



Safe, Accountable, Flexible and Efficient Transportation Equity Act— A Legacy for Users

An Analysis

September 2005

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An ARTBA Analysis

2005 Highway & Transit Act: SAFETEA-LU

Executive Summary

On August 10, 2005, President George W. Bush signed the “Safe, Accountable, Flexible and Efficient Transportation Equity Act—A Legacy for Users” (SAFETEA-LU) at a Caterpillar manufacturing facility in Illinois.

This American Road & Transportation Builders Association (ARTBA) analysis of the 1,700 page new law covers the major transportation investment, policy and regulatory issues of interest to transportation construction industry professionals.

SAFETEA-LU authorizes federal investment for the highway, public transportation and highway safety programs from fiscal year (FY) 2004-2009. It provides total guaranteed funding of \$286.5 billion over the period—\$227.6 billion for the federal-aid highway program; \$52.6 billion for state and local transit programs; and \$6.3 billion for the highway safety activities.

While these investment levels represent more than a 30 percent increase over the total guaranteed funding levels provided by the Transportation Equity Act for the 21st Century (TEA-21) from FY 1998-2003, the year over year growth in the highway and transit programs—the relevant measure for gauging the transportation construction market benefits of the bill—will be much more modest.

Under SAFETEA-LU, federal highway investment will grow an average of 4.4 percent per year from the FY 2004 baseline of \$34.4 billion—a 1.8 percent average annual increase when the impacts of projected inflation are taken into account. The federal transit program will grow annually by an average 6.3 percent—a 3.6 percent average increase annually after adjusting for projected inflation.

To accomplish these levels of investment, SAFETEA-LU uses all revenues flowing into the Highway Trust Fund (HTF) through FY 2009 and draws down the fund’s existing cash balance. It maintains TEA-21’s



“budgetary firewalls” and includes provisions to guard against unlawful user fee evasion, which will help generate almost \$2 billion in new HTF revenues.

The tax changes enacted in 2004 to ensure the HTF is fully compensated for the sale of ethanol motor fuels—which increased trust fund revenues by almost \$19 billion through FY 2009—made possible virtually all of the funding increases accomplished under SAFETEA-LU.

SAFETEA-LU includes many positive changes to federal policy and law long advocated by ARTBA in the areas of project planning and environmental reviews, project litigation, safety in the construction work zone and on rural roads, and the fostering of public-private partnerships and financing. Among them:

Environmental

SAFETEA-LU provides teeth to many of the transportation project review and approval process improvements that began under TEA-21. It:

- Ensures the U.S. Department of Transportation will coordinate the environmental review process for transportation projects and imposes several deadlines for other agencies to comment on projects.
- Reforms the transportation conformity requirements of the Clean Air Act and includes a 12-month grace period before an area’s federal highway funds are threatened.
- Takes steps toward allowing qualified and interested states to assume the federal responsibility for certain environmental reviews. These provisions are intended to reduce the amount of time it takes before needed transportation improvement projects can get out of the regulatory process and into the construction phase.
- Requires any lawsuit challenging a transportation project to be filed within 180 days of a project’s approval, which should help allow projects to move forward in a timely manner. Previously, there had been no deadline, allowing lawsuits to be filed even after construction had begun.

Innovative Financing

SAFETEA-LU includes a number of innovative financing and tolling provisions to support additional infrastructure improvements. The measure:

- Expands the use of State Infrastructure Banks to all states and makes federal credit assistance under the Transportation Infrastructure Finance and Innovation Act more accessible.
- Provides a new authority for the issuance of \$15 billion in Private Activity Bonds for highway and intermodal facilities.
- Allows for the use of toll financing on the Interstate Highway System and in congested areas, and creates two new pilot programs to allow further tolling for certain Interstate projects.

Safety

In the safety arena, the new law:

- Establishes a \$1.2 billion annual categorical investment program designed to improve roadway infrastructure safety.
- Initiates unit bid pricing to help ensure appropriate safety precautions are taken in roadway work zones on all federal-aid highway projects.
- Creates a \$90 million annual rural road safety investment program.

Future Financing for America’s Transportation Network

Although SAFETEA-LU investment levels will fall short of meeting the highway and transit needs documented in repeated government reports, it lays the groundwork for the future by establishing several commissions and studies that will identify the best ways to finance federal transportation investments post 2009 so that America can meet its highway and transit challenges.

Contact ARTBA

For questions about SAFETEA-LU and this analysis, contact ARTBA’s Government Affairs team at 202-289-4434.

ARTBA Analysis of SAFETEA-LU

President Bush signed the “Safe, Accountable, Flexible and Efficient Transportation Equity Act—A Legacy for Users” (SAFETEA-LU) into law August 10, 2005. SAFETEA-LU authorizes federal investment in highway, public transportation and highway safety improvements for a five-year period, federal Fiscal Years (FY) 2005 through 2009. The funding provided by the bill, however, is generally expressed for a six-year period that also includes FY 2004.

The Transportation Equity Act for the 21st Century (TEA-21), the previous authorization, provided funding for the six-year period FY 1998 through FY 2003. During FY 2004, these programs were funded under six short-term extensions of TEA-21, making it technically a seventh year of TEA-21. But funding totals for the reauthorization bills considered by Congress during 2004 and 2005 were generally presented for six years including FY 2004, since these bills were intended to be six-year authorizations. This analysis of SAFETEA-LU will, whenever possible, follow that convention even though the bill is only a five-year authorization.

The following pages provide ARTBA’s analysis of the key funding and policy issues in the new 1,700 page law.

Transportation Funding

Overall Surface Transportation Investment

When combined with funding already enacted for FY 2004, SAFETEA-LU provides \$295.0 billion of new contract authority for the federal highway, public transportation and highway safety programs for FY 2004-09. This is the total amount of new funding that will be generated and distributed to federal, state and local transportation agencies by the legislation over that six year period. Of this total, \$236.1 billion or 80.0 percent will constitute new contract authority for the federal highway program, \$52.6 billion or 17.8 percent will be for public transportation programs, and \$6.3 billion or 2.1 percent will be for the highway safety programs.

At the same time, SAFETEA-LU specifies that no more than \$286.5 billion of the \$295 billion of these funds may actually be obligated for construction projects or other authorized uses. The \$286.5 billion ceiling on obligations, not the total amount of contract authority created by the bill, is the critical funding measure in the legislation.

The \$286.5 billion figure is also referred to as “guaranteed funding” because SAFETEA-LU includes procedural hurdles that prevent Congress from reducing it in future legislation. Prior to TEA-21, obligation limitations

were set in the annual transportation appropriations bill, usually with no formal relationship either to the nation’s transportation needs or Highway Trust Fund (HTF) revenues.

In TEA-21, Congress linked annual obligation limitations directly to HTF revenues and, in one of the most important TEA-21 innovations, established budget procedures and firewalls designed to prevent cuts during the annual appropriations process. The practical impact was to guarantee funding for these programs in the authorization legislation, and the obligation limitations set in TEA-21 became known as “guaranteed funding.” These budgetary provisions and firewalls, initially established by TEA-21, have been substantially retained in SAFETEA-LU.

SAFETEA-LU thus guarantees that \$286.5 billion of the \$295 billion of new contract authority will actually be available for investment during FY 2004-09. The guaranteed funding will be divided in the following way: \$227.6 billion or 79.4 percent for highways, \$52.6 billion or 18.4 percent for public transportation and \$6.3 billion or 2.2 percent for highway safety.

The distribution of total contract authority and guaranteed funding between highways, public transportation and highway safety programs is shown in Figure 1. The detailed distribution of guaranteed funding among programs by year is shown in Table 1.

Figure 1 – Flow of Funds under SAFETEA-LU

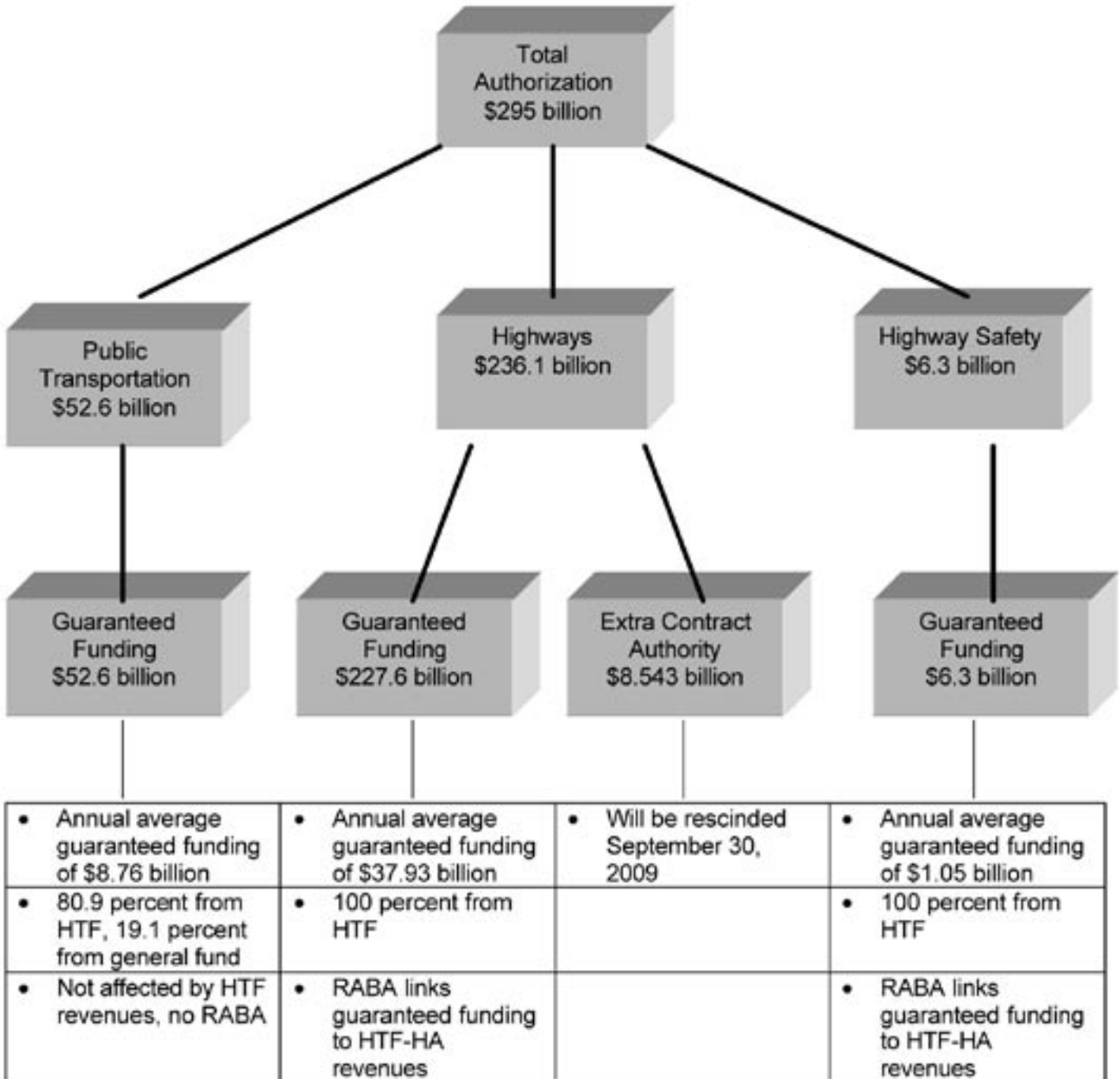


Table 1 - Guaranteed Funding for Highway and Mass Transit Programs under SAFETEA-LU

(millions of dollars)

	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	Total
Highway Obligation Limitation	\$33,643	\$34,422	\$36,032	\$38,244	\$39,585	\$41,200	\$223,127
Exempt Contract Authority /1	\$739	\$739	\$739	\$739	\$739	\$739	\$4,434
Highway Total	\$34,382	\$35,161	\$36,771	\$38,983	\$40,324	\$41,939	\$227,561
Public Transportation/2	\$7,266	\$7,646	\$8,623	\$8,975	\$9,731	\$10,338	\$52,579
Highway & Public Trans. Total	\$41,648	\$42,808	\$45,394	\$47,958	\$50,055	\$52,277	\$280,140
FMCSA /3	\$364	\$443	\$495	\$517	\$528	\$541	\$2,888
NHTSA /3	\$298	\$299	\$694	\$700	\$711	\$729	\$3,430
Highway Safety Total	\$662	\$742	\$1,189	\$1,217	\$1,239	\$1,270	\$6,318
Grand Total	\$42,310	\$43,549	\$46,583	\$49,174	\$51,294	\$53,547	\$286,458

1 \$100 million of Emergency Relief and \$639 million of formula funds that are exempt from the obligation limitation.

2 Includes both trust fund and general fund components.

3 Federal Motor Carrier Safety Administration and National Highway Traffic Safety Administration.



The fact that SAFETEA-LU authorizes \$295.0 billion of new contract authority but limits spending to \$286.5 billion means that federal, state and local transportation agencies will receive, over time, \$8.543 billion of contract authority that they will not be able to spend.

This is not a new development in federal transportation legislation. TEA-21, for example, authorized \$218 billion of new contract authority for the highway, mass transit and highway safety programs for FY 1998-2003, but limited total obligations for the six-year period to \$198 billion. The extra \$20 billion of contract authority—about \$15 billion in the highway program and \$5 billion in the mass transit program—could have been spent if Congress had passed additional legislation. As a result, between FY 1998 and 2003, federal, state and local transportation agencies accumulated funds as unspent balances that are still on their books today.

Unlike TEA-21, however, SAFETEA-LU provides for a “death-bed” rescission of the extra \$8.543 billion of contract authority. This rescission will occur on the last day covered by the bill—September 30, 2009. The impact will be to equate the net amount of new contract authority created by the bill to the amount of contract authority that can be obligated, or \$286.5 billion. Because of the rescission, federal, state and local transportation agencies will ultimately get no more new contract authority under SAFETEA-LU than they will be allowed to obligate.

Since all the extra contract authority created prior to September 30, 2009, is in the federal highway program, this is the only program that will be affected by the rescission. The amount of new contract authority created each year for the public transportation and highway safety programs is identical to the guaranteed funding and thus no rescission would be needed.

This process of doling out money with one hand and taking it back with the other is how Congress chose to address two mutually exclusive demands. One was the demand by donor states for an increased return on their contributions to the federal HTF—this calculation is based on contract authority, not guaranteed funding. This goal, which when combined with funding for the new programs created by the bill, could not be satisfied with less than \$295.0 billion.

The other demand was the Bush Administration’s insistence that total funding not exceed \$286.5 billion, subject to the threat of a veto. The bill resolved the conflict by creating and distributing \$295 billion of new contract authority, limiting total obligations to \$286.5 billion and rescinding the excess contract authority at the end.

The rescission, however, will have no impact on total highway investment under the bill. The \$286.5 billion guaranteed funding is the upper limit on spending under SAFETEA-LU and would hold whether the amount of new contract authority were \$286.5 billion, \$295 billion or any other amount.

The rescission is window-dressing and will have no impact on total spending, which is guaranteed to be \$286.5 billion.

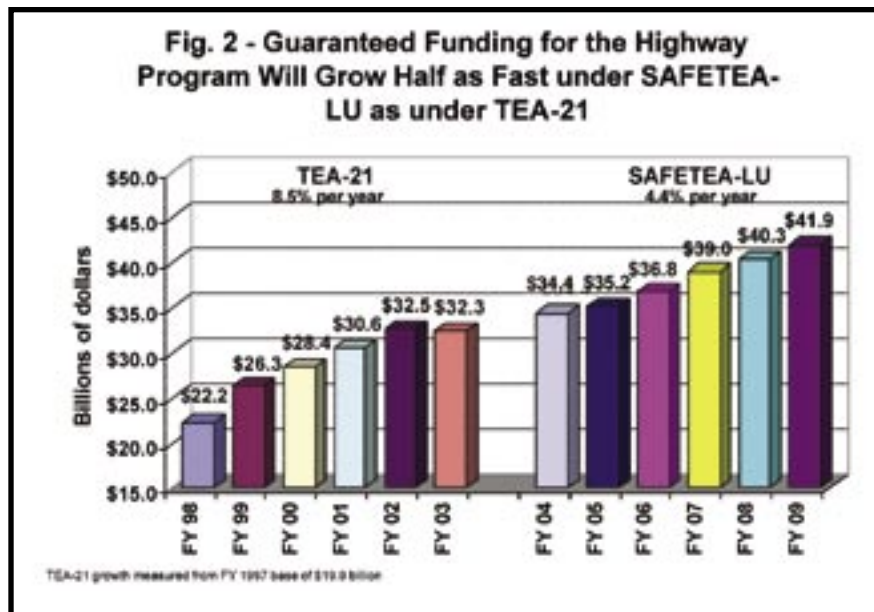
The fact that total contract authority created by the bill exceeds guaranteed funding means some of that contract authority simply cannot be spent. Under SAFETEA-LU, the extra contract authority amounts to about \$2 billion each year, or five percent of the total. This means approximately 95 percent of the contract authority each year can actually be obligated. This limitation is applied differently to apportioned (formula) and allocated (discretionary) programs. For apportioned programs, all of the contract authority is distributed to the state departments of transportation (DOTs) on October 1 of each fiscal year. The DOTs get to obligate 95 percent, and the extra contract authority simply builds up as unobligated balances.

For allocated programs, however, FHWA distributes only the amount of contract authority that can actually be obligated. This means a project or program for which SAFETEA-LU authorizes \$1 million of contract authority per year will actually receive only \$950,000, with FHWA holding back the rest. Under TEA-21, the cut was even larger, about 10 percent. The excess authorizations from the allocated programs plus the unobligated apportionments comprise the \$8.5 billion of contract authority scheduled to be rescinded September 30, 2009.

Highway Investment

Guaranteed funding. When combined with FY 2004, SAFETEA-LU guarantees a six-year total of \$227.6 billion for the federal highway program, or 79.4 percent of the total guaranteed funding under the bill. This includes \$223.1 billion for programs subject to the annual obligation limitation plus \$4.4 billion of contract authority in the new equity bonus program and the emergency relief program that is exempt from the limitation. Annual guaranteed funding levels for the highway program are shown in Table 1.

¹Intermodal Surface Transportation Efficiency Act, which covered FY 1992-97.



A comparison of highway program funding under SAFETEA-LU and TEA-21 is shown in Figure 2. Under TEA-21, federal highway funding grew from a baseline of \$19.8 billion in FY 1997, the last year under ISTEA¹, to \$32.3 billion in FY 2003, the last year of TEA-21. The increase between FY 1997 and FY 2003 was 63.1 percent or an annual average of 8.5 percent per year.

Under SAFETEA-LU, total guaranteed funding for the highway program will grow from a baseline level \$32.3 billion in FY 2003, the last year of TEA-21, to \$41.9 billion in FY 2009, the last year of SAFETEA-LU. The increase between FY 2003 and FY 2009 is 29.7 percent or an annual average of 4.4 percent.

SAFETEA-LU thus will provide only about half the annual growth of federal highway investment as TEA-21 did.

Impact of inflation. While highway program funding is projected to grow an average of 4.4 percent per year under SAFETEA-LU, the impact of this funding on growth of highway construction will be even less. The reason is that highway construction costs usually increase each year as prices of construction materials like asphalt and concrete go up, wages increase and equipment becomes more expensive. Some of the annual increase in highway funding under SAFETEA-LU will be used to cover higher construction costs, leaving only a fraction of the new money to finance an increase in the number and scope of construction projects. In the *Midsession Review of the Budget for FY 2006*, the

President's Council of Economic Advisers predicted that prices in the U.S. will rise about 2.5 percent per year between now and 2009. When the funding levels under TEA-21 and SAFETEA-LU are expressed in constant 2004 dollars, which removes the effects of inflation, SAFETEA-LU will generate real growth averaging 1.8 percent per year versus real growth of 6.1 percent per year under TEA-21. These comparisons are shown in Figure 3.

Figure 3 should make it clear that SAFETEA-LU provides a largely "status quo" highway program through the end of this decade. State and local highway agencies will receive little more each year than needed just to maintain their current level of highway construction.

Revenue Aligned Budget Authority

One of the breakthrough advances of TEA-21 was an important decision by Congress to link annual funding for highways directly to user fee revenues in the HTF. Prior to TEA-21, there was no link, which meant taxes paid by highway users could, if Congress directed, be spent for non-transportation purposes or not spent at all.

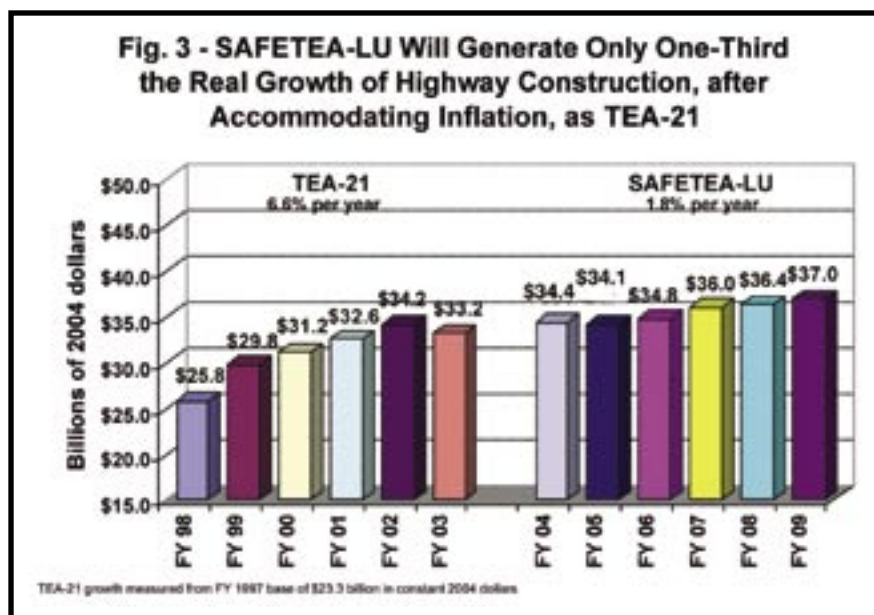
TEA-21 established just such a link and enforced the link through a number of innovative provisions:

- It set the annual obligation limitation for the highway program for FY 2000–2003 equal to estimated Highway Account receipts for the previous fiscal year, thus establishing a dollar for dollar link between Highway Account revenues and highway spending;
- It established budget firewalls and procedural hurdles to prevent Congress from reducing these annual amounts in future appropriations legislation, thus establishing guaranteed funding for the highway program; and
- It created Revenue Aligned Budget Authority (RABA) to automatically adjust the annual guaranteed funding up or down if Highway Account revenues came in above or below the initial es-

timates used to set guaranteed funding. This provision ultimately added \$9 billion to the highway investment guaranteed for FY 2000–02 in TEA-21.

SAFETEA-LU retains the TEA-21 RABA mechanism, but with some technical modifications:

- The formula for calculating the annual RABA adjustment will henceforth be based on actual Highway Account revenues for the last fully-completed fiscal year (the same "look-back" provision as in TEA-21) plus the latest estimate for the current fiscal year (which will replace the budget year or "look-forward" element in TEA-21). This change is designed to reduce big swings in RABA from year to year, since current-year revenue estimates are more accurate than estimates of future-year revenues.
- Half of the RABA adjustment will be applied to the current budget year and half to the subsequent year. This means half of the RABA adjustment for FY 2007 will be applied to FY 2007 and half to FY 2008, and similarly for the RABA adjustments for FY 2008 and 2009. Spreading the RABA adjustment over two fiscal years is also designed to reduce volatility. But it means half of any RABA adjustment for FY 2009, the last year under SAFETEA-LU, will apply to FY 2010. Since Congress will set funding for FY 2010 in the next highway authorization bill, it is unclear how the second half of the FY 2009 RABA adjustment will be treated.



- If a RABA adjustment for a fiscal year is negative, it will not apply so long as the balance in the Highway Account of the HTF on October 1 of the fiscal year is at least \$6 billion. Currently, it appears this will protect FY 2007 and FY 2008 guaranteed funding from being reduced by a negative RABA. But the balance is expected to slip below \$6 billion sometime before the start of FY 2009, which leaves that year vulnerable.
- If RABA for FY 2007 is positive, the increase in guaranteed funding for FY 2007 will be used first to raise the minimum return to donor states to 92 percent. Any remainder will be apportioned proportionately to all states as was done under TEA-21.

Although RABA generated a bonus \$9 billion of guaranteed funding for the highway program under TEA-21, it is unlikely to have a comparable effect under SAFETEA-LU. In fact, it is more likely that RABA adjustments under SAFETEA-LU will be negative than positive. The reason is that there is little slack in the revenue estimates that will be used as the baseline for the RABA computations in SAFETEA-LU, whereas the revenue estimates in TEA-21 were very conservative. SAFETEA-LU provisions described above should keep a negative RABA from having any practical impact, at least in FY 2007 and FY 2008, but the bottom line is that RABA will probably not generate the kind of funding bonuses seen under TEA-21.

Outlook for the Highway Account Balance

SAFETEA-LU pushes the Highway Account of the HTF to its limits. Not only will all projected revenues be spent by FY 2009, so will virtually all of the cash balance. Table 2 presents the latest estimates for Highway Account revenues, expenditures and the cash balance through the end of FY 2009.

The following are some of the more important conclusions that can be drawn from the data in this table.

Revenues. HTF revenue forecasts have been getting worse with each new revision. The most recent forecasts of revenues into the Highway Account are shown in Section A of the table. Both the Administration and the Congressional Budget Office (CBO) issued revenue projections in January 2005 that fell short of the highway funding levels in both the House-passed and Senate-passed bills. Since then, the Administration has cut its forecast by \$3.2 billion. This downward adjustment assumes the recent increase in the retail price of gasoline and diesel fuel will cut purchases and thus HTF revenues. It is likely CBO will also cut its revenue forecast.

The only good news from Section A of the table is the fact that Congress chose to use the Administration's revenue forecast, not the CBO's, for the RABA baseline. The RABA baseline takes the Administration forecast and adds the Joint Tax Committee's estimate of revenues from the tax changes enacted in SAFETEA-

Table 2 - Financial Outlook for the Highway Account of the Highway Trust Fund
(millions of dollars)

	2004	2005	Fiscal year		2008	2009	6-year total
			2006	2007			
A. Revenue Estimates							
CBO January Baseline	\$29,868	\$33,898	\$35,393	\$36,615	\$37,770	\$38,857	\$212,401
Treasury January Baseline	\$29,868	\$32,815	\$34,025	\$34,752	\$35,406	\$36,022	\$202,888
Treasury August Baseline	\$29,868	\$31,563	\$33,297	\$34,160	\$34,980	\$35,734	\$199,602
SAFETEA-LU RABA Baseline	\$29,868	\$31,562	\$33,712	\$34,623	\$35,449	\$36,220	\$201,434
B. Expenditure Estimates							
Guaranteed Funding, Highway Category	\$34,305	\$35,164	\$37,221	\$39,461	\$40,824	\$42,470	\$229,445
Projected Outlays, Highway Account	\$34,703	\$31,277	\$33,942	\$36,960	\$39,123	\$40,660	\$216,665
C. Highway Account Balance							
Highway Account Surplus or Deficit	-\$4,835	\$285	-\$230	-\$2,337	-\$3,674	-\$4,440	
Highway Account Balance, End of Year	\$10,806	\$11,091	\$10,861	\$8,524	\$4,850	\$410	

Sources: Midsession Review of the Budget for FY 2006, CBO, SAFETEA-LU



Table 3 - Public Transportation Funding under SAFETEA-LU

	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09
Public Transportation Total	\$7,266.0	\$7,646.3	\$8,622.9	\$8,974.8	\$9,730.9	\$10,338.1
Financed from:						
Mass Transit Account	\$5,847.2	\$6,690.5	\$6,979.9	\$7,262.8	\$7,871.9	\$8,360.6
General Fund	\$1,418.8	\$955.8	\$1,643.0	\$1,712.0	\$1,859.0	\$1,977.5
Percent financed from						
Mass Transit Account	80.5%	87.5%	80.9%	80.9%	80.9%	80.9%
General Fund	19.5%	12.5%	19.1%	19.1%	19.1%	19.1%

Source: SAFETEA-LU, Sect. 3036



LU. These are the revenue levels that will be used for computing the RABA adjustments for FY 2007-09. Using the Administration's estimates sets the bar as low as possible, but as discussed earlier, large RABA bonuses like those under TEA-21 are very unlikely.

Revenues versus guaranteed funding. Guaranteed funding for the highway budget category, which includes the highway program and the two highway safety agencies is no longer linked to Highway Account revenues under SAFETEA-LU. Under TEA-21, guaranteed funding for the highway category was identical, dollar for dollar, to projected Highway Account revenues in the previous year. SAFETEA-LU does not make such a link. Each year, guaranteed funding is \$6 to \$7 billion more than prior-year revenues. Had Congress chosen to retain the TEA-21 link, guaranteed funding for the highway and highway safety programs would be \$30 billion less than SAFETEA-LU provides. It will take virtually all of the Highway Account balance to fill the gap.

Highway account balance. The balance in the Highway Account will plunge under SAFETEA-LU and could fall to zero or below by the end of FY 2009. Section C of Table 2 shows the expected cash balance under the revenue and outlay projections in SAFETEA-LU. Any shortfall of revenues or action that increases outlays could wipe out the residual balance. This would have no practical impact since the Trust Fund could temporarily borrow from the general fund to meet expenses. But it would be an open door for opponents of federal highway investment. At the very least, there will be no cushion for the next reauthorization, which could potentially force the hard revenue or spending choices not made in this bill.

Impacts of Earmarks

The "federal highway program" is actually an umbrella term for a large number of individual programs in SAFETEA-LU, each with its own purpose and funding. These programs fall into two categories:

Apportioned programs. Funds for these programs are apportioned among the states by formula. Funds apportioned under each program must be used for particular kinds of highway projects. But within that constraint, recipient state and local transportation departments determine which projects to finance. Apportioned programs represent about 90 percent of program funding and include the Interstate Maintenance, National Highway System, Bridge, Surface Transportation, Congestion Mitigation and Air Quality, and Equity Bonus programs, plus a handful of others.

Allocated programs. Funds for most other programs are distributed in a more discretionary manner by the Secretary of Transportation or Federal Highway Administrator. There are criteria for how the funds for each program should be used, and states generally must apply for the funds. Allocated programs represent about 10 percent of total highway funds.

During the early years of TEA-21, this process worked the way the legislation intended. For discretionary programs, state and local governments submitted applications and the Secretary or Administrator funded meritorious projects.

But as time progressed, the congressional Appropriations Committees (whose authority over total highway funding had been severely limited by the TEA-21 guaranteed funding provisions) began to exercise

control over discretionary program funds by instructing the Secretary and Administrator exactly how to use them—i.e., by earmarking them for specific projects in appropriations bills and reports. By FY 2003, appropriators were earmarking virtually all allocated funds.

Earmarking is politically popular among members of Congress and a response to the scarcity of federal, state and local funds for highway improvements. But earmarking can have negative consequences. For example, many earmarks are for “wish list” projects that are still years from construction, if ever. According to formulas used by the U.S. Department of Treasury and the Congressional Budget Office to project HTF expenditures, funds earmarked for specific projects take three years longer to spend out than funds distributed by formula.

In TEA-21, earmarks were generally limited to the High Priority Project program. SAFETEA-LU not only has a High Priority Projects section, but also earmarks virtually all of the allocated program funds.

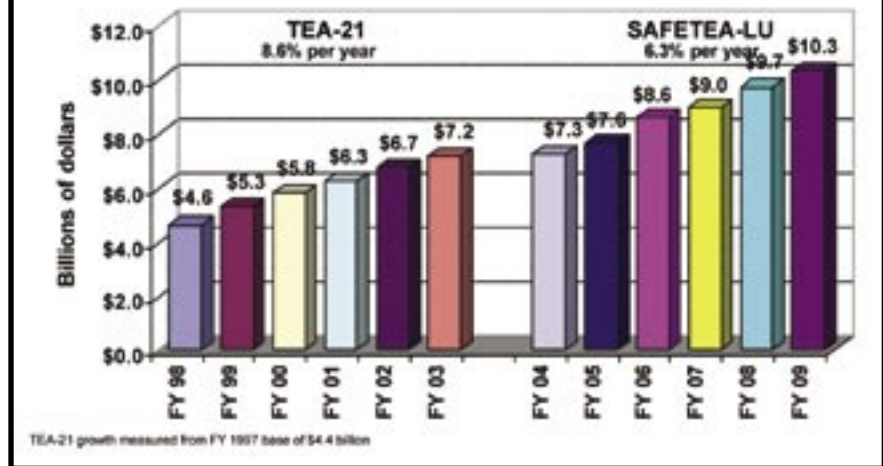
Public Transportation Investment

SAFETEA-LU guarantees \$52.6 billion for the public transportation program for the six-year period, FY 2004-09. This is 18.4 percent of the total guaranteed funding in the bill. Year-by-year amounts are shown in Table 3 on page 11, while a comparison with TEA-21 is shown in Figure 4.

Unlike the highway program, which is financed solely from the HTF, the public transportation program is supported both by the HTF and the federal General Fund. The argument for using General Funds is that the public transportation program addresses public purposes other than transportation—saving energy, reducing pollution, linking welfare recipients with jobs, and providing transportation for the elderly and disabled.

Under TEA-21, the split was 80/20, with 80 percent of total funding from the HTF and 20 percent from the General Fund. Furthermore, this split applied to each of the individual transit programs. While the 80 percent financed from the HTF qualified as con-

Fig. 4 - Growth of Funding for Public Transportation Will Slow Slightly under SAFETEA-LU



tract authority and thus did not require an appropriation, the 20 percent financed from the General Fund did require an appropriation. But, under TEA-21, the entire amount for each year was guaranteed funding, protected by the same firewall and procedural protections as the highway program, so Congress had little choice but to appropriate the funds.

SAFETEA-LU takes a slightly different approach. For FY 2005, it follows the TEA-21 pattern of financing each program partially from the HTF and partially from the General Fund. For FY 2006–09, however, it finances the Federal Transit Administration’s (FTA) administrative expenses, the university transportation research program, and the Major Capital Investment Grant program’s New Starts solely from the General Fund and all other programs, including the formula programs, from the HTF.

This should have no impact on overall funding for the public transportation program, since the annual funding is guaranteed. But the formula programs are now 100 percent contract authority, which means all of the funds can be apportioned at the start of each fiscal year even without an appropriations bill. This should be helpful to state and local transit agencies, since they will receive all of their formula transit funds at the start of the federal fiscal year. Under TEA-21, the 20 percent from the General Fund could not be apportioned until Congress had passed the transportation appropriations bill for the fiscal year.

Table 4 - Funding for Transit New Starts Under SAFETEA-LU

(millions of dollars)

Category	Number of Projects	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09	5-Year total
Projects currently under construction	31		\$1,157.4	\$838.4	\$614.4	\$424.8	\$259.2	\$3,294.2
Final design & new construction	38		\$165.4	\$544.3	\$826.3	\$1,139.2	\$1,405.3	\$4,080.5
Preliminary engineering	264		\$115.0	\$120.2	\$125.3	\$136.0	\$144.7	\$641.3
Total	333	\$1,323.8	\$1,437.8	\$1,502.9	\$1,566.0	\$1,700.0	\$1,809.2	\$8,016.0
Percent increase			8.6%	4.5%	4.2%	8.6%	6.4%	

Source: SAFETEA-LU, Sect. 3043



Under SAFETEA-LU, funds for FTA administration expenses, university transportation research and New Starts will require an appropriation. This should have no significant consequences since the funding is guaranteed. But if the transportation appropriations bill is delayed past the start of the fiscal year, funding for these programs will be dribbled out under continuing resolutions at the prior-year rate until the full-year bill is passed.

New Starts. The major transit construction program is the New Starts program. This program finances the federal share of funding for new and ongoing fixed-guideway transit construction projects. Year-by-year funding totals are shown in Table 4.

The bill identifies 31 projects that are currently under full-funding grant agreements, for which it provides \$3.29 billion to complete or continue construction. Another 38 projects are ready for final design and construction, for which it provides another \$4.08 billion. A final \$641 million is available to finance preliminary engineering for a list of 264 projects.

Outlook for Mass Transit Account Balance

Like the Highway Account, the Mass Transit Account will be drawn down to finance public transportation investment that exceeds projected Mass Transit Account revenues. The revenue, spending and balance figures are shown in Table 5 on page 14.

As a comparison of Sections A and B of the table shows, outlays from the Trust Fund over the six year

period will exceed revenues by about \$8 billion. As a result, the Mass Transit Account balance will be virtually exhausted by the end of FY 2007 and will assume a negative balance.

This can be avoided by changing the way the Public Transportation program is scored for budget purposes. Under TEA-21, each year the Treasury Department withdrew from the Mass Transit Account the full amount needed to cover the Trust Fund's share of expenses, even though some of the actual outlays would not occur for many years.

Apparently, this will continue under SAFETEA-LU, rapidly depleting the Mass Transit Account balance. An alternative, which was proposed by the Bush Administration in the FY 2006 budget, would be to withdraw transit program outlays as they actually occur. This would spread the outlays over many years and bring them in line with revenue. In so doing, there would be no erosion of the Mass Transit Account balance.

Highway Safety Investment

SAFETEA-LU also provides funding for the National Highway Traffic Safety Administration (NHTSA) and the Federal Motor Carrier Safety Administration (FMCSA), two agencies charged with improving highway safety.

Total guaranteed funding for these agencies will be \$6.3 billion for the six fiscal years, FY 2004-09. This represents about 2.2 percent of total guaranteed funding under SAFETEA-LU. Year-by-year guaranteed funding for both agencies is shown in Table 1 on page 7.

Table 5 - Financial Outlook for the Mass Transit Account of the Highway Trust Fund

(millions of dollars)

	Fiscal year						6-year total
	2004	2005	2006	2007	2008	2009	
A. Revenue Estimates							
CBO January Baseline	\$4,939	\$5,115	\$5,326	\$5,512	\$5,687	\$5,850	\$32,429
Treasury January Baseline	\$4,939	\$4,977	\$5,094	\$5,156	\$5,224	\$5,293	\$30,683
Treasury August Baseline	\$4,939	\$4,789	\$4,967	\$5,058	\$5,136	\$5,205	\$30,074
B. Expenditure Estimates							
Guaranteed Funding, Mass Transit Category	\$7,266	\$7,646	\$8,623	\$8,975	\$9,731	\$10,338	\$52,579
HTF Share of Guaranteed Funding	\$5,847	\$6,691	\$6,980	\$7,263	\$7,872	\$8,361	\$43,013
Projected Outlays, Mass Transit Category	\$7,266	\$6,674	\$7,359	\$8,120	\$8,742	\$9,180	\$47,341
HTF Share of Outlays	\$5,813	\$5,840	\$5,957	\$6,571	\$7,072	\$7,424	\$38,676
C. Mass Transit Account Balance							
Mass Transit Account, Surplus or Deficit	-\$874	-\$1,071	-\$990	-\$1,513	-\$1,936	-\$2,219	-\$8,602
Mass Transit Account Balance, End of Year	\$3,777	\$2,706	\$1,716	\$203	-\$1,733	-\$3,952	

Sources: Midsession Review of the Budget for FY 2006, CBO, SAFETEA-LU



Funding for these two agencies is financed from the Highway Account of the HTF. Because of this, the funds are considered contract authority and are available without an appropriation. Obligation of the funds is still subject to the overall limitation on the highway category but under SAFETEA-LU, the limitation is equal to the amount of new contract authority so it has no impact.

For budget enforcement purposes, funding for NHTSA and FMCSA is included in the highway category. Since RABA applies to the entire highway category and not just the highway program, funding for these two programs will be subject to the annual RABA adjustment in FY 2007-09. As discussed earlier, this is unlikely to have an impact in FY 2007 and 2008 but could be a problem in FY 2009 if RABA is negative.

ETEA-LU are in the formula that distributes highway funds among the states and the creation of several new categories of spending within the highway program.

This section of ARTBA's analysis includes a summary of these new programs and other highway program changes of interest to the transportation construction industry.

Distribution of Federal Highway Funds Among the States

Among the most contentious issues surrounding any highway legislation is the division of highway program funds among the states. One of the consequences of HTF financing is that each state can calculate the revenues attributed to its highway users and the amount of federal highway funds it receives. States that contribute more than they receive are called "donor" states, while those that receive more than they contribute are "donee" states.

The ability to make this calculation has made distribution of highway funds among the states a more contentious issue than for virtually any other expenditure of the federal government. Despite the fact that the purpose of the federal highway program is to finance

Federal Highway Program Structure

The 2005 surface transportation reauthorization bill largely retains the existing structure of the federal highway program. The major modifications of SAF-

Table 6 - Apportionment of Federal Highway Funds by State under SAFETEA-LU
(millions of dollars)

State	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	Average annual growth FY04-09
Alabama	\$646.4	\$686.0	\$694.8	\$732.6	\$758.6	\$766.1	3.5%
Alaska	\$380.0	\$401.6	\$406.7	\$428.9	\$444.1	\$448.5	3.4%
Arizona	\$595.0	\$619.5	\$619.7	\$654.0	\$678.7	\$685.5	2.9%
Arkansas	\$421.4	\$449.2	\$454.9	\$479.7	\$496.7	\$501.6	3.5%
California	\$3,100.8	\$3,198.7	\$3,240.6	\$3,460.7	\$3,604.9	\$3,640.7	3.3%
Colorado	\$444.0	\$441.1	\$459.4	\$500.4	\$524.5	\$529.7	3.6%
Connecticut	\$484.3	\$487.2	\$491.3	\$495.5	\$499.7	\$503.8	0.8%
Delaware	\$141.1	\$149.2	\$151.1	\$159.3	\$164.9	\$166.6	3.4%
Dist. of Col.	\$126.2	\$145.2	\$150.1	\$152.3	\$154.5	\$156.8	4.4%
Florida	\$1,626.1	\$1,664.7	\$1,653.8	\$1,739.1	\$1,802.5	\$1,820.4	2.3%
Georgia	\$1,201.4	\$1,220.9	\$1,212.9	\$1,272.8	\$1,318.3	\$1,331.4	2.1%
Hawaii	\$165.1	\$166.1	\$167.5	\$168.9	\$170.3	\$171.8	0.8%
Idaho	\$246.1	\$260.9	\$264.2	\$278.6	\$288.5	\$291.3	3.4%
Illinois	\$1,078.4	\$1,084.8	\$1,137.2	\$1,268.2	\$1,339.0	\$1,352.3	4.6%
Indiana	\$752.2	\$803.2	\$834.0	\$904.9	\$947.4	\$956.8	4.9%
Iowa	\$383.3	\$385.6	\$395.8	\$410.7	\$433.0	\$437.3	2.7%
Kansas	\$373.6	\$375.9	\$379.1	\$382.4	\$386.2	\$392.1	1.0%
Kentucky	\$553.7	\$596.5	\$604.1	\$637.0	\$659.6	\$666.1	3.8%
Louisiana	\$514.1	\$546.9	\$553.9	\$584.0	\$604.7	\$610.7	3.5%
Maine	\$167.8	\$180.6	\$187.0	\$190.4	\$194.3	\$198.0	3.4%
Maryland	\$557.1	\$559.3	\$555.7	\$584.1	\$605.3	\$611.4	1.9%
Massachusetts	\$594.3	\$602.6	\$607.8	\$613.0	\$624.4	\$630.6	1.2%
Michigan	\$1,008.4	\$1,034.6	\$1,057.7	\$1,137.5	\$1,187.6	\$1,199.4	3.5%
Minnesota	\$478.1	\$480.7	\$538.9	\$629.1	\$673.2	\$679.9	7.3%
Mississippi	\$396.0	\$423.6	\$429.0	\$452.4	\$468.4	\$473.0	3.6%
Missouri	\$753.1	\$813.0	\$823.4	\$868.2	\$899.0	\$907.9	3.8%
Montana	\$316.6	\$334.8	\$339.1	\$357.5	\$370.2	\$373.9	3.4%
Nebraska	\$247.7	\$262.0	\$265.3	\$279.8	\$289.7	\$292.6	3.4%
Nevada	\$231.1	\$244.4	\$247.5	\$261.0	\$270.2	\$272.9	3.4%
New Hampshire	\$164.6	\$166.0	\$167.4	\$168.9	\$170.3	\$171.7	0.8%
New Jersey	\$896.4	\$902.4	\$896.7	\$942.7	\$976.9	\$986.6	1.9%
New Mexico	\$315.2	\$333.0	\$337.3	\$355.7	\$368.3	\$371.9	3.4%
New York	\$1,646.4	\$1,655.7	\$1,669.8	\$1,684.0	\$1,698.1	\$1,712.3	0.8%
North Carolina	\$917.8	\$953.1	\$964.2	\$1,027.4	\$1,069.4	\$1,080.1	3.3%
North Dakota	\$209.0	\$221.0	\$223.8	\$236.0	\$244.3	\$246.8	3.4%
Ohio	\$1,137.3	\$1,180.8	\$1,227.4	\$1,334.1	\$1,397.4	\$1,411.3	4.4%
Oklahoma	\$529.1	\$537.2	\$533.7	\$559.0	\$578.7	\$584.4	2.0%
Oregon	\$388.5	\$417.5	\$422.9	\$445.9	\$461.7	\$466.3	3.7%
Pennsylvania	\$1,590.8	\$1,618.9	\$1,632.7	\$1,646.6	\$1,660.4	\$1,674.2	1.0%
Rhode Island	\$190.0	\$194.7	\$200.1	\$202.8	\$205.5	\$208.3	1.9%
South Carolina	\$552.9	\$560.4	\$556.7	\$584.4	\$605.3	\$611.4	2.0%
South Dakota	\$228.0	\$245.7	\$248.9	\$262.4	\$271.7	\$274.4	3.8%
Tennessee	\$729.9	\$766.0	\$760.9	\$798.5	\$827.0	\$835.2	2.7%
Texas	\$2,743.6	\$2,765.9	\$2,757.0	\$2,901.7	\$3,008.3	\$3,038.2	2.1%
Utah	\$254.1	\$268.2	\$268.8	\$283.4	\$293.5	\$296.4	3.1%
Vermont	\$145.8	\$166.3	\$172.2	\$175.3	\$178.7	\$181.8	4.5%
Virginia	\$867.0	\$875.9	\$887.8	\$947.2	\$986.3	\$996.1	2.8%
Washington	\$570.0	\$575.2	\$593.3	\$626.9	\$654.9	\$661.4	3.0%
West Virginia	\$360.9	\$380.9	\$385.7	\$406.7	\$421.2	\$425.3	3.3%
Wisconsin	\$635.1	\$671.2	\$679.8	\$716.8	\$742.2	\$749.6	3.4%
Wyoming	\$221.7	\$235.3	\$238.3	\$251.3	\$260.2	\$262.8	3.5%
Total	\$33,277.4	\$34,309.8	\$34,747.9	\$36,640.5	\$37,938.8	\$38,316.0	2.9%

Source: FHWA. Projected inflation from Midsession Review of the FY 2006 Federal Budget



an integrated nationwide highway system that serves the overall American economy and traveling public, states are invariably focused on the return to federal motor fuel taxes and other user fees paid by highway users in their state.

As a result, recent highway bills have included provisions to assure that donor states receive a minimum return on their contributions to the HTF. ISTEA had a number of programs designed to channel funds to donor states. TEA-21 addressed this issue through the Minimum Guarantee program, whose distribution formula was designed to guarantee that each state receive a share of highway program apportionments no less than 90.5 percent of the state's share of Highway Account revenues.

A major reauthorization goal of the donor states was to raise this return to 95 percent. This created a classic distribution conflict since raising the highway program share for some states meant reducing it for others. The least disruptive way to resolve this kind of conflict is to increase total funding enough that states with a reduced share still receive enough growth of dollars to salve the wound. This was relatively easy to do under TEA-21 because of the large funding increase over ISTEA.

SAFETEA-LU replaces the existing minimum guarantee program that promises each state at least a 90.5 percent rate of return on its HTF contributions with a new "Equity Bonus Program." It specifies the minimum rate of return that will be guaranteed for all states in each fiscal year: 90.5 percent in FY 2005; 91.5 percent in FY 2006; 91.5 percent in FY 2007; 92 percent in FY 2008; and 92 percent in FY 2009.

Funds from the following programs are included in this calculation: Interstate Maintenance; National Highway System; Bridge Rehabilitation and Reconstruction; Surface Transportation; Highway Safety Improvement; Congestion Mitigation and Air Quality; Metropolitan Planning; Highway Priority Projects; Appalachian Development Highway System; Recreational Trails; Safe Routes to Schools; Rail Highway Grade Crossing; Border Infrastructure; and Equity Bonus.

A separate provision, however, provides that states meeting a certain set of criteria will receive either the above rates of return **OR** the share of total highway formula funds they received under TEA-21—which-

ever is greater. The 27 states eligible for this provision are: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, District of Columbia, Florida, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Vermont, Utah, West Virginia, Wisconsin, and Wyoming.

The Equity Bonus also establishes a set percentage increase that all states must receive above the average six-year apportionment of federal highway funds they received under TEA-21: 117 percent in FY 2005; 118 percent in FY 2006; 119 percent in FY 2007; 120 percent in FY 2008; and 121 percent in FY 2009. This provision is intended to ensure that "donee" states also receive an increase in federal highway formula funds.

As a result, some states will receive significantly larger increases in contract authority than others under SAFETEA-LU, as shown in Table 6. The first six columns of this table show the annual amount of apportioned authorizations each state received or is projected to receive during FY 2004–09. This includes High Priority Projects but does not include many of the other earmarks for specific projects.

The seventh column of Table 6 on page 15 shows the average annual increase in authorizations for each state between FY 2004 and FY 2009. This ranges from less than one percent per year for some states to more than seven percent. States with large funding increases—like Minnesota, Illinois, Ohio and Indiana—benefit particularly from the 2004 tax bill, which now taxes ethanol based motor fuels at the same rate as gasoline.

Trade Corridor and Border Infrastructure Programs

TEA-21 created a National Corridor Planning and Development and Coordinated Border Infrastructure Program that provided \$140 million per year to improve key trade corridors and border crossings. SAFETEA-LU retains these initiatives, but separates them into two autonomous programs. The measure also dramatically boosts the authorizations for the programs.

Under SAFETEA-LU, \$1.95 billion is authorized for the National Corridor Infrastructure Improvement Program through FY 2009—20 percent of these funds are earmarked for specific projects—and a total of \$833 million is authorized for the Coordinated Bor-

der Infrastructure Program. Funds from the corridor program are to be used for highway construction improvement projects, while highway construction is an eligible use under the border program.

Projects of National & Regional Significance

The measure creates a new program to focus exclusively on high cost surface transportation projects that will provide broad benefits. The Projects of National and Regional Significance Program authorizes almost \$1.8 billion for highway and freight railroad projects that have costs exceeding either \$500 million or 75 percent of the annual federal highway funds provided to the state in which the project is located.

Funds can be used for a wide variety of preconstruction and construction costs for the projects. The act directs 20 percent of the funds for this program to specific projects and allows the Secretary of Transportation to distribute the remaining funds to projects that will provide regional or national benefits in terms of economic growth, improved mobility and a host of other criteria.

Project Oversight

The new law requires the Secretary of Transportation to develop a transportation project oversight program to monitor the use of federal funds with a focus on financial integrity and project delivery. A value engineering analysis will be required for every highway project with a cost in excess of \$25 million and bridge projects costing \$20 million or more. Projects costing \$500 million or more will be required to submit a management plan and annual financial plan to the Secretary. Projects costing at least \$100 million will be required to submit an annual financial plan to the Secretary.

Other Notable Highway Program Modifications

- Increases the amount of federal highway funds that will be set-aside for Metropolitan Planning Organization activities. SAFETEA-LU will require states to dedicate 1.25 percent of their Interstate Maintenance (IM), National Highway System (NHS), Surface Transportation, Congestion Mitigation and Air Quality (CMAQ), and Bridge Replacement and Rehabilitation Program funds for this purpose.

Current law requires a one percent set-aside.

- Funds transferred between the HTF's Highway and Mass Transit Accounts must be administered in the same manner as other funds in the recipient account. For example, if Highway Account funds are transferred for transit purposes, they must be administered as Mass Transit Account funds.
- The eligible uses of NHS funds are expanded to include environmental restoration and pollution abatement, control of noxious weeds and establishment of native species.
- The eligible uses of Surface Transportation Program (STP) funds are expanded to include truck stop electrification systems (providing electricity and air conditioning for commercial motor vehicles), dangerous intersections or those with high congestion, environmental restoration and pollution abatement, control of noxious weeds, and establishment of native species.
- The 10 percent set-aside of STP funds for Transportation Enhancements is modified to be the greater of 10 percent of a state's STP funds or the 2005 level of Enhancement funding for a state.
- The requirement that at least 15 percent, but not more than 35 percent, of a state's Bridge Replacement and Rehabilitation Program funds be used on off-system bridges is modified to remove the 35 percent cap.
- Annual funding for the Transportation and Community and System Preservation Program, which provides grants for smart growth and other non-infrastructure initiatives, is increased from \$25 million to \$61.25 million in FY 2006 through 2009.
- Creates a new System Management Information Program for which states may dedicate NHS, CMAQ and STP funds to plan and develop real-time monitoring of traffic and travel conditions on major highways.
- Provides \$25 million through FY 2009 for the development of truck parking facilities in the NHS.
- Establishes a new Freight Intermodal Distribution Pilot Grant Program that provides \$30 million through FY 2006 for projects in Oregon, Georgia, Alaska, North Carolina and California to address

infrastructure and freight distribution needs at inland ports and intermodal freight facilities.

- A Delta Region Transportation Development Program is established that provides \$10 million per year for multi-state highway planning, development and construction in the Delta Region (Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri and Tennessee).
- Authorizes \$37.5 million from the HTF for a grant program for states that prohibit the use of racial profiling in the enforcement of state laws regulating the use of federal-aid highways.

Revenue Provisions

While federal highway and transit program expenditures are of primary interest to the transportation construction industry, the various revenue sources that flow into the HTF make these expenditures possible. As such, a significant amount of time was devoted during the TEA-21 reauthorization debate working to ensure a stable source of trust fund revenues for the short- and long-term.

Excise Tax Extension

The measure extends the federal excise taxes that produce revenue for the HTF (buses, special motor fuels, alcohol fuels, heavy trucks and trailers, gasoline, diesel fuel and kerosene) through FY 2011 and updates the purposes for which trust fund revenues may be spent consistent with the contents of the bill. HTF revenues are typically extended beyond the authorization period to provide funds for paying off outstanding obligations.

SAFETEA-LU also extends the HTF's obligation authority through September 30, 2009.

User Fee Evasion

To help ensure that all federal transportation user fees are collected as intended, SAFETEA-LU continues and expands federal and state activities aimed at combating illegal tax evasion in this area. The new reauthorization law raises the taxation of kerosene to the

same rate at which diesel fuel is taxed—24.4 cents per gallon. Kerosene can be used as either aviation fuel or diesel fuel, but aviation fuel is taxed at a lower rate.

Evasion occurs when individuals pay the lower aviation rate, but use the fuel for highway purposes. According to the House Ways and Means Committee, this provision is projected to increase HTF revenues by \$1.9 billion through FY 2009.

SAFETEA-LU also includes a number of other provisions to combat user fee evasion, such as increased reporting requirements and penalties. The act's user fee evasion provisions are projected to raise HTF revenues by a total of \$1.95 billion through FY 2009.

SAFETEA-LU also dramatically increases funding for federal programs that fight HTF user fee evasion. Under TEA-21, highway user fee evasion programs were authorized to receive \$5 million per year. SAFETEA-LU authorizes \$5 million in FY 2005, \$44.8 million in FY 2006, \$53.3 million in FY 2007 and \$12 million in FY 2008 and FY 2009 for these programs.

Transportation Financing Commissions

SAFETEA-LU recognizes the significant challenge that confronts financing the federal highway and transit programs in the future. The measure creates two commissions to examine the projected needs of the nation's surface transportation infrastructure network in the future and charges these panels with developing recommendations to meet these needs.

While their missions are similar, the difference between the two commissions is found in the individuals responsible for appointing commission members. The National Surface Transportation Policy and Revenue Study Commission will be chaired by the Secretary of Transportation and will have 11 other members—three appointed by the President, two appointed by the Speaker of the House, two appointed by the House Minority Leader, two appointed by the Senate Majority Leader, and two appointed by the Senate Minority Leader.

The National Surface Transportation Infrastructure Financing Commission will have 15 members, seven appointed by the Secretary of Transportation, two appointed by the chairman of the House Ways and Means Committee, two appointed by the ranking

Democrat on the House Ways and Means Committee, two appointed by the chairman of the Senate Finance Committee and two appointed by the ranking Democrat on the Senate Finance Committee.

Study of Motor Fuels Used for Non-Transportation Purposes

SAFETEA-LU directs the Treasury Department to conduct a study of the use of highway motor fuels that are not utilized for the propulsion of a vehicle (for example, fuel used in power takeoff vehicles and concrete pumpers).

Diesel Fuel Tax Evasion Study

The act directs the Internal Revenue Service to submit a report on new technologies that can be employed to increase the collection of diesel fuel excise revenue. The law also creates a Motor Fuels Tax Enforcement Advisory Commission to oversee motor fuel tax enforcement.

Mileage Based User Fee Study

\$12.5 million is provided through FY 2009 for the University of Iowa to conduct a study of assessing user fees based on actual miles driven.

Environment & Planning

Transportation improvement projects can be delayed by duplicative and unnecessary review processes for periods up to 19 years. SAFETEA-LU includes a number of provisions that address the environmental review and approval process for transportation improvement projects. One of the transportation construction industry's top priorities for the TEA-21 reauthorization legislation was ensuring common sense environmental reforms and preventing the needless delay of transportation projects.

Transportation Conformity

The measure makes several changes to the transportation conformity process that links federal Clean Air Act (CAA) requirements and transportation planning. The most significant of these changes is a pro-

vision that allows for a 12-month "grace period" for areas which fall out of compliance with CAA standards. Under this provision, areas would have one year from the date on which they fell out of conformity to meet federal air quality requirements before federal highway funding sanctions could be imposed.

Statute of Limitations on Lawsuits

SAFETEA-LU places a 180-day limitation on lawsuits seeking judicial review of a permit, license or approval issued by a federal agency for a highway or public transportation capital project. This will allow for both ample public participation in the decision making process while also ensuring important transportation improvement projects move forward without being subject to environmental lawsuits that are raised well after a project has been approved.

Reform of Environmental Planning & Review Process

The new law addresses a number of needed changes in the environmental review and planning process. Specifically, it allows concurrent reviews and establishing "lead agency" status for the U.S. DOT on environmental reviews, such as "purpose and need" and "range of alternatives" determinations. Under the provision, the "lead agency" defines the "purpose and need" and "alternatives" for the purposes of "any document which the lead agency is responsible for preparing for the project." This language, however, does not grant the lead agency the power to require participating agencies to adopt the conclusions of the lead agency.

Planning Requirements

SAFETEA-LU adds a new planning requirement mandating the consideration of environmental mitigation activities in the long-range transportation plan. Adding new factors which must be considered in the transportation planning process could lead to further delay of much needed transportation improvement projects. States previously had the flexibility to properly consider environmental mitigation issues as needed, but it was not a mandate for every project. Also added were non-environmental planning requirements addressing safety, security, improved performance, multimodal capacity, and enhancement activities.

On the positive side, other proposed additional planning requirements did not make the final bill, including mandatory consideration of land use planning.

Elimination of Duplicative Review Requirements

Several sections of the bill encourage “concurrent reviews” allowing National Environmental Policy Act (NEPA) obligations to be met at the same time as transportation planning requirements. This is intended to alleviate delay and help to streamline the transportation planning and environmental review processes.

Delegation of Environmental Reviews

SAFETEA-LU establishes a pilot program for five states (Alaska, California, Ohio, Oklahoma and Texas) to assume all DOT environmental responsibilities for one or more highway projects except CAA requirements and transportation planning requirements. A pilot program allowing up to five states to take responsibility for “environmental reviews, consultation, or decision making,” but only for recreational trail projects and transportation enhancement activities is also established.

SAFETEA-LU further allows all states to assume responsibility for projects which qualify as Categorical Exclusions (CEs) under NEPA. CEs are projects that neither individually nor cumulatively have a significant environmental impact, such as road rehabilitation or bridge replacement. Allowing states to assume responsibility for these should reduce the amount of time involved in the environmental review and approval process by lessening the burden on federal agencies.

Timelines for Review of Agency Decisions

SAFETEA-LU establishes a 60-day deadline for comments on draft environmental impact statements from federal agencies and the general public. Comments on any other materials associated with the environmental review process must be made within 30 days after such materials are made available. These deadlines are intended to help in reducing the administrative delay associated with the environmental review and approval process.

Section 4(f) Modernization

To address the impact of federal historic preservation requirements on transportation projects, the new law attempts to modernize Section 4(f) of the Department of Transportation Act of 1966 and Section 106 of the National Historic Preservation Act.

Under SAFETEA-LU, the Section 4(f) requirements will be deemed to be satisfied if a “de minimis” finding is made for the potential impact of transportation projects on historic sites, parks, recreation areas and wildlife and waterfowl refuges. The act, however, defines “de minimis” as “having no adverse effect.” While this may seem like a technicality, there is a significant difference between determining a project will not have a significant impact on a historic site, and determining that it will not have an adverse effect.

As such, the new law’s effort to eliminate some of the redundancy in the Section 4(f) and Section 106 requirements will not apply to all projects and, as written, may be less applicable to historic sites than parks, recreation areas and wildlife refuges. Further, decisions regarding historic sites must have written concurrence from the State Historic Preservation Officer where the project is located while decisions regarding parkland or wildlife/waterfowl refuges must have concurrence (though it need not be in writing) from any officials with jurisdiction over the area in question.

Interstate Highway System Exemption from Historic Standards

SAFETEA-LU exempts the Interstate Highway System from historic preservation requirements except in instances where individual elements of the system possess a high degree of historic significance. With the Interstate Highway System approaching its 50th anniversary in 2006, this provision will prevent historic preservation regulations from delaying even the most routine construction and transportation improvement operations. The measure also allows for states to perform “construction, maintenance, restoration or rehabilitation activities” on any portion of the Interstate System that is found to possess historical significance.

Stormwater Runoff

A provision in the Senate bill requiring states to use two percent of their federal Surface Transporta-

tion Program (STP) funds for stormwater mitigation activities was not included in the final bill. The bill allows states to use NHS and STP funds on stormwater activities, but it does not mandate that funds be used for these purposes.

CMAQ Eligibility of Diesel Engine Retrofit Programs

The new law allows programs for retrofitting diesel engines in nonattainment or maintenance areas under the CAA to be eligible for funding under the Congestion Mitigation and Air Quality (CMAQ) program. As such, areas attempting to comply with CAA standards will have access to CMAQ funds to construct voluntary programs which best suit their immediate needs in complying with CAA.

Innovative Finance Programs and Issues

Due to the nation's vast transportation infrastructure needs, TEA-21 allowed for federal support for a number of innovative finance programs to supplement the core surface transportation program. These initiatives ranged from using tolls to finance highway improvements to providing credit assistance for public-private venture transportation projects. SAFETEA-LU includes provisions that build on and expand the current federal innovative financing programs.

State Infrastructure Banks

Under TEA-21, five states—California, Florida, Missouri, Rhode Island and Texas—were allowed to make “capital grants” to their state infrastructure banks (SIBs) out of certain HTF allocations and apportionments for fiscal years 1998 through 2003. SAFETEA-LU expands the SIB program to all 50 states and the District of Columbia. SAFETEA-LU also authorizes interstate compacts of two or more states to create multi-state infrastructure banks.

Transportation Infrastructure Finance and Innovation Act (TIFIA)

TEA-21 established the Transportation Infrastructure Finance and Innovation Act (TIFIA), a program that provides direct loans, loan guarantees and lines of credit (rather than grants) to states, local governments or other sponsors in order to help finance surface transportation projects. TEA-21 also set the size eligibility threshold for TIFIA projects at \$100 million or 50 percent of the state's federal highway apportionments, whichever was less (except for ITS projects, which had a \$30 million size threshold).

SAFETEA-LU continues the TIFIA program and authorizes \$122 million per year for fiscal years 2005 to 2009 for its credit assistance activities. The new law expands the list of eligible TIFIA projects to include publicly-owned freight rail facilities or private facilities providing public benefit for highway users; public or privately-owned intermodal freight transfer facilities; and access or service improvements to freight rail or intermodal freight transfer facilities.

The eligibility threshold for TIFIA projects has been lowered from the lesser of \$100 million or 50 percent of a state's federal highway apportionments to the lesser of \$50 million or 33 1/3 percent of a state's federal highway apportionments. The threshold for ITS projects was lowered from \$30 million to \$15 million. The new law also allows TIFIA credit assistance to be used to refinance long-term project obligations or federal credit instruments if such refinancing provides additional funding capacity for the completion, enhancement, or expansion of an eligible project.

SAFETEA-LU permits applications from “a state, local government, public authority, public-private partnership, or any other legal entity undertaking the project and authorized by the Secretary [of Transportation].” Previously, public-private partnerships were not permitted to apply for TIFIA assistance.

HOV Lanes and Tolls

TEA-21 included a number of options for the use of tolls to finance highway improvements. SAFETEA-LU continues these important initiatives and establishes new opportunities for toll financed transportation improvement projects.

HOV lanes. TEA-21 allowed states to establish high occupancy vehicle (HOV) lanes and allowed low-emission vehicles and motorcycles to use the HOV lanes. SAFETEA-LU provides for the continuation of the HOV program for federally-assisted roads. However, under the provisions of SAFETEA-LU, the state agencies are to provide occupancy exemptions to the following types of vehicles: motorcycles and bicycles (unless they would create a safety hazard); public transportation vehicles; and “low emission and energy-efficient vehicles.”

The new law allows states to convert HOV lanes into High Occupancy Toll (HOT) lanes, and permit single-occupancy vehicles to use the HOV lanes, provided that: tolls are collected automatically; the amount of the toll levied varies by either time of day or level of congestion in the HOT lanes; and the average speed in the HOT lanes is not reduced to below 45 mph for roads with speed limits at or above 50 mph or 10 mph below the posted speed limit for facilities with speed limits below 50 mph. The measure also directs that states “shall give priority consideration to projects for developing alternatives to single occupancy vehicle travel and projects for improving highway safety” for any “excess toll revenues” collected on the HOT lanes.

Value Pricing Pilot Program. TEA-21’s Value Pricing Pilot Program (VPPP) permitted the charging of a variable toll to use HOV lanes for vehicles that did not meet a lane’s occupancy requirements. SAFETEA-LU continues the VPPP through fiscal year 2009, but with a few minor changes in the program’s design. The overall program is provided \$11 million in fiscal year 2005, and \$12 million a year for fiscal years 2006 to 2009 to implement up to 15 pilot programs. However, \$3 million per year for fiscal years 2006 to 2009 is set aside for “congestion pricing pilot projects that do not involve highway tolls.”

Express Lanes Demonstration Program. The measure also establishes an “Express Lanes Demonstration Program.” This new program, which is limited to 15 projects, allows for the tolling of “any highway, bridge, or tunnel, including facilities on the Interstate System” for the purpose of managing high levels of congestion; reducing emissions in non-attainment or maintenance areas; or financing “the expansion of a highway, for the purpose of reducing traffic congestion, by constructing one or more additional lanes (including bridge, tunnel,

support, and other structures necessary for that construction) on the Interstate System.”

Projects eligible for the Express Lanes Demo Project are limited to: facilities that already collect tolls; existing HOV lanes; facilities modified or constructed after the date of enactment of SAFETEA-LU to create additional tolled lane capacity; and new lanes added to a previously non-tolled facility (existing lanes may not be tolled). The program requires automatic toll collection. If there are residual revenues after providing for these uses, the state may use toll revenues for any eligible federal highway or transit project.

Interstate tolling pilot programs. TEA-21 also established the Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP) that allowed tolling on the Interstate System for three projects in three different states. There was only one application—approval still pending—to the ISRRPP during TEA-21. Although ISRRPP is not specifically mentioned in SAFETEA-LU, it will continue to function at least until June 6, 2008, as stipulated in TEA-21 and the Secretary of Transportation has the authority to extend the program beyond this date.

SAFETEA-LU, however, creates a new “Interstate System Construction Toll Pilot Program” (ISCTPP). The ISCTPP allows a state or compact of states to impose tolls to finance a highway, bridge, or tunnel project on the Interstate System provided that tolling is demonstrated to be the most efficient and economical way to advance the project. The ISCTPP is limited to three projects.

Private Activity Bonds for Surface Transportation Infrastructure

Under current U.S. Tax Code, tax-exempt bonds may be issued to help finance the construction of airports, docks and wharves, mass commuting facilities, and high speed intercity rail facilities. Omitted from the list of eligible transportation projects are highway projects and surface freight transfer facilities.

SAFETEA-LU expands this list of eligible transportation projects to include highway and surface freight transfer facilities. The total value of the outstanding debt that can be issued for highway or surface freight transfer facilities is limited to \$15 billion.

In addition, any debt issued for highway or surface freight transfer facilities are not counted against a state's volume cap. The Secretary of Transportation is granted the authority to allocate the \$15 billion limit in whatever manner he deems appropriate.

Safety Provisions

SAFETEA-LU contains a number of important safety provisions, some of which have been sought by the transportation construction industry for well over a decade, that address roadway infrastructure safety and the safety of roadway construction work zones.

Unit Bid Pricing

For many years, the transportation construction industry has expressed concern that contractors who make serious efforts to develop and maintain good safety practices in construction work zones are often at a competitive disadvantage against those who do not make appropriate expenditures for traffic control and other safety measures.

SAFETEA-LU includes a provision designed to “level the playing field” by allowing state departments of transportation to contract for critical safety elements through unit bid pricing instead of lumping all costs into one bid. In doing so, states are expected to take a

more active role ensuring that appropriate safety measures are undertaken—and adequately funded—on important roadway construction projects.

In essence, FHWA will work with the states to develop regulations establishing the conditions for the appropriate use of: uniformed law enforcement officers; positive protective measures between workers and traffic; and installation and maintenance of temporary traffic control devices.

This provision will help ensure appropriate safety precautions are taken on all federal-aid highway projects through the use of unit-bid pricing for safety items.

Highway Safety Improvement Program

The new law creates a “Highway Safety Improvement Program” (HSIP) to consolidate safety infrastructure activities. The HSIP defines a structure under which states must develop strategic plans and programs to reach specific safety goals. For the first time, infrastructure safety projects (under HSIP) will be funded through a dedicated program from the HTF's Highway Account. This HSIP replaces the “Hazard Elimination Program” and the 10 percent Surface Transportation Program safety set-aside with over \$1.2 billion annually in dedicated funds. (See table)

Funds in this section can be used on *any public road*, bicycle trail, or pedestrian walkway. This is a significant change as funds are no longer limited to projects on

Program	2006	2007	2008	2009	Total
§148- Highway Safety Improvement Program	\$1,235,810,000	\$1,255,709,322	\$1,275,929,067	\$1,296,474,396	\$5,063,922,785
Rail Grade Crossings	220,000,000	220,000,000	220,000,000	220,000,000	880,000,000
Safe Routes to School	50,000,000*	50,000,000*	50,000,000*	50,000,000*	200,000
Work Zone Safety Training Grants	5,000,000	5,000,000	5,000,000	5,000,000	20,000,000
NWZSIC	1,000,000	1,000,000	1,000,000	1,000,000	4,000,000
Roadway Safety	500,000	500,000	500,000	500,000	2,000,000
Bicycle and Pedestrian Safety	300,000	300,000	300,000	300,000	1,200,000

* Minimum authorization levels

the federal highway system. As in the previous program, the federal share for a highway safety improvement project is 90 percent (unless otherwise noted, i.e. rail crossings).

The measure allows safety projects noted in other sections of the bill to be included in this section for funding purposes, including public awareness and education campaigns, and enforcement of safety laws. Nevertheless, there are limitations as states are only allowed to flex up to 10 percent of HSIP funds and HSIP funds may not be spent on other programs unless the state certifies that it has met railway crossing and infrastructure safety needs.

Under the program, the term “*Highway Safety Improvement Project*” means a project described in a state’s strategic highway safety plan that improves a hazardous road condition or feature, or addresses a highway safety problem, including: intersection safety; pavement and shoulder widening (and passing lanes); rumble strips and warning devices; skid resistant surfaces at intersections and high accident areas; improvements for pedestrians, bicyclists or disabled persons; rail crossings, devices, and model enforcement; traffic calming; elimination of roadside obstacles; improvement of signage and pavement markings; priority control at signalized intersections; traffic control and warning devices in high accident areas; safety conscious planning; improvement in crash data and analysis; work zone planning, communications equipment and law enforcement; guardrail, barriers (including separation of traffic and workers), and crash cushions; structures to prevent wildlife crashes; installation of signs at pedestrian crossings and in school zones; and construction and operational improvements on high-risk rural roads.

State Requirements

The law requires states to develop a state strategic HSIP in cooperation with other state agencies including the governor, regional and metropolitan planning organizations, representatives of other transportation modes, law enforcement, etc.

SAFETEA-LU contains important data requirements that will help provide a better understanding of the types and causes of incidents on our roadways. For example, states must make effective use of crash data from various sources and include engineering, op-

erations, maintenance, education, enforcement, emergency services and communications.

Rural Roads

SAFETEA-LU directs states to set aside \$90 million per year of HSIP funds for construction and operational improvements on high risk rural roads. States may flex money from their rural road safety funds only if they certify that all their construction and operations needs for these roadways have been met.

Rail Grade Crossings

At least \$220 million of the HSIP funds must be set aside annually for the elimination of hazards and installation of protective devices at railway-highway crossings. Money can be flexed from this account if the state demonstrates that its needs have been met for the elimination/protection of hazards at railway-highway crossings.

Worker Injury and Free Flow of Traffic

The new law mandates that no later than one year after the legislation is enacted, the Secretary of Transportation must issue regulations to decrease the likelihood of worker injuries (including wearing high-visibility garments) while maintaining the free flow of traffic.

Safe Routes to School Program

SAFETEA-LU creates a “Safe Routes to School Program” to promote walking and riding bicycles to and from school. This program is funded by a minimum \$50 million annual HSIP set-aside (each state will receive a minimum of \$1 million each fiscal year). The provision contains both infrastructure and behavior modification elements. There is no state match required for this program.

Safety Improvements for Older Drivers

Consistent with FHWA’s document “*Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians*,” SAFETEA-LU requires the Secretary of Transportation to carry out a program to improve traffic signs and pavement markings in all states. Funds to carry out this program are authorized “as may be necessary.”

Incentives to Prevent Operation of Motor Vehicles by Intoxicated Persons

SAFETEA-LU contains a provision mandating that if a state has not enacted laws to reduce the likelihood of persons driving while intoxicated, the Secretary shall withhold the following percentages from the state's highway formula funds until such changes are enacted.

2004	2005	2006	2007	Thereafter
2%	4%	6%	8%	8%

States can recover funds not apportioned from past years if their laws come into compliance within four years after this legislation is enacted. After four years, the funds will lapse and may not be recovered.

Work Zone Safety Grants

The new law creates a work zone safety grant program for nonprofit and not-for-profit organizations to provide training to prevent or reduce highway work zone injuries and fatalities. An amount of \$5 million annually for fiscal years 2006–2009 is authorized for this initiative.

National Work Zone Safety Information Clearinghouse

SAFETEA-LU authorizes \$1 million per year from FY 2006 through FY 2009 to improve the operations of the National Work Zone Safety Information Clearinghouse, which provides public information and best practices for roadway work zone safety.

In a related provision, the measure directs the FHWA to conduct a study of night-time roadway construction to highlight the impact of this practice on motorists, workers and communities.

Pavement Marking Systems Demonstration Projects

The new law authorizes \$1 million per year for FY 2006 through FY 2009 for demonstration projects in Alaska and Tennessee to study the safety and other impacts of pavement markings, including the effectiveness of increasing edge line widths from four to six inches.

Highway Safety Funding

SAFETEA-LU includes a number of provisions attempting to improve roadway safety from a behavioral perspective, as administered by the National Highway Traffic Safety Administration. It is important to note that funds provided for these activities cannot be used for infrastructure purposes (see table below).

Research and Development funds may be used for a number of purposes, including:

- Research, training and education programs related to Older Drivers;
- Conducting of training and education programs in cooperation with other federal departments and agencies, states, private sector persons, highway safety personnel and law enforcement personnel; and
- Conducting of research on all phases of highway safety and traffic conditions, including accident causation, highway or driver characteristics, communications and emergency care.

Traffic Safety Information System Improvements cover a number of activities, including:

- Improve the timeliness, accuracy, completeness, etc., of state safety data;
- Evaluate the effectiveness of improvements;

Program	2005	2006	2007	2008	2009	Total
§402 Highway Safety	\$163,680,000	\$217,000,000	\$220,000,000	\$225,000,000	\$235,000,000	\$1,060,680,000
§403 R&D	71,424,000	110,000,000	107,750,000	107,750,000	105,500,000	502,424,000
§408 Traffic Safety Information	0	34,500,000	34,500,000	34,500,000	34,500,000	

- Link the state data systems within the state; and
- Improve data compatibility with other state and national systems.

Older Driver Safety

For FY 2006 through FY 2009, \$1,700,000 is authorized to conduct a comprehensive research and demonstration program to improve traffic safety pertaining to older drivers (behavioral).

Procurement and Other Business Issues

Disadvantaged Business Enterprise Program

SAFETEA-LU reauthorizes a minimum 10 percent set-aside for disadvantaged business enterprises (DBEs) within the federal aid highway, public transportation and research programs. This section also expands the DBE set-aside to the highway safety research and development program.

The law also raises the amount of average annual gross receipts over which a minority- or female-owned business may not be considered a DBE for purposes of this program. TEA-21 set the limit at \$16.6 million, calculated by averaging the firm's gross receipts from the previous three years. SAFETEA-LU raises this threshold to \$19.57 million.

It authorizes the Secretary of Transportation, through the U.S. DOT Minority Resource Center, to assist DBEs in obtaining bid, payment and performance bonds, subject to annual appropriation.

Contracting for Engineering and Design Services

SAFETEA-LU did not include provisions that would have eliminated states' opt out authority for following federal rules for contracting for engineering and design services. If included, the change would have required all states to follow federal guidelines for the process of contracting for engineering and design services thus simplifying the paperwork requirements for planning and design firms.

Highways for LIFE Pilot Program

The new law establishes a pilot program to encourage innovation in highway construction. The goals of the new Highways for LIFE program are to encourage greater safety, faster construction, improved quality and cost effectiveness. (The "LIFE" acronym stands for Long Lasting, Innovative and Fast Construction of Efficient and Safe Highway Infrastructure.) It applies to federal-aid highway eligible projects. Innovative financing and contracting methods are included as criteria for this pilot program. This act authorizes \$15 million in FY 2006 and \$20 million per year for FY 2007 through FY 2009. Designated projects may also apply for federal aid dollars up to 100 percent of the cost of the project. The U.S. DOT is encouraged to fund one project in each state by 2009.

Changes for Design-Build Project Contracting

SAFETEA-LU includes a provision that revises aspects of the FHWA rules for design-build projects. The new law directs the Secretary of Transportation to revise the regulations for design-build contracts to permit agencies to issue a request for proposal or award a design-build contract prior to the issuance of a record of decision regarding a project's compliance with NEPA requirements. SAFETEA-LU directs the Secretary of Transportation to revise the regulations within 90 days of the bill's enactment.

Another development in design-build is that the act eliminates the monetary thresholds on the size of contracts that can use design build without special approval. TEA-21 imposed design-build project cost limitations of \$5 million for intelligent transportation system projects and \$50 million for other projects.

Advance Construction Authority Changes

SAFETEA-LU removes the restriction that a state must obligate all of its allocated or apportioned funds, or demonstrate that it will use all obligation authority allocated to it for federal-aid highways and highway safety construction prior to approval of advance construction projects. The revisions clarify that advance construction procedures can be used for all categories of federal-aid highway funds and that when a project is converted to a regular federal-aid project, any available federal-aid funds may be used to convert the project. Finally, the measure removes the requirement that the

Secretary must first approve an application of the state prior to authorizing the payment of the federal share of the cost of the project when additional funds are later apportioned or allocated to the State.

Truck Driver Hours of Service

The bill does not include the codification of the new hours of service rule, as the Federal Motor Carrier Safety Administration had proposed. It does include exemptions from the rule for certain industries under specific circumstances, but not the transportation construction industry. Such exemptions include those for the agriculture, water drilling, utility service, and movie production industries.

Research and Technology

SAFETEA-LU allows the U.S. DOT to conduct research in a number of areas related to materials, safety, congestion, transportation construction, education and training. A total of \$2.271 billion is authorized for FY 2005 to 2009 for the key research areas: surface transportation research and deployment; training and education; the Bureau of Transportation Statistics; University Transportation Research; Intelligent Transportation Systems (ITS) research; and ITS deployment. SAFETEA-LU sets an obligation limit of \$2.054 billion for these programs.

One major difference between SAFETEA-LU and its predecessor, TEA-21, is the ITS Deployment Program. SAFETEA-LU authorizes \$122.0 million for the ITS deployment in FY 2005 only, compared to annual average funding of \$113.2 million for the program from FY 1998 through 2003 under TEA-21. SAFETEA-LU provides expanded capability for ITS deployment in the core highway programs and through specific projects.

When not taking into account the ITS Deployment Program, the average annual funding level appropriated in SAFETEA-LU rose 36 percent compared to research funding in TEA-21. The average annual obligation limit, however, decreased four percent. So although states have more authorizations for research and technology programs, the total annual amount available, on average, is slightly less than the obligation limit under TEA-21.

Surface Transportation Research, Development & Deployment

SAFETEA-LU authorizes \$982 million for surface transportation research, development and deployment. Annual average funding in SAFETEA-LU is \$196.4 million, an increase of 40 percent over the \$140.3 million average annual funding level in TEA-21. The legislation specifies funds for a variety of programs, including:

- The **Advanced Research Program** will continue to address longer-term, higher-risk research. Private sector partnerships are encouraged under this program (\$70 million);
- The **Future Strategic Highway Research Program** will include an analysis of renewing aging highway infrastructure; driving behavior and crash causal factors; reducing congestion; planning and designing new road capacity to meet mobility, economic and environmental and community needs (\$205 million);
- The **Long Term Pavement Program** will monitor, material-test and evaluate highway test sections, and prepare products to meet future pavement technology needs (\$50.6 million);
- The **Innovative Bridge Research and Deployment Program** will focus on the application of innovative designs, materials and construction methods to the construction, repair and rehabilitation of bridges and other highway structures (\$65.5 million); and
- Over \$200 million is provided for **technology deployment programs** that will highlight innovations in highway safety, pavement and bridge technologies.

Training and Education

SAFETEA-LU authorizes \$133.5 million for training and education, an annual average of \$26.7 million that is 57 percent above the annual average funding level of \$17 million under TEA-21. Funding is provided for the National Highway Institute (\$48 million), the Local Technical Assistance Program (\$55.5 million) and the Eisenhower Fellowships (\$11 million).

New training and education initiatives in SAFETEA-LU include:

- The **Transportation Education Development Pilot Program** will make grants to institutions of higher education that will work with the industry and local officials on new curricula and education programs for all levels of the transportation workforce (\$7.5 million); and
- The **Freight Planning Capacity Building Program** will support enhancements in freight transportation planning. Specific areas include: the identification and dissemination of best practices; peer exchange for freight transportation staff; refinement of data and analysis tools; technical assistance; relationship building between government and private stakeholders; and identifying ways to target the capacity of state and local governments to address freight considerations (\$3.5 million).

Bureau of Transportation Statistics

SAFETEA-LU authorizes \$135.0 million for the U.S. DOT Research and Innovative Technology Administration to provide data, statistics and analysis to transportation decision makers through the Bureau of Transportation Statistics (BTS). Average annual funding for BTS for FY 2005 to 2009 will be \$27.0 million, a decrease of 13 percent from the TEA-21 average annual authorization of \$31.0 million.

Intelligent Transportation Systems Research & Deployment

A total of \$550 million is authorized for ITS research for FY 2005 to 2009, and \$122 million for ITS deployment in FY 2005. The average annual funding level of \$110 million for the ITS research program is nine percent greater than the average annual funding level of \$100.5 under TEA-21.

SAFETEA-LU also calls for a **National Intelligent Transportation Systems Plan**. The U.S. DOT Secretary will develop and publish a five-year National ITS program plan within one year of the enactment of SAFETEA-LU. The program plan shall identify ITS goals in the context of major and smaller metropolitan areas, rural areas and commercial vehicle operations.

University Transportation Centers & Research

A total of \$348.5 million is authorized for University Transportation Research and National University Transportation Centers in SAFETEA-LU, which is an average annual funding increase of 163 percent over the annual average funding level in TEA-21.

SAFETEA-LU names ten non-profit "Institutions of Higher Learning" that will receive a total of \$160 million between FY 2005 and 2009. The legislation also designates 22 Tier II level centers that will receive \$44 million over the same time period.

SAFETEA-LU Funding for Research and Technology

	2005	2006	2007	2008	2009	Annual Average	Total
Surface Transportation Research, Development and Deployment Program	\$ 196,400,000	\$ 196,400,000	\$ 196,400,000	\$ 196,400,000	\$ 196,400,000	\$196,400,000	\$ 982,000,000
Training and Education	\$ 26,700,000	\$ 26,700,000	\$ 26,700,000	\$ 26,700,000	\$ 26,700,000	\$ 26,700,000	\$ 133,500,000
Bureau of Transportation Statistics	\$ 27,000,000	\$ 27,000,000	\$ 27,000,000	\$ 27,000,000	\$ 27,000,000	\$ 27,000,000	\$ 135,000,000
University Transportation Research	\$ 69,700,000	\$ 69,700,000	\$ 69,700,000	\$ 69,700,000	\$ 69,700,000	\$ 69,700,000	\$ 348,500,000
Intelligent Transportation Systems (ITS) Research	\$ 110,000,000	\$ 110,000,000	\$ 110,000,000	\$ 110,000,000	\$ 110,000,000	\$110,000,000	\$ 550,000,000
ITS Deployment	\$ 122,000,000						\$ 122,000,000
Total Appropriations	\$ 551,800,000	\$ 429,800,000	\$ 429,800,000	\$ 429,800,000	\$ 429,800,000	\$429,800,000	\$2,271,000,000
Total Obligation Limit	\$ 410,888,888	\$ 410,888,888	\$ 410,888,888	\$ 410,888,888	\$ 410,888,888	\$410,888,888	\$2,054,444,440

Under the new law, 10 Tier I University Transportation Centers and 10 Regional Transportation Centers will be selected through a competitive process. They will in turn be awarded \$142.3 million for surface transportation research projects. Total funding for the Regional, Tier I and Tier II University Transportation Centers cannot exceed \$188.5 million.

Infrastructure Investment Needs Report

SAFETEA-LU requires the Secretary of Transportation to submit an "Infrastructure Investment Needs Report" to Congress no later than July 31, 2006, and the July 31 of every second year thereafter. The measure directs that the report include estimates of the future highway, transit and bridge needs in the United States, as well as the backlog of current system needs and that it be comparable to previous reports.

Public Transportation Program Structure

SAFETEA-LU contains \$52.6 billion in guaranteed funding from the HTF's Mass Transit Account and the General Fund for federal transit programs. The measure retains the basic structure, funding guarantees, and budgetary protections of the current federal public transportation programs.

The law, however, contains a number of technical modifications to the transit programs that will be of interest to the transportation construction industry.

Expansion of the Definition of Capital

SAFETEA-LU expands the definition of transit capital expenditure to include security and emergency preparedness programs. This provision could increase the use of federal capital funds on operational costs—including employee training and emergency response drills.

SAFETEA-LU also expands the definition of capital to allow federal transit capital funds to be used to establish a debt service reserve fund for the repayment of principle and interest on bonds issued to finance projects eligible to receive funding under transit capital programs.

Small Starts Program

SAFETEA-LU establishes a new program to provide capital funds for fixed guideway systems requiring total federal assistance below \$75 million. Eligible projects must also have a total estimated capital cost of less than \$250 million. Projects eligible to receive funding under this new program will be subject to simplified procedures and project rating criteria. The program will be funded by reducing funds available from the existing "New Starts" program by \$200 million annually beginning in FY 2007.

Definition of Fixed Guideway

The measure defines a fixed guideway capital project for the Small Starts Program as a corridor-based bus capital project for which:

- A substantial portion of the project operates in a separate right-of-way dedicated for public transportation use during peak hour operations; or
- The project represents a substantial, long-term investment in a defined corridor.

This provision attempts to recognize the diverse transit needs of smaller communities and/or systems, while ensuring investments are focused on capital intensive activities. This change represents a significant departure from the exclusive right-of-way requirement of the New Starts Program, and allows federal capital investments to be used for transit projects that do not utilize a fixed guideway.

Federal Share for Transit Capital Programs

SAFETEA-LU retains the 80 percent federal share for transit capital projects.

Bond Proceeds as Local Match

The new law also allows locally issued revenue bond proceeds to be used as a local match for capital projects. These funds may only be used if state and local financial support for public transit in an urbanized area over the next three fiscal years exceeds the funding level provided during the preceding three fiscal years.

“Buy America”

The measure includes language requiring the Federal Transit Administration to conduct a rulemaking to define “end product” to ensure that major system procurements are not used to circumvent Buy America requirements. This provision has the potential to broaden the reach of Buy America for transit procurement, construction and maintenance activities.

Contractor Performance Reports

SAFETEA-LU also requires the Secretary of Transportation to submit annual reports to Congress regarding the consistency and accuracy of cost and ridership estimates made by contractors to public transportation agencies developing new fixed guideway capital projects. The act also requires the Secretary to submit a report regarding the suitability of allowing contractors to receive a performance incentive award for projects completed for less than the original estimate.

Rail Infrastructure Programs

SAFETEA-LU contains a number of programs designed to increase federal financial support for the development of rail infrastructure improvement projects. The measure also continues federal support for the development of high speed rail corridors and technologies.

Railroad Rehabilitation and Improvement Financing (RRIF)

The RRIF program is intended to make rail infrastructure investments available through loans and loan guarantees to state and local governments, government sponsored authorities, and private railroads or corporations.

SAFETEA-LU would increase the total amount of loans and loan guarantees permitted under this program from \$3.5 billion to \$35 billion. The legislation also makes a number of technical changes to streamline the program and the conditions required in the loan agreement with the U.S. DOT.

Rail Relocation Program

SAFETEA-LU creates a new program funded from the federal General Fund to provide state and local governments with assistance for the relocation of freight rail lines. This provision authorizes \$350 million per year between FY 2006 through 2009. Grants awarded under this program would require a 10 percent non-federal match.

High Speed Rail Corridor Development

This measure authorizes \$70 million annually from the federal General Fund in FY 2006 through 2013 for high speed rail corridor development activities. It also includes federal General Fund authorizations of \$30 million per year from FY 2006 through 2013 for high speed rail technology improvements.

Magnetic Levitation Transportation Projects (MAGLEV)

SAFETEA-LU also authorizes \$15 million in FY 2006 and FY 2007, and \$30 million in FY 2008 and FY 2009 from the Highway Trust Fund's Highway Account for the deployment of MAGLEV projects providing passenger service in excess 240 miles per hour. These funds are subject to annual appropriations. The funds made available by this section are to be divided with 50 percent dedicated to carry out a MAGLEV project between Las Vegas and Primm, Nev. The remaining 50 percent is to be made available to a project east of the Mississippi River.

Glossary of Terms

Allocation: An administrative distribution of funds among the states; done for funds that do not have statutory distribution formulas.

Apportionment: Refers to a statutorily prescribed division or assignment of funds. An apportionment is usually based on prescribed formulas in the law and consists of dividing authorized contract authority for a specific program among the states.

Appropriations Act: Action of legislative body that makes funds available for expenditures with specific limitations as to amount, purpose and durations.

Attainment: A term that means an area is in compliance with the National Ambient Air Quality Standards (NAAQS). The Environmental Protection Agency (EPA) has promulgated NAAQS for six atmospheric pollutants. If an area (such as Washington, D.C.) is not in compliance with the ozone NAAQS, for example, the D.C. region is said to be in non-attainment for ozone.

Authorization Act: Basic substantive legislation that empowers an agency to implement a particular program and also establishes an upper limit on the amount of the funds that can be appropriated for that program (i.e., SAFETEA-LU).

Budget Authority: Empowerment by the Congress that allows federal agencies to incur obligations to spend or lend money. This empowerment is usually in the form of appropriations. However, for the major highway program categories, it is in the form of “contract authority.” Budget authority permits agencies to obligate all or part of the funds that were previously “authorized.” Without budget authority, federal agencies cannot commit the government to make expenditures or loans.

Contract Authority: A form of budgetary authority that permits authorized amounts to be obligated. No appropriations act is necessary. The federal-aid highway program operates mostly under contract authority rules.

Discretionary Spending: Refers to spending subject to the annual appropriations process, such as expenditures for the environment and education. In addition, within the federal surface transportation program it refers to funds available for allocation by the Secretary of Transportation.

Expenditures: A term signifying disbursement of funds for repayment of obligations incurred. An electronic transfer of funds, or a check sent to a state highway or transportation agency for voucher payment, is an expenditure or outlay.

Fiscal Year (FY): The yearly federal accounting period beginning October 1 and ending September 30 of the subsequent calendar year. Fiscal years are denoted by the calendar year in which they end; e.g. FY 2005 began October 1, 2004 and ends September 30, 2005.

General Fund: Refers to the part of the federal budget that supports funding for most government programs—such as the environment, health care, etc.—not paid for by special trust funds like the Highway Trust Fund or the Social Security Trust Fund.

Highway Trust Fund (HTF): Provides dedicated funding for federal highway and mass transit programs. Revenues come from the federal gasoline tax of 18.3 cents per gallon, plus other user fees. The HTF consists of separate highway and mass transit accounts.

Mandatory Spending: Refers to automatic spending or money not subject to the appropriations process, such as entitlement programs or interest on the national debt.

Obligation Authority: Also referred to as limitation on obligations, it is the amount of federal assistance that may be obligated during a specific period of time. Obligation authority controls the rates at which these funds may be used, but does not affect the scheduled apportionment or allocation of funds.

Obligations: Commitments made by federal agencies to pay out money as distinct from the actual payments, which are “outlays.” Generally, obligations are incurred after the enactment of budget authority. However, since budget authority in many highway programs is in the form of contract authority, obligations in these cases are permitted to be incurred immediately after apportionment of allocation. The obligations represent the federal share of the estimated full cost of each project at the time it is approved, regardless of when the actual payments are made or the expected time of project completion.

Revenue Aligned Budget Authority (RABA): The TEA-21 established mechanism that links annual federal highway spending directly to user fee revenues credited to the HTF Highway Account. Under this procedure, guaranteed highway investment is adjusted up or down commensurate with changes between Highway Account revenue projections at the time of enactment and what is collected over the life of the bill.

Rescission: A legislative action that cancels new budget authority or the availability of unobligated balances of budget authority prior to the time the authority would otherwise have expired.

About ARTBA

Founded in 1902, the American Road & Transportation Builders Association (ARTBA) advocates strong federal investment in transportation infrastructure. On behalf of its members and in the public interest, ARTBA aggressively and progressively promotes development of safe and efficient transportation systems. Complementing its vital leadership role in this area, the association also provides regulatory advocacy and services and benefits designed to help its member firms and agencies operate more efficiently.

ARTBA's more than 5,000 members hail from all 50 states. They include representatives from all of the U.S. transportation construction industry's business sectors, both public and private. Today, the U.S. transportation construction industry that ARTBA represents generates more than \$200 billion in annual economic activity and sustains 2.5 million American jobs.

In just the past five years, ARTBA has won more than 20 national awards for its government relations and communications programs in support of its mission.

For more information, visit the association's website at www.artba.org.



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