



This publication is a member service of  
**National School  
Transportation Association**  
113 South West Street, 4<sup>th</sup> Floor  
Alexandria, VA 22314  
Phone: (703) 684-3200  
Fax: (703) 684-3212  
E-mail: [info@yellowbuses.org](mailto:info@yellowbuses.org)  
Website: [www.yellowbuses.org](http://www.yellowbuses.org)



## 2005-06 Board of Directors

### Executive Board/Officers:

#### **John Corr, President**

The Trans Group – NY (845) 356-2200

#### **Barry Stock, President-elect**

Durham School Services - US/Canada  
(905) 952-2005

#### **Donald Fowler, Secretary/Treasurer**

Fowler Bus Company, Inc. -MO  
(816) 776-2548

#### **Dale Krapf, Immediate Past President**

Krapf Buses - PA (610) 594-2664

### Regional Directors:

#### **Region One - Carey Paster**

First Student, Inc. (US/Canada)

#### **Region Two - Charles Peterson**

Kottkes' Bus Service, Inc. (MN)

#### **Region Three - Dan Kobussen**

Kobussen Buses, Ltd. (WI)

#### **Region 4 – Todd Monteferrario**

First Student, Inc. (US/Canada)

### At Large Delegates:

#### **John Benish**

Cook-Illinois Corporation (IL)

#### **Kevin Clifford**

Huntington Coach, Inc. (NY)

#### **Magda Dimmendaal**

Dousman Transport (WI)

#### **John Elliott**

Durham School Services (US/Canada)

#### **Timothy Flood**

The Trans Group (NY)

#### **Steven Hey**

School Bus, Inc. (SD)

#### **Paul Losos**

Sunrise Transportation (IL)

#### **Philip Paige**

Paige Bus Enterprises (IL)

#### **Bob Pudlewski**

Laidlaw Education Services (US/Canada)

#### **Peter Settle**

Petermann, LLC (OH)

#### **Patrick Vaughn**

Laidlaw Education Services (US/Canada)

The National School Transportation Association (NSTA) was founded in 1964 by school bus contractors to "promote and foster the highest degree of safety in the transportation of school children"

## Congress Extends S-Endorsement Deadline

Responding to pleas from state agencies facing a September deadline for administering school bus tests to all current drivers, Congress has given states another year to implement the S-endorsement. Under a provision in the Highway bill, the deadline for all school bus drivers to have the endorsement was extended to September 30, 2006. Be aware, though, that your state may have put the 2005 deadline into state statutes, which would make the Congressional action moot.

Congress also provided a waiver from retesting for drivers that previously passed a written test approved by FMCSA. In essence, this provision grandfathers current school bus drivers in Alabama, Delaware, Illinois, Minnesota, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Virginia, and Wisconsin.



## Labor Department Proposes New Rule on UC Eligibility

The U.S. Department of Labor published a Notice of Proposed Rulemaking (NPRM) on July 22 that would limit a state's payment of unemployment compensation (UC) only to individuals who are able and available (A&A) for work. The rule would apply to all state UC laws and programs.

While the department claims that they have consistently interpreted the unemployment compensation rules to require that individuals be able and available to work in order to be eligible for payments, because the A&A requirement is not explicitly stated in federal law or regulations, there appears to be some confusion regarding the validity of the A&A requirement as well as its scope and application. As a result of this confusion, the department has determined that there is a need to adopt a regulation that clearly sets forth its interpretation of the A&A requirement. The rule does not regulate other areas of the UC program, such as monetary entitlement or disqualifications for such actions as voluntarily quitting employment, which are generally left to the states.

The proposed rule provides that a state may pay UC only to an individual who is unemployed due to a lack of suitable work for the week for which UC is claimed. To test whether the individual is unemployed due to a lack of suitable work, the state must determine whether that individual is offering services for which a labor market exists. This does not mean that job vacancies must exist, only that, at a minimum, the type of services the individual is able and available to perform is generally performed in the labor market. This "labor market test" is designed to ensure that an individual's unemployment is due to a lack of suitable work. That is, if the services offered by an individual are so restricted that there is no labor market for those services, then that individual is not able and available, and is ineligible to collect. Those restrictions on services could be for any number of reasons, such as hours of availability, limitations on the distance the individual is willing to commute, or

*(UC Eligibility article continued...)*

what types of jobs the claimant is willing to accept.

Under the proposal, states retain the authority to determine what constitutes the labor market for an individual under their UC laws.

The proposed rule also clarifies how the A&A requirement relates to the individual's initial separation from the labor market. An example may help explain how the separation provisions of state law, such as voluntary leaving provisions, are distinct from the A&A requirements. Assume an individual left work to care for an ill child. Whether to disqualify this individual for voluntarily leaving employment is entirely left to state law. However, if the state does not disqualify the individual for voluntarily leaving employment, the individual must still be A&A to be eligible for UC. If caring for the ill child prevents the individual from being available for a new job, the individual will be held ineligible for not meeting the state's A&A requirements because the individual is not involuntarily unemployed due to lack of suitable work. However, after the child no longer needs care and the individual becomes available for work, the individual may immediately begin collecting UC.

Of particular interest to school bus carriers, the proposal clarifies that an individual on temporary lay-off from an employer may limit his or her availability to that employer. For example, if you lay off a driver for the summer, the driver can say that he is available to work only for you and still collect benefits. While this is a very restrictive availability, it is nonetheless a test of whether the unemployment is due to lack of suitable work. Indeed, payment of UC to individuals on temporary lay-off allows employers to preserve their skilled workforces, which has been cited as one of the purposes of

the UC program. It also reflects a practical reality: Most other employers are unlikely to hire an individual on temporary lay-off because that individual will leave any new employment to return to the prior employment. Of course, if you offer the driver work during the summer and he refuses (or if he doesn't return in the fall), then he is no longer A&A and cannot collect.

Comments on the NPRM are due September 20, 2005. For more information, contact us at the NSTA office or through the new website at [www.yellowbuses.org](http://www.yellowbuses.org).



### **NON-CONFORMING 15-PASSENGER VAN SAFETY PROVISIONS INCLUDED IN SAFETEA-LU**

Several provisions advocated for by NSTA were included in the final SAFETEA-Lu bill passed on July 30. Many thanks to our chief sponsors, Senator Olympia Snowe, Republican Senator from Maine and Congressman Mark Udall, Democratic Congressman from Colorado.

Because 15 passenger vans have such a high rollover rate (3 times the average), the final bill requires the Secretary of Transportation to test 15 passenger vans as part of the rollover resistance program of NHTSA's new car assessment program. 15 passenger van is defined as a vehicle seating 10-14 passengers, not including the driver.

The final bill also includes a new provision relating to prohibitions on purchase, rental, or lease of nonconforming 15-passenger vans for school use. The new bill states that a school or school system may not purchase or lease a new 15-passenger van if it will be used significantly by, or on behalf of, the

school or school system to transport preprimary, primary, or secondary school students to or from school or an event related to school, unless the 15 passenger van complies with the motor vehicle standards prescribed for school buses and multifunction school activity buses under this title. This paragraph does not apply to the purchase or lease of a 15-passenger van under a contract executed before the date of enactment of this paragraph."

What this provision does is now puts the onus on the school or school district instead of the dealer, for purchasing or leasing 15-passenger vans. It will put schools and school districts on notice that they should not be purchasing these vans outright.

In addition, penalties for violating the provision are increased in the legislation. The maximum civil penalty is increased to \$10,000 in the case of the manufacture, sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation of a school bus or school bus equipment (as those terms are defined in section 30125(a) of this title) in violation of the law. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by that section. The maximum penalty for a related series of violations is \$15,000,000.

Together, these passenger van safety provisions will go a long way towards NSTA's goal of ensuring that no students are forced to be transported in dangerous 15 passenger vans to and from school or to school-related events, and forcing schools to make the only safe choice, the yellow school bus.



[www.yellowbuses.org](http://www.yellowbuses.org)



## NSTA Launches New Website...

### Sign Up Now!

NSTA launched a new website last week at the Annual Meeting and Convention in Washington, DC. If you haven't had time to browse through it, please visit the website at [www.yellowbuses.org](http://www.yellowbuses.org) and see all of the information NSTA has to offer.

There is a new MEMBERS ONLY section on the website. When you click on the link, you will need to register a user name and password. After you register, you will receive an email confirming your registration.

If you forget your password, no problem! Click on the link "forgot password", fill in your email address and the website will automatically send you an email listing your information.

If you have any questions, contact us at [info@yellowbuses.org](mailto:info@yellowbuses.org) or call (800) 222-NSTA.

## We Get Questions

**Q1.** *I operate some station wagons and minivans for special needs students. Can I put those drivers in my random drug testing pool?*



**A1.** If the drivers of your smaller vehicles have CDLs, the answer is a simple yes. If they don't have CDLs, the answer is more complicated. Whether or not you can subject non-CDL drivers to random drug testing is a matter of state law. Unless your state has specific requirements for drivers of all school vehicles, your

state labor laws will dictate when you can require drug tests of employees who are not covered under federal regulations. Most states allow all employers to do pre-employment and reasonable suspicion testing, but are more restrictive regarding random testing. Check with your state labor department (or your labor attorney) to see if you are allowed to test "safety-sensitive" employees.

Even if you find that you can legally subject non-CDL drivers to random drug testing, the answer to your question is no. You cannot mix CDL and non-CDL drivers in a random testing pool.

Drivers that are tested under the federal regulations must be in an exclusive pool so that you can meet the required minimum test numbers of those drivers.

In addition, the forms that are used for DOT testing cannot be used for any tests outside the DOT regulations. You can do the same testing in the same way for your non-CDL drivers, but you'll need to set up a separate pool for them and use different forms.

**Q2.** *My driver was at fault in a crash where a vehicle had to be towed. The police officer told him that he would receive a ticket in the mail. Should I do drug and alcohol tests before he gets the ticket?*

**A2.** We checked with FMCSA for the answer to your question, and they confirmed that the answer is no. You cannot test a driver until you have the actual citation in hand, no matter what the officer promises—or threatens.

If the citation arrives more than 8 hours after the crash, it's too late to administer an alcohol test; if it arrives more than 32 hours after the crash, it's too late for a drug test.

Be sure to document in the driver's file the date and time the citation arrived as your reason for not administering the tests.

## SAFETEA-LU BILL FINALLY REACHES FINISH LINE

The long-awaited surface transportation reauthorization bill passed the House and Senate on Friday July 30<sup>th</sup> by overwhelming



margins. The bill is named the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" or SAFETEA-LU bill.

The bill provides a total of \$286.5 billion dollars into Federal-aid highway, transit and motor carrier safety programs for the next four years. The bill had been delayed almost two years and been extended by a series of twelve short-term extension bills.

The House bill passed by a vote of 412-8; the Senate bill passed by a vote of 91-4. President Bush is expected to sign the bill into law next week.

## Important Dates to Note...

January 22-25, 2006  
*NSTA Midwinter Meeting*  
Ritz Carlton Resort  
Kapalua, Maui, HI

July 22-23, 2006  
*International Safety  
Competition*  
Lake Tahoe, NV

July 23-26, 2006  
*42<sup>nd</sup> Annual Convention  
and Annual Meeting*  
Lake Tahoe, NV



## Energy Bill Passes with Provisions of Interest to NSTA

In the final days before leaving for their summer recess, Congress overwhelmingly passed a comprehensive Energy Policy Act of 2005. The President is scheduled to sign the bill into law on August 8th. The bill was four years in the making and the first major energy bill in 13 years. Included within the 1700-plus page of text were a number of provisions of interest to NSTA and its members, including a Clean School Bus grant program authorization, a new authorization for diesel retrofits grants for a wide range of diesel vehicles and tax credits for a variety of low emissions or improved fuel economy vehicles.

NSTA has been working on Clean School Bus legislation through a coalition of clean diesel and natural gas engine manufacturers, the makers of improved emissions equipment, public interest organizations and all three major school bus trade associations. While we have been successful in obtaining a total of \$17 million over the past three years through annual funding bills, enactment of the Energy Bill has secured the congressional authorization for the program that should make it easier to obtain higher levels of funding in future years. The program provides grants for the replacement or retrofit of school buses to reduce improved emissions using the latest technology vehicles and equipment. Over the past four years, Congress has included Clean School Bus

authorizing legislation in virtually every comprehensive energy bill taken up in the House or Senate. However, controversies about other, unrelated issues have doomed final passage of a comprehensive energy bill until now. In fact, our coalition decided this year to also try to include the Clean School Bus legislation in the big highway bill, which was seen as more of a "must pass" bill than the energy bill. In an abundance of riches, Congress passed both bills on the same day with almost identical Clean School Bus legislation in both bills.

Both the Highway and Energy Bills authorize \$55 million in each of fiscal years 2006 and 2007 for Clean School bus grants to help pay for up to 50% of the cost of new, lower emission buses to replace older buses or 100% of the cost of retrofit technologies such as particulate traps or emissions catalysts that can be added to more recently manufactured school buses. EPA will administer the program and will set cost sharing rules based on emissions reductions and how best to achieve a balance between replacement and retrofits. The version of the bill in the Highway bill differs slightly from the Energy Bill version in that it also authorizes EPA to fund the cost of purchasing biodiesel fuels. NSTA worked hard to ensure that funds available under both provisions can be provided to contractors and trade associations, as well as to local and state school districts or agencies.

### Other provisions of interest in the Energy Bill include:

The bill authorizes a total of \$25 million over four years for a Fuel Cell School Bus program to develop and demonstrate a fuel cell school bus.

The Diesel Emission Reduction Program authorizes \$200 M/yr for fiscal years 2007-2012 for a national grant and loan program to reduce diesel emissions, particularly in areas designated as poor air quality areas.

The funding is to be used for a variety of diesel vehicles and equipment, including buses, or to reduce long-duration idling.

70% of the funds appropriated are to be distributed by EPA through grants and loans to regional, State, local or tribal agencies or port authorities with jurisdiction over transportation or air quality and nonprofit organizations and institutions that represent or provide services to organizations that own or operate diesel fleets or promote either transportation or air quality. Of these funds, up to 50% of the funds could go to fund private fleet projects. 30% of funding overall would go in grants or loans to support State administered programs through an allocation formula.

The Energy Bill also contains Clean Engine Tax Incentives that are estimated to cost \$874 million over ten years for a variety of clean engine or improved fuel economy vehicles. These include fuel cell, hybrid, clean burn diesel, and "alternative" fueled vehicles such as vehicles running on both liquefied and compressed natural gas, propane, liquefied petroleum gas, hydrogen, or an 85% methanol blend. The amount of the credit is based on a variety of factors including vehicle size, increase in vehicle cost and the average fuel efficiency achieved. The maximum per vehicle credit available for each type of vehicle is \$44,000 for fuel cells, \$12,000 for hybrids, \$3,400 for lean burn diesel, and \$32,000 for alternative fueled vehicles. These credits do not extend to clean diesel school buses since the low burn diesel language is limited to vehicles of up to 8,500 lbs only.

### Did You Know?



Some of NSTA member benefits include:

- Workers Compensation program
- Health Insurance program
- Fuel savings program
- Credit Card acceptance program

## **VICTORIES FOR PRIVATE SECTOR IN TRANSIT PORTION OF SAFETEA-LU BILL**

The Private Sector  
Transportation  
Associations  
Coalition, of which  
NSTA is a founding  
Member, had  
some major  
victories in the  
surface  
transportation



reauthorization bill, SAFETEA-LU. Included in the legislation passed on Friday, July 30<sup>th</sup> were several provisions being advocated for by the Coalition. Many thanks to our chief sponsors of these provisions, Senator Richard Shelby, Republican Senator from Alabama and Congressman Jimmy Duncan, Republican House Member from Tennessee.

**The most important provision for NSTA is the resolution of the charter bus provision.** The final bill puts more meat on the investigation of charter bus and school bus service violations, as well as implements a new flexible penalty that will make it more likely that transit authorities will suffer a loss of funding for violating those rules. Under current law, the only penalty that can be imposed is a very draconian; losing all of a transit agency's formula funding; and therefore it has rarely been implemented. The new law permits a portion of formula funds to be withheld, making it more likely that the penalties will be imposed.

In addition, the law directs the Federal Transit Administration to enter into a negotiated rulemaking to address changes to the charter rules. A negotiated rulemaking is a much more intense and lengthy rulemaking process with all stakeholders at the table from beginning to end, with the goal of reaching a negotiated resolution of all issues. NSTA will be

very active in this negotiated rulemaking process.

The new law also makes several changes to the labor protection provisions in public transportation. The law codifies what is known as the Las Vegas Department of Labor decision. This decision found that in a change of contractor situation, section 13© does not require that the employees be guaranteed jobs with the new contractor or that their labor contract be carried over to the new contractor. That is, the incoming contractor need not

(CMAQ funding article continued...)

language is aimed primarily at construction equipment in non-attainment areas, but by requiring that localities give priority to both kinds of projects, this provision could lead to greater local interest in diesel retrofit programs.

### Hot Topics

If you didn't make it to the 41<sup>st</sup> Annual Meeting and Convention, you missed a lot of hot



topics that are being discussed each day in the industry. Here are just a few of the topics that were discussed:

Recruiting and Retaining Qualified Drivers, which included innovative ideas for hiring personnel and enhancing the workplace to make them want to stay.

The School Bus Watch Program -- developed by the school bus industry and tailored for our school bus professionals -- was launched for the first time ever. The Program incorporates the communication elements of Highway Watch<sup>®</sup> in a manner that is specific to our school bus operators.

National Transportation Safety Board (NTSB) reported on the latest findings on recent school bus accidents and investigations (what NTSB looked for, what was found, and what recommendations they are making to reduce the chance of another type of accident from occurring.)

Federal Motor Carrier Safety Administration (FMCSA) reported the latest news on implementation of the School Bus endorsement and other

CDL improvements plus updates on other FMCSA proposals that affect contractors.

Fuel costs continue to hurt the school bus industry but contractors can take an active role in managing energy expenses. Attendees heard from a leading futures specialist on *Chilling Out Energy Costs*.

We heard from TSA about funding for security, panelists progress on Clean School Bus Grant projects, the latest news on Capitol Hill and more.

The next NSTA Meeting will be held January 22-25, 2006 in Maui, Hawaii. The NSTA Annual Meeting and Convention will be held July 23-26, 2006 in Lake Tahoe, Nevada. To find out more about NSTA's meetings and workshops, contact us at (800) 222-NSTA or by email at [info@yellowbuses.org](mailto:info@yellowbuses.org).



### Look for your Quarterly Mailing

Starting this school year, NSTA members will be receiving quarterly mailings to help you stay up-to-date on the latest happenings at NSTA.

You will be receiving the first quarterly mailing by the end of August and the next one will go out in December.

### Security Threats... Be Prepared!

Prepare your school bus operation for security threats!

Contact the NSTA Headquarters office for a copy of the NSTA Security Preparedness Guide or download a copy in the members-only section of the NSTA Web site at [www.yellowbuses.org](http://www.yellowbuses.org).



### Share Your News With NSTA

Contact NSTA Headquarters to receive a membership packet to share with others you know will benefit from membership! Call us at 1-800-222-NSTA (6782) or email us at [info@yellowbuses.org](mailto:info@yellowbuses.org).



### UMA and ABA Break Off Talks

Earlier this year, UMA and ABA memberships gave approval to move forward with the unification of our two organizations. The transition period has afforded each association an opportunity to carefully analyze staff, business models, leadership approach and basic philosophies on serving their members' needs.

On Thursday, August 4<sup>th</sup>, the Associations announced that they have reached an impasse in the transition process and, have agreed to end the unification effort.

### National School Bus Safety Week is October 16-22



Over ten years ago, the National School Transportation Association, National Association for Pupil Transportation and National Association of State Directors of Pupil Transportation Services joined forces to form the National School Bus Safety Week Committee and coordinate School Bus Safety Week activities throughout the country. To find out more about NSBSW, go to the NSTA website ([www.yellowbuses.org](http://www.yellowbuses.org)) and click on the School Bus Safety Week link on the home page.