



## **SAFETEA-LU**

### **A Summary of Provisions of Interest to Ocean Carriers**

The following is a summary of H.R. 3, "The Safe, Accountable, Flexible, Efficient, Transportation Equity Act", which was signed into law by the President on August 10, 2005. It was a multi-year effort to pass this \$286.5 billion, five-year highway spending bill, applicable to fiscal years 2005 through 2009. The law is very extensive and more than 800 pages long. This document serves as a partial summary of provisions that may be of significant interest to ocean carriers.

#### **1. Direct Impact on Intermodal and Port Freight Movements**

While there was increased attention on freight movement issues compared to previous highway reauthorization efforts, limitations on the amount of money, coupled with Congressional "earmarking" (i.e., specific designation) of most funding for specific transportation projects, will confine the impact of a number of the new law's provisions.

The law includes some new or expanded freight and goods movement programs; however, Congress then earmarked all authorized spending in most of these programs to specific projects, which are named in the bill. Most of the funds earmarked for specific projects named in the bill are not transferable to other projects, without another act of Congress.

For the next four years, the Department of Transportation is thus left with almost no discretionary spending for new projects and programs, unless they have been specifically named in the law.

The decision to initiate transportation projects not named in the bill principally resides with the state and local governments, who continue to develop and implement transportation plans based on the pre-determined federal contribution defined in the highway bill. States are also responsible for plan development and implementation of those projects named in the bill.

Many port-related goods movement projects were included in the list of earmarks, but the level of federal funding often falls well below the full cost of the project, and will need to be supplemented by other funding sources. States are then left to determine whether adequate additional funding can be secured through state or local governments, and increasingly through partnerships with the private sector. A state's transportation plan is required by law to be fiscally constrained; therefore projects cannot be placed into the plan until they are fully funded.

Below is a list of some of the goods movement projects conferees included in the final highway bill.

### ***Port of Long Beach***

The port received \$100 million through the Projects of Regional and National Significance (PRNS) program to reconstruct the Gerald Desmond Bridge. The highway bill earmarks \$100 million out of a needed \$745 million leaving state and local entities responsible for the lion's share of the cost of the project.

### ***Port of Los Angeles***

The Southern California gateway received \$4 million for the Interstate-110-State Road 47-Harbor Boulevard interchange. The project cost is estimated to be \$21.5 million, leaving the state of California and local entities to come up with the remainder of the funding. The port also received \$1.6 million in federal funding to study an upgrade for the Vincent Thomas Bridge, another artery serving the port complex.

### ***Alameda Corridor East***

\$125 million was earmarked for the Alameda Corridor East project, which is intended to eliminate railroad grade crossings on a 35-mile route from intermodal terminals in downtown Los Angeles through to the Inland Empire and other eastern communities. The project is expected to cost a total of \$600 million.

### ***Port of Virginia and the "Heartland Corridor"***

\$90 million was earmarked for the Heartland Corridor project planned to increase capacity and link Virginia terminals with a major new intermodal transfer facility in Columbus, Ohio by way of upgraded Norfolk Southern rail lines. The project is expected to cost about \$250 million. The port of Virginia also received \$15 million to expand on-dock rail service to the new APMT facility currently under construction.

### ***CREATE (Chicago Regional Environmental and Transportation Efficiency)***

The CREATE project partners major railroads with the state and local Departments of Transportation and seeks to eliminate bottlenecks in many rail interchanges in and around Chicago, while improving traffic flow for motorists. This \$1.5 billion dollar project received \$100 million in the new bill.

### ***Port of Seattle***

\$220 million was provided for replacement of the Alaskan Way viaduct, a raised highway that runs parallel to Seattle terminals and is responsible for moving much truck-borne freight. The cost of the project is \$1.5 billion.

### ***South Carolina State Ports Authority***

South Carolina ports received \$10 million to connect a new terminal built on a former Navy base with Interstate-26.

### ***Port Authority of New York New Jersey***

\$100 million was earmarked for the ***Liberty Corridor***, an expansive project that seeks to develop barge service to small regional ports, an inland rail distribution network, "freight villages" from old industrial sites and roads feeding distribution centers. Project cost is estimated at \$7.2 billion over the next ten years, two-thirds of which has been committed by federal, state and regional entities.

\$100 million was provided for the ***Cross Harbor Freight Tunnel***, which hopes to construct a dedicated truck and rail tunnel under the New York-New Jersey harbor linking New Jersey with Brooklyn. Transportation experts expect the project to cost upwards of several billion dollars, if it proceeds.

### ***Port of Portland, Ore.***

The state received \$160 million for its Interstate-5 Corridor improvement projects including bridge repair and replacements. Some of these projects will help move cargo through the port. The port also received \$11 million for construction of the Ramsey Rail Yard, and \$1 million for improvements to the Troutdale interchange at Interstate-84 and 257th Street.

### ***Freight Intermodal Distribution Pilot Grants***

Section 1306 establishes a small freight intermodal distribution pilot grant program. The original House draft funded the program at \$1.25 billion and the original Senate draft funded the program by requiring 2 percent of NHS funds be set aside. The final bill authorizes \$6 million for each of fiscal years 2005 through 2009, and then specifies the six projects that will comprise the pilot program and receive \$1 million each annually in funding. These are:

- Short-haul intermodal projects, Oregon
- The Georgia Port Authority
- The ports of Los Angeles and Long Beach, California
- Fairbanks, Alaska
- Charlotte Douglas International Airport Freight Intermodal Facility, North Carolina
- South Piedmont Freight Intermodal Center, North Carolina

### ***Transportation Infrastructure Finance and Innovation Act (TIFIA)***

Section 1601 makes a number of changes to the TIFIA program, extending program eligibility to more projects and making it more accessible for smaller projects and operational improvements. Specifically, it expands the definition of freight-related projects eligible for TIFIA assistance to allow private rail facilities that serve a public

benefit for highway users to qualify for the program. Further, the law allows a series of small related projects, each of which separately might not meet the threshold requirements, to be grouped together in order to apply for TIFIA assistance.

Additionally, the law takes steps to ensure that smaller states have the opportunity to benefit from the program as well. It decreases the minimum eligible project cost from \$100 million to \$50 million for general projects, from \$30 million to \$15 million for ITS projects, and reduces the state matching requirement from 50 percent to 33.3 percent.

## ***2. Future Transportation Infrastructure Planning***

The Act evidences an understanding of the importance of better planning to meet the needs of all users of the transportation system and directs the establishment of several forums to accomplish this.

Section 1909 of the bill -- Future of Surface Transportation System -- calls for the establishment of a 12-member National Surface Transportation Policy and Revenue Commission to be chaired by the Secretary of Transportation, with appointees designated by the President, Speakers and Minority Leaders of the House and Senate. The Commission is tasked with a comprehensive review of current conditions and development of a long-term plan to meet the future needs of the surface transportation system including the revenue sources to fund those needs for at least the next 30 years. Further, the Commission must explore alternatives to replace or supplement the fuel tax as the principal revenue source to support the Highway Trust Fund. Commission members are to be designated by the end of the year and its report is due to Congress no later than July 1, 2007. To support this new Commission, "the Secretary shall establish a Technical Advisory Committee" ... "to collect and evaluate technical input from" various stakeholders, including transportation and trade associates and freight providers."

This Commission would seem to be the likely forum to consider any major additional transportation infrastructure spending programs and funding mechanisms. Its scope, however, is clearly broader than freight or intermodal transportation issues.

At the same time, Section 11142, provides for the creation of a 15-member National Surface Transportation Infrastructure Financing Commission, with appointees designated by the Secretary of Transportation and select members of the House and Senate. Much of this commission's responsibility directly duplicates tasks assigned to the commission established under section 1909 and the Financing Commission's report is not due until several months *after* the Policy and Revenue Commission is due to submit its report to Congress.

Similarly, Section 4149 of the law directs the Office of Intermodalism to "develop a plan to improve the national intermodal transportation system" and submit an initial report on that plan in August 2007, which is also after the due date for the Policy and Revenue Commission's report to Congress.

How these planning processes relate to each other or might be coordinated is remains unclear, although the overlap in assigned objectives is apparent and the Department of Transportation is working to clarify the roles and responsibilities.

### **3. Title VII – Hazardous Materials Transportation**

Section 7105 requires background checks for drivers hauling hazardous materials.

### **4. Chassis Roadability**

The law contains chassis roadability language that was worked out by the Ocean Carrier Equipment Management Association (OCEMA) and together with other intermodal interests, which requires the Secretary of Transportation to issue regulations establishing a program to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained. The law places the maintenance responsibility on the companies that provide the equipment and control the daily disposition of it. It requires the Secretary to publish certain regulations as a subpart of the regulations of the Federal Motor Carrier Safety Administration, including identifying intermodal equipment providers responsible for the inspection and maintenance of intermodal equipment and a requirement to match intermodal equipment to the equipment provider through a unique identifying number.

Under the new law, any intermodal equipment determined under this section that fails to comply with applicable safety regulations may be placed out of service and the Secretary, or an employee of the DOT designated by the Secretary may inspect intermodal equipment and copy related maintenance and repair records. The new law also preempts any law, regulation, order or other requirement of a State, political subdivision of the State, or tribal organization and defines several terms.

Significantly, in the Statement of Managers that accompanies the final bill, the conference supported an inspection system that shall maximize the use of available technologies, including electronically verified visual inspections, whenever appropriate.

### **5. Registration of Motor Carriers and Freight Forwarders**

Section 4142 harmonizes the jurisdictional reach of the commercial and the safety statutes by eliminating the requirement for freight forwarders and brokers to register as motor carriers if they are not subject to the Federal motor carrier safety regulations. Specifically, the new law amends section 13903 of title 49 U.S.C. to relieve freight forwarders and brokers of the requirement to register with the Federal Motor Carrier Administration as a motor carrier, unless they are engaged in forwarding or brokering of services relating to households goods.

## **6. Bureau of Transportation Statistics (BTS)**

Section 5601 expands the role of BTS to collect and make available a wide range of transportation data for use by federal, state and regional governments. This is consistent with increased spending allocated for transportation research. The law calls for the appointment of a Director of BTS and defines the Director's responsibilities. Several provisions are included on the collection of freight data, including a requirement for *mandatory* response by corporations to BTS requests for data. Anyone who fails to respond shall be fined not more than \$500; and if the individual willfully gives a false answer to such a question, the individual shall be fined not more than \$10,000. Safeguards are provided to prevent disclosure of freight data that can be identified with any corporation or individual. An Advisory Council on Transportation Statistics is also established.

## **7. Undeclared HazMat Shipments Entering the U.S.**

Section 7130 requires the Government Accountability Office to conduct a study to propose methods to determine the amount of undeclared shipments of hazardous materials entering the United States.

## **8. Sanitary Food Transportation**

In practical terms, the new law switches responsibility from the Department of Transportation (DOT) to the Food and Drug Administration (FDA) within the Department of Health and Human Services (HHS) for the issuance of regulations governing sanitary food transportation. The Federal Food, Drug and Cosmetic Act (the Act; 21 U.S.C. 391) became law in 1990. However, the rules implementing the original Act, first proposed by DOT in 1993, were never finalized. With the transfer of responsibility to FDA, it is expected that new rules will be proposed and implemented. Changes enacted with the new law are:

- Sections 7201-7203 provide that food is "adulterated" if it is transported in violation of safe transportation practices prescribed in the new section 416 of the Act.
- Subsection (b) adds to the Act a new section 416 requiring the Secretary of HHS to establish by regulation sanitary transportation practices to be followed by shippers, carriers, and others engaged in food transport.
- Discretion is given to the Secretary of HHS to prescribe practices relating to matters such as sanitation, packaging and protective measures; limitations on the use of vehicles; information sharing between shippers and carriers; and record keeping, reporting, and compliance with inspections.

- Authorization is given to the Secretary of HHS to publish lists of non-food products that could render food products adulterated if shipped simultaneously or subsequently in the same vehicle.
- Authorization is given to the Secretary of HHS to waive all or part of the requirements of section 416, in appropriate circumstances, with respect to particular classes of persons, vehicles, food, or non-food products.
- The law requires the heads of other Federal agencies, including the Secretaries of Transportation and the Department of Agriculture, and the Administrator of the Environmental Protection Agency, to assist the Secretary of HHS, upon request, in carrying out this section.
- The law also requires the Secretary of Transportation to train DOT personnel who perform motor vehicle and railroad related safety inspections to identify practices and conditions that could pose a threat to food safety and to notify the secretaries of HHS and the Department of Agriculture of any instances of potential food contamination identified during those inspections.

**9. Harbor Maintenance Tax on Exports**

Section 11116 exempts exported commercial cargo from the harbor maintenance tax of 0.125 percent, which remains in effect for imported cargo. This change has no practical effect as this is the law today. This provision simply amends the terms of the Tax Code to conform it to the Supreme Court decision of several years ago, which determined that the tax was unconstitutional as applied to exported cargo.

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