access to an Indian reservation, and that are used by a school bus to transport children to school or to a Headstart program. The funds are to supplement funds provided by the Bureau of Indian Affairs and are for the maintenance of the roads. [§ 1826, § 1214(d) of ISTEA]

Subtitle I – Technical Corrections

This title repeals and/or updates obsolete text, provides clarification of an effective date, makes technical amendments to the nondiscrimination provision (23 USC 140) and codifies without substantive change provisions regarding signs identifying funding sources and Buy America requirements

TITLE II – TRANSPORTATION RESEARCH

Subtitle A – Funding

Authorization of Appropriations. Combining the Surface Transportation Research (STR) and Technology funds, the bill provides a total of $1.298 billion in funding for the Surface Transportation Research Program. There are a number of setasides for specific purposes from the Surface Transportation Research authorizations. (See authorization table for details.) It also establishes total funding levels of $177 million for Training and Education; $168 million for the Bureau of Transportation Statistics (BTS); $765 million for ITS Standards, Research, Operational Tests, and Development; $265 million for University Transportation Centers; $108 million for Biobased Transportation Research (subject to appropriation); $1.2 million for the Surface Transportation Research Technology Advisory Committee (subject to appropriation); and $30 million for Intelligent Transportation Infrastructure (subject to appropriation). [§§ 2001, 2101, 2105]

Subtitle B – Research and Technology

Research and Technology

- SURFACE TRANSPORTATION RESEARCH: Establishing "priority areas of effort" for the research program (including FHWA's *Conditions and Performance*, 50 year pavements/100 year bridges; lowering life-cycle costs; hazard mitigation; safety; data requirements; performance metrics; improvement of planning processes; multimodal GIS applications; and extreme weather research), the bill also has a new requirement for competition and merit review of research "to the maximum extent practicable." Specific dollar amounts are called out from the STR authorization for the following:
    - Surface Transportation-Environment Cooperative Research
    - Advanced, High-Risk, Long-term Research
    - Long-term Pavement Performance Program
    - High Performance Concrete Bridge R&T
    - Asphalt Used in Highway Pavement Research
    - Concrete Pavement Research
    - Pavement Aggregate Research
    - Alkali Silica Reactivity Mitigation Development and Deployment
    - Asphalt and Asphalt-related Reclamation Research
    - Seismic Research
    - Technology Application Program
    - International Highway Outreach Program
    - TRANSIMS Development and Deployment
    - Centers for Surface Transportation Excellence

- TRAINING AND EDUCATION: The bill continues the National Highway Institute (with some new course areas), the Local Technical Assistance Program (LTAP), and the Eisenhower Fellowship Program.

- UNIVERSITY TRANSPORTATION CENTERS: The bill continues the program, increasing the number of centers to be funded

- NEW STRATEGIC HIGHWAY RESEARCH PROGRAM (New-SHRP): In providing for a New-SHRP; building on National Research Council (NRC) Report 260 and subsequent detailed planning work to scope the research areas, the bill directs the program to be administered by the NRC and funded at $75 million annually to be deducted from the amounts authorized for IM, NHS, Bridge, STP, HSIP, and CMAQ programs.

- RESEARCH PLANNING: The Senate bill mandates a "Surface Transportation Research and Technology Deployment Strategic Plan" focusing on six areas: safety, operations, infrastructure, planning and environment, policy and asset management. This bill adds a substantial set of material to add to DOT's current annual R&D review, including program progress/summary material on specified areas. In consultation with the Secretary of Homeland Security, the Secretary is to develop a 5-year highway security research and technology transfer plan that must be coordinated with the Department of Homeland Security.

- SURFACE TRANSPORTATION RESEARCH TECHNOLOGY ADVISORY COMMITTEE: In addition to the ITS commission noted below, the bill requires formulation of a twelve-member "Surface Transportation Research Technology Advisory Committee" which must have expertise in six defined areas. Funding for the Committee is authorized at $200,000 per year subject to appropriation.

- MULTISTATE CORRIDOR OPERATIONS AND MANAGEMENT. The Secretary must encourage multistate cooperative agreements, coalitions or other arrangements to promote regional cooperation, planning and shared project implementation to improve transportation system managements and operations. Funding for the I-95 corridor coalition is authorized at $66 million over 6 years to be set aside from ITS Research funds.

- SURFACE TRANSPORTATION-ENVIRONMENT COOPERATIVE RESEARCH PROGRAM (STECRP). The Secretary may enter into an agreement with the National Academy of Sciences to carry out activities under this program funded at $20 million per year from the STR authorization.

<u>Study of Data Collection and Statistical Analysis Efforts</u>. The Bureau of Transportation Statistics (BTS) continues its lead role in working with other DOT agencies in developing statistical standards. Within 90 days of enactment, the Secretary will engage the Transportation Research Board to study the data collection and statistical analysis efforts of the Department make recommendations. BTS is to implement the results of the TRB study to the maximum extent practicable. If the Comptroller General determines that the study has not been conducted, BTS

will be ineligible for funding from the Highway Trust Fund until the study has been conducted. [§ 2102]

Centers for Surface Transportation Excellence. The Secretary is to establish centers for surface transportation excellence to promote strategic national programs and activities, including the environment, operations, surface transportation safety, project finance, and asset management. After multiyear strategic plans for the centers are developed, the Secretary shall make grants to and enter into cooperative agreements with the National Academy of Sciences, AASHTO, planning organizations, federal laboratories, States, and/or other organizations. A total of $10 million per year is to be setaside from STR funds for the Centers. [§ 2103]

Motorcycle Crash Causation Study. The Secretary is to provide grants to conduct a comprehensive motorcycle causation study. The study must employ the international methodology for in-depth motorcycle accident investigation of the Organization for Economic Cooperation and Development. The study is funded at $1.5 million per year in FYs 2004 and 2005, the funding to be derived from funds authorized for the BTS. [§ 2104]

Transportation Technology Innovation And Demonstration Program. Continuing the Intelligent Transportation Infrastructure demonstration initiative begun in Pennsylvania under section 5117(b)(3) of TEA-21, the bill authorizes additional funding of $5 million per year (subject to appropriation) and provides a new list of potential follow-on deployment areas. [§ 2105]

Subtitle C – Intelligent Transportation System Research

Intelligent Transportation Systems (ITS) Research and Technical Assistance. The bill indicates that continued investment in architecture and standards development, research, technical assistance for State and local governments, and system integration is needed to accelerate the rate at which ITS is incorporated into the national surface transportation network to improve safety and efficiency. Within the funds authorized for ITS Research, the Secretary of Transportation will receive $1.5 million annually to fund a public-private advisory committee for research, planning, standards development, deployment, and marketing of ITS programs, products, and services to coordinate the development and deployment of ITS in the U.S. The Secretary is to develop a 5-year National ITS Program Plan and a national ITS architecture and standards. Under the Commercial Vehicle Information Systems and Networks program (CVISN), States may apply for grants for core deployment of CVISN with a maximum of $2.5 million per State and for expanded deployment with a maximum of $1 million. The Federal share is 80 percent as adjusted by the sliding scale. Mandating the establishment of a national, interoperable 511 system, the bill establishes the goals of a 5 percent reduction of metropolitan congestion by 2010 and an average 10-minute reduction in emergency response times. [§ 2201; see similar CVISN program in § 4241]

TITLE III – INTERMODAL PASSENGER FACILITIES

Intercity Bus Intermodal Passenger Facilities. To accelerate intermodal integration among North America's passenger transportation modes, the legislation directs the Secretary to make grants to State and local governments and non-profit organizations for capital projects. A grant may not exceed 50 percent of the estimated project cost. The program is funded at $10 million annually beginning in 2005, subject to the Federal-aid highway obligation limitation. [§ 3045]

TITLE IV – SURFACE TRANSPORTATION SAFETY

Subtitle F – Rail Transportation

Federal Bonds for Transportation Infrastructure. The bill establishes a nonprofit corporation, the Build America Corporation, as a non-Government entity, to issue Build America bonds to support qualified projects. Qualified highway projects are projects for highway facilities or other facilities eligible for funding under Title 23. Qualified congestion relief projects are intermodal freight transfer facilities, freight rail facilities, freight movement corridor; intercity passenger rail or facility, intercity bus vehicle or facility, border-crossing facility or other public or private facility approved by the Secretary. The Secretary shall base such approval on the economic, environmental, mobility, and national benefits of a project and give preference to regionally or nationally significant projects, projects sponsored by multistate coalitions and/or private sector entities that support international commerce or otherwise enhance the national transportation system. Only capital costs are eligible and Federal requirements under Titles 23, 40, and 49 which would apply if the project were assisted with Federal funds, will apply to such projects. The State agency related to the project must update its list of accepted construction technologies to match a list prescribed by the Secretary. [§§ 4602, 4603]

Use of Congestion Mitigation and Air Quality (CMAQ) Improvement Funds for Boston to Portland Passenger Rail Service. Through December 15, 2006, CMAQ funds apportioned to Maine may be used to support the operation of passenger rail service between Boston, Massachusetts and Portland, Maine. [§ 4662]

TITLE V – HIGHWAY REAUTHORIZATION AND EXCISE TAX SIMPLIFICATION

Subtitle A – Trust Fund Reauthorization

Extension of Highway Trust Fund Expenditure Authority and Related Taxes. The bill extends the following Highway Trust Fund provisions:

Expenditure Authority

- Authority to make expenditures from the Highway Account of the Highway Trust Fund for specified purposes is extended through September 30, 2009. [5001(a)(1)(A)]
- The list of approved purposes of expenditures is updated to include the expenditure of funds to liquidate obligations under SAFETEA of 2004. [5001(a)(1)(B)]

- The "penalty" for continuing to expend funds after the cutoff date of September 30, 2009 is continued. Under this provision, sometimes referred to as the Basso Rule, all transfers of tax receipts to the Trust Fund would be cut off, is such expenditures are made. [5001(a)(1)(C)]
- Comparable provisions to the above are also made for the Mass Transit Account of the Highway Trust Fund. [5001(a)(2)]

Highway Trust Fund Taxes

- Extends the imposition of existing taxes through September 30, 2009. Most of these taxes would have otherwise terminated on October 1, 2005, except for 4.3 cents per gallon of the fuel tax, which does not terminate. [§ 5001(c)(1)]

Exemptions from Taxes

Most exemptions require no extension.

- Extends the exemption from the gas-guzzler and tire taxes for exports, use by State and local governments, and use by nonprofit educational organizations through September 30, 2009.
- Extends the exemption from the heavy vehicle use tax for vehicles used by State and local governments and for transit buses through September 30, 2009. [§ 5001(d)]

Deposits into and Transfers from the Highway Trust Fund

- Extends the transfer from the General Fund to the Highway Trust Fund of tax receipts from taxes dedicated to the Highway Trust Fund through September 30, 2009.
- Extends the transfer of receipts from boat gas from the Highway Trust Fund to the Boat Safety Account of the Aquatic Resources Trust Fund and to the Land and Water Conservation Fund.
- Extends the transfer of receipts from small engine fuel (lawn mowers, chain saws, etc.) to the Sport Fish Restoration Account of the Aquatic Resources Trust Fund. [§ 5001(e)]

Tax Benefits for Certain Alcohol Fuels

- Extends the special tax treatment of fuels that are at least 85 percent alcohol either from natural gas or from coal. [§§ 5001(c(1)(C), 5001(f)]

<u>Use of Highway Account Funds for Rail Projects</u>. Rail projects started after enactment may not be funded from the Highway Account of the Highway Trust Fund unless they are for publicly owned rail facilities or private facilities that will yield a public benefit. [§ 5001(g)]

<u>Highway Use Tax Evasion Projects</u>. The bill authorizes expenditure of $100 million per year from the Highway Trust Fund for efforts to curb evasion:

- For the Internal Revenue Service (IRS), $30 million per year for enforcement of fuel tax compliance, $10 million per year for ExSTARS, and $10 million per year for ExFIRS.
- For the Federal Highway Administration, $50 million per year ($1 million per State) to combat fuel tax evasion at the State level. [§ 5001(h)]

Full Accounting of Funds Received by the Highway Trust Fund. Effective April 1, 2004, the bill eliminates the current requirement that the Highway Trust Fund bear the cost of various refunds and credits provided by law against fuel and truck tax liabilities. The refunds and credits would be paid from the General Fund without reimbursement from the Highway Trust Fund. The payment of interest on the invested balances of the Highway Trust Fund would begin upon enactment. [§ 5002]

Modification of Adjustments of Apportionments (Byrd Test). The bill would modify the Byrd Test, a test of solvency of the Highway Trust Fund, to require that Highway Account and Mass Transit Account (each separately) unpaid authorizations at the end of a fiscal year be less than or equal to the cash balance of the account at the end of the year plus the projected receipts for the next 48 months (current law is 24 months). Any time this condition is not met, the Secretary must reduce the apportionment of funds from the account. When the Byrd Test calculation requires an estimate of tax receipts beyond FY 2009, the estimate of receipts is to be made assuming that the taxes continue to be imposed at the rates in effect at the time the estimate is made. [§ 5003]

Subtitle B – Volumetric Ethanol Excise Tax Credit

- Effective October 1, 2004, this title eliminates gasohol's partial exemption (currently 5.2 cents per gallon) from the gasoline tax and replaces it with a new excise tax credit of equal per-gallon value. The new tax credit is paid from the General Fund.
- The credit can be claimed based solely on the amount of alcohol blended into the fuel, rather than on the three different blend ratios for gasohol defined in current law (5.7%, 7.7% and 10%).
- The title also provides a new excise tax credit, paid from the General Fund, for biodiesel. Generally, the credit is 50 cents per gallon, and is $1 per gallon if the product is agri-biodiesel.
- Blenders will be able to claim the General Fund ethanol and biodiesel credits on their excise tax returns allowing the benefit of the new credits to occur at the same time as the benefit of the repealed tax exemption.
- Retroactively to October 1, 2003, the 2.5 cents per gallon of the gasohol tax currently retained by the General Fund would be redirected to the Highway Account of the Highway Trust Fund.
  [§§ 5101-5103]

Subtitle C – Fuel Fraud Prevention

Taxation of Aviation Grade Kerosene. To reduce the likelihood of untaxed jet fuel (kerosene) being used in trucks in place of taxed diesel fuel, the bill would move the point of taxation for jet fuel to the terminal rack, the same as diesel fuel. The jet fuel would be taxed at the rate of general aviation fuel, 21.9 cents per gallon. Aviation fuel that moves through the bulk system from the terminal and can be directly loaded into a commercial aircraft via a pipeline/hydrant system would be taxed at the commercial aviation rate of 4.4 cents per gallon. If the fuel taxed at the general aviation rate is ultimately used in commercial aviation, a refund would be allowed. The provision would be effective October 1, 2004. [§§ 5201-5211]

Transfer of Funds from the Airport and Airways Trust Fund (AATF) to the Highway Trust Fund. Recognizing that, despite the change to jet fuel tax administration, some jet fuel will be used in highway vehicles, the bill requires the Secretary of the Treasury to annually estimate the taxes received by the AATF from such use and to transfer the receipts to the Highway Trust Fund. Effective, October 1, 2004, the amounts so transferred would be split with 89 percent to the Highway Account and 11 percent to the Mass Transit Account. [§ 5212]

Changes to Dyed Fuel Law. The bill would eliminate splash-dyeing option and require tamper-resistant mechanical injector dyeing systems at terminals selling dyed fuel. Significant penalties, with joint and several liability, would be imposed for tampering with the injection system and for failure to maintain security for such systems. Repeat offenders would no longer have the option of administrative appeal or review, with some exceptions. [§§ 5221-5223]

Operators of intercity buses would no longer be allowed to buy dyed (untaxed) fuel and then self assess the tax at their reduced tax rate. They would be able to purchase from ultimate vendors and assign the their right to a partial refund to the vendor who could then sell the fuel to the bus operator at a lower price. [§ 5224]

Inspection of Records. The bill would expand enforcement tools for IRS inspections by permitting examination of additional fuel-related records, and by assessing a penalty, with joint and several liability, for refusal of entry to inspect such records. [§§ 5231-5232]

Registration and Reporting Requirements. The bill would require taxable fuel on which the tax has not been paid could only be transported in bulk by registered pipelines or vessels to registered terminals or refineries and establish a penalty for carrying such fuel by a nonregistered pipeline or vessel. Registered vessels would be required to display proof of registration and there would be a civil penalty for failure to display such registration. [§§ 5241-5242]

Persons who operate a terminal or refinery within a foreign trade zone or within a customs bonded storage facility, or those holding inventory positions with respect to taxable fuel in such terminals, must register with the Internal Revenue Service. Substantial penalties would apply to those who fail to register and to meet reporting requirements. [§§ 5243-5244]

Persons required to file information reports related to fuel must file electronically if they have 25 or more reportable transactions per month. [§ 5246]

Imports. Under the bill, the tax on fuel entering the U.S. (other than transfers in bulk) for consumption, use, or warehousing, would be immediately due and payable at the time of entry if the enterer is not registered with the IRS. The Customs Service can seize the fuel or detain the vehicle carrying the fuel if the tax is not paid or bond posted. If the tax remains unpaid 5 days after seizure, the Secretary of the Treasury may sell the fuel.

After promulgation of regulations by the Department of Homeland Security, taxable fuels destined for import into the U.S. would be subject to the cargo declaration and electronic reporting requirements, including declaration 24 hours before the cargo is laden aboard the vessel at the foreign port. The customs reporting would be shared with the IRS.
[§§ 5251-5252]

Miscellaneous Provisions.

- Modifies the definition of diesel to include any liquid offered for sale for use in a diesel highway vehicle or diesel train.
- Allows registered "ultimate vendors" to administer credits and refunds of the gasoline tax, on credit card sales of diesel to State and local governments and for farm diesel under certain conditions.
- Eliminates the option to pay the heavy vehicle use tax (HVUT) in quarterly installments. Requires that an electronic identification device indicating proof of payment of the HVUT be displayed on each taxable vehicle.
- Dedicates the receipts from a number of the penalties assessed in conjunction with highway tax enforcement to the Highway Trust Fund effective October 1, 2004.
[§§ 5261-5267]

Total Accountability. The bill requires that all gasoline, gasoline blendstocks, diesel fuel and kerosene removed through a terminal rack are taxable subject to available credit and exemption provisions. [§5271]

Excise Tax Reporting. Beginning October 1, 2004, the bill would require that fuel excise taxpayers file monthly returns rather than the quarterly returns currently required. The returns filed would include information on any refined product removed from a terminal whether or not the product is taxable. [§5272]

Subtitle D — Definition of Highway Vehicle

The bill establishes a statutory definition for "highway vehicle," currently defined only in IRS regulations. The definition is key to determining whether certain vehicles and their tires and fuel are taxable. The bill also clarifies the exclusion of mobile machinery from the definition of highway vehicle. Mobile machinery, such as cranes, would not be taxable under the truck retail tax, the heavy vehicle use tax or the tire tax. Fuel used by mobile machinery would be taxable unless it traveled less than 5,000 miles during the year or was not licensed to travel on public roads at any time during the year. [§§ 5301-5302]

Subtitle E – Excise Tax Reform and Simplification

Gas Guzzler Tax. The bill dedicates the gas guzzler tax, an existing tax, to the Highway Trust Fund effective upon enactment. It also modifies the coverage of the tax so that limousines over 6,000 pounds are not taxed. (Other vehicles over 6,000 pounds are already exempt from the tax.) [§ 5401]

Repeal of diesel fuel tax on fuel used in trains and in inland waterway barges. The bill repeals the 4.3 cents per gallon tax, originally levied for deficit reduction, on the named fuels. [§ 5402]

Aquatic Resources Trust Fund. The bill merges the two accounts of the Aquatic Resources Trust Fund—the Boat Safety Account and the Sport Fish Restoration Account—and renames the Trust Fund the Sport Fish Restoration Trust Fund. [§ 5411]

Credit for Taxpayers Owning Commercial Power Takeoff Vehicles. An income tax credit of $250 is provided to an owner (except a government agency) of a trash or recycling truck or a ready mixed concrete trucks where the trash compacting or concrete mixing equipment is powered by the vehicle's propulsion engine. The credit provision is effective upon enactment and terminates after calendar year 2006. [§ 5452]

Credit for Auxiliary Power Units Installed on Diesel-Powered Trucks. An income tax credit of $250 is provided to a vehicle owner who installs an auxiliary power unit on a heavy-duty (over 12,500 pounds) diesel vehicle during the tax year. Such power units would provide heat, air conditioning, engine warming etc, as if the main drive engine were in operation and must be used to reduce long-term idling of the diesel engine on the vehicle. The auxiliary unit must be certified to meet emission standards by EPA. [§ 5453]

Subtitle F –Miscellaneous Provisions

Motor Fuel Tax Enforcement Advisory Commission. The bill would establish the Commission to (1) review motor fuel revenue collections, historic and current, (2) review the progress of investigations, (3) develop and review legislative proposals with respect to motor fuel taxes, (4) monitor the progress of administrative regulation projects relating to fuel taxes, review the results of Federal and State agency cooperative efforts regarding motor fuel taxes. The Commission is also to evaluate and make recommendations regarding (1) the effectiveness of existing Federal enforcement programs regarding motor fuel taxes, (2) enforcement personnel allocation, and (3) proposals for regulatory projects, legislation and funding.

Commission members are to be appointed by the Senate Committee on Finance and the House Committee on Ways and Means. Membership is to include representatives from the Federal Highway Administration, the DOT Office of Inspector General, Department of Homeland Security, the Department of Defense, and the Departments of Justice. Also included are representatives from the Federation of Tax Administrators, State DOTs, the highway construction industry, industries related to fuel distribution, the retail fuel industry, and the staff of the Senate Finance and House Ways and Means Committees.

The Commission does not include members from the Department of Treasury, but Treasury staff is to be available to consult with the Commission upon request. [§ 5501]

National Surface Transportation Infrastructure Financing Commission. The bill would establish the Commission to study revenues of the Highway Trust Fund under current law and the likely trends for receipts from the current taxes, including an evaluation of changes in types of vehicles, fuel efficiency, travel alternatives that would impact such receipts. The Commission would also consider alternatives to the current taxes, highway and transit needs, and whether additional revenues would be needed. The period to be evaluated is through 2015. The Commission is to report on policies that Congress could consider to achieve various levels of annual revenue for the Highway Trust Fund. The Commission is to submit its report to the Secretary of Transportation, Secretary of the Treasury, House and Senate tax committees and House and Senate authorizing committees. Report due within 2 years of Commission's first meeting.

The 15 members are to be appointed by the Secretary of Transportation in consultation with the Secretary of Treasury (7 members), and the Chairman and ranking members of the Senate Finance and House Ways and Means Committees (2 each). [§ 5502, see similar Commission in § 1305]

Treasury Study of Fuel Tax Compliance and Interagency Cooperation. Treasury is to report to the Senate Finance and House Ways and Means Committees on its audit and enforcement efforts and accomplishments, including interagency efforts. A detailed list of the topics to be covered is specified. The report is to cover fiscal years 2002-2005 and is due January 31, 2006. [§ 5503]

Funding for Studies of Supplemental or Alternative Financing for the Highway Trust Fund. The bill authorizes two studies:

- $1 million for a study by the Western Transportation Institute of the College of Engineering at Montana State University for a study of funding mechanisms of other industrialized nations, an examination of increasing motor fuel tax rates, and an examination of the viability of alternative funding proposals such as congestion pricing, greater reliance on tolls, privatization of facilities and bonding for construction of added capacity.
- $16.5 million for a field test by the Public Policy Center of the University of Iowa for a study on a long term field test of an approach to assessing highway use taxes based upon actual mileage driven.
  [§5504]

Treasury Study of Highway Fuels Used by Trucks for Nontransportation Purposes. The Secretary of the Treasury would be required to study the use of fuel used by trucks other then to provide motive power for the vehicle. The Secretary is to review the technical and administrative feasibility of exempting such use of fuel from the highway motor fuel tax. The Secretary is also to estimate the amount of taxable fuel consumed by trucks due to long term idling of diesel engines. Findings are to be reported to the Senate Finance and House Ways and Means Committees by January 1, 2006. [§5505]

Delta Regional Transportation Plan. The bill would require the Delta Regional Authority to conduct a study of the transportation assets and needs in the Delta region. After completion of the study, the Authority would develop a regional strategic transportation plan to achieve efficient transportation systems in the region. The bill authorizes $1 million from the General Fund for this purpose. [§5506; see related provision in § 1824]

Treatment of Employer-provided Transit and Van Pooling Benefits. The bill increases the amount of employer-provided transit benefits that may be excluded from an employee's taxable income from $100 per month to $120 per month effective January 1, 2005. [§ 5507]

Study of Incentives for Production of Biodiesel. The Comptroller General is to study the biodiesel tax credit established by the Act and evaluate its effectiveness and any unintended consequences, reporting its findings to the tax committees within 2 years. [§ 5508]

Subtitle G – Revenue Offsets

The bill contains a number of provisions intended to replace the General Fund receipts that would be redirected to the Highway Trust Fund by provisions in the bill. These include (1) an expansion of the limitation on expensing of certain passenger automobiles; (2) changes to curtail tax shelters; (3) other corporate governance proposals, (4) Enron-related tax shelters proposals, and (5) proposals to discourage expatriation.

Subtitle I – Tax-exempt Financing of Highway Projects and Rail-Truck Transfer Facilities (Private Activity Bonds)

Highway facilities and surface freight transfer facilities are added to a list of other activities eligible for exempt facility bonds. Qualified highway facilities include any surface transportation project receiving Federal assistance under Title 23 or any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible and which receives Federal assistance under Title 23. Qualified surface transportation facilities are facilities for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to the transfers) that receive Federal assistance under either Title 23 or Title 49. [§ 5691]

TITLE VI – TRANSPORTATION DISCRETIONARY SPENDING GUARANTEE AND BUDGET OFFSETS

Sense of the Senate on Overall Federal Budget. The bill States that the Senate believes that comprehensive statutory budget enforcement measures should be enacted this year and should address discretionary spending, direct (mandatory) spending, and revenues. [§ 6101]

Discretionary Spending Categories. The bill defines two categories of discretionary spending—the Highway Category and the Mass Transit Category—and establishes discretionary outlay caps for each of fiscal years 2004-2009 for each category. The Highway Category is made up of the Federal-aid Highway Program obligation limitation plus Highway Trust Funded programs of the Federal Motor Carrier Safety Administration and the National Highway Traffic Safety Administration's Trust Funded Operations and Research account. The Mass Transit Category includes the Federal Transit Administration's programs funded from both the Mass Transit Account of the Highway Trust Fund and the General Fund.

In addition to describing the two categories in terms of outlays, they are also defined in terms of obligation limitations for each fiscal year. For fiscal years 2006-2009, the Highway Category obligation limitation would be adjusted to reflect the latest information on actual receipts to the Highway Account of the Highway Trust Fund and the Mid-session Review forecast for the current year (the year before the budget year for which the adjustment is made). The adjustment to the obligation limitation is calculated in the same manner as proposed in the Administration's reauthorization proposal. [§ 6102]

TITLE VIII – SOLID WASTE DISPOSAL

Use of Recovered Mineral Component in Concrete. The Administrator of the Environmental Protection Agency, the Secretary of Transportation, and the heads of each other Federal agency that on a regular basis procures, or provides Federal funds to assist in paying the cost of procuring, material for cement or concrete projects, shall take necessary actions to fully implement all procurement requirements and incentives that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects. Priority is to be given to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

The EPA Administrator, in cooperation with the Secretaries of Transportations and Energy, are to conduct a study to determine the extent to which full implementation of the procurement requirements may realize energy savings and environmental benefits. The report is due to Congress within 30 months of enactment. [§ 8001]

Use of Granular Mine Tailings. Within 180 days of enactment, the EPA Administrator, in consultation with the Secretary of Transportation and other Federal agencies, is to establish criteria for the safe and environmentally protective use of granular mine tailings from the Tar Creek, Oklahoma Mining District for cement or concrete projects and transportation construction projects that are carried out using Federal funds. [§ 8002]

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