

**NOTE: This is an copy of a draft bill that was circulated some time ago within the U.S. Department of Transportation and the Office of Management and Budget. It is not the final version of the bill that the Obama Administration will eventually transmit to Congress (if indeed they ever do submit a bill to Congress). It is merely a snapshot of what the White House and USDOT were thinking about including in their reauthorization proposal at one point in time.**

**However, all of the dollar amounts authorized in the bill are consistent with the numbers put forward in the Department of Transportation's FY 2012 budget request, even at the sub-sub-account level put forward in detail in the Federal Highway Administration's budget justifications. And since those dollar amounts had to be approved by the Office of Management and Budget, and cannot be changed (at least at the account level) without further permission from OMB, the language and policy accompanying the numbers is probably pretty far advanced.**

**The following 498 pages contain all provisions and titles of this undated Administration draft.**

**A Bill**

To authorize passenger rail, highway infrastructure and safety, transit, motor carrier, and other surface transportation programs, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.--This Act may be cited as the "Transportation Opportunities Act".

(b) TABLE OF CONTENTS.--The table of contents of this Act is as follows:

- Sec. 1. Short title; Table of Contents.
- Sec. 2. Definitions.

**TITLE I--NATIONAL HIGH PERFORMANCE RAIL SYSTEM**

- Sec. 1101. Purpose and objectives.
- Sec. 1102. Passenger rail system.
- Sec. 1103. Obligation ceiling.
- Sec. 1104. Buy America.
- Sec. 1105. Miscellaneous rail provisions.
- Sec. 1106. Miscellaneous corrections, revisions, and repeals.

**TITLE II--SURFACE TRANSPORTATION INFRASTRUCTURE REFORM**

**Subtitle A--Accelerating Project Delivery**

- Sec. 2001. Project Delivery Acceleration Initiative.
- Sec. 2002. Efficiencies in Contracting.
- Sec. 2003. Application of categorical exclusions for multi-modal projects.
- Sec. 2004. Integration of planning and environmental review.
- Sec. 2005. National Environmental Policy Act process reforms.
- Sec. 2006. Clarified eligibility for early acquisition activities prior to completion of NEPA review.
- Sec. 2007. Alternative relocation payment demonstration program.
- Sec. 2008. Surface transportation project delivery program.
- Sec. 2009. State assumption of responsibilities for categorical exclusions.
- Sec. 2010. Local Transportation Project Delivery Acceleration Pilot Program.

**Subtitle B--Infrastructure Financing; Freight Policy**

Part 1--National Infrastructure Innovation and Finance Fund

- Sec. 2101. Establishment of National Infrastructure Innovation and Finance Fund.
- Sec. 2102. Title 5 Amendment.

Part 2--Freight Policy Office

- Sec. 2151. Office of Freight Policy.

Subtitle C--Federal-Aid Highways

Part 1--Authorizations and Programs

- Sec. 2201. Authorization of appropriations.
- Sec. 2202. Obligation Ceiling.
- Sec. 2203. Apportionments.
- Sec. 2204. Definitions.
- Sec. 2205. National Highway Program.
- Sec. 2206. National Highway System.
- Sec. 2207. Highway Infrastructure Performance Program.
- Sec. 2208. Flexible Investment Program.
- Sec. 2209. Historic Highway Bridges.
- Sec. 2210. National Bridge and Tunnel Inventory and Inspection Programs.
- Sec. 2211. Livability Program.
- Sec. 2212. Federal Lands and Tribal Transportation Programs.
- Sec. 2213. Emergency Relief Program.
- Sec. 2214. Workforce Development.
- Sec. 2215. Highway Safety Improvement Program.
- Sec. 2215. Highway Safety Data Improvement Program.
- Sec. 2217. Tolling.
- Sec. 2218. Surface Transportation Revenue Alternatives Office.
- Sec. 2219. Transportation systems management and operations.

Part 2--Performance Management

- Sec. 2301. Performance Management Process.
- Sec. 2302. Metropolitan transportation planning.
- Sec. 2303. Statewide and non-metropolitan transportation planning.

Part 3--Improved Federal Stewardship

- Sec. 2501. Special permits during periods of national emergency.
- Sec. 2502. Charging infrastructure in Interstate rights-of-way.
- Sec. 2503. Federal share payable.
- Sec. 2504. HOV facilities.

## Part 4--Other

- Sec. 2601. Program efficiencies.
- Sec. 2602. Alaska highway.
- Sec. 2603. Letting of contracts.
- Sec. 2604. Construction.
- Sec. 2605. Maintenance.
- Sec. 2606. Project approval and oversight.
- Sec. 2607. Adjustments to penalty provisions.
- Sec. 2608. Open container requirements.
- Sec. 2609. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence.
- Sec. 2610. Uniform Relocation Assistance Act Amendments.
- Sec. 2611. Complete Streets.

## Subtitle D--Public Transportation

- Sec. 2901. Short title; Amendments to title 49, United States Code.
- Sec. 2902. Definitions.
- Sec. 2903. Metropolitan transportation planning.
- Sec. 2904. Statewide and non-metropolitan transportation planning.
- Sec. 2905. Planning programs.
- Sec. 2906. State of Good Repair Formula Grants Program.
- Sec. 2907. Urbanized Area Formula Grants.
- Sec. 2908. Greenhouse Gas and Energy Reduction Programs.
- Sec. 2909. Capital Investment Grants.
- Sec. 2910. Consolidated Specialized Transportation Grant Program.
- Sec. 2911. Formula grants for other than urbanized areas.
- Sec. 2912. Research, development, demonstration, and deployment projects.
- Sec. 2913. Transit Cooperative Research Program.
- Sec. 2914. Technical Assistance and Workforce Development Program.
- Sec. 2915. Tribal Transit Program.
- Sec. 2916. Public Transportation Emergency Relief Program.
- Sec. 2917. Livability Demonstration Grants Program.
- Sec. 2918. Bus testing facility.
- Sec. 2919. Debt financing instruments.
- Sec. 2920. Alternative transportation in parks and public lands.
- Sec. 2921. Efficient environmental reviews for project decisionmaking.
- Sec. 2922. General provisions on assistance.
- Sec. 2923. Special provisions for capital projects.
- Sec. 2924. Contract requirements.
- Sec. 2925. Oversight.
- Sec. 2926. Alcohol and controlled substances testing.
- Sec. 2927. Administrative provisions.
- Sec. 2928. National transit database.
- Sec. 2929. Apportionment of appropriations for formula grants.

- Sec. 2930. Authorizations.
- Sec. 2931. Apportionments based on growing states and high density states formula factors.
- Sec. 2932. Obligation ceiling.
- Sec. 2933. Repeal of obsolete provisions of title 49 and other laws.

TITLE III--SURFACE TRANSPORTATION SAFETY

Subtitle A--Highway Safety

Part 1--Traffic Safety

- Sec. 3001. Authorization of appropriations.
- Sec. 3002. Highway safety programs.
- Sec. 3003. Highway safety research and development.
- Sec. 3004. National Driver Register.
- Sec. 3005. Combined occupant protection grants.
- Sec. 3006. State traffic safety information system improvements.
- Sec. 3007. Impaired driving countermeasures.
- Sec. 3008. Distracted driving grants.
- Sec. 3009. High visibility enforcement program.
- Sec. 3010. Motorcyclist safety.
- Sec. 3011. Agency accountability.
- Sec. 3013. Effective date.
- Sec. 3013. Emergency medical services.

Part 2--Motor Vehicle Safety

- Sec. 3051. Authorization of appropriations.
- Sec. 3052. Definitions.
- Sec. 3053. Activities to promote motor vehicle and highway safety.
- Sec. 3054. Safety of recalled rental motor vehicles.
- Sec. 3055. Authority to prescribe certain electronic standards.
- Sec. 3056. Extend prohibitions on importing noncompliant vehicles and equipment to include defective vehicles and equipment.
- Sec. 3057. Information in general.
- Sec. 3058. Update of means of providing notification; improving efficacy of recalls.
- Sec. 3059. Expanding choices of remedy available to manufacturers of replacement equipment.
- Sec. 3060. Used motor vehicle consumer protection.
- Sec. 3061. Recall obligations and bankruptcy of manufacturer.
- Sec. 3062. Amendment to render inoperative prohibition.
- Sec. 3063. Permit reminder signal for non-use of safety belt interlocks.
- Sec. 3064. Financial responsibility requirements for importers.
- Sec. 3065. Judicial review.

- Sec. 3066. Actions by the Attorney General.
- Sec. 3067. Conditions on importation of vehicles and equipment.
- Sec. 3068. Civil penalties.
- Sec. 3069. Port inspections; samples for examination or testing.
- Sec. 3070. Motor vehicle safety research and development.
- Sec. 3071. Consumer information definition.
- Sec. 3072. Passenger motor vehicle information program.
- Sec. 3073. Repeal of insurance information requirement.
- Sec. 3074. Odometer requirements definition.
- Sec. 3075. Electronic disclosures of odometer information.
- Sec. 3076. Authority for odometer fraud agents to make arrests and carry firearms.
- Sec. 3077. Increased civil penalties for odometer fraud.
- Sec. 3078. Increased damages for victims of odometer fraud.
- Sec. 3079. Inspection authority under automobile fuel economy statute.
- Sec. 3080. Repeal of insurance reports and information under the theft prevention statute.
- Sec. 3081. Monroney label amendment to permit additional safety rating categories.

#### Subtitle B--Motor Carrier Safety Program

- Sec. 3101. Short Title; Amendment of title 49, United States Code.

#### Part 1--Commercial Motor Vehicle Safety

- Sec. 3111. Reincarnated carriers.
- Sec. 3112. Motorcoach new entrants.
- Sec. 3113. Authority to conduct en route passenger carrier inspections.
- Sec. 3114. Commercial motor vehicle defined.
- Sec. 3115. Disqualification for imminent hazard.
- Sec. 3116. Uniform electronic clearance for commercial motor vehicle inspections.
- Sec. 3117. Inspection demand and display of credentials.
- Sec. 3118. Intrastate operations of interstate motor carriers.
- Sec. 3119. Motor carrier and officer patterns of safety violations.
- Sec. 3120. Enforcement personnel.
- Sec. 3121. Bus rentals and definition of employer.
- Sec. 3122. High risk carrier reviews.
- Sec. 3123. Enforcement of safety laws and regulations.
- Sec. 3124. Disclosure to State and local law enforcement agencies.
- Sec. 3125. Canadian safety rating reciprocity.

#### Part 2--Driver Safety Provisions

- Sec. 3131. Commercial driver's license requirements.
- Sec. 3132. Commercial Motor Vehicle Driver Information Systems.

- Sec. 3133. Disqualification based on non-commercial motor vehicle operations.
- Sec. 3134. Driver safety fitness ratings.
- Sec. 3135. Federal driver disqualifications.
- Sec. 3136. Failure to pay civil penalty as a disqualifying offense.
- Sec. 3137. State reporting of foreign driver convictions.
- Sec. 3138. Electronic notification of commercial driver's license violations.
- Sec. 3139. National Clearinghouse for Positive Alcohol and Controlled Substance Test Results of Commercial Motor Vehicle Operators.
- Sec. 3140. Authority to disqualify foreign drivers.

### Part 3--Penalties

- Sec. 3151. Increased penalties for operating without registration.
- Sec. 3152. Out of service penalty for denial of access to records.
- Sec. 3153. Penalties for violation of operation out of service orders.
- Sec. 3154. Minimum prohibition on operation for unfit carriers.
- Sec. 3155. Minimum out of service penalties.
- Sec. 3156. Revocation of registration for imminent hazard.
- Sec. 3157. Revocation of foreign motor carrier operating authority for failure to pay civil penalties.
- Sec. 3158. Revocation of registration and other penalties for failure to respond to subpoena.
- Sec. 3159. Impoundment and immobilization of commercial motor vehicles for imminent hazard.
- Sec. 3160. Increased penalties for evasion of regulations.
- Sec. 3161. Fleetwide out of service order for operating without required registration.
- Sec. 3162. Settlement authority.
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### Part 4--Grants

- Sec. 3171. Compliance, safety and accountability grants.
- Sec. 3172. Authorization of appropriations.
- Sec. 3173. Data and technology grants.
- Sec. 3174. Driver safety grants.

### Part 5--Medical and Registration Provisions

- Sec. 3181. Effect of driving on commercial motor vehicle operators.
- Sec. 3182. Electronic filing of medical examination certificates.
- Sec. 3183. Waivers exemptions, and pilot programs.
- Sec. 3184. USDOT number registration requirement.
- Sec. 3185. Registration fee system.
- Sec. 3186. Registration update.
- Sec. 3187. Repeal of commercial jurisdiction exception for brokers of

motor carriers of passengers.

Part 6--Miscellaneous

- Sec. 3191. Failure to give up possession of household goods.
- Sec. 3192. Motor Carrier Safety Advisory Committee.
- Sec. 3193. Unified Carrier Registration Plan.
- Sec. 3194. Self-Insurance for motor carriers repealed.
- Sec. 3195. Statutory recodification.
- Sec. 3196. Proficiency examination rulemaking.
- Sec. 3197. Update of obsolete text.
- Sec. 3198. Correction of Interstate Commerce Commission references.
- Sec. 3199. Prohibition of coercion.
- Sec. 3199a. Access to the National Directory of New Hires.

Subtitle C--Hazardous Material Transportation Safety

- Sec. 3201. Short title; amendment of title 49, United States Code.
- Sec. 3202. Definition.
- Sec. 3203. General regulatory authority.
- Sec. 3204. Hazardous Material Enforcement Training Program.
- Sec. 3205. Paperless Hazard Communications Program.
- Sec. 3206. Planning and training grants, monitoring, and review.
- Sec. 3207. Special permits, approvals, and exclusions.
- Sec. 3208. Hazardous Material Technical Assessment, Research and Development, and Analysis Program.
- Sec. 3209. Administrative.
- Sec. 3210. Civil penalty.
- Sec. 3211. Reporting of fees.
- Sec. 3212. Authorization of appropriations.

Subtitle D--Pipeline Safety Program

- Sec. 3301. Short Title; Amendment of title 49, United States Code
- Sec. 3302. Civil penalties.
- Sec. 3303. Clarifications.
- Sec. 3304. Pipeline infrastructure data collection.
- Sec. 3305. International cooperation and consultation.
- Sec. 3306. Gas and hazardous liquid gathering lines.
- Sec. 3307. Transportation-related oil flow lines.
- Sec. 3308. Alaska project coordination and cost recovery.
- Sec. 3309. Cost recovery for design reviews.
- Sec. 3310. Special permits.
- Sec. 3311. Class location and integrity management.
- Sec. 3312. Biofuel pipelines.
- Sec. 3313. Carbon dioxide pipelines.



- Sec. 3314. Study of non-petroleum hazardous liquids transported by pipeline.
- Sec. 3315. Authorization of appropriations.

Subtitle E--Public Transportation Safety Program

- Sec. 3401. Public Transportation Safety Program.

Subtitle F--Other Safety Authorities

- Sec. 3501. Protection of voluntarily submitted information.
- Sec. 3502. Integrated roadway safety programs.

TITLE IV-- AMENDMENTS TO THE INTERNAL REVENUE CODE

- Sec. 4001. Amendment of 1986 Code.

Subtitle A--Trust Fund Reauthorization

- Sec. 4101. Extension of highway-related taxes.
- Sec. 4102. Extension of provisions related to the Sport Fish Restoration and Boating Trust Fund.
- Sec. 4103. Transportation Trust Fund.
- Sec. 4104. Effective date.

Subtitle B--Other Revenue Provisions

- \*\*Sec. 4201. *Qualification of Grants under Section \_\_\_\_ as Contributions to Capital.***
- Sec. 4202. Expansion of Private Activity Bond Program.
- Sec. 4203. Promotion of America's Marine Highways.

TITLE V--RESEARCH

Subtitle A--Funding

- Sec. 5101. Authorization of appropriations.

Subtitle B--Research, Technology, and Education

- Sec. 5201. Research, technology, and education.
- Sec. 5202. Surface transportation research, development, and technology.
- Sec. 5203. Research and technology development and deployment.
- Sec. 5204. Training and education.
- Sec. 5205. State planning and research.
- Sec. 5206. International Highway Transportation Program.

- Sec. 5207. Surface Transportation Environmental Cooperative Research Program.
- Sec. 5208. National Cooperative Freight Research Program.
- Sec. 5209. University Transportation Centers Program.
- Sec. 5210. University transportation multimodal research grants.
- Sec. 5211. Multimodal Innovative Research Program.
- Sec. 5212. Bureau Of Transportation Statistics.
- Sec. 5213. 5.9 GHZ vehicle-to-vehicle and vehicle-to-infrastructure communications systems deployment.
- Sec. 5214. Administrative authority.
- Sec. 5215. Prize authority.
- Sec. 5216. Transportation research and development strategic planning.
- Sec. 5217. Use of funds for ITS activities.

#### TITLE VI-- MISCELLANEOUS

- Sec. 6001. Amendments to the Marine Highways initiative.
- Sec. 6002. Government-wide regulations for programs established under 5 U.S.C.7905 for transit passes and transit benefits.
- Sec. 6003. Application of SEP-15 program department-wide.
- Sec. 6004. Fiscal Year 2012 aviation infrastructure funding.
- Sec. 6005. National infrastructure investments.

#### **SEC. 2. DEFINITIONS.**

In this Act, the following definitions apply:

- (1) DEPARTMENT.--The term "Department" means the Department of Transportation.
- (2) SECRETARY.--The term "Secretary" means the Secretary of Transportation.

#### **TITLE I--NATIONAL HIGH PERFORMANCE RAIL SYSTEM**

#### **SEC. 1101. PURPOSE AND OBJECTIVES.**

(a) PURPOSE.--It is the purpose of this Title to promote and facilitate the development of the National High Performance Rail System, a comprehensive national network of integrated passenger and freight rail services, and to authorize funds for the planning, development, construction, and implementation of rail corridors and related infrastructure improvements.

(b) OBJECTIVES.--

- (1) MOBILITY.--The National High Performance Rail System shall increase the efficient transportation of both goods and persons by delivering a transformational transportation infrastructure system that will increase jobs and support economic growth.

(2) ENVIRONMENTAL SUSTAINABILITY.--The National High Performance Rail System shall advance environmentally sustainable policies and investments that reduce carbon and other harmful emissions from transportation sources while protecting natural resources.

(3) ENERGY EFFICIENCY.--The National High Performance Rail System shall conserve energy and expand use of renewable and clean energy sources.

(4) LIVABLE COMMUNITIES.--The National High Performance Rail System shall promote livable communities, including enhanced safety in areas adjacent to transportation facilities and safety at highway-rail grade crossing and efficient land-use development.

(5) MAINTENANCE AND ENHANCEMENT OF EXISTING PASSENGER RAIL NETWORK.--The National High Performance Rail System shall be developed through competitive and targeted financial assistance programs to ensure that the current passenger rail network is brought into, and maintained in, a state of good repair.

(6) OPTIMIZATION OF FREIGHT RAIL NETWORK.--The National High Performance Rail System shall ensure that America's world-class freight rail system is preserved and improved while balancing and protecting both private and public interests.

**SEC. 1102. PASSENGER RAIL SYSTEM.**

(a) IN GENERAL.--Part C of subtitle V of title 49, United States Code, is amended by inserting the following after chapter 245:

**"CHAPTER 246--PASSENGER RAIL SYSTEM**

"Sec.

"24601. Definitions.

"24602. Authorizations.

"24603. National high performance passenger rail system.

"24604. Network development program.

"24605. System preservation and renewal program.

"24606. Passenger rail planning.

"24607. Regional Rail Development Authorities.

"24608. Oversight.

"24609. Financial assistance provisions.

**"Sec. 24601. Definitions**

"In this chapter:

"(1) Three types of passenger rail corridors are defined as follows:

"(A) CORE EXPRESS CORRIDOR.--The term 'Core Express Corridor' means a passenger rail corridor that offers electric-powered service operating primarily on dedicated track at peak speeds of 125 miles

per hour or greater, and that primarily connects major metropolitan centers in the United States that are generally up to 500 miles apart within a three-hour travel time.

"(B) REGIONAL CORRIDOR.--The term 'Regional Corridor' means a passenger rail corridor that offers service operating on a mix of dedicated and shared use track at peak speeds of 90 to 124 miles per hour, and that primarily connects mid-size urban areas to larger and smaller communities that are generally up to 500 miles apart.

"(C) EMERGING CORRIDOR.--The term 'Emerging Corridor' means a State- or regionally-designated passenger rail corridor that offers service operating on shared use track at peak speeds of up to 90 miles per hour and that connects large, mid-sized, and small urban areas generally less than 750 miles apart.

"(2) DIRECT LOAN.--The term 'direct loan' has the same meaning as under section 502 of the Congressional Budget Act of 1974, as amended.

"(3) INDIRECT COSTS.--The term 'indirect costs' means costs that are:

"(A) Incurred for a common or joint purpose benefiting more than one cost objective;

"(B) not readily assignable to the cost objectives specifically benefited; and

"(C) originating in an entity in supplying goods, services, and facilities to its inferior departments, such as administrative, operational, and expenses of unit heads and their immediate staff.

"(4) INTERCITY PASSENGER RAIL SERVICE.--The term 'intercity passenger rail service' has the same meaning as 'intercity rail passenger transportation', as defined in section 24102 of this title.

"(5) INTERMODAL STATION.-- The term 'intermodal station' means an intercity passenger rail facility providing direct access to public transit, airports, and other forms of transportation, inclusive of pedestrian, bicycle, or other applicable facilities that serve non-motorized means of transportation.

"(6) INTERSTATE COMPACT.--The term 'interstate compact' means two or more States that have entered into compacts, agreements, or organizations, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this chapter.

"(7) LOAN GUARANTEE.--The term 'loan guarantee' has the same meaning as under section 502 of the Congressional Budget Act of 1974, as amended.

"(8) NORTHEAST CORRIDOR.--The term 'Northeast Corridor' has the same meaning as under section 24102(6) of this title.

"(9) STATE.--The term 'State' means a State of the United States and the District of Columbia.

"(10) STATE OF GOOD REPAIR.--The term 'state of good repair' means a condition in which the existing physical assets, both individually and as a system, are functioning as designed within their useful lives and are sustained through regular maintenance and replacement programs.

**"Sec. 24602. Authorizations**

"(a) NETWORK DEVELOPMENT PROGRAM.--There are authorized to be appropriated from the Passenger Rail Account of the Transportation Trust Fund to carry out section 24604 of this title:

- "(1) \$4,000,000,000 for fiscal year 2012;
- "(2) \$4,967,000,000 for fiscal year 2013;
- "(3) \$6,002,000,000 for fiscal year 2014;
- "(4) \$7,242,000,000 for fiscal year 2015;
- "(5) \$7,532,000,000 for fiscal year 2016; and
- "(6) \$7,867,000,000 for fiscal year 2017.

"(b) SYSTEM PRESERVATION AND RENEWAL PROGRAM.--There are authorized to be appropriated from the Passenger Rail Account of the Transportation Trust Fund to carry out section 24605 of this title:

- "(1) \$4,046,000,000 for fiscal year 2012;
- "(2) \$2,479,000,000 for fiscal year 2013;
- "(3) \$2,504,000,000 for fiscal year 2014;
- "(4) \$1,864,000,000 for fiscal year 2015;
- "(5) \$2,024,000,000 for fiscal year 2016; and
- "(6) \$2,063,000,000 for fiscal year 2017.

"(c) AVAILABILITY OF FUNDS; CONTRACT AUTHORITY.--

"(1) PERIOD OF AVAILABILITY.--The amounts made available under this section shall remain available for obligation for a period of three years after the last day of the fiscal year for which they are authorized. Any amounts that remain available after that period shall lapse.

"(2) CONTRACT AUTHORITY.--Authorizations from the Transportation Trust Fund made by this section shall be available for obligation on October 1 of the fiscal year for which they are authorized. The Secretary may incur obligations to make grants from amounts made available under this section for the purpose of carrying out sections 24604 and 24605 of this title on the first day of each fiscal year. Approval by the Secretary of financial assistance made available under this section imposes upon the United States a contractual obligation for payment of the Government's share of costs incurred in carrying out the objectives of the financial assistance.

**"Sec. 24603. National high performance passenger rail system**

"(a) IN GENERAL.--The Secretary of Transportation shall facilitate the establishment of a national high performance passenger rail system in accordance with this chapter.

"(b) CONTENTS.--The national high performance passenger rail system shall include--

- "(1) a network development program; and

"(2) a system preservation and renewal program.

**"Sec. 24604. Network development program**

"(a) IN GENERAL.--To promote and facilitate development of high-speed and intercity passenger rail services, the Secretary of Transportation shall establish a network development program that consists of the following:

- "(1) High-Speed Corridor Development.
- "(2) Station Development.
- "(3) U.S. Rail Equipment Development.
- "(4) Capacity-Building and Transition Assistance.

"(b) HIGH-SPEED CORRIDOR DEVELOPMENT.--

"(1) OBJECTIVE.--The objective of the network development program is to plan and develop a national system of passenger rail corridors, including Core Express Corridors, Regional Corridors, and Emerging Corridors, as defined in section 24601 of this title, that will connect at least 80 percent of Americans to an efficient and viable passenger rail system within 25 years of the date of the enactment of the Transportation Opportunities Act.

"(2) AUTHORITY.--The Secretary is authorized to provide financial assistance to eligible recipients for eligible high-speed corridor development projects.

"(3) ELIGIBLE RECIPIENTS.--Entities eligible to receive financial assistance under this subsection are the following:

- "(A) A State.
- "(B) An Interstate Compact.
- "(C) A public agency established by one or more States and having responsibility for providing high-speed or intercity passenger rail service.
- "(D) Amtrak.
- "(E) A Regional Rail Development Authority, as described in section 24607 of this title.

"(F) A private-sector entity or entities proposing to develop a high-speed or intercity passenger rail project identified on a Regional Passenger Rail Development Plan (as described in subsection 24606(b) of this title) or a State Rail Plan (as described in chapter 227 of this title). Entities described in this subparagraph may apply in conjunction with another eligible recipient but, if applying separately, shall provide at least the minimum non-Federal share of the total project costs, as required under paragraph (f) of this section.

"(G) Any other entity deemed eligible by the Secretary.

"(4) ELIGIBLE PROJECTS.--Projects must be for the primary benefit of or use in high-speed or intercity passenger rail service to be eligible to receive high-speed corridor development financial assistance. Projects that consist of one or more of the following activities are eligible to receive financial assistance under this subsection:

"(A) Acquiring, constructing, improving, or inspecting equipment, track and track structures, or a facility.

"(B) Expenses incidental to the acquisition or construction of equipment, track and track structures, or a facility (including designing, engineering, location surveying, mapping, environmental studies, acquiring rights-of-way, and maintenance of operations during construction).

"(C) Preserving and acquiring rights-of-way.

"(D) Planning and feasibility studies, including market analysis, cost-benefit analysis, route alternatives analysis, Regional Passenger Rail Development Plans as described in subsection 24606(b) of this title, State Rail Plans as described in chapter 227 of this title, corridor-level environmental analysis, service development plans, and other studies that the Secretary determines to contribute to achieving the objectives of this subsection.

"(E) Payments for the capital portions of rail trackage rights agreements.

"(F) Highway-rail grade crossing improvements.

"(G) Mitigating environmental impacts, including environmental remediation of properties needed.

"(H) Communication and signalization improvements.

"(I) Relocation assistance, including acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing.

"(J) Interest and other financing costs to efficiently carry out a part of the project within a reasonable time.

"(K) Credit risk premiums or credit subsidies related to loans issued under the Railroad Rehabilitation and Improvement Financing Program authorized under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822) or the National Infrastructure Innovation and Finance Fund authorized under subchapter II of chapter 6 of title 23.

"(L) Indirect costs as defined in section 24601 of this title.

"(M) Other project costs deemed necessary for achieving the objective of this subsection, as determined by the Secretary.

"(5) PROJECT SELECTION CRITERIA.--The Secretary, in selecting the recipients of financial assistance for high-speed corridor development activities, shall--

"(A) give preference to proposed projects that are consistent with the investment goals, objectives, policies, and methodologies defined in--

"(i) the National Passenger Rail Development Plan described in subsection 24606(a) of this title, once available;

"(ii) any Regional Passenger Rail Development Plans described in subsection 24606(b) of this title that are applicable to a project proposal, once available; and

"(iii) any State Rail Plans, as described in chapter 227 of this title that are applicable to a project proposal; and

"(B) also consider--

"(i) the project's system and service performance as experienced by the passenger, including measures such as improved reliability, reduced trip time, additional service frequency to meet anticipated or existing demand, or other significant system and service enhancements;

"(ii) the project's estimated ridership and anticipated user and public benefits, relative to the proposed Federal investment, including consideration of enhanced mobility, environmental, and economic benefits (both for the specific project proposal and in terms of the costs and benefits generated by the specific project within a network context);

"(iii) equitable financial participation by other beneficiaries of the project, including the degree to which the project's business plan considers potential private sector participation in finance, construction, and/or operation;

"(iv) the recipient's past performance in developing and delivering similar passenger rail projects; and

"(v) the recipient's previous financial contributions to developing high-speed or intercity passenger rail services, including any non-Federal contributions in excess of minimum requirements that the sponsor may have provided as a match for previous Federal financial assistance.

"(6) FEDERAL SHARE OF TOTAL PROJECT COSTS.--

"(A) TOTAL PROJECT COST.--Based on engineering studies, studies of economic feasibility, environmental analyses, and information on the expected use of equipment or facilities, the Secretary shall estimate the total project cost.

"(B) CORE EXPRESS CORRIDORS.--The Federal share of total project costs under this section for Core Express Corridors shall not exceed 85 percent, except where the proposed project was identified through and is consistent with an adopted Regional Passenger Rail Development Plan created under subsection 24606(b) of this title, in which case the Federal share of total project costs under this section shall not exceed 90 percent.

"(C) REGIONAL CORRIDORS AND EMERGING CORRIDORS.--The Federal share of total project costs under this section for Regional Corridors and Emerging Corridors shall not exceed 80 percent, except where the proposed project was identified through and is consistent with an adopted Regional Passenger Rail Development Plan created pursuant to subsection 24606(b) of this title, in which case the Federal share of total project costs under this section shall not exceed 85 percent.



"(D) MAXIMUM FEDERAL SHARE.--Up to 10 percent of the total project cost not provided under this section may be funded from amounts appropriated or made available from a department or agency of the Federal Government, except that the total Federal share may not exceed 90 percent of the total project cost.

"(E) NON-FEDERAL SHARE.--The non-Federal share of project costs under this section may include non-Federal funds used to pay for credit risk premiums or credit subsidies related to loans issued under the Railroad Rehabilitation and Improvement Financing program authorized under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822) or the National Infrastructure Innovation and Finance Fund authorized under subchapter II of chapter 6 of title 23.

"(c) STATION DEVELOPMENT.--

"(1) OBJECTIVE.--The objective of the station development program is to strengthen community connectivity to the national passenger rail system through planning and developing intermodal stations that link to other transportation facilities, including public transit stations, airports, and other modal facilities, including facilities that serve non-motorized means of transportation.

"(2) AUTHORITY.--The Secretary is authorized to provide financial assistance to eligible recipients for eligible intermodal station development projects.

"(3) ELIGIBLE RECIPIENTS.--Entities eligible to receive financial assistance under this subsection include the following:

"(A) A State.

"(B) A public agency established by one or more States and having responsibility for providing high-speed or intercity passenger rail service;

"(C) A political subdivision of a State.

"(D) Amtrak.

"(E) A public transit agency.

"(F) A Regional Rail Development Authority, as described in section 24607 of this title.

"(G) A Metropolitan Planning Organization (only for projects listed under (3)(B) of this section).

"(H) An entity with authority to develop or redevelop intermodal stations as designated by a State or a political subdivision of a State.

"(I) A private-sector entity that owns an existing intermodal station, or that has the authority and rights to develop an intermodal station.

"(J) Any other entity deemed eligible by the Secretary.

"(4) ELIGIBLE PROJECTS.--Projects eligible to receive financial assistance under this subsection include the following:

"(A) Construction of new or rehabilitation of existing intermodal stations on Core Express Corridors, Regional Corridors, or Emerging Corridors, as defined in section 24601 of this title.

"(B) Development of station area plans that address, at a minimum--

"(i) connections between intermodal stations and transit, pedestrian, bicycle, and other applicable facilities that serve non-motorized means of transportation;

"(ii) automobile access, including parking;

"(iii) proposed land use and urban design measures in areas proximate to the intermodal station location;

"(iv) other Federal and non-Federal funding sources or financing mechanisms for station area improvements;

"(v) transportation and non-transportation capital improvements that are needed to support access to the intermodal station, user comfort and safety, utility needs, and other factors that contribute to the successful operation of the intermodal station; and

"(vi) consistency with local, regional, or State land use and urban development policies and plans, where available.

"(C) Other project costs deemed necessary for achieving the objective of this subsection, as determined by the Secretary.

"(5) PROJECT SELECTION CRITERIA.--The Secretary, in selecting the recipients of financial assistance for Station Development projects, shall consider the extent to which--

"(A) a proposed project includes direct connections between the high-speed or intercity passenger rail service and other forms of transportation, including the convenience of intermodal transfers and the number of modes available to the passenger;

"(B) a proposed project supports the livable communities objective defined in section 1101 of the Transportation Opportunities Act;

"(C) for construction of new or rehabilitation of existing intermodal stations, a proposed project is part of a locally-adopted Station Area Plan;

"(D) a proposed project includes matching funding from other sources proportionate to the anticipated benefits for other users of the facility;

"(E) a proposed project results in transportation and public benefits including consideration of the project's--

"(i) ability to decrease access time to high-speed or intercity passenger rail stations;

"(ii) environmental benefits, including projects that involve the use of environmentally-friendly building techniques and materials;

"(iii) anticipated positive economic and employment impacts;

"(iv) elements that contribute to the safety, security, and comfort of intermodal station passengers, employees, and visitors;

"(v) leverage of real estate development activities to support--

"(I) development of the intermodal station;  
 "(II) capital improvements in the station area; and  
 "(III) high-speed or intercity passenger rail capital investment needs or ongoing operating assistance requirements; and

"(vi) contribution to the urban design goals of the local community and the sensitive integration of the intermodal station with surrounding neighborhoods and commercial areas.

"(6) FEDERAL SHARE OF PROJECT COSTS.--

"(A) TOTAL PROJECT COST.--Based on engineering studies, studies of economic feasibility, environmental analyses, and information on the expected use of equipment or facilities, the Secretary shall estimate the total project cost.

"(B) FEDERAL SHARE FROM STATION DEVELOPMENT ACTIVITIES.--The Federal share of total project costs for financial assistance provided under this section shall not exceed 80 percent of the total project cost.

"(C) MAXIMUM FEDERAL SHARE.--Amounts appropriated or made available from a department or agency of the Federal Government may be used to supplement the financial assistance provided for a project under this subsection, provided that the total Federal share may be up to 100 percent of the total project cost.

"(D) NON-FEDERAL SHARE.--The non-Federal share of project costs under this section may include non-Federal funds used to pay for credit risk premiums or credit subsidies related to loans issued under the Railroad Rehabilitation and Improvement Financing program authorized under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822) or the National Infrastructure Innovation and Finance Fund authorized under subchapter II of chapter 6 of title 23.

"(7) COORDINATION WITH OTHER FEDERAL AGENCIES.--In providing financial assistance for Station Development activities, the Secretary is encouraged to coordinate--

"(A) investment decisions and development policies made under this section with other Federal transportation programs, as applicable; and

"(B) with the Environmental Protection Agency (EPA) and Department of Housing and Urban Development (HUD) to advance the livable communities objective described in section 1101 of the Transportation Opportunities Act.

"(d) U.S. RAIL EQUIPMENT DEVELOPMENT.--

"(1) OBJECTIVE.--The objective of the U.S. rail equipment development program is to promote interoperability of passenger rail equipment, to the extent practicable, and to create economies of scale sufficient to further develop a domestic passenger equipment manufacturing industry.

"(2) ESTABLISHMENT.--The Secretary may establish an organizational and financial framework, which may take the form of a corporation, that may be

owned or jointly-owned by Amtrak, participating States, or other entities, to accomplish the following objectives:

"(A) Lower the costs of procuring and maintaining equipment for passenger rail service throughout the full life-cycle of that equipment's service life.

"(B) Encourage the growth and stability of the domestic rail manufacturing industry.

"(C) Encourage common standards for critical equipment design components that facilitate interoperability.

"(D) Encourage the development of an efficient secondary market for high-speed and intercity passenger rail equipment.

"(E) Increase the options available to intercity passenger rail service operators for responding to demand fluctuations and other operational uncertainties.

"(3) FUNCTIONS.--A corporation or other organizational and financial framework that the Secretary may establish under subsection 24604(d)(2) of this title may--

"(A) develop, or provide for the development of, standardized and interoperable specifications and designs for passenger equipment and passenger equipment components that, to the extent practicable, conform to or improve upon the specifications developed by the Next Generation Corridor Equipment Pool Committee established by section 305 of Division B of Public Law 110-432;

"(B) develop, or provide for the development of, new designs and specifications for equipment not considered by the Next Generation Corridor Equipment Pool Committee, including development of specifications and designs for Tier II passenger equipment;

"(C) acquire passenger equipment and passenger equipment components that conform with the specifications developed under subparagraphs (A) and (B);

"(D) rehabilitate, repair, or otherwise maintain passenger equipment and passenger equipment components in a state of good repair throughout the equipment's life-cycle, including the overhaul of such equipment and components when necessary; and

"(E) enter into agreements to sell or lease passenger equipment and passenger equipment components for use in passenger rail service.

"(4) FINANCIAL ASSISTANCE.--

"(A) AUTHORITY.--The Secretary is authorized to provide financial assistance to eligible recipients for eligible activities under this subsection for the purposes of developing, procuring, and maintaining U.S. passenger rail equipment.

"(B) ELIGIBLE RECIPIENTS.--Entities eligible to receive financial assistance under this subsection are--

"(i) A State;

"(ii) Amtrak;

"(iii) A Regional Rail Development Authority, as described in section 24607 of this chapter;

"(iv) Any corporation or other organizational framework that the Secretary may establish pursuant to subsection 24604(d)(2); and

"(v) Any other entity deemed eligible by the Secretary.

"(C) ELIGIBLE ACTIVITIES.--The following activities are eligible to receive financial assistance under this subsection--

"(i) development of standardized and interoperable specifications and designs for passenger equipment and passenger equipment components, including the fabrication and testing of passenger equipment prototypes;

"(ii) procurement by purchase or lease of passenger equipment and passenger equipment components for corridor-based passenger rail service;

"(iii) maintenance of corridor-based passenger rail equipment and passenger equipment components in a state of good repair throughout the equipment's life-cycle, including the overhaul of such equipment and components when necessary;

"(iv) management and personnel costs associated with the establishment of an organizational framework established pursuant to subsection 24604(d)(1); and

"(iv) other activities as determined by the Secretary.

"(D) FEDERAL SHARE.--The Federal share of total costs for rail equipment development shall not exceed 100 percent.

"(e) CAPACITY-BUILDING AND TRANSITION ASSISTANCE.--

"(1) CAPACITY-BUILDING.--

"(A) OBJECTIVE.--The objective of the capacity-building and transition assistance program is to develop and provide robust training and technical assistance to help build professional expertise and institutional capacity in the field of rail transportation, in both governmental and private entities.

"(B) AUTHORITY.--The Secretary is authorized to provide financial assistance to finance rail technical assistance and training.

"(C) ELIGIBLE RECIPIENTS.--Entities eligible to receive financial assistance under this paragraph include the following:

"(i) A State.

"(ii) An Interstate Compact.

"(iii) A public agency established by one or more States and having responsibility for providing high-speed or intercity passenger rail service.

"(iv) A political subdivision of a State.

"(v) Amtrak.

"(vi) A Regional Rail Development Authority, as described in section 24607 of this chapter.

"(vii) A nonprofit institution of higher learning.

"(viii) The Transportation Research Board.

"(ix) A rail carrier, as defined by section 24606 of this title.

"(x) A high-speed or intercity passenger rail service operator.

"(E) ELIGIBLE ACTIVITIES.--Financial assistance provided under this paragraph may be used to--

"(i) develop and deliver rail technical assistance and training programs;

"(ii) conduct activities relating to the research, technology, and technology transfer activities described in subsection 24901(b) through the Rail Cooperative Research Program; and

"(iii) other activities deemed appropriate by the Secretary for achieving the goal of building professional expertise and institutional capacity in the field of rail transportation.

"(F) FEDERAL SHARE.--The Federal share of costs for financial assistance made under this section may be up to 100 percent of the total project cost.

"(2) TRANSITION ASSISTANCE.--

"(A) OBJECTIVE.--To enable the successful transition of fully-allocated operating costs to States during the implementation of section 209 of Division B of Public Law 110-432 for existing State-supported passenger rail operations, and to encourage the successful launch of new passenger rail services by supporting passenger rail service operators during the start-up phase of those services.

"(B) AUTHORITY.--The Secretary is authorized to provide financial assistance, consistent with the maximum time period under which temporary financial assistance may be received as developed in paragraph (C), to eligible recipients for eligible activities under this subsection to support--

"(i) the operating costs for State-supported passenger rail operations following the implementation of section 209 of Division B of Public Law 110-432; and

"(ii) the operating costs for new Core Express Corridors, Regional Corridors, and Emerging Corridors during the initial phase of service operations on the corridor.

"(C) TRANSITION ASSISTANCE FRAMEWORK.--The Secretary shall develop a transition assistance framework within one year of the enactment of the Transportation Opportunities Act. As part of this framework, the Secretary shall--

"(i) develop a plan for phasing-out subparagraph (B)(i) activities;

"(ii) develop a plan for phasing-in and phasing-out, by individual corridor, subparagraph (B)(ii) activities; and

"(iii) develop policies governing financial terms, repayment conditions, and other terms of financial assistance.

**"(D) ELIGIBLE RECIPIENTS.--**

"(i) States are eligible to receive financial assistance for eligible activities under subparagraph (E)(i) to support the operating costs for State-supported passenger rail corridors following the implementation of section 209 of Division B of Public Law 110-432.

"(ii) Entities eligible to receive financial assistance for eligible activities under subparagraph (E)(ii) to support Core Express Corridor, Regional Corridor, and Emerging Corridor operations during the start-up phase include--

"(I) a State;

"(II) an Interstate Compact;

"(III) a public agency established by one or more States and having responsibility for providing high-speed or intercity passenger rail service;

"(IV) Amtrak;

"(V) a high-speed or intercity passenger rail service operator; and

"(VI) any other entity deemed eligible by the Secretary.

**"(E) ELIGIBLE ACTIVITIES.--**Financial assistance provided under this paragraph may be used to--

"(i) provide temporary operating support to eligible applicants in conformance with the operating and capital cost methodologies developed pursuant to section 209 of Division B of Public Law 110-432; and

"(ii) provide temporary support during the start-up phase of operations for Core Express Corridors, Regional Corridors, and Emerging Corridors that--

"(I) facilitates or reduces the cost of borrowing;

"(II) encourages private sector investment; or

"(III) enables a demonstration period for ridership and revenue forecasts.

**"(F) TERMS AND CONDITIONS.--**The following terms and conditions apply to financial assistance provided under this paragraph:

"(i) To be eligible for Federal transition assistance, a passenger rail service shall--

"(I) provide high-speed or intercity passenger rail revenue operation on routes subject to the requirements of section 209 of Division B of Public Law 110-432; or

"(II) provide service on a Core Express Corridor, Regional Corridor, or Emerging Corridor, as those terms are defined in section 24601 of this title.

"(ii) Agreements to provide financial assistance under this paragraph shall specify a limited time period over which financial assistance may be provided.

"(G) FEDERAL SHARE.--The Federal share of expenditures for eligible activities under this paragraph may be up to 100 percent of the total cost.

"(3) REVIEW OF FRAMEWORK FOR PASSENGER RAIL ON SHARED-USE CORRIDORS.--

"(A) IN GENERAL.-- The Secretary shall conduct a study, in consultation with the Surface Transportation Board, Amtrak, high-speed and intercity passenger rail operators, and freight railroads, as appropriate, to evaluate operational, institutional, and legal structures that would best support high-speed and intercity passenger rail in the United States.

"(B) FACTORS.--In conducting the study, the Secretary shall evaluate--

"(i) high-speed and intercity passenger rail facilities access and the resolution of disputes relating to such access;

"(ii) the application of metrics and standards to all high-speed and intercity passenger rail operations;

"(iii) the roles of Federal, State, and local governments, infrastructure owners, and service providers in developing and delivering high-speed and intercity passenger rail service while preserving and enhancing freight transportation where high-speed and intercity passenger rail service is provided on shared infrastructure or rights-of-way; and

"(iv) other issues identified by the Secretary.

"(C) REPORT.--Not later than 3 years after the enactment of the Transportation Opportunities Act, the Secretary shall make available to the public a report with the Secretary's findings, conclusions, and recommendations.

"(D) AUTHORIZATION OF APPROPRIATIONS.--Of funds appropriated for Network Development in fiscal year 2013, \$5,000,000 may be used, to remain available until expended, for the purpose of carrying out the requirements of this paragraph.

**"Sec. 24605. System preservation and renewal program**

"(a) IN GENERAL.--The Secretary of Transportation shall establish a system preservation and renewal program under this section. The program shall ensure that rail assets are maintained in reliable working condition after being placed in revenue service. The system preservation and renewal program consists of the following:

"(1) Public Asset Backlog Retirement.

"(2) National Network Service.

"(3) State of Good Repair and Recapitalization.

"(b) PUBLIC-ASSET BACKLOG RETIREMENT.--

"(1) AUTHORITY.--The Secretary may provide financial assistance under this subsection, in accordance with procedures the Secretary may develop.



"(2) ELIGIBLE RECIPIENTS AND PROJECTS.--The Secretary may provide financial assistance as follows:

"(A) To Amtrak, the Northeast Corridor States (including the District of Columbia), the Northeast Corridor infrastructure owners, and Regional Rail Development Authorities, as described in section 24607 of this title, to fund capital investments in the Northeast Corridor to replace obsolete infrastructure, facilities, and equipment and eliminate the backlog of needed repairs and upgrades on the Northeast Corridor Main Line between Washington, DC and Boston, Massachusetts and non-Northeast Corridor spine lines connecting the Northeast Corridor to Harrisburg, Pennsylvania, Albany, New York and Springfield, Massachusetts through Hartford, Connecticut.

"(B) To Amtrak, States, groups of States, political subdivisions of States, local governmental infrastructure-owning entities, and Regional Rail Development Authorities, as described in section 24607 of this title, to fund a proportional share of capital investments to replace obsolete infrastructure, facilities, and equipment used by high-speed or intercity passenger service on publicly-owned corridors not specified in subparagraph (A) and eliminate the backlog of needed repairs and upgrades.

"(C) To Amtrak for the payment of costs associated with early buyout options of existing loans for capital equipment or capital leases if the exercise of those options is determined to be advantageous to Amtrak and the United States.

"(D) To Amtrak for the payment of mandatory principal and interest payments related to debt incurred prior to fiscal year 2012 and for the end-of-lease buyback of equipment.

"(E) To Amtrak, States, political subdivisions of States, and Regional Rail Development Authorities, as described in section 24607 of this title, to fund upgrades of existing railroad passenger stations to comply with the Americans With Disabilities Act and achieve station state of good repair.

"(F) To Federal Railroad Administration-led projects related to planning, management, and oversight necessary to develop and implement public-asset backlog retirement activities, including working with Amtrak, the Northeast Corridor Infrastructure and Operations Advisory Commission, and public agencies that own physical assets in corridors jointly served by public transit and high-speed or intercity passenger rail service to identify backlog projects necessary to bring existing physical assets to a state of good repair as defined in section 24601 of this title.

"(c) NATIONAL NETWORK SERVICE.--

"(1) AUTHORITY.--The Secretary may provide financial assistance to Amtrak under this subsection, in accordance with procedures the Secretary may develop.

"(2) ELIGIBLE RECIPIENTS.--Amtrak is eligible to receive financial assistance for national network service activities.

"(3) ELIGIBLE ACTIVITIES.--Financial assistance provided for National Network Service may be expended for--

"(A) operating and capital costs associated with providing reliable national long-distance rail passenger services;

"(B) capital projects needed to maintain national reservations, security, mechanical facilities, training centers and other assets associated with Amtrak's national rail passenger transportation system as that term is defined in section 24102(5) of this title; and

"(C) congestion mitigation capital investment projects on non-Amtrak-owned infrastructure intended to remove bottlenecks that contribute to unreliable long-distance or State-supported corridor service and identified as highest priority investment needs based on service improvement reports prepared annually by Amtrak.

"(d) STATE OF GOOD REPAIR AND RECAPITALIZATION.--

"(1) AUTHORITY.--The Secretary may provide financial assistance under this subsection, in accordance with procedures the Secretary may develop.

"(2) ELIGIBLE RECIPIENTS.--Entities eligible to receive financial assistance under this subsection are--

"(A) a State;

"(B) a group of States;

"(C) a political subdivision of a State;

"(D) a local governmental infrastructure-owning entity;

"(E) Amtrak; and

"(F) a Regional Rail Development Authority, as described in section 24607 of this title.

"(3) ELIGIBLE ACTIVITIES.--Financial assistance provided under this subsection may be expended to fund a share of the annualized life cycle costs of publicly-owned infrastructure and equipment needed to maintain a state of good repair and reserves for replacement.

"(4) FEDERAL SHARE OF PROJECT COSTS.--

"(A) MAXIMUM FEDERAL SHARE.--The Federal share of total project costs for financial assistance provided under this section shall not exceed 80 percent of the total project cost.

"(B) NON-FEDERAL SHARE.--The non-Federal share of project costs under this section may include non-Federal funds used to pay for credit risk premiums or credit subsidies related to loans issued under the Railroad Rehabilitation and Improvement Financing program authorized under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822) or the National Infrastructure Innovation and Finance Fund authorized under subchapter II of chapter 6 of title 23.

"(5) IDENTIFICATION OF PROJECTS.--The Secretary shall work with Amtrak, the Northeast Corridor Infrastructure and Operations Advisory Commission, public agencies that own physical assets in corridors jointly served

by public transit and high-speed or intercity passenger rail service, and Regional Rail Development Authorities, as described in section 24607 of this title, to identify high-speed and intercity passenger rail projects necessary to maintain existing physical assets in a state of good repair as defined in section 24601 of this title.

**"Sec. 24606. Passenger rail planning**

"(a) NATIONAL PASSENGER RAIL DEVELOPMENT PLAN.--Within 1 year after the date of the enactment of the Transportation Opportunities Act, the Secretary of Transportation shall complete a National Passenger Rail Development Plan.

"(1) PURPOSES.--The purposes of the National Passenger Rail Development Plan are--

"(A) to set forth national policy involving high-speed and intercity passenger rail transportation, including presenting priorities and strategies to enhance high-speed and intercity passenger rail transportation; and

"(B) to serve as the foundation for developing Regional Passenger Rail Development Plans.

"(2) CONTENTS.--The National Passenger Rail Development Plan shall include the following elements:

"(A) Conditions under which Federal investments in Core Express Corridors, Regional Corridors, or Emerging Corridors are justified, to include, at a minimum, specific parameters around the following criteria:

"(i) Population size and density.

"(ii) Projected population and economic growth and changing demographic characteristics.

"(iii) Connections to local rail and bus transit and alternative transportation options.

"(iv) Economic profile of specific markets.

"(v) Congestion on existing transportation facilities and constraints on future capacity enhancements, in relation to efficient movement of both goods and people.

"(vi) Distances between markets.

"(vii) Geographic characteristics.

"(B) A national map designating the markets to be served by Core Express Corridors, Regional Corridors, and Emerging Corridors that meet the criteria and parameters described in subparagraph (A).

"(C) A discussion of benefits and costs of potential investments in high-speed or intercity passenger rail that considers both user and public benefits and costs from a network perspective, to include factors such as travel time reductions, enhanced mobility benefits, environmental benefits, economic benefits, and other public benefits.

"(D) Issues related to timing and phasing for the implementation of potential Core Express Corridors, Regional Corridors, and Emerging Corridors.

"(E) A strategy for investments in intermodal passenger stations that are linked to local public transportation and non-motorized transportation options, and that connect residential areas, commercial areas, and other nearby transportation facilities.

"(F) Suggested performance standards for fiscal and operational performance of new and enhanced high-speed and intercity passenger rail services.

"(G) Analysis of the environmental impacts of the plan.

"(H) Recommendations regarding project financing, management and implementation for corridor development, station development and similar projects.

"(I) Achievement of the objectives set forth in section 1101 of the Transportation Opportunities Act.

"(J) Additional factors that the Secretary deems relevant.

"(b) REGIONAL PASSENGER RAIL DEVELOPMENT PLANS.--

"(1) IN GENERAL.--The Secretary shall facilitate the development of Regional Passenger Rail Development Plans that describe a region's plans for a comprehensive and integrated passenger rail network, including plans for public investment in projects that contribute towards efficient movement and increased capacity for freight, by either Regional Rail Development Authorities, described in section 24607 of this title, or by any two or more States that have entered into interstate compacts, agreements, or organizations for the purpose of developing such a plan.

"(2) FEDERAL SHARE INCENTIVE.--Project proposals for High-Speed Corridor Development funding that are consistent with an adopted Regional Passenger Rail Development Plan shall be eligible for a higher Federal share of total project costs, as described in subsection 24604(b)(6) of this title, provided that the Regional Passenger Rail Development Plan meets the content and process criteria set forth in this paragraph.

"(A) CONTENTS.--At a minimum, the Regional Passenger Rail Development Plan shall contain--

"(i) a map that shows detailed alignment alternatives for the Core Express Corridors, Regional Corridors, and Emerging Corridors identified in the National Passenger Rail Development Plan and that identifies potential station locations;

"(ii) a phasing plan for developing or upgrading specific segments of the regional network;

"(iii) environmental impact analyses that may be required under the National Environmental Policy Act or other relevant statutes and regulations;

"(iv) a full capital cost estimate for developing the regional network;

"(v) an analysis of operating financial forecasts;

"(vi) a benefit-cost analysis for the regional network that considers both user and public benefits and costs from a network

perspective, to include factors such as ridership projections, travel time reductions, enhanced mobility benefits, environmental benefits, economic benefits, and other public benefits;

"(vii) an analysis of potential land use policies and strategies for areas near high-speed and intercity passenger rail stations;

"(viii) potential non-Federal funding sources, including a detailed consideration of anticipated private sector participation;

"(ix) a proposal for the institutional and governance structures that will be necessary to develop the regional network;

"(x) other project implementation considerations, including an analysis of the readiness of specific corridors to proceed for development;

"(xi) an examination of multi-modal connections that considers the most cost-effective means for achieving the region's transportation goals and objectives; and

"(xii) identification of plans for cost-effective, public investment in shared-benefit projects that contribute toward the efficient movement and increased capacity for freight rail operations.

"(B) PROCESS.--At a minimum, the process for creating the Regional Passenger Rail Development Plan shall include the following:

"(i) Adoption by all participating States of an institutional structure for organizing the planning activities, including identification of a lead entity.

"(ii) Opportunities for substantial involvement of affected stakeholders, including but not limited to local communities, railroad infrastructure owners, Amtrak, passenger rail service operators, freight railroad operators, Metropolitan Planning Organizations, governing authorities for transit systems or airports, and the general public.

"(iii) A specific process for the formal adoption of the final plan by each participating State.

"(3) CONSISTENCY WITH NATIONAL PASSENGER RAIL DEVELOPMENT PLAN.--

"(A) ELIGIBILITY.--In order to be eligible for Federal funding through the High-Speed Corridor Development program, any Core Express Corridors, Regional Corridors, or Emerging Corridors identified in the Regional Passenger Rail Development Plan shall be consistent with the parameters identified in the National Passenger Rail Development Plan.

"(B) UPDATES.--In the event that the Regional Passenger Rail Development Plan is adopted prior to publication of the National Passenger Rail Development Plan, the Regional Plan shall be updated within 1 year of the publication of the National Plan.

"(C) WAIVER.--The Secretary may waive these consistency requirements as necessary to accommodate unique characteristics and situations in specific regions.

"(4) FINANCIAL ASSISTANCE.--Planning activities to create a Regional Passenger Rail Development Plan are eligible to receive High-Speed Corridor Development financial assistance, as described in subsection 24604(b)(4)(D) of this title, with the Federal share of the total project cost not exceeding 80 percent.

## **"Sec. 24607. Regional Rail Development Authorities**

*[NOTE: This section requires additional review by administrative law expert.]*

"(a) AUTHORITY.--The Secretary, in consultation with State governors, is authorized to establish Regional Rail Development Authorities (RRDAs) to facilitate the development of multi-state high-speed and intercity passenger rail services and to coordinate these investments with other rail, transit, highway, and aviation system services.

"(b) GOVERNANCE.--

"(1) EXECUTIVE DIRECTOR.--

"(A) APPOINTMENT.--The RRDA shall be administered by an Executive Director who is appointed **\*\*[in the competitive service??]** by the Secretary.

"(B) SUPERVISION.--The Executive Director shall be subject to the supervision and direction of the Secretary of Transportation consistent with the Executive Director's responsibilities and other requirements established in this chapter.

"(C) EXPERTISE.--The Executive Director shall have demonstrated expertise in at least two of the following three areas:

"(i) Passenger or freight rail operations.

"(ii) Transportation or infrastructure planning.

"(iii) Project, public, or corporate finance.

"(D) AUTHORITY.--The Executive Director shall be the chief executive officer of the RRDA, with such executive functions, powers, and duties as may be prescribed by this chapter or otherwise by the Secretary.

"(E) RESPONSIBILITY.--The Executive Director shall have responsibility for the day-to-day operations of the RRDA. In addition to the other activities required to carry out the authorities and purposes of the RRDA as set forth in this chapter, the Executive Director shall--

"(i) establish and maintain a passenger rail corridor development and delivery capability that consists of qualified transportation infrastructure planning, financing, and construction professionals directed to develop and deliver projects that are

consistent with the strategy and objectives set forth in the Regional Passenger Rail Development Plan; and

"(ii) establish and maintain a technical assistance capability at the RRDA that consists of a staff of qualified project management professionals directed to assist other entities within the region that are implementing high-speed and intercity passenger rail projects.

"(2) REGIONAL COMMITTEE.--

"(A) ESTABLISHMENT.--There is established within the RRDA a deliberative body to be known as the 'Regional Committee.'

"(B) MEMBERSHIP.--The membership of the Regional Committee shall be established and maintained as follows:

"(i) Governors or their designee from all States in the region; and

"(ii) other individuals and organizations the Secretary determines have a significant interest in rail issues in the region.

"(C) CONSULTATION.--The Regional Committee shall consult as necessary with--

"(i) elected officials and other community leaders in cities or counties affected by high-speed or intercity passenger rail projects;

"(ii) economic development bodies;

"(iii) business leaders in the region;

"(iv) freight carriers with operations in the region;

"(v) commuter rail agencies with operations in the region;

"(vi) rail labor;

"(vii) other individuals or organizations that the Regional Committee determines would provide valuable input into the Committee's deliberations.

"(D) RESPONSIBILITIES.--The Regional Committee shall be responsible for carrying out the following duties:

"(i) Establishing and approving the Regional Passenger Rail Development Plan within one year of the RRDA's establishment and approving biennial updates.

"(ii) Approving Service Development Plans and investment plans and related materials or other analyses prepared by the Executive Director for use in supporting applications to the Secretary for Federal financial assistance.

"(iii) Approving the selection of private sector partners for designing, constructing, operating, or maintaining a corridor; and

"(iv) Certifying the RRDA's Annual Report.

"(v) Other duties related to directing and overseeing the powers outlined in section 24607(c) of this title.

"(E) MAJORITY VOTE.--An action or decision by the Regional Committee shall be by majority vote of all members, whether in person or

in absentia. Each member shall be provided a reasonable opportunity to vote on all matters before the Regional Committee.

"(F) PUBLICLY ACCESSIBLE MEETINGS.--All meetings of the Regional Committee shall be publicly-accessible.

"(c) CORRIDOR DEVELOPMENT POWERS.--Regional Rail Development Authorities established pursuant to this section shall have the power to undertake the following corridor development activities:

"(1) Planning for Core Express Corridors, Regional Corridors, and Emerging Corridors within their jurisdiction, including leading the development of the Regional Passenger Rail Development Plan described in section 24606(b) and identifying proposed corridor alignments and station locations.

"(2) Planning that addresses transportation issues and infrastructure investments for more efficient movement of people and goods through and among corridors, including consideration of the most cost-effective transportation investments to address a specific region's or corridor's transportation needs for both people and goods.

"(3) Preparing engineering studies, environmental analyses, project management plans, financial plans, service development plans and other documentation necessary for developing and delivering new or improved high-speed or intercity passenger rail services.

"(4) Applying for, receiving, managing, and expending Federal financial assistance, including taking responsibility for all relevant reporting or other requirements associated with that financial assistance.

"(5) Coordinating the financing package for project development and delivery, including structuring and overseeing Federal, State, and local financial assistance funds, private-sector contributions, and any loan or credit facilities, including the issuance of debt as necessary.

"(6) Leading construction-related activities for developing the corridor, including issuing requests for proposals/qualifications, managing contractors, entering into contracts with public and private entities for construction of the corridor, and other related activities.

"(7) Acquiring and preserving right-of-way for dedicated corridors;

"(8) Providing for or supporting negotiations with infrastructure owners for new or improved shared-use passenger rail corridors.

"(9) Issuing requests for proposals for projects for the financing, design, construction, operation, and/or maintenance of a high-speed intercity passenger rail system operating within the RRDA's jurisdictions that shall include those items described in paragraph (a)(4) of section 502 of Division B of Public Law 110-432.

"(d) FUNDING ELIGIBILITY.--Regional Rail Development Authorities are eligible to receive Federal financial assistance under the Network Development Program (as described in section 24604 of this title) and for Public Asset Backlog Retirement and State of Good Repair and Recapitalization activities within the System Preservation and Renewal Program (as described in section 24605 of this title).



"(e) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.--The Federal Advisory Committee Act shall not apply to Regional Rail Development Authorities.

**"Sec. 24608. Oversight**

"(a) AUTHORITY.--

"(1) IN GENERAL.--The Secretary of Transportation is authorized to expend up to 1 percent of the funds made available each fiscal year under section 24602(a) of this title.

"(2) PAYMENT.--The Federal Government shall pay the entire cost of carrying out a contract under this subsection.

"(b) PROJECT MANAGEMENT OVERSIGHT.--

"(1) PROCEDURES.--The Secretary shall develop and implement oversight procedures to monitor the effective and efficient use of funds appropriated under this chapter. These procedures shall include such measures as the Secretary deems necessary to identify, mitigate, and monitor risks to successful delivery of projects. These procedures may include--

"(A) entering into contracts for safety, procurement, management, and financial compliance reviews, audits, and reports of a recipient of an amount under paragraph (1);

"(B) conducting site visits to review the progress and implementation of projects; and

"(C) establishing field offices to oversee projects and provide project delivery assistance to financial assistance recipients.

"(2) ACCESS.--Each recipient of assistance under this chapter shall provide the Secretary or the Secretary's designee, including a contractor the Secretary chooses under subparagraph (1)(A) of this section, with access to the construction sites and records of the recipient when reasonably necessary.

"(c) PROJECT DELIVERY DOCUMENTATION.--To receive Federal financial assistance for a project under this chapter, an applicant shall prepare and carry out project delivery documentation approved by the Secretary. This documentation may include--

"(1) a Project Management Plan;

"(2) a Financial Plan;

"(3) a System Safety Plan;

"(4) agreements between the project sponsor(s) and all relevant entities;

"(5) a Project Risk Management Plan; and

"(6) other documents identified by the Secretary as relevant to carrying out project management oversight activities under this section.

**"Sec. 24609. Financial assistance provisions**

"(a) STATE RECIPIENTS OF FINANCIAL ASSISTANCE.--A State desiring to avail itself of the provisions of this chapter shall have a State department, agency, or

Commission with adequate powers, and be suitably equipped and organized to discharge to the satisfaction of the Secretary of Transportation, the duties required by this chapter.

"(b) FINANCIAL ASSISTANCE CONDITIONS.--

"(1) CONDITIONS.--The Secretary shall require, as a condition of making any financial assistance under this chapter, that financial assistance provided under this chapter shall comply with subsections 24405(b), (c), (d), and (e) of this title in the same manner as funding under chapter 244, Part C of subtitle V of this title must comply with subsections 24405(b), (c), (d), and (e) of this title.

"(2) LIMITATION.--No financial assistance shall be provided under this chapter for commuter rail passenger transportation, as defined in section 24102(4) of this title, with the exception of high speed and intercity passenger rail and commuter rail joint benefit projects under this chapter."

(b) CONFORMING AMENDMENT.--The analysis for subtitle V of title 49 is amended by inserting above the item for chapter 247 the following:

"246. National High Performance Passenger Rail System..... 24601".

**SEC. 1103. OBLIGATION CEILING.**

(a) LIMITATION.--Notwithstanding any other provision of law, the total of all obligations from amounts made available from the Passenger Rail Account of the Transportation Trust Fund under title 1 of this Act shall not exceed--

- (1) \$8,046,000,000 for fiscal year 2012;
- (2) \$7,446,000,000 for fiscal year 2013;
- (3) \$8,506,000,000 for fiscal year 2014;
- (4) \$9,106,000,000 for fiscal year 2015;
- (5) \$9,556,000,000 for fiscal year 2016; and
- (6) \$9,930,000,000 for fiscal year 2017.

(b) EXCEPTION.--The obligation limitation under subsection (a) for each of fiscal years 2012 through 2017 shall not apply to the obligation of funds previously made available in prior years and shall be in addition to the amount of any limitation imposed on obligations for future years.

**SEC. 1104. BUY AMERICA.**

(a) IN GENERAL.--Part E of subtitle V of title 49, United States Code, is amended by inserting the following after chapter 285:

**"CHAPTER 287--BUY AMERICA PREFERENCES**

"Sec.

"28701. Buying goods produced in the United States.

"28702. Fraudulent use of 'Made in America' label.

**"Sec. 28701. Buying goods produced in the United States**

"(a) PREFERENCE.--Notwithstanding any other provision of law, the Secretary shall not obligate any funds authorized to be appropriated to carry out subtitle V of this title and administered by the Department of Transportation, nor shall the Secretary provide direct loans or loan guarantees under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822) unless steel, iron, and manufactured products used in the project are produced in the United States.

"(b) WAIVER.--The Secretary may waive paragraph (a) of this section if the Secretary finds that--

"(1) applying paragraph (a) would be inconsistent with the public interest;

"(2) such materials and products produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

"(3) when procuring rolling stock or power train equipment (including train control, communication, and traction power equipment)--

"(A) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the rolling stock or power train equipment; and

"(B) final assembly of the rolling stock has occurred in the United States; or

"(4) inclusion of domestic material will increase the cost of the overall project by more than 25 percent.

"(c) ACTION PLAN.--If the Secretary determines that it is necessary to waive the application of paragraph (a) based on a finding under paragraph (b)(2), the beneficiary of the waiver shall--

"(1) consult with a national industry association representing the products that are the subject of the waiver;

"(2) prepare an action plan to address how such products may be produced in a sufficient and reasonably available amount, and in satisfactory quality, in the United States; and

"(3) submit the action plan to the Secretary for review within one year of receipt of the waiver.

"(d) LABOR COSTS.--For purposes of this section, labor costs involved in final assembly shall not be included in calculating the cost of components.

"(e) WAIVER NOTICE AND COMMENT.--If the Secretary determines that it is necessary to waive the application of paragraph (a) based on a finding under paragraph (b), the Secretary shall, before the date on which such finding takes effect--

"(1) make available to the public on the Department of Transportation's public Web site the waiver request and a detailed written justification as to why the waiver is needed;

"(2) publish in the Federal Register a detailed written justification as to why the waiver is needed; and

"(3) provide notice of such finding and an opportunity for public comment on such finding for a reasonable period of time not to exceed 15 days.

"(f) **WAIVER PROHIBITED.**--The Secretary may not make a waiver under paragraph (b) of this section for goods produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, decides that the government of that foreign country--

"(1) has an agreement with the United States Government under which the Secretary has waived the requirement of this section; and

"(2) has violated the agreement by discriminating against goods to which this section applies that are produced in the United States and to which the agreement applies.

"(g) **STATE REQUIREMENTS.**--The Secretary may not impose any limitation on assistance provided under subtitle V of this title that restricts a State from imposing more stringent requirements than this section on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries, in projects carried out with that assistance, or restricts a recipient of that assistance from complying with those State-imposed requirements.

"(h) **CERTIFICATION.**--The Secretary may allow a manufacturer or supplier of steel, iron, or manufactured goods to correct after bid opening any certification of noncompliance or failure to properly complete the certification (but not including failure to sign the certification) under this section if such manufacturer or supplier attests under penalty of perjury that such manufacturer or supplier submitted an incorrect certification as a result of an inadvertent or clerical error. The burden of establishing inadvertent or clerical error is on the manufacturer or supplier.

"(i) **REVIEW.**--A party adversely affected by an agency action under this section shall have the right to seek review under section 702 of title 5.

"(j) **MINIMUM COST.**--The requirements of this section shall only apply to contracts for which the costs exceed \$100,000."

**"Sec. 28702. Fraudulent use of 'Made in America' label**

"A person is ineligible to receive a contract or subcontract made with amounts authorized under subtitle V of this title or section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822) if a court or department, agency, or instrumentality of the Government decides the person intentionally--

"(1) affixed a 'Made in America' label, or a label with an inscription having the same meaning, to goods sold in or shipped to the United States that are used in a project to which this section applies, but were not produced in the United States; or

"(2) represented that goods described in paragraph (1) of this section were produced in the United States."

(b) CONFORMING AMENDMENT.--The analysis for subtitle V of title 49, United States Code, is amended by inserting below the item for chapter 285 the following:

"287. Buy America Preferences..... 24601".

(c) RELATED AMENDMENT.--Section 24305 of title 49, United States Code, is amended by repealing section (f).

**SEC. 1105. MISCELLANEOUS RAIL PROVISIONS.****(a) AUTHORIZATIONS.**

(1) RESEARCH AND DEVELOPMENT.--There are authorized to be appropriated to the Secretary for necessary expenses for railroad research and development, the following amounts:

- (i) \$40,000,000 for fiscal year 2012;
- (ii) \$40,800,000 for fiscal year 2013;
- (iii) \$41,616,000 for fiscal year 2014;
- (iv) \$42,448,000 for fiscal year 2015;
- (v) \$43,297,000 for fiscal year 2016; and
- (vi) \$44,163,000 for fiscal year 2017.

(2) SAFETY AND OPERATIONS EXPENSES.--Section 20117(a) of title 49, United States Code, is amended--

(A) in paragraph (1) by striking "to carry out this part" and inserting "to carry out this part and uncodified rail safety provisions of the Rail Safety Improvement Act of 2008 (Public Law 110-432, Division A)";

(B) in paragraph (1) by striking subparagraphs (D) and (E) and adding the following:

- "(D) \$223,034,000 for fiscal year 2012;
- "(E) \$227,495,000 for fiscal year 2013;
- "(F) \$232,045,000 for fiscal year 2014;
- "(G) \$236,685,000 for fiscal year 2015;
- "(H) \$241,419,000 for fiscal year 2016; and
- "(I) \$256,248,000 for fiscal year 2017."; and

(B) in paragraph (4) by striking "the fiscal years 2009 through 2013" and inserting "the fiscal years 2009 through 2017".

(b) APPLICATION, AWARD AND OVERSIGHT CHARGE.--Section 503(k) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 823) is amended by striking subsection (k) and inserting the following:

**"(k) EVALUATION, AWARD AND OVERSIGHT CHARGES.--**

"(1) FEES.--The Secretary may charge and collect from each applicant a reasonable charge for--

"(A) the cost of evaluating the application, including appraisal of the value of the equipment or facilities for which the direct loan or loan guarantee is sought, and for making necessary determinations and findings; such charge shall not aggregate more than one-half of 1 percent of the principal amount of the obligation; and

"(B) the cost of award and project management oversight, including design and implementation of capital projects of great complexity including but not limited to projects of \$100,000,000 or more; such charge shall not aggregate more than one-half of 1 percent of the principal amount of the obligation.

"(2) FEES CREDITED TO SAFETY ACCOUNT.--Amounts collected under this subsection shall be credited directly to the Safety and Operations account of the Federal Railroad Administration, and shall remain available until expended to pay for the costs described in this subsection."

(c) EARLY ACQUISITION OF REAL PROPERTY INTERESTS FOR RAIL; LIMITATIONS ON CLAIMS.--Chapter 241 of title 49, United States Code, is amended by inserting the following after section 24105:

**"Sec. 24106. Early acquisition of real property interests for rail**

"(a) IN GENERAL.--

"(1) AVAILABILITY OF FUNDS.--For the purpose of facilitating the timely and economical acquisition of real property interests for a transportation improvement eligible for funding under subtitle V of this title, the Secretary of Transportation may make funds available to project sponsors for the acquisition of real property interests.

"(2) CONSTRUCTION.--The agreement between the Secretary and the sponsor for the reimbursement of the cost of the real property interests shall provide for the actual construction of the transportation improvement within a period not to exceed 20 years following the fiscal year for which the request is made, unless the Secretary determines that a longer period is reasonable.

"(b) EARLY ACQUISITION OF REAL PROPERTY INTERESTS.--

"(1) USE OF FUNDS FOR PROPERTY ACQUISITION.--Subject to paragraph (2) of this subsection, funds may be used to participate in the payment of--

"(A) costs incurred by the sponsor for acquisition of real property interests, acquired in advance of any Federal approval or authorization; and

"(B) costs incurred by the sponsor for the acquisition of land necessary to preserve environmental and scenic values.

"(2) TERMS AND CONDITIONS.--

"(A) PROPERTY ACQUISITION BY PUBLIC AUTHORITY.--Subject to the other provisions in this section, a public authority may carry out acquisition of real property that may be used for a project prior to completion of the review process for the project required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Such acquisition may be authorized by project agreement and is eligible for reimbursement as a project expense if the Secretary finds that the acquisition--

"(i) will not cause any significant adverse environmental impact;

"(ii) will not limit the choice of reasonable alternatives for the project or otherwise influence the Secretary's decision on any approval required for the project;

"(iii) complies with other applicable Federal laws and regulations;

"(iv) will acquire the real property through negotiation, without the threat of condemnation; and

"(v) together with any relocation assistance provided, will comply with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended and the requirements of title VI of the Civil Rights Act of 1964.

"(B) ENVIRONMENTAL REVIEW.--Real property acquired under this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

"(C) FUNDING OFFSET.--If reimbursement is made for property acquired early under this section and the property is not subsequently incorporated into a project eligible under subtitle V of this title within the time allowed by subsection (a)(2), the Secretary shall offset the amount so reimbursed against funds allocated to the sponsor.

"(D) OTHER CONDITIONS OR RESTRICTIONS.--The Secretary may establish other conditions or restrictions on such acquisitions as the Secretary determines to be necessary and appropriate.

#### **"Sec. 24107. Limitations on claims**

"(a) LIMITATIONS ON CLAIMS.--

"(1) IN GENERAL.--Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of a permit, license, or approval issued by a Federal agency for a railroad capital project shall be barred unless it is filed within 180 days after publication of a notice in the Federal Register announcing that the permit, license, or approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law pursuant to which judicial review is allowed. Nothing in this subsection shall create a right to judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval.

"(2) NEW INFORMATION.--The Secretary of Transportation shall consider new information received after the close of a comment period if the information satisfies the requirements for a supplemental environmental impact statement under section 1502.9 of title 40, Code of Federal Regulations. The preparation of a supplemental environmental impact statement when required shall be considered a separate final agency action and the deadline for filing a claim for judicial review of such action shall be 180 days after the date of publication of a notice in the Federal Register announcing such action.

"(b) SAVINGS CLAUSE AND LIMITATIONS.--

"(1) SAVINGS CLAUSE.--Nothing in this section shall be construed as superseding, amending, or modifying the National Environmental Policy Act of



1969 or any other Federal environmental statute or affect the responsibility of any Federal officer to comply with or enforce any such statute.

"(2) LIMITATIONS.--Nothing in this section shall preempt or interfere with--

"(A) any practice of seeking, considering, or responding to public comment; or

"(B) any power, jurisdiction, responsibility, or authority that a Federal, State, or local government agency, metropolitan planning organization, Indian tribe, or project sponsor has with respect to carrying out a project or any other provisions of law applicable to projects, plans, or programs."

(d) RAILROAD USER FEES.--Section 20115 of title 49, United States Code, is amended to read as follows:

**"Sec. 20115. User fees**

"(a) SCHEDULE OF RAILROAD SAFETY USER FEES.--The Secretary of Transportation shall prescribe by regulation a schedule of rail safety fees for railroad carriers subject to Part A of Subtitle V of this title. The fees shall cover the costs incurred by the Federal Railroad Administration in carrying out such Part and Chapter 51 of title 49 United States Code (rail transportation of hazardous materials) in fiscal years 2012 through 2017 but shall not exceed \$80,000,000 per year. The fees shall be imposed fairly on railroad carriers, in reasonable relationship to appropriate criteria to be developed by the Secretary.

"(b) COLLECTION PROCEDURES.--The Secretary shall prescribe procedures to collect the fees. The Secretary may use the services of a department, agency, or instrumentality of the United States Government or a State or local authority to collect the fees, and may reimburse the department, agency, or instrumentality a reasonable amount for its services.

"(c) COLLECTION, DEPOSIT, AND USE.--

"(1) IN GENERAL.--The Secretary shall impose and collect the fees under this section for each fiscal year before the end of the fiscal year.

"(2) FEE DEPOSIT.--Fees collected under this section shall be deposited in the Federal Railroad Administration's Safety and Operations account as offsetting receipts. The fees may be used to carry out eligible activities of that account and shall remain available until expended."

(e) CONFORMING AMENDMENT.--The analysis of chapter 241 of title 49, United States Code, is amended by inserting the following after the item relating to section 24105:

"Sec. 24106. Early acquisition of real property interests for rail.

"Sec. 24107. Limitations on claims."

**SEC. 1106. MISCELLANEOUS CORRECTIONS, REVISIONS AND REPEALS.**

(a) TECHNICAL CORRECTION TO INTRODUCTORY TEXT OF PUBLIC LAW 110-432.--The introductory text of Public Law 110-432 (122 Stat. 4848) is amended by striking "Federal Railroad Safety Administration" and inserting "Federal Railroad Administration".

(b) TECHNICAL CORRECTIONS TO PROVISIONS OF THE UNITED STATES CODE ENACTED IN, OR AMENDED BY, THE RAIL SAFETY IMPROVEMENT ACT OF 2008.--

(1) Section 103(c) of title 49 of the United States Code is amended by striking "the Administration shall consider the assignment and maintenance of safety as the highest priority," and inserting "the Administration shall consider the improvement of safety as the highest priority,".

(2) Section 1139 of title 49 of the United States Code is amended--

(A) in subsection (a)(1) by striking "phone number" and inserting "telephone number";

(B) in subsection (a)(2) by striking "post trauma communication with families" and inserting "post-trauma communication with families";

(C) in subsection (j)(2) by striking "railroad passenger accident" and inserting "rail passenger accident".

(3) Section 10909 of title 49 of the United States Code is amended--

(A) in the introductory text of subsection (b), by striking "Clean Railroad Act of 2008," and inserting "Clean Railroads Act of 2008,,"; and

(B) in subsection (e) by striking "Upon the granting of petition from the State" and inserting "Upon the granting of a petition from the State".

(4) Section 20116 of title 49 of the United States Code is amended--

(A) by inserting "(1)" after "unless"; and

(B) by inserting "(2)" before "the code, rule, standard, requirement, or practice has been subject to notice and comment under a rule or order issued under this part.".

(5) Section 20120(a) of title 49 of the United States Code is amended--

(A) in the introductory text by striking "website" and inserting "Web site";

(B) in subparagraph (1) by striking "accident and incidence reporting" and inserting "accident and incident reporting";

(C) in subparagraph (2)(G), by inserting "and" at the end; and

(D) in subparagraph (5)(B) by striking "Administrative Hearing Officer or Administrative Law Judge" and inserting "administrative hearing officer or administrative law judge".

(6) Section 20156 of title 49 of the United States Code is amended--

(A) in subsection (c) by inserting a comma after "In developing its railroad safety risk reduction program"; and

(B) in subsection (g) by inserting a comma after "good faith" and by striking "non-profit" and inserting "nonprofit".

(7) Section 20157(a)(1)(B) of title 49 of the United States Code is amended by striking "parts 171.8, 173.115, and 173.132" and inserting "sections 171.8, 173.115, and 173.132".

(8) Section 20159 of title 49 of the United States Code is amended by striking "the Secretary" and inserting "the Secretary of Transportation".

(9) Section 20160 of title 49 of the United States Code is amended--

(A) in subsection (a)(1) by striking the word "or" from the phrase "concerning each previously unreported crossing through which it operates or with respect to the trackage over which it operates"; and

(B) in subsection (b)(1)(A) by striking the word "or" from the phrase "concerning each crossing through which it operates or with respect to the trackage over which it operates".

(10) Section 20162(a)(3) of title 49 of the United States Code is amended by striking "railroad compliance with Federal standards" and inserting "railroad carrier compliance with Federal standards".

(11) Section 20164(a) of title 49 of the United States Code is amended by striking "after enactment of the Railroad Safety Enhancement Act of 2008" and inserting "after the enactment of the Rail Safety Improvement Act of 2008".

(12) Section 21102(c) of title 49 of the United States Code is amended--

(A) by striking "APPLICATION OF HOURS OF SERVICE REGIME TO COMMUTER AND INTERCITY PASSENGER RAILROAD TRAIN EMPLOYEES" and inserting "APPLICATION OF HOURS OF SERVICE REGIME TO COMMUTER AND INTERCITY PASSENGER RAILROAD TRAIN EMPLOYEES, INCLUDING TOURIST, HISTORIC, SCENIC, OR EXCURSION RAILROAD TRAIN EMPLOYEES";

(B) in subparagraph (1) by inserting after "commuter rail passenger transportation or intercity rail passenger transportation," the phrase "including tourist, historic, scenic, or excursion rail transportation," and by striking "including public authorities operating passenger service" and inserting "including tourist, historic, scenic, or excursion railroad carriers and public authorities operating passenger service";

(C) in subparagraph (2) by inserting after "commuter rail passenger transportation or intercity rail passenger transportation," the following

phrase: "including tourist, historic, scenic, or excursion rail transportation,";

(D) in subparagraph (3)(A) by inserting after "commuter rail passenger transportation or intercity rail passenger transportation" a comma and adding the following phrase: "including tourist, historic, scenic, or excursion rail transportation,"; and

(E) In subparagraph (4) by striking the colon after "In this subsection" and inserting a dash and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C) respectively.

(13) Section 21103(e) of title 49 of the United States Code is amended by striking "such railroads' efficient operations and on-time performance of its trains." and inserting "such a railroad's efficient operations and on-time performance of its trains."

(14) Section 21109(b) of title 49 of the United States Code is amended--

(A) by striking "REGULATIONS GOVERNING THE HOURS OF SERVICE OF TRAIN EMPLOYEES OF COMMUTER AND INTERCITY PASSENGER RAILROAD CARRIERS" and inserting "REGULATIONS GOVERNING THE HOURS OF SERVICE OF TRAIN EMPLOYEES OF COMMUTER AND INTERCITY PASSENGER RAILROAD CARRIERS, INCLUDING TRAIN EMPLOYEES OF TOURIST, HISTORIC, SCENIC, OR EXCURSION RAILROAD CARRIERS"; and

(B) by inserting after "train employees engaged in commuter rail passenger transportation and intercity rail passenger transportation (as defined in section 24102 of this title)" a comma and adding the following phrase: "including train employees engaged in the transportation by railroad of passengers on tourist, historic, scenic, or excursion railroad carriers,".

(15) Section 22106(b) of title 49 of the United States Code is amended by striking "interest thereof" and inserting "interest thereon".

(16) The item for section 24316 in the chapter analysis for chapter 243 of title 49 of the United States Code is amended by striking "to assist families of passengers" and inserting "to address needs of families of passengers".

(c) TECHNICAL CORRECTIONS TO DIVISION A OF PUBLIC LAW 110-432, THE RAIL SAFETY IMPROVEMENT ACT OF 2008.--

(1) Section 1(b) of division A of Public Law 110-432 (122 Stat. 4848), "Table of Contents", is amended--

(A) in the item for section 307, by striking "website" and inserting "Web site";

(B) in the item for section 403, by striking "Track inspection time study" and inserting "Study and rulemaking on track inspection time; rulemaking on concrete cross ties";

(C) in the item for section 408, by striking "Conrail" and inserting "Consolidated Rail Corporation";

(D) in the item for title VI, by striking "SOLID WASTE FACILITIES" and inserting "SOLID WASTE RAIL TRANSFER FACILITIES"; and

(E) in the item for section 602 by striking "solid waste transfer facilities" and inserting "solid waste rail transfer facilities".

(2) Section 2(a)(1) of division A of Public Law 110-432 (122 Stat. 4849) is amended by inserting a comma after the word "grade".

(3) Section 102(a)(6) of title I of division A of Public Law 110-432 (122 Stat. 4852) is amended--

(A) by striking "Improving the safety of railroad bridges, tunnels, and related infrastructure to prevent accidents, incidents, injuries and fatalities caused by catastrophic failures and other bridge and tunnel failures."; and

(B) by inserting "Improving the safety of railroad bridges, tunnels, and related infrastructure to prevent accidents, incidents, injuries and fatalities caused by catastrophic and other failures of such infrastructure.".

(4) Section 206(a) of title II of division A of Public Law 110-432 (122 Stat. 4873) is amended by striking "Public Service Announcements" and inserting "public service announcements".

(5) Section 307 of title III of division A of Public Law 110-432 (122 Stat. 4881) is amended--

(A) in the caption by striking "WEBSITE" and inserting "WEB SITE"; and

(B) in the text by striking "website" wherever it appears and inserting "Web site".

(6) Section 403 of title IV of division A of Public Law 110-432 is amended in the caption (122 Stat. 4884) by striking "TRACK INSPECTION TIME STUDY." and inserting "STUDY AND RULEMAKING ON TRACK INSPECTION TIME; RULEMAKING ON CONCRETE CROSS TIES.".

(7) Section 405 of title IV of division A of Public Law 110-432 is amended--

(A) in subsection (a) (122 Stat. 4885) by striking "cell phones" and inserting "cellular telephones"; and

(B) in subsection (d) (122 Stat. 4886) by striking "Secretary of Transportation" and inserting "Secretary".

(8) Section 408 of title IV of division A of Public Law 110-432 (122 Stat. 4887) is amended in the caption, by striking "CONRAIL" and inserting "CONSOLIDATED RAIL CORPORATION".

(9) Section 412 of title IV of division A of Public Law 110-432 (122 Stat. 4889) is amended by striking "Secretary of Transportation" and inserting "Secretary".

(10) Section 414 of title IV of division A of Public Law 110-432 is amended--

(A) by striking "parts 171.8, 173.115," (122 Stat. 4889) and inserting "sections 171.8, 173.115,"; and

(B) by striking "part 1520.5" (122 Stat. 4890) and inserting "section 1520.5".

(11) Section 416 of title IV of division A of Public Law 110-432 (122 Stat. 4890) is amended--

(A) in the introductory text by striking "Secretary of Transportation" and inserting "Secretary"; and

(B) in paragraph (4) by striking "subsection" and inserting "section".

(12) Section 417(c) of title IV of division A of Public Law 110-432 (122 Stat. 4891) is amended by striking "each railroad" and inserting "each railroad carrier".

(13) Section 503 of title V of division A of Public Law 110-432 is amended--

(A) in subsection (b) (122 Stat. 4899)--

(i) by striking "passenger rail accident" and inserting "rail passenger accident";

(ii) by striking "passenger rail accidents" wherever it appears and inserting "rail passenger accidents"; and

(iii) by striking "a count of the number of passengers onboard the train" and inserting "a count of the number of passenger aboard the train".

(B) by adding at the end (122 Stat. 4900) new subsection (d) to read as follows:

"(d) DEFINITIONS.--In this section, the terms 'passenger' and 'rail passenger accident' have the meaning given those terms by section 1139 of this title."

(14) The heading of title VI of division A of Public Law 110-432 (122 Stat. 4900) is amended by striking "SOLID WASTE FACILITIES" and inserting "SOLID WASTE RAIL TRANSFER FACILITIES".

(15) The caption of section 602 of title VI of division A of Public Law 110-432 (122 Stat. 4900) is amended by striking "SOLID WASTE TRANSFER FACILITIES." and inserting "SOLID WASTE RAIL TRANSFER FACILITIES."

(d) REVISIONS TO DIVISION B OF PUBLIC LAW 110-432, THE PASSENGER RAIL INVESTMENT AND IMPROVEMENT ACT OF 2008.--

(1) SECTION 209 METHODOLOGY REVISIONS.--Section 209 of Division B of Public Law 110-432 is amended to read as follows--

"(a) IN GENERAL.--The Amtrak Board of Directors, in consultation with the Secretary, the governors of each relevant State, and the Mayor of the District of Columbia, or entities representing those officials, shall develop and implement a single, nationwide standardized methodology for establishing and fully allocating the operating and capital costs among the States and Amtrak associated with trains operated on each of the routes described in section 24102(5)(B) and (D) and section 24702 that--

"(1) ensures equal treatment in the provision of like services of all States and groups of States (including the District of Columbia); and

"(2) allocates to each route the costs incurred only for the benefit of that route and a fully allocated share, based upon factors that reasonably reflect relative use, of costs incurred for the common benefit of more than 1 route.

"(b) REVISIONS.--The Amtrak Board of Directors, in consultation with the Secretary, may revise or amend the methodology established under subsection (a) as necessary, consistent with the intent of this section, including revisions or modifications based on Amtrak's financial accounting system developed pursuant to section 203 of this division.

"(c) REVIEW.--If Amtrak and the States (including the District of Columbia) in which Amtrak operates such routes do not voluntarily adopt and implement the methodology developed under subsection (a) in allocating costs and determining compensation for the provision of service, the Surface Transportation Board shall determine the appropriate methodology required under subsection (a) for such services in accordance with the procedures and procedural schedule applicable to a proceeding under section 24904(c) of this title, and require the full implementation of this methodology with regards to the provision of such service within 1 year after the Board's determination of the appropriate methodology.

"(d) USE OF CHAPTER 244 AND 246 FUNDS.--Funds provided to a State under chapters 244 or 246 of this title may be used, as provided in those chapters, to pay capital costs determined in accordance with this section."

(2) SECTION 305 SUNSET PROVISION.--Section 305 of Division B of Public Law 110-432 is amended--

(A) in subsection (a), by striking "The purpose of the Committee shall be to design, develop specifications for, and procure standardized next-generation corridor equipment." and inserting "The purpose of the Committee shall be to design and develop specifications for next-generation equipment.";

(B) by striking subsection (b)(2) and renumbering subsection (b)(3);

(C) in subsection (b)(3), by striking ", maintain and remanufacture";

(D) by striking subsection (c) and inserting:

"(c) SUNSET.--The Committee will have completed its responsibilities under section 305 of Division B of Public Law 110-432 when the Committee initially approves specifications for all Tier I equipment categories, including Bi-Level Cars, Single Level Cars, Electric Locomotives, Diesel Locomotives, Tier I Trainsets, and Tier I Diesel Multiple Units.";

(E) in subsection (e), by striking "for the purpose of designing, developing specifications for, and initiating the procurement of an initial order or 1 or more types of standardized next-generation corridor train equipment and establishing a jointly-owned corporation to manage that equipment." and inserting "for the purpose of designing and developing specifications for 1 or more types of standardized next-generation corridor train equipment.".

(e) REVISIONS TO PROVISIONS OF THE UNITED STATES CODE.--Section 20154 of title 49, United States Code, is amended--

(1) by revising subsection (b)(2) to read as follows:

"(2) involves a lateral or vertical relocation of any portion of the rail line; or";

(2) by adding a new paragraph (3) at the end of subsection (b) as follows:

"(3) involves a lateral or vertical relocation of any portion of a road.";

(3) by revising subsection (h)(3) to read as follows:

"(3) STATE.--The term 'State' includes, except as otherwise specifically provided, a political subdivision of a State, a public agency, and the District of Columbia."; and

(4) by revising subsection (e)(1) to read as follows:

"(1) PERCENTAGE.--A State or other non-Federal entity shall pay at least 20 percent of the shared costs of a project that is funded in part by a grant awarded under this section.".

(f) MISCELLANEOUS REPEALS.--

(1) Section 24406 of title 49, United States Code, is amended by repealing sections (4) and (5).

(2) Section 24105 of title 49, United States Code, is amended by repealing subsections (e)(3) and (e)(4).

(3) Section 26104 of title 49, United States Code, is amended by revising subsection (a)(2) to read as follows:

"(2) \$30,000,000 for carrying out section 26102, for each of the fiscal years 2006 through 2011.".

(4) Section 26106 of title 49, United States Code, is amended by repealing subsection (h)(4) and (h)(5).



(5) Section 101 of the Passenger Rail Investment and Improvement Act of 2008 is amended--

(1) by repealing subsections (a)(4) and (a)(5); and

(2) by repealing subsections (c)(4) and (c)(5).

(6) Section 102 of the Passenger Rail Investment and Improvement Act of 2008 is amended by repealing subsections (a)(4) and (a)(5).

(7) Section 20154 of title 49, United States Code, is repealed.

(8) Section 22702 of title 49, United States Code, is amended by repealing subsection (b)(4).

## **TITLE II--SURFACE TRANSPORTATION INFRASTRUCTURE REFORM**

### **Subtitle A--Accelerating Project Delivery**

#### **SEC. 2001. PROJECT DELIVERY ACCELERATION INITIATIVE.**

(a) **DECLARATION OF POLICY.**--It is in the national interest to enable the Department of Transportation, State departments of transportation, transit agencies, and all other recipients of Federal transportation funds to accelerate project delivery acceleration and reduce costs; and to ensure that the planning, design, engineering, construction and financing of transportation projects is done in an efficient and effective manner, promoting accountability for public investments and encouraging greater private sector involvement in project financing and delivery. Delay in the delivery of transportation projects increases project costs, harms the Nation's economy, and impedes the travel of the American public. The Secretary shall identify and promote the deployment of innovation aimed at reducing the time and money it takes to deliver transportation projects while enhancing safety and protecting the environment.

(b) **ESTABLISHMENT OF INITIATIVE.**--

(1) **IN GENERAL.**--To advance the policy identified in subsection (a), the Secretary shall carry out a project delivery acceleration initiative under this section.

(2) **PURPOSES.**--The purposes of the project delivery acceleration initiative shall be to--

(A) develop and advance the use of best practices to accelerate project delivery and reduce costs across all modes of transportation and expedite the deployment of technology and innovation;

(B) implement statutory provisions designed to accelerate project delivery; and

(C) select eligible projects for applying experimental features to test innovative project delivery acceleration techniques.

(3) **ADVANCING THE USE OF BEST PRACTICES.**--In carrying out the initiative under this section, the Secretary shall identify and advance best practices to reduce delivery time and project costs, from planning to construction, for transportation projects and programs of projects regardless of mode and project size. To advance the use of best practices, the Secretary shall--

(A) engage transportation stakeholders to gather information regarding opportunities for accelerating project delivery and reducing costs;

(B) establish a clearinghouse for the collection, documentation, and advancement of existing and new innovative approaches and best practices;

(C) disseminate information through a variety of means to transportation stakeholders on new innovative approaches and best practices; and

(D) provide technical assistance to assist transportation stakeholders in the use of existing flexibilities to resolve project delays and accelerate project delivery where feasible.

(4) IMPLEMENTING STATUTORY PROVISIONS UNDER THIS SUBTITLE FOR ACCELERATING PROJECT DELIVERY.--The Secretary shall ensure that the statutory provisions under this subtitle designed to accelerate project delivery are fully implemented, including--

(A) compressing the process for drafting environmental impact statements under the National Environmental Policy Act;

(B) establishing mandatory timeframes for permitting and approval decisions of other Federal agencies;

(C) providing reasonable assurance of funding commitment before commencing an environmental impact statement;

(D) integrating transportation planning and environmental review of transportation projects;

(E) expanding eligibility of early acquisition of property prior to completion of environmental review under the National Environmental Policy Act;

(F) allowing the use of the construction manager/general contractor method of contracting in the Federal-aid highway program;

(G) establishing a demonstration program to streamline the relocation process by permitting a lump-sum payment for acquisition and relocation where elected by the displaced occupant; and

(H) establishing a pilot program to provide direct Federal-aid highway funding to local governments.

(5) ADVANCING INNOVATIVE PROJECT DELIVERY.--In order to accelerate project delivery and reduce costs for transportation projects across all modes and regardless of project size, the Secretary shall use the authority under section 312 of title 49, United States Code, as added by this Act, to the greatest extent possible.

**SEC. 2002. EFFICIENCIES IN CONTRACTING.**

(a) AUTHORITY.--Section 112(b) of title 23, United States Code, is amended by adding at the end the following:

"(4) CONSTRUCTION MANAGER; GENERAL CONTRACTOR.--

"(A) IN GENERAL.--A contracting agency may award a two-phase contract to a construction manager / general contractor for pre-construction and construction services. In the pre-construction phase, the construction manager provides the contracting agency with advice for scheduling, work sequencing, cost engineering, constructability, cost estimating, and risk identification. Prior to the start of the second phase, the owner and the construction manager may agree to a price for the construction of the project, or a portion of the project. If an agreement is reached, the construction manager becomes the general contractor for the construction of the project at the negotiated schedule and price.

"(B) SELECTION.--A contract shall be awarded to a construction manager or general contractor using a competitive selection process whereby the contract is awarded on the basis of qualifications, experience, best value, or any other combination of factors deemed appropriate by the contracting agency.

"(C) TIMING.--

"(i) A contracting agency may, prior to the completion of the process required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), issue requests for proposals, proceed with the award of the first phase of construction manager or general contractor contract, and issue notices to proceed with preliminary design.

"(ii) If the first phase of a construction manager or general contractor contract focuses primarily on one alternative, the Secretary shall require that the contract include appropriate provisions to ensure that the objectives of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) are achieved and compliance with other applicable Federal laws and regulations occurs.

"(iii) A contracting agency shall not proceed with the award of the second phase, and shall not proceed, or permit any consultant or contractor to proceed, with final design or construction until completion of the process required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

"(iv) Prior to authorizing construction activities, the Secretary shall approve the contracting agency's estimate for the entire project, as well as any price agreement with the general contractor for the project, or a portion of the project."

(b) REGULATIONS.--The Secretary shall issue regulations necessary to carry out the provisions added by this section to title 23, United States Code.

(c) EFFECT ON EXPERIMENTAL PROGRAM.--Nothing in this section or the amendments made by this section affects the authority to carry out, or any project carried out under, any experimental program concerning construction manager risk that is being carried out by the Secretary as of the date of the enactment of this Act.

### **SEC. 2003. APPLICATION OF CATEGORICAL EXCLUSIONS FOR**

**MULTI-MODAL PROJECTS.**

(a) IN GENERAL.--Section 304 of title 49, United States Code, is amended to read as follows:

**"Sec. 304. Application of categorical exclusions for multi-modal projects**

"(a) APPLICABILITY.--The authorities granted in this section may be exercised for a multi-modal project, class of projects or program of projects that are carried out under the authority of this title.

"(b) APPLICATION OF CATEGORICAL EXCLUSIONS FOR MULTI-MODAL PROJECTS.--When considering the environmental impacts of a proposed multi-modal project, any operating administration or secretarial office that is the lead authority over the multi-modal project (lead DOT administration) and has determined that the components of the project that fall under their modal expertise satisfy the conditions for one or more categorical exclusions under its National Environmental Policy Act (NEPA) implementing regulations or procedures and does not require the preparation of an Environmental Analysis or an Environmental Impact Statement, may also apply one or more categorical exclusion under another Department of Transportation operating administration's (cooperating DOT administration) implementing regulations or procedures for other components of the project, provided that--

"(1) the multi-modal project is funded under one grant agreement administered by the lead DOT administration;

"(2) the multi-modal project has components that require the expertise of a cooperating DOT administration to assess the components' environmental impacts;

"(3) each component of the project has independent utility;

"(4) the cooperating DOT administration, in consultation with the lead DOT administration, follows its NEPA implementing regulations or procedures and determines that one or more of its categorical exclusions applies to the components; and

"(5) the lead DOT administration has determined that the project, utilizing the lead and cooperating DOT administration's categorical exclusions, does not individually or cumulatively have a significant impact on the environment and that extraordinary circumstances do not exist.

"(c) MODAL COOPERATION.--A cooperating DOT administration shall provide modal expertise to a lead DOT administration with administrative authority over a multi-modal project, on such aspects of the project in which the cooperating DOT administration has expertise. In such cases, a cooperating DOT administration's categorical exclusion(s) may be applied once the cooperating DOT administration reviews the project on behalf of the lead administration and determines the project satisfies the conditions for one or more Categorical Exclusion under the cooperating DOT administration's NEPA implementing regulations or procedures.

"(d) DEFINITIONS.--The terms used in this section shall have the same meaning the terms have under section 139 of title 23."

(b) CONFORMING AMENDMENT.--The item relating to section 304 in the analysis for chapter 3 of title 49, United States Code, is amended to read as follows:  
"Sec. 304. Application of categorical exclusions for multi-modal projects."

## **SEC. 2004. INTEGRATION OF PLANNING AND ENVIRONMENTAL REVIEW.**

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code, is amended by adding the following after section 166:

### **"Sec. 167. Integration of planning and environmental review**

"(a) DEFINITIONS.-- In this section:

"(1) NEPA.--The term "NEPA" means the National Environmental Policy Act.

"(2) PLANNING PRODUCT.--The term "planning product" means any decision, analysis, study, or other documented result of an evaluation or decision-making process carried out during transportation planning.

"(3) PROJECT.--The term "project" has the same meaning as in section 139(a)(6) of this title.

"(4) PROJECT SPONSOR.--The term "project sponsor" has the same meaning as in section 139(a)(7) of this title.

### **"(b) ADOPTION OF PLANNING PRODUCTS FOR USE IN NATIONAL ENVIRONMENTAL POLICY ACT PROCEEDINGS.--**

"(1) IN GENERAL.--Notwithstanding any other provision of law, the lead Federal agency, in consultation with other lead agencies and project sponsors, may adopt and use in proceedings relating to any class of action under the NEPA and in any other environmental review of a transportation project or program, any planning product, provided that the conditions in paragraph (4) have been satisfied. The lead Federal agency may adopt such planning products in their entirety or may select portions for adoption.

"(2) PURPOSE AND INTENT.--The purpose of this section is to establish the authority and provide procedures for achieving integrated planning and environmental review processes to enable statewide and metropolitan planning processes to more effectively serve as the foundation for highway and transit project decisions, foster better decision-making, reduce duplication in work, avoid delays in transportation improvements, and lead to better transportation and environmental results for communities and the Nation. This section is consistent with and is adopted in furtherance of section 101 and section 102(a) of NEPA and section 109 of this title.

"(A) AUTHORITIES.--The authorities granted in this section are intended to be broadly construed and may be applied to any project, class of projects, or program carried out under this title.

"(B) NEPA APPLICABILITY.--Nothing in this section shall make NEPA applicable to the transportation planning process conducted under this title. Initiation of the NEPA process as a part of, or concurrently with, transportation planning activities shall not subject transportation plans and programs to NEPA.

"(C) PLANNING PRODUCTS.--Nothing in this section shall affect the use of planning products in the NEPA process pursuant to other authorities under law, or restrict the initiation of the NEPA process during planning.

"(3) APPLICABILITY.--

"(A) PLANNING DECISIONS.--Planning decisions that may be adopted pursuant to this section include, but are not limited to--

"(i) a purpose and need or goals and objectives statement for the proposed action, including without limitation whether tolling, private financial assistance, or other special financial measures are necessary to implement the proposed action and will be included in the statement;

"(ii) travel corridor location;

"(iii) modal choice, including without limitation, a decision to implement corridor or subarea study recommendations to advance different modal solutions as separate projects with independent utility;

"(iv) elimination of unreasonable alternatives and selection of the range of reasonable alternatives for detailed study during the NEPA process;

"(v) basic description of the environmental setting;

"(vi) methodologies for analysis;

"(vii) identification of programmatic level mitigation for potential impacts that the lead Federal agency, in consultation with local, tribal, State and Federal resource agencies, determines are most effectively addressed at a regional or national program level, including without limitation--

"(I) system-level measures to avoid, minimize, or mitigate impacts of proposed transportation investments on environmental resources;

"(II) regional ecosystem needs and opportunities;

and

"(III) potential mitigation activities, locations, and investments.

"(B) PLANNING ANALYSES.--Planning analyses that may be adopted under this section include studies of past, current, or predicted future--

"(i) travel demands;

"(ii) regional development and growth;

"(iii) local land use, growth management, and development;

"(iv) population and employment;

"(v) natural and human environmental conditions;

"(vi) environmental resources and environmentally-sensitive areas;

"(vii) potential environmental effects, including the identification of resources of concern and potential cumulative effects on those resources, as a result of a statewide or regional cumulative effects assessment;

"(viii) greenhouse gas emissions from transportation and climate change impacts on infrastructure;

"(ix) mitigation needs for a proposed action or for programmatic level mitigation for potential effects that the lead Federal agency determines are most effectively addressed at a regional or national program level; and

"(x) safety performance.

"(4) CONDITIONS FOR ADOPTION AND USE OF PLANNING

PRODUCTS.--Adoption and use of a planning product under this section shall be subject to a determination by the lead Federal agency, in consultation with lead agencies and project sponsors as appropriate, that the conditions in this subsection have been met. Such adoption determination should be made at the time the lead agencies decide the appropriate scope of environmental review for the project or program, but may occur later. Conditions for adoption and use of planning products include the following:

"(A) The planning product was developed through a planning process conducted pursuant to applicable Federal law.

"(B) The planning process included broad multidisciplinary consideration of systems-level or corridor-wide transportation needs and potential effects.

"(C) During the planning process, notice was provided through publication or other means to Federal, State, and local government agencies and tribal governments that may have an interest in the proposed project or program, and to members of the general public, of the planning products that the planning process may produce and that may be relied on during the NEPA process and other environmental reviews, and those parties have been provided an appropriate opportunity to participate in the planning process leading to such planning product.

"(D) Prior to determining the scope of environmental review, the lead agencies have made documentation relating to the planning product available to Federal, State, and local governmental agencies and tribal governments that may have an interest in the proposed action, and to members of the general public.

"(E) No significant new information or new circumstance exists that has a reasonable likelihood of affecting the continued validity of the planning product.

"(F) The planning product has a rational basis and is based on reliable and reasonably current data and, in the case of an analysis, is based on reasonable and scientifically acceptable methodologies.

"(G) The planning product is documented in sufficient detail to support the decision or the results of the analysis and to meet requirements for use of the information in the environmental review process.

"(H) The planning product is appropriate for adoption and use in the environmental review process for the project or program.

"(5) EFFECT OF ADOPTION.--Notwithstanding any other law, any planning product adopted by the lead Federal agency under this section shall not be reconsidered or made the subject of additional interagency consultation during environmental review of the project or program unless the lead Federal agency, in consultation with lead agencies and project sponsors as appropriate, determines that there is significant new information or new circumstances that affect the continued validity or appropriateness of the adopted planning product. Any planning product adopted by the lead Federal agency in accordance with this section may be relied upon and used by other Federal agencies in carrying out their reviews of the project or program."

(b) CONFORMING AMENDMENT.--The analysis for Chapter 1 of title 23, United States Code, is amended by adding at the end the following:

"167. Integration of planning and environmental review."

## **SEC. 2005. NATIONAL ENVIRONMENTAL POLICY ACT PROCESS REFORMS.**

Section 139 of title 23, United States Code, is amended--

(1) in subsection (a)--

(A) in paragraph (5), by striking "or chapter 53 of title 49";

(B) in paragraph (6), by striking ", public transportation capital project,";

(2) in subsection (c)(3), by striking "or chapter 53 of title 49";

(3) by inserting at the end of subsection (e) the following:

"As a condition precedent to the Secretary's initiation of the environmental review process for any project that requires preparation of an environmental assessment or environmental impact statement, the project sponsor shall be required to provide the Secretary with documentation leading to reasonable assurance of its ability to fund the entire project. As part of providing such documentation leading to reasonable assurance, the project sponsor must demonstrate to the Secretary that the project sponsor's project selection procedures include consideration of a full range of revenue generating options, including taxes, road pricing, beneficiary fees, land value capture, and project-specific revenue generation opportunities.";

(4) by redesignating subsections (f) through (h) as (g) through (i), and subsections (i) through (l) as (k) through (n), respectively;

(5) by inserting after subsection (e) the following:

"(f) SCOPING.--

"(1) IN GENERAL.--The lead agency shall limit the scope of documents prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to the relevant and important environmental issues directly related to



decisions with respect to the proposed action.

"(2) DECISION.--The Secretary shall decide the relevant and important issues to be analyzed after considering information in the scoping process.

"(3) RECONSIDERATION.--The Secretary's decision regarding the relevant and important issues to be analyzed is subject to reconsideration only if significant new circumstances or information arise that bear on the proposal or its impacts."

(6) in subsection (g), as redesignated, by--

(A) inserting at the end of paragraph (4)(B) the following:

"The selection of reasonable alternatives shall be based upon--

"(i) the likely ability of the alternatives to satisfy the transportation elements of the purpose and need for the project;

"(ii) the likely requirements of other Federal environmental statutes;

"(iii) costs;

"(iv) the needs of affected local governments;

"(v) whether the alternative is substantially similar to other alternatives selected for detailed study; and

"(vi) other circumstances, discussed in the scoping process, that the lead agency determines are relevant to the particular project provided that, after the Secretary's scoping decision under subsection (f), additional reasonable alternatives may be selected for analysis only if the lead agency determines that significant new information justifies expansion of the range of reasonable alternatives selected for analysis.";

(B) striking from paragraph (4)(C) "at appropriate times during the study process" and inserting "during scoping or at such other time during project development as the lead agency deems appropriate,"; and

(C) inserting at the end of paragraph (4)(C) "These decisions may be reconsidered whenever the lead agency deems such reconsideration appropriate.";

(D) inserting before the first sentence of paragraph (4)(D) the following:

"A preferred alternative may be identified at any time after initiation of the scoping process. The draft environmental impact statement shall identify the preferred alternative, if any, for a project.";

(7) in subsection (h), as redesignated, by striking paragraph (3) and redesignating paragraph (4) as paragraph (3);

(8) in subsection (i), as redesignated, by striking paragraph (4) and inserting the following:

"(4) ISSUE RESOLUTION.--

"(A) MEETING OF PARTICIPATING AGENCIES.--At any time upon request of a Federal agency of jurisdiction, project sponsor, or the Governor of a State in which the project is located, the lead agency shall promptly convene a meeting with the relevant participating agencies, the project sponsor, and the Governor (if the meeting was requested by the

Governor) to resolve issues that could delay completion of the environmental review process or could result in denial of any approvals required for the project under applicable laws, including issue resolution relating to application for project permits, licenses or other approvals as referred to in subsection (i)(5). The lead agency may convene an issue resolution meeting under this subsection with the participating agencies and project sponsor whenever the lead agency deems appropriate. A meeting convened under this subsection at the request of a Federal agency of jurisdiction, the project sponsor, or the Governor shall be held within 14 days after receipt of the request unless the lead agency determines there is just cause to extend the time for a meeting.

"(B) ELEVATION IF RESOLUTION IS NOT ACHIEVED.--If a resolution is not achieved by 30 days following the later of the date of the subsection (i)(4)(A) meeting or the date of a determination by the lead agency that all information necessary to resolve the issue has been obtained, the Secretary may convene an issue resolution meeting of the lead agency, the heads of the relevant participating agencies, the project sponsor, and the Governor (if the initial issue resolution meeting was requested by the Governor) to resolve the issues; provided that, in the case of a Federal agency of jurisdiction that has not made its decision within the time period established in subsection (h)(3)(A), the Secretary shall convene an issue resolution meeting. The meeting convened by the Secretary shall be held no later than 30 days after the end of the 30-day period established in this paragraph for resolution of issues following the subsection (i)(4)(A) meeting. The Secretary shall notify the Committee on Environment and Public Works of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Council on Environmental Quality that a meeting is being convened under this paragraph.

"(5) DEADLINES FOR DECISIONS UNDER OTHER LAWS.--

Notwithstanding any other provision of law or regulation, the following applies:

"(A) A decision relating to a transportation project under any Federal law or regulation (including the issuance or denial of a permit, license, or other approval) shall be made by the Federal agency of jurisdiction by the later of the date that is 180 days after the date on which the Federal lead agency issues its decision on the project under the National Environmental Policy Act and (if applicable) 23 U.S.C. 138, or 180 days after the date on which an application was submitted for the permit, license, or approval. The Secretary may extend the time for a decision for just cause.

"(B) The application for a project permit, license, or other approval shall be approved by operation of law without further action by the Federal agency of jurisdiction if--

"(i) within the time for a decision under paragraph (A), the Federal agency of jurisdiction has not issued its final decision or requested a meeting under subsection (i)(4)(A); or

"(ii) the Federal agency has not issued its final decision within 30 days, or such longer time as the Secretary may establish for just cause, after the conclusion of a meeting convened by the Secretary pursuant to subsection (i)(4)(B).

"(C) A permit, license, or other approval approved pursuant to this subsection shall not be subject to judicial review. The Secretary may issue a written finding verifying the application approval, as submitted to the Federal agency of jurisdiction, in accordance with this subsection.";

(9) by inserting after subsection (i), as redesignated, the following:

"(j) CONSOLIDATED STATEMENTS AND DECISIONS.--

"(1) IN GENERAL.--In the event that a preferred alternative is identified in the draft environmental impact statement, and notwithstanding any other provision of law or regulation, the Secretary may combine a final environmental impact statement and a record of decision into a single document following any public hearings required by section 128 of this title as long as, at least 30 days prior to the issuance of the combined final environmental impact statement and record of decision, the lead agency gives notice to the agencies participating in the environmental review process and the public of its proposed decision.

"(2) NOTICE CONTENT.--The notice must include a brief summary description of the proposed decision, including the anticipated selected alternative and any mitigation commitments that will be required under the decision. The notice to Federal agencies must include a deadline at least 30 days after the delivery of the notice for any predecisional referral under 40 CFR Part 1504.

"(3) MANNER OF NOTICE.--The lead agency may give the required notice to agencies by mail, e-mail, fax, or other commercially acceptable means that permits confirmation of delivery. The lead agency may give the required public notice by means of publication of the notice in a newspaper of statewide circulation, in the Federal Register, or by posting the notice on the project's web site.";

(10) in subsection (l)(1), as redesignated, by striking "or chapter 53 of title 49" and "or such Chapter 53";

(11) in subsection (m,) as redesignated, by striking paragraph (2) and inserting the following:

"(2) RELATIONSHIP TO OTHER STATUTES.--If any provision of the National Environmental Policy Act of 1969 or its implementing regulations, or any other Federal environmental statute, conflicts with this section, the procedures in this section shall take precedence."; and

(12) in subsection (n)(1), as redesignated, by striking "or public transportation capital".

## **SEC. 2006. CLARIFIED ELIGIBILITY FOR EARLY ACQUISITION ACTIVITIES PRIOR TO COMPLETION OF NEPA REVIEW.**

(a) IN GENERAL.--Notwithstanding any other law, acquisition of real property in anticipation of a federally assisted or approved surface transportation project that may use the property is not prohibited prior to the completion of reviews of the surface

transportation project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) so long as the acquisition does not have an adverse environmental effect and does not limit the choice of reasonable alternatives for the proposed project.

(b) EARLY ACQUISITION OF REAL PROPERTY INTERESTS FOR HIGHWAYS.--Section 108 of title 23, United States Code, is amended--

(1) by inserting "interests" after "real property" each place it appears;  
 (2) by striking "right-of-way" and "rights-of-way" each place it appears and inserting "real property interests";

(3) by inserting "at any time" after "may be used" in the first sentence of subsection (c)(1);

(4) in subsection (c)(1)(A), by striking ", if the rights-of-way are subsequently incorporated into a project eligible for surface transportation program funds"; and

(5) by striking subsection (c)(2) and inserting in its place the following:

"(2) TERMS AND CONDITIONS.--

"(A) IN GENERAL.--Subject to the other provisions in this section, a public authority may carry out acquisition of real property that may be used for a project prior to completion of the review process for the project required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Such acquisition may be authorized by project agreement and is eligible for federal-aid reimbursement as a project expense if the Secretary finds that the acquisition--

"(i) will not cause any significant adverse environmental impact;

"(ii) will not limit the choice of reasonable alternatives for the project or otherwise influence the Secretary's decision on any approval required for the project;

"(iii) is consistent with the State transportation planning process under section 135 of this title;

"(iv) complies with other applicable Federal laws and regulations;

"(v) will acquire the real property through negotiation, without the threat of condemnation; and

"(vi) together with any relocation assistance provided, will comply with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and the requirements of title VI of the Civil Rights Act of 1964.

"(B) DEVELOPMENT.--Real property acquired under this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

"(C) REIMBURSEMENT.--If federal-aid reimbursement is made for property acquired early under this section and the property is not subsequently incorporated into a project eligible for surface transportation funds within the time allowed by subsection (a)(2), the Secretary shall offset the amount so reimbursed against funds apportioned to the State.

"(D) OTHER CONDITIONS.--The Secretary may establish other conditions or restrictions on such acquisitions as the Secretary determines to be necessary and appropriate."

## **SEC. 2007. ALTERNATIVE RELOCATION PAYMENT DEMONSTRATION PROGRAM.**

(a) PAYMENT DEMONSTRATION PROGRAM.--Notwithstanding any other provision of law and subject to the provisions of this section, for the purpose of identifying improvements in the timeliness of providing relocation assistance to persons displaced by Federal or federally-assisted programs and projects, the Secretary may permit not more than five States to participate in an alternative relocation payment demonstration program under which payments to displaced persons eligible for relocation assistance pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) and implementing regulations, are calculated based on reasonable estimates and paid in advance of the physical displacement of the displaced person. Relocation assistance payments for projects carried out under an approved State demonstration program may be provided to the displaced person at the same time as payments of just compensation for real property acquired for the State's program or project, and payments for relocation and just compensation may be combined into a single unallocated amount.

(b) CRITERIA.--After public notice and an opportunity to comment, the Secretary shall adopt criteria for carrying out the alternative relocation payment demonstration program. Conditions for State participation in the demonstration program shall include the following:

(1) A State wishing to participate in the demonstration program must enter into a memorandum of agreement with the Secretary that includes provisions addressing the selection of projects or programs within the State to which the alternative relocation payment process will be applied, program and project-level monitoring, performance measurement, reporting provisions, and the circumstances under which the Secretary would terminate the State's demonstration program before the end of its term.

(2) A State's demonstration program may continue for up to 3 years after the date the Secretary executes the memorandum of agreement.

(3) Displaced persons affected by a project included in a State's demonstration program must be informed in writing that the relocation payments they receive under the demonstration program may be higher or lower than the amount they would receive under the standard relocation assistance process. Displaced persons must be informed of their right not to participate in the demonstration program and the alternative relocation payment process can be used only if the displaced person agrees in writing. The displacing agency shall provide any displaced person who elects not to participate in the demonstration program with relocation assistance in accordance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulations.

(4) If other Federal agencies plan displacements in or adjacent to a demonstration program project area within the same time period as the demonstration program's project acquisition and relocation actions, the Secretary will adopt measures to protect against inconsistent treatment of displaced persons. Such measures may include a determination that the demonstration program authority will not be used on a particular project.

(c) REPORT.--The Secretary shall report to Congress on the progress and results of the demonstration program at least every 18 months after the date of enactment of this section and will submit a final report within 1 year after all the State demonstration programs have ended. The report shall include the Secretary's evaluation of the merits of the alternative relocation payment demonstration program, including its effects on--

- (1) displaced persons and the protections afforded them by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (2) efficiency of the delivery of Federal-aid Highway projects and overall effects on the Federal-aid Highway Program; and
- (3) achievement of the purposes of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(d) LIMITATION.--This authority may be used only on projects funded under title 23 where the funds are administered by the Federal Highway Administration.

(e) AUTHORITY.--The Secretary's authority to approve an alternate relocation payment demonstration program for a State terminates on a date that is 3 years after the date of the enactment of this section.

(f) NEPA APPLICABILITY.--Notwithstanding any other provision of law, the use of the alternative relocation payment authority created by this section on a project funded under title 23 and administered by the Federal Highway Administration is not a major Federal action requiring analysis or approval under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

## **SEC. 2008. SURFACE TRANSPORTATION PROJECT DELIVERY PROGRAM.**

(a) IN GENERAL.--Section 327 of title 23, United States Code, is amended by striking "pilot" in each place it appears.

(b) ESTABLISHMENT.--Section 327(a) is amended--

- (1) by striking paragraph (2)(B)(ii) and inserting the following:  
    "(ii) the Secretary may not assign any responsibility imposed on the Secretary by section 134 or 135.";
- (2) in paragraph (2)(C), by inserting ", including any legal remedies, both at law and in equity, and an award of attorneys fees as would be required under the Equal Access to Justice Act (28 U.S.C. 2412), had a legal challenge been brought against the Secretary" after "carried out by the Secretary"; and
- (3) in paragraph (2), by adding at the end the following:

"(F) SOVEREIGN IMMUNITY.--By executing an agreement with the Secretary and assuming the responsibilities of the Secretary under this section, the State waives its sovereign immunity under the Eleventh Amendment of the Constitution of the United States from suit in Federal court and expressly consents to accept the jurisdiction of the Federal courts with respect to any action relating to the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes."

(c) STATE PARTICIPATION.--Section 327(b) of such title is amended--  
(1) by striking paragraph (1);  
(2) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively; and  
(3) in paragraph (3)(A), as redesignated, by striking "(2)" and inserting "(1)".

(d) WRITTEN AGREEMENT.--Section 327(c) of such title is amended--  
(1) by striking "." at the end of paragraph (3) and inserting "; and"; and  
(2) by inserting at the end the following:  
"(4) require the State to provide to the Secretary any information the Secretary deems necessary to ensure that the State is adequately carrying out the responsibilities assigned to the State; and  
"(5) require the Secretary, after a period of 5 years, to evaluate the State's ability to carry out the responsibility assumed under this section. If the Secretary determines that the State is not ready to effectively carry out the responsibilities the State has assumed, then the Secretary shall reevaluate the State's readiness 3 years after the initial 5 year evaluation, and every 3 years thereafter, until the State is ready to assume such responsibilities on a permanent basis. Once the Secretary determines that the State is ready to permanently assume the Secretary's responsibilities, no further evaluations shall be required. The written agreement shall require the State to provide the Secretary with any information, including regular written reports, as the Secretary may require in conducting such evaluations."

(e) AUDITS.--Section 327 of such title is amended by striking subsection (g) and redesignating subsections (h) and (i) as (g) and (h) respectively.

(f) TERMINATION.--Section 327(h) of such title, as redesignated, is amended--  
(1) by striking paragraph (1);  
(2) by redesignating paragraph (2) as paragraph (1); and  
(3) by inserting after paragraph (1), as redesignated, the following new paragraph:

"(2) TERMINATION BY THE STATE.--The State may terminate its participation in the program at any time by providing at least 90 days notice to the Secretary, and subject to such terms and conditions as the Secretary may provide."

(g) CONFORMING AMENDMENT.--The item relating to section 327 in the analysis of Chapter 3 of title 23, United States Code, is amended to read as follows: "327. Surface transportation project delivery program."

**SEC. 2009. STATE ASSUMPTION OF RESPONSIBILITIES FOR CATEGORICAL EXCLUSIONS.**

Section 326 of title 23, United States Code, is amended--

(1) in subsection (b)(1), by inserting ", including any legal remedies, both at law and in equity, and an award of attorneys fees as would be required under the Equal Access to Justice Act (28 U.S.C. 2412), had a legal challenge been brought against the Secretary" after "carried out by the Secretary"; and

(2) by striking subsection (c)(3) and inserting the following:

"(3) SOVEREIGN IMMUNITY.--By executing an agreement with the Secretary and assuming the responsibilities of the Secretary under this section, the State waives its sovereign immunity under the Eleventh Amendment of the Constitution of the United States from suit in Federal court and expressly consents to accept the jurisdiction of the Federal courts with respect to any action relating to the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes."

**SEC. 2010. LOCAL TRANSPORTATION PROJECT DELIVERY ACCELERATION PILOT PROGRAM.**

(a) ESTABLISHMENT.--

(1) IN GENERAL.--The Secretary shall carry out a project acceleration pilot program under this section for local governments to become direct recipients of Federal-aid highway funding.

(2) ASSUMPTION OF RESPONSIBILITY.--

(A) IN GENERAL.--With the written agreement of the Secretary, a local government, and the respective State in which the local government is located, in such form and including such information as the Secretary may prescribe, a State may assign, and a local government may assume, the responsibilities of the State with respect to highway projects within the jurisdiction of the local government that are selected for Federal-aid funding consistent with the requirements of sections 134 and 135 of title 23, United States Code.

(B) PROCEDURAL, LEGAL, AND SUBSTANTIVE REQUIREMENTS.--A local government selected for participation under this program shall assume responsibility under this section for the same procedural and substantive requirements as would apply if that responsibility were carried out by the State, including requirements related to reporting, right-of-way acquisition, environment, engineering, civil rights, design and inspection, procurement, construction administration,



financial administration, performance management, and all other applicable requirements.

(b) LOCAL GOVERNMENT PARTICIPATION.--

(1) NUMBER OF PARTICIPATING LOCAL GOVERNMENTS.--The Secretary may permit up to three local governments to participate in the pilot program.

(2) ELIGIBILITY.--To be eligible for participation in this program, a local government must--

(A) have a population of 2,500,000 or more, according to the most recent available United States Census data;

(B) demonstrate to the satisfaction of the Secretary that it has the necessary organizational structure, agreements, processes, controls, and staff to ensure that project development and delivery meets all applicable Federal requirements; and

(C) have in place the necessary financial management systems and processes to carry out cost accounting, billing, certifications, improper payments review, recordkeeping, audits, and related requirements.

(3) APPLICATION PROCESS.--The Secretary shall establish requirements related to information required to be contained in an application of an eligible local government for participation in the program.

(4) SELECTION CRITERIA.--The Secretary may approve an application of a local government under this section if the Secretary determines the local government meets the requirements of this section and any other requirements as the Secretary may prescribe.

(c) FUNDING.--Funds for the projects for which local oversight has been approved shall be deducted from the amounts apportioned for appropriate programs to the State in which the local government lies and transferred to the local government.

(d) ADMINISTRATIVE EXPENSES.--On October 1 in each fiscal year for the duration of the pilot program, the Secretary may set aside up to \$5,000,000 of the funds authorized to be appropriated under section 104(b) of title 23, United States Code, to carry out the requirements of this section. Funds set aside shall be for the use of the Federal Highway Administration in providing oversight of the additional entities.

(e) TERMINATION BY SECRETARY.--The Secretary may terminate the participation of a local government in the program if--

(1) the Secretary determines that the local government is not adequately carrying out the responsibilities it assumed under this section;

(2) the Secretary provides to the local government--

(A) notification of the determination of noncompliance; and

(B) a period of at least 30 days during which to take such corrective action as the Secretary determines is necessary to comply with the applicable agreement; and

(3) the local government, after the notification provided under paragraph (2), fails to take satisfactory corrective action, as determined by the Secretary.

**Subtitle B--Infrastructure Financing; Freight Policy**

**Part 1--National Infrastructure Innovation And Finance Fund**

**SEC. 2101. ESTABLISHMENT OF NATIONAL INFRASTRUCTURE INNOVATION AND FINANCE FUND.**

(a) IN GENERAL.--Chapter 6 of title 23, United States Code, is amended--

(1) by inserting the following before section 601:

"SUBCHAPTER 1--GENERAL";

(2) by inserting the following after section 610:

**"Sec. 611. Continuation of TIFIA credit assistance**

"(a) TIFIA CESSATION.--Within one year after the enactment of this section, the Secretary of Transportation shall cease providing credit assistance under Subchapter I of this chapter.

"(b) TRANSFER OF CREDIT INSTRUMENTS.--Within two years after the enactment of this section, the Secretary shall transfer all Federal credit instruments made under Subchapter I of this chapter to the National Infrastructure Innovation and Finance Fund established under Subchapter II of this chapter, and the Fund shall assume responsibility for servicing the credit instruments, consistent with the Fund's authorities to provide Federal credit assistance.

"(c) EXCEPTION.--Subsections (a) and (b) above do not apply to assistance made available to state infrastructure banks under section 610 of this chapter."; and

(2) by inserting the following at the end:

"SUBCHAPTER II--NATIONAL INFRASTRUCTURE INNOVATION AND FINANCE FUND

**"Sec. 621. National Infrastructure Innovation and Finance Fund; definitions**

"(a) DEFINITIONS.--In this chapter:

"(1) DIRECT LOAN.--The term 'direct loan' has the same meaning as under section 502 of the Congressional Budget Act of 1974, as amended.

"(2) ELIGIBLE FUNDING RECIPIENT.--The term 'eligible funding recipient' means an entity that has received a grant, direct loan, loan guarantee, line of credit, or a combination of such awards from the Fund. An eligible funding recipient shall be either a non-Federal governmental entity, agency, or instrumentality, or a non-governmental entity such as a corporation, partnership,

joint venture, or other instrumentality that seeks funding for an eligible project. An eligible funding recipient that is a non-governmental entity must have a non-Federal governmental co-sponsor of the project.

"(3) ECONOMIC COMPETITIVENESS.--The term 'economic competitiveness' means the ability of the economy to more efficiently produce goods and deliver services. Examples of the impact of transportation infrastructure on economic competitiveness include--

"(A) Reductions in travel time of goods and people, including reductions in average delay or the uncertainty of travel time, relative to distance;

"(B) Reductions in injuries, deaths, and property destruction;

"(C) Reductions in pollutants regulated by the Environmental Protection Agency; and

"(D) Net benefits to society through marginal economic benefit attributable to the spatial clustering of economic activity.

"(4) ELIGIBLE PROJECT.--The term 'eligible project' means a capital project that advances the objectives of this chapter and that--

"(A) is comprised of activities included in a regional plan, either at the time of submission of the application or prior to the obligation of funding;

"(B) has eligible project costs related to a single project, or has aggregate eligible project costs related to a program of projects that are coordinated to achieve a unified improvement; and

"(C) is one of the following:

"(i) A transportation-related project.

"(ii) A project that is a component of a non-transportation project and that is by itself a transportation-related project.

"(iii) An additional non-transportation component to a transportation project that satisfies the criteria laid out in sections 621(c) and 621(d) and is consistent with the strategy undertaken in 621(e).

"(5) ELIGIBLE PROJECT COST.--The term 'eligible project cost' includes a cost associated with development phase planning and design activities, construction, acquisition, rehabilitation, environmental remediation, interest expense during construction, and reasonably required reserves, and excludes operating costs, research and development costs, and any other costs not otherwise specifically provided for herein.

"(6) FUND.--The term 'Fund' means the National Infrastructure Innovation and Finance Fund established under this chapter as an operating unit of the Department of Transportation.

"(7) INVESTMENT PLAN.--The term 'Investment Plan' means a written mutual agreement between the Fund and an applicant that outlines prospective terms of financial assistance to be invested by the Fund.

"(8) LINE OF CREDIT.--The term "line of credit" means an agreement entered into by the Fund with an eligible funding recipient to provide a direct loan at a future date upon the occurrence of certain events.

"(9) LOAN GUARANTEE.--The term "loan guarantee" has the same meaning as under section 502 of the Congressional Budget Act of 1974, as amended.

"(10) OPERATING GUIDANCE.--The term 'Operating Guidance' means a detailed description of the Fund's operating policies and procedures published in accordance with section 621(e)(3)(B).

"(11) QUALIFIED APPLICATION.--The term 'Qualified Application' means an application that the Executive Director has certified to have met eligibility and qualification standards prescribed under this chapter.

"(12) RURAL.--The term 'rural' means all population and territory that are not within an Urbanized Area, as such term is defined in the most recent United States census.

"(13) SECRETARY.--The term 'Secretary' means the Secretary of Transportation, except as otherwise specified.

"(14) TRANSPORTATION RELATED PROJECT.-- The term "transportation related project" means a project that is part of or related to a transportation improvement. Transportation improvements involve highway, bridge, aviation, port and marine, or public transportation facilities and systems; intercity passenger bus or passenger or freight rail facilities and vehicles.

(b) ESTABLISHMENT OF FUND.--There is established the 'National Infrastructure Innovation and Finance Fund', which shall be an operating unit of the Department of Transportation.

"(c) PRIMARY OBJECTIVE.--The Fund's primary objective shall be to exercise the authority of this chapter to invest in infrastructure projects that significantly enhance the economic competitiveness of the United States or a region thereof by increasing or otherwise improving economic output, productivity, or competitive commercial advantage.

"(d) SECONDARY OBJECTIVES.--The Fund shall, in the course of fulfilling the primary objective, seek to advance the following secondary objectives:

"(1) Provision of funding for projects that otherwise face significant barriers to funding due to problems associated with the need to combine resources across multiple jurisdictions or modes of transportation.

"(2) Improvement to the environmental sustainability of a national or regional transportation network, as measured by improvement in energy efficiency, reduction in greenhouse gas emissions, conservation of natural resources, or other beneficial environmental impacts.

"(3) Improvement to the safety of transportation facilities and systems, as measured by reduction in risk of transportation-related incidents, injuries, or deaths.

"(4) Improvement to the livability and affordability of a community, as measured by the integration of transportation infrastructure with housing, commerce, and other community aspects that affect quality of life, and the

availability to community residents of transportation choices that provide opportunities to lower household transportation costs.

"(5) Improvement to the efficiency or throughput of a national or regional transportation network through enhancements to existing infrastructure and new investment designed to improve the condition, performance or long-term cost structure of existing infrastructure.

"(e) FUND STRATEGY.--

"(1) IN GENERAL.--The Fund shall advance the primary objective and secondary objectives by providing financial assistance for individual projects or programs of related projects identified in regional plans (either at the time of submission or prior to the obligation of funding) and designed to significantly improve national or regional economic competitiveness. The Fund shall especially target projects or programs of related projects with a demonstrated difficulty in obtaining complete financing through other available public or private sources of funds for reasons including project complexity, incorporation of multiple jurisdictions, incorporation of multiple transportation modes, or other comparable transactional barriers. The Fund will seek to identify appropriate investment plans for selected projects and programs of projects. To the extent practical, the Fund will use its resources to build a portfolio of transformational investments that--

"(A) promotes the distribution of benefits to economically distressed areas;

"(B) promotes geographic diversity in the distribution of benefits;

"(C) promotes cross-jurisdictional infrastructure planning and co-investment among a broad range of participants, including States, tribal governments, municipalities, and private investors;

"(D) promotes greater efficiency in the movement of freight;

"(E) promotes the use of innovation and best practices in the planning, design, development and delivery of projects, including practices that promote performance-based decision-making to achieve national, state or local objectives;

"(F) integrates multiple transportation modes in the movement of passengers or freight; and

"(G) integrates transportation infrastructure investment planning, such as regional transportation plans, with land-use, economic development, and other infrastructure investment plans.

"(2) INVESTMENT PROSPECTUS.--

"(A) The processes and publications described below shall follow rulemaking procedures under section 553 of title 5, United States Code.

"(B) The Fund shall publish a detailed description of its strategy in an Investment Prospectus within 180 days of enactment of this chapter.

The Investment Prospectus shall--

"(i) specify what the Fund shall consider significant to the economic competitiveness of the United States or a region thereof in a manner consistent with the primary objective;

"(ii) specify the priorities and strategic focus of the Fund in forwarding the primary objective and secondary strategic objectives and carrying out the Fund strategy as described in this chapter;

"(iii) specify the priorities and strategic focus of the Fund in promoting greater efficiency in the movement of freight, including the framework and methodology that the Fund will use to align its investments with the national freight transportation strategic plan developed pursuant to Section 310 of Title 49;

"(iv) specify the priorities and strategic focus of the Fund in promoting the use of innovation and best practices in the planning, design, development and delivery of projects, including the framework and methodology that the Fund will use to align its investments with the Secretary's designations of states or metropolitan areas that have highly-effective or highly-improved performance-based planning processes pursuant to sections 134(n) and 135(m) of this title, and sections 5303(n) and 5304(m) of title 49;

"(v) describe in detail the framework and methodology for calculating the qualification score as specified in this chapter, along with the data to be requested from applicants and the mechanics of calculations to be applied to that data to determine the qualification score;

"(vi) describe how selection criteria will be applied by the Executive Director in determining the competitiveness of an application and its qualification score relative to other current applications and previously funded applications; and

"(vii) Describe how the qualification score methodology and project selection framework are consistent with maximizing the fund goals in both urban and rural areas.

"(C) The Investment Prospectus and any subsequent updates thereto shall be approved by a majority vote of the Investment Council prior to publication.

"(D) The Fund shall update the Investment Prospectus on every biennial anniversary of its original publication.

"(3) OPERATING GUIDANCE.--

"(A) The processes and publications described below shall follow rulemaking procedures under section 553 of title 5, United States Code.

"(B) The Fund shall publish its Operating Guidance within 180 days of enactment of this chapter. The Operating Guidance shall--

"(i) establish general operating procedures to be followed by the fund in carrying out its authorities under this chapter;

"(ii) establish criteria, requirements, and standards regarding provision of various forms of assistance authorized under this chapter, including the various forms and terms of credit assistance, that are consistent with the requirements of this chapter;

"(iii) establish an application and award process for Planning and Feasibility Grants in accordance with the authorities and requirements provided for under this chapter;

"(iv) establish disclosure and application procedures for nominating or otherwise proposing applications for project assistance, either solicited or unsolicited, that are consistent with the requirements of this chapter;

"(v) describe in detail the form and timing of data and other information required of applicants in conjunction with consideration of an application for financial assistance under this chapter; and

"(vi) establish a schedule of regular time intervals for the presentation of sets of one or more Investment Plans before the Investment Council.

"(C) The Fund shall periodically review, and may update the Operating Guidance.

"(f) GOVERNANCE.--

"(1) EXECUTIVE DIRECTOR.--

"(A) The Fund shall be administered by an Executive Director who is appointed by the President and confirmed by the Senate.

"(B) The Executive Director shall be subject to the supervision and direction of the Secretary of Transportation consistent with the Executive Director's responsibilities and other requirements established in the Operating Guidance and this chapter.

"(C) The Executive Director shall have demonstrated expertise in at least two of the following three areas:

"(i) Two or more distinct transportation modes.

"(ii) Economic analysis.

"(iii) Project, public, or corporate finance.

"(D) The Executive Director shall be the chief executive officer of the Fund, with such executive functions, powers, and duties as may be prescribed by this chapter or otherwise by the Fund.

"(E) The Executive Director shall have responsibility for the day-to-day operations of the Fund. In addition to the other activities required to carry out the authorities and purposes of the Fund as set forth in this chapter, the Executive Director shall--

"(i) establish and approve the Operating Guidance;

"(ii) establish and maintain a project application origination capability at the Fund that consists of a staff of qualified transportation infrastructure planning professionals directed to search nationwide for projects that promote the strategy set forth in the most recently published Investment Prospectus, and to solicit applications to finance those projects from eligible funding recipients;

"(iii) establish and maintain an analysis capability at the Fund that consists of a staff of qualified economics professionals directed to collect application data, analyze that data, and report to the Executive Director on qualification scores, measures of uncertainty, and other analyses of applications;

"(iv) establish and maintain an investment planning process capability at the Fund that consists of a staff of qualified project finance professionals directed to review qualified applications and to structure Investment Plans;

"(v) establish and maintain a technical assistance capability at the Fund that consists of a staff of qualified project management professionals directed to assist those entities receiving funding from the Fund in the successful execution of their Investment Plans and to otherwise implement the funding decisions of the Secretary; and

"(vi) post on the Fund's website semi-annual reports on the Fund's activities that include the status of applications received, the outcome of application evaluations, the outcome of investment planning processes, the status of Investment Plans submitted to the Investment Council, and the status of financial assistance awards approved by the Secretary.

"(F) The Executive Director shall serve a five-year term.

"(G) A vacancy in the position of Executive Director shall be filled in the manner in which the original appointment was made and as expeditiously as possible.

"(H) The Executive Director shall be a position compensated on the Federal Executive Schedule.

"(2) FUND INVESTMENT COUNCIL.--

"(A) There is established within the Fund a deliberative body consisting of nine members to be known as the 'Investment Council'.

"(B) The membership of the Investment Council shall be established and maintained as follows:

"(i) The Secretary shall appoint not more than two of the following executives of the Department of Transportation to serve as members of the Investment Council:

"(I) Deputy Secretary.

"(II) Under Secretary of Transportation for Policy.

"(III) General Counsel.

"(IV) Chief Financial Officer.

"(V) Assistant Secretary of Transportation for Policy.

"(VI) Assistant Secretary of Transportation for Aviation and International Affairs.

"(ii) The Secretary shall appoint not more than two of the following executives of the Department of Transportation's modal administrations to serve as concurrent members of the Investment



Council for a term of two years, with none of the executives serving consecutive terms:

"(I) Administrator, Federal Highway Administration.

"(II) Administrator, Federal Transit Administration;

"(III) Administrator, Federal Aviation Administration.

"(IV) Administrator, Federal Railroad Administration.

"(V) Administrator, Maritime Administration.

"(iii) The Secretary of the Treasury shall be a permanent member of the Investment Council.

"(iv) The Secretary of Commerce shall be a permanent member of the Investment Council.

"(v) The Secretary of the Department of Housing and Urban Development shall be a permanent member of the Investment Council.

"(vi) The Administrator of the Environmental Protection Agency shall be a permanent member of the Investment Council.

"(vii) The Secretary of the Department of Energy shall be a permanent member of the Investment Council.

"(C) The Investment Council and its members shall be responsible for carrying out the following duties:

"(i) Establishing and approving the Investment Prospectus, in consultation with the Fund Advisory Committee, within 180 days of enactment of this chapter.

"(ii) Updating the Investment Prospectus, in consultation with the Fund Advisory Committee, on each biennial anniversary of its original publication.

"(iii) Reviewing Investment Plans and related application materials and other analyses provided to the Investment Council by the Executive Director.

"(iv) Determining by majority vote whether or not to recommend Investment Plans submitted by the Executive Director to the Secretary for funding.

"(v) Certifying reports to Congress and other publications of the Fund.

"(D) Action or decision by the Investment Council shall be by majority vote of all members, whether in person or in absentia. Each member shall be provided a reasonable opportunity to vote on all matters before the Investment Council.

"(E) Every two years after the date of enactment of this chapter the Investment Council, in consultation with the Director of the Office of Management and Budget and the Fund Advisory Committee, shall post on the Fund's website a report that evaluates the Fund's performance. The report shall include an assessment of the Fund as a model for

infrastructure investment and may include a recommendation on whether or not to extend the Fund's activities to non-transportation infrastructure sectors likely to benefit the United States, including renewable energy generation, energy transmission and storage, energy efficiency, drinking water and wastewater systems, and telecommunications.

"(3) FUND ADVISORY COMMITTEE.--

"(A) Not later than 180 days from the date of enactment of this chapter, the President shall establish an advisory committee, to be known as the 'Fund Advisory Committee'.

"(B) The Fund Advisory Committee shall advise the Investment Council and the Secretary with respect to the following:

"(i) Alignment of the investment prospectus and its contents with the primary objective, secondary objectives and other elements of the fund strategy as described in this chapter.

"(ii) Alignment of the framework and methodology used to determine qualification scores and uncertainty estimates with the primary objective, secondary objectives, and the Fund strategy.

"(iii) Consistency of the calculation of qualification scores and uncertainty estimates with academic standards for analytical rigor and data quality typically applied to peer-reviewed social science research.

"(iv) Alignment of investment decision mechanics and outcomes with the Investment Prospectus and the requirements of this chapter.

"(v) Integrity and effectiveness of Fund operations and performance, including application evaluation processes, Investment Plan processes and determinations, and the optimization of the Fund's performance as a portfolio.

"(vi) Fund progress in financing projects with a demonstrated difficulty in obtaining complete financing through other available public or private sources of funds for reasons including project complexity, incorporation of multiple jurisdictions, incorporation of multiple transportation modes, or other comparable transactional barriers.

"(vii) Prospects for the extension of the Fund's activities to non-transportation infrastructure sectors likely to benefit the United States, including renewable energy generation, energy transmission and storage, energy efficiency, drinking water and wastewater systems, and telecommunications.

"(C) The Fund Advisory Committee shall post on the Fund's website a biennial report on the execution of the Fund strategy that includes--

"(i) an independent assessment of the Fund's performance in terms of the elements specified by subsection (f)(3)(B)(i)-(vi) of this section; and

"(ii) an independent analysis in terms of the element specified by subsection (f)(3)(B)(vii) of this section.

"(D) Within 90 days of each Investment Council decision on an Investment Plan, the Fund Advisory Committee shall post on the Fund's website a report that includes an assessment of--

"(i) the adherence of each funding decision, including applications funded and not funded, to the requirements of the Investment Prospectus, Operating Guidance, and this chapter;

"(ii) the consistency of each funding decision for applications funded with the primary objective, the secondary objectives, the Fund strategy and the requirements of this chapter;

"(iii) the validity of the qualification certification of each funded application;

"(iv) the return on Federal investment likely to result from each funded Investment Plan; and

"(v) the return on total investment likely to result from each funded Investment Plan.

"(E) The Committee shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

"(F) The Committee shall consist of five members to be appointed by the President. Each member shall have expertise in one or more of the following areas:

"(i) Economics and economic analysis.

"(ii) Project or public finance.

"(iii) Portfolio or fund management.

"(iv) Organized labor interests.

"(v) Environmental interests.

"(vi) American business and trade interests.

"(vii) Rural community development.

"(viii) Transportation policies and priorities, including policies and priorities related to one or more of the relevant modes of transportation (highways, transit, rail, aviation or maritime).

"(ix) State Department of Transportation and/or Metropolitan Planning Organization policies and priorities.

"(x) Other infrastructure planning, redevelopment, and development-related codes and policies".

"(G) The President shall ensure that the membership of the Fund Advisory Committee is bipartisan and otherwise balanced in terms of the points of view represented and the functions to be performed by the Committee.

"(H) The Fund Advisory Committee shall continue to serve so long as the Fund exists and contemplates new investments. The term of an appointee shall be three years.

"(I) Members of the Fund Advisory Committee may be compensated at a rate equal to the daily equivalent of the annual rate of basic pay for level IV of the Executive Schedule (5 U.S.C. 5315) for each

day (including travel time) during which the member is engaged in performance of duties of the Committee. Members shall not be considered employees of the Federal Government by reason of receiving such pay for their service.

## **"Sec. 622. Fund authorities and assistance**

"(a) AGREEMENTS WITH OTHER ORGANIZATIONS.--The Fund may enter into an agreement with any organization within the Department of Transportation to obtain necessary technical expertise and assistance. The head of any Federal agency may detail employees to the Fund for purposes of carrying out its duties.

"(b) FEES FOR SERVICES.--

"(1) ADMINISTRATIVE FEES.--To the extent and in the amounts provided in appropriation acts, the Fund may establish and collect fees from eligible funding recipients, including application and processing fees and other fees associated with the costs of loan servicing, at a level sufficient to cover all or a portion of the administrative costs to the Federal Government of providing funding assistance and servicing the credit instruments entered into under this chapter.

"(2) OTHER FEES.--To the extent and in the amounts provided in appropriation acts, the Fund may establish and collect fees from eligible funding recipients and expend those fees at a level sufficient to cover all or a portion of the costs of expert firms, including counsel in the field of municipal and project finance, and financial advisors to assist with underwriting, credit analysis, or other independent reviews, as appropriate.

"(3) AVAILABILITY OF AMOUNTS.--Amounts collected under subsections (b)(1) and (b)(2) shall be available to the extent provided in advance in appropriations acts; provided, the source of such fees shall not be a loan or a debt obligation guaranteed by the Federal Government.

"(c) PLANNING AND FEASIBILITY GRANTS.--

"(1) IN GENERAL.--The Fund may make grants to an eligible funding recipient to fund activities related to the planning, preparation or design of a specific eligible project proposal, including costs associated with –

"(A) planning and formulating optimal project design;

"(B) assessing project technical feasibility;

"(C) assessing potential project performance; and

"(D) incorporating the project proposal into a regional plan.

"(2) GRANT PROGRAM CRITERIA.--In administering the grant program under this subsection, the Fund shall give priority to activities that are likely to lead to projects that are well aligned with the criteria laid out in sections 621(c) and 621(d) and are consistent with the strategy undertaken in 621(e)

"(3) FEDERAL SHARE.--The Fund may enter into a grant agreement with an eligible funding recipient to pay up to 100 percent of eligible planning and feasibility costs of an eligible project described under this subsection.

"(4) ELIGIBLE COSTS.--The following project costs are eligible for funding under this subsection:

"(A) An activity reasonably necessary to obtain Federal, State, and local permits, licenses, and approvals for an eligible project, including the costs of concept development and preliminary design, economic and environmental analyses, public involvement, and application, licensing, and permit fees.

"(B) Preparation of financial analyses and other economic analyses reasonably necessary in order to apply for and secure funding to implement an eligible project.

"(5) ALIGNMENT WITH INVESTMENT PROSPECTUS.--The Fund may make a planning or feasibility grant to a project only if the application materials for the planning and feasibility grant demonstrate that the eligible project is aligned with the strategy outlined in the Investment Prospectus.

"(6) DESIGNATION FOR RECEIPT OF CERTAIN FUNDS.--When the State or local governmental entity is carrying out the planning and feasibility activities, the eligible funding recipient may designate the State or local governmental entity to receive grant funds for such activities directly from the Fund.

"(d) NATIONAL INFRASTRUCTURE INNOVATION GRANTS.--

"(1) IN GENERAL.--The Fund may make grants to eligible recipients to fund capital investments in infrastructure.

"(2) ELIGIBLE USES.--Grants may be used to fund eligible project costs of eligible projects as defined in this chapter.

"(3) APPROVED INVESTMENT PLAN.--Grants under this heading can only fund project costs covered under an Investment Plan approved by the Secretary. Grants funded under this heading are subject to the terms and conditions of the approved Investment Plan.

"(4) FUND SHARE.--Grants made by the Fund under this subsection may not exceed 50 percent of the eligible project costs of an eligible project, except as may be necessary to achieve the Fund Strategy specified in Sec. 621(e)(1) of this chapter. The Fund shall take into account the ability of an applicant to finance its share of project costs during the investment planning process.

"(e) DIRECT LOANS AND LOAN GUARANTEES.--

"(1) DIRECT LOANS.--

"(A) AGREEMENTS.--The Fund is authorized to make direct loans to eligible funding recipients for eligible projects on such terms and conditions and containing such covenants, representations, warranties, and requirements (including requirements for audits) as the Fund determines appropriate, consistent with requirements of this chapter, the Operating Guidance, and all other statutory or regulatory requirements.

"(B) APPROVED INVESTMENT PLAN. – Direct Loans under this heading can only fund eligible project costs covered in an investment plan approved by the Secretary. Loans funded under this heading are subject to the terms and conditions of the approved investment plan.

"(C) TERMS, CONDITIONS, AND LIMITATIONS.--Direct loans made under this chapter will be on such terms and conditions as the Executive Director may prescribe, except that:

"(i) The Fund will provide credit assistance to any prospective borrower only when it is necessary to alleviate a credit market imperfection, or when it is necessary to achieve specified Federal objectives by providing credit assistance, and such assistance is the most efficient way to meet those objectives on a borrower-by-borrower basis.

"(ii) No loan made will be subordinated to another debt contracted by the borrower, or to any other claims against the borrowers in the case of default, unless such subordination is necessary to achieve Federal objectives, consistent with criteria and policies set forth in the Operating Guidance.

"(iii) Direct loans or interest supplements on loan guarantees will be at an interest rate that is set by reference to a benchmark interest rate (yield) on marketable Treasury securities with a similar maturity to the direct loans being made or the non-Federal loans being guaranteed, at a level consistent with the interest rate policy set forth in the Operating Guidance.

"(iv) The Executive Director will prescribe explicit standards for use in periodically assessing the credit risk of new and existing direct loans and guaranteed loans. The Executive Director must find that there is a reasonable assurance of repayment before extending credit assistance.

"(v) New direct loans may not be obligated and new loan guarantees may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required in Section 504 of the Federal Credit Reform Act of 1990, as amended.

"(vi) The total principal amount of the direct loan or loan guarantee shall not exceed the lower of 70 percent of total eligible project costs less the percentage of eligible project costs that are otherwise funded by the Fund, or some other level that may be defined in the Operating Guidance.

(v) Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Fund will have the right in its discretion to complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell any property acquired by the Fund pursuant to the provisions of this Act.

"(D) REPAYMENT.--

"(i) The Fund shall adhere to policies set forth in the Operating Guidance concerning repayment terms and shall establish repayment terms for each direct loan based on the

projected cash flow from project revenues or other repayment sources.

"(ii) The final maturity date of a direct loan or loan guarantee shall not exceed 90 percent of the estimated useful economic life of the asset being financed except under conditions set forth in the Operating Guidance. In no case shall the maturity date be later than the estimated useful economic life of the asset being financed.

"(E) RISK ASSESSMENT.--Requirements for risk assessment will be outlined in the Operating Guidance.

"(2) LOAN GUARANTEES.--

"(A) IN GENERAL.--The Fund is authorized to provide loan guarantees to eligible funding recipients on such terms and conditions and containing such covenants, representations, warranties, and requirements (including requirements for audits) as the Fund determines appropriate, consistent with requirements of this chapter, the Operating Guidance, and all other statutory or regulatory requirements.

"(B) APPROVED INVESTMENT PLAN.--Loan guarantees under this heading can only fund eligible project costs that are covered in an investment plan approved by the Secretary. Loan guarantees funded under this heading are subject to the terms and conditions of the approved investment plan.

"(C) TERMS, CONDITIONS AND LIMITATIONS.--

"(i) The terms and limitations of a guaranteed loan shall be consistent with the terms and limitations set forth in this subsection for a direct loan including maximum Fund share requirements, except that the interest rate on the guaranteed loan and any repayment features shall be negotiated between the eligible funding recipient and the lender consistent with the policies set forth in the Operating Guidance, with the consent of the Secretary.

"(ii) No loan will be guaranteed if the income from such loan is excluded from gross income for the purposes of Chapter 1 of the Internal Revenue Code of 1986, as amended, or if the guarantee provides significant collateral or security, as determined by the Administrator, for other obligations the income from which is so excluded.

"(iii) Fees or premiums for loan guarantee or insurance coverage will be set at levels that minimize the cost to the Government, as defined in Section 502 of the Federal Credit Reform Act of 1990, as amended, of such coverage, while supporting achievement of the program's objectives, consistent with policies as set forth in the Operating Guidance

"(iv) No loan guaranteed to any borrower will exceed 80 percent of the loss on the loan. Borrowers who are deemed to pose less of a risk will receive a lower guarantee as a percentage of the loan amount.

"(v) No loan will be guaranteed unless the Executive Director determines that the lender is responsible, and that adequate provision is made for servicing the loan on reasonable terms and protecting the financial interest of the United States.

"(vi) Any guarantee will be conclusive evidence that said guarantee has been properly obtained; that the underlying loan qualified for such guarantee; and that, but for fraud or material misrepresentation by the holder, such guarantee will be presumed to be valid, legal, and enforceable.

"(vii) If, as a result of a default by a borrower under a guaranteed loan, after the holder thereof has made such further collection efforts and instituted such enforcement proceedings as the Executive Director may require, the Executive Director determines that the holder has suffered a loss, the Executive Director will pay to such holder no more than 80 percent of such loss, as specified in the guarantee contract. Upon making any such payment, the Executive Director will be subrogated to all the rights of the recipient of the payment. The Executive Director will be entitled to recover from the borrower the amount of any payments made pursuant to any guarantee entered into under this chapter.

"(vi) The Attorney General will take such action as may be appropriate to enforce any right accruing to the United States as a result of the issuance of any guarantee under this chapter.

"(vii) Nothing in this section will be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the guaranteed loan and approved by the Executive Director, provided that budget authority for any resulting subsidy costs as defined under the Federal Credit Reform Act of 1990, as amended, is available.

"(D) REPAYMENT.--

"(i) The Fund shall adhere to policies set forth in the Operating Guidance concerning repayment terms and shall establish repayment terms for each direct loan based on the projected cash flow from project revenues or other repayment sources.

"(E) RISK ASSESSMENT.--Requirements for risk assessment will be outlined in the Operating Guidance.

"(f) APPLICATION EVALUATION AND QUALIFICATION.--

"(1) APPLICATION ELIGIBILITY STANDARD.--An application shall, at a minimum, meet the following requirements to be eligible for consideration by the Fund:



"(A) Funding recipient or recipients, project or program of related projects, and associated project costs identified in the application must be eligible as specified in this chapter.

"(B) Eligible project costs identified in the application must exceed \$50,000,000, unless the application is for a project or program of related projects located entirely in a rural area and in that case must exceed \$1,000,000.

"(C) Financial assistance from sources outside of the Fund adequate to support at least thirty percent of the total eligible project costs included in the application must be identified.

"(D) Project benefits identified in the application must be distributed broadly either at a national or regional level. The geographic scope of benefits shall not be limited to a focused area, such as a commercial or residential real estate development, a shopping or amusement complex, or a recreational area.

"(E) Applicant must not be delinquent on Federal tax or non-tax debts, including judgment liens against property for a debt to the Federal Government, and therefore not eligible to receive Federal loans, loan guarantees or insurance. Processing will continue only when the debtor satisfactorily resolves the debts in compliance with 31 U.S.C. 3720B and 31 C.F.R. 285.13. The Fund shall use credit bureaus as a screening tool and ask applicants about such delinquencies on the application form.

"(2) QUALIFICATION SCORE.--The Fund shall assign to each eligible application a single numerical factor on the basis of an evaluation of the information and data collected from the applicant. This factor shall be the application's qualification score and shall be determined by the ratio of the present value of benefits to the present value of costs reasonably expected to result from the funding of the project or projects as proposed in the application. The calculation of the qualification score shall be determined through a consistently applied analytic and systematic framework. The score shall also include measures of the uncertainty of benefits and costs which will indicate the potential uncertainty of the qualification score. The methodology of the framework, including the specific mechanics of its calculation, shall be published in the Investment Prospectus. The qualification score and measures of uncertainty shall be shared with the applicant within 15 days of their final determination and published on the Fund's website within 30 days of their final determination. The methodology used to calculate the qualification score and uncertainty measures shall--

"(A) apply equal weighting to all measures of the net present value of benefits and costs; and

"(B) include standardized measures of the expected uncertainty in both total and specific benefits and costs associated with the project.

"(3) APPLICATION QUALIFICATION.--The Executive Director shall determine whether to certify an application as qualified for financial assistance on the basis of an evaluation of the information and data collected from the applicant, including the qualification score. In order to certify an application as qualified, the

Executive Director shall, at a minimum, find that the application's qualification score--

"(A) has been calculated on the basis of data, estimates, and assumptions that are defensible according to accepted standards of economic analysis;

(B) appears valid based on efforts by the Fund to conduct due diligence and verification;

"(C) is greater than the larger of either 1.0 or some other factor published in the Investment Prospectus as a threshold for qualification; and

"(D) is competitive with scores issued to applications currently under consideration and scores issued to applications previously funded under this chapter, taking into account the Executive Director's assessment of the extent to which the application under consideration achieves the following in order of relative priority:

"(i) Advances the primary objective and secondary objectives of the Fund.

"(ii) Addresses a special infrastructure investment challenge due to cost, complexity, cross-jurisdictional scope, multimodal features, or use of innovative technologies.

"(iii) Provides a cost effective approach to achieving the benefits described in the application relative to alternative approaches to achieving comparable benefits, taking into account the estimated uncertainty in measures of costs and benefits associated with the project.

"(iv) Combines Fund funds with other sources of funds to leverage substantial co-investment from the public and private sectors.

"(v) Delivers revenue streams from public or private sources dedicated to pay debt service, meet ongoing operating expenses, or provide for needed maintenance and capital renewal over the life cycle of the funded asset.

"(vi) Rewards states or metropolitan areas that are designated by the Secretary as having highly-effective or highly-improved performance-based planning processes pursuant to sections 134(n) and 135(m) of this title, and sections 5303(n) and 5304(m) of title 49.

"(vii) Encourages use of innovative procurement, asset management, or financing to optimize the all-in-life-cycle cost-effectiveness of a project.

"(g) INVESTMENT PLANS.--

"(1) QUALIFIED APPLICATION REQUIREMENT.--Applications certified by the Executive Director as qualified applications shall enter a process for producing a mutually agreeable Investment Plan. No applicant or application

shall enter this process by any other means. No application shall be funded without an Investment Plan approved by the Secretary.

"(2) INVESTMENT PLANNING PROCESS.--The Fund shall establish a process for determining the level, form, and terms of financial assistance to be offered by the Fund to complete a financing package adequate to fund the project or projects included in the application. The top priority of the Fund in the investment planning process shall be to establish a mutually agreeable financing package that is adequate to fund the qualified application and that maximizes total expected project benefits relative to total expected costs while also considering the portion of total costs to be financed by the Fund. When considering the appropriate level and form of Fund resources to include in an Investment Plan, the Fund shall consider the qualification score achieved by the application relative to other current applications and previously funded applications and shall strive to make investment plan decisions on the basis of maximizing total net benefits relative to cost. As part of this process, the Fund shall consider--

"(A) the amount of Fund budgetary resources required to complete a financing package;

"(B) the percentage of Federal resources included in the Investment Plan in the form of grants;

"(C) level of certainty of the proposed net benefits, including the risks to the Federal taxpayer and the project sponsor in the event of project cost overrun or failure; and

"(D) the percentage of eligible project costs to be funded through non-Federal resources pledged by the applicant to complete a financing package.

"(3) INVESTMENT PLANS.--The Fund shall determine through an investment planning process the terms of assistance to be offered to applicants at its sole discretion subject to the requirements of this chapter and subject to the availability of funding and any other statutory and regulatory requirements. If the Fund and the applicant are able to reach mutually agreeable terms, the Fund shall record determinations on Fund assistance along with details of the complete financing package in an Investment Plan. Under no circumstances shall the Fund approve an Investment Plan that does not identify a complete financing package. Under no circumstances shall the Fund be required or compelled to reach agreement on an Investment Plan.

"(4) SUBMISSION TO FUND INVESTMENT COUNCIL.--The Executive Director shall advance Investment Plans for qualified applications to the Investment Council at regular submission intervals, as set forth in the Operating Guidance.

"(5) CONFLICT OF INTEREST PROTECTIONS.--The Fund and the Department of Transportation shall establish, in operating procedures and in the Operating Guidance, communications practices and compliance procedures that protect Fund professional staff responsible for negotiating Investment Plans from outside or otherwise inappropriate influence, and conflicts of interest. This shall include necessary restrictions on communications between Fund staff responsible for the investment planning process and individuals and organizations both within

and outside of the Department of Transportation, including the Fund Investment Council, the Office of the Secretary, the Secretary and others as needed to safeguard the ability of the Fund to fairly and independently formulate Investment Plans as directed under this subsection.

"(h) FUNDING DECISIONS.--

"(1) INVESTMENT PLAN SUBMISSION REQUIREMENT.--The Investment Council shall only consider recommending an application for funding upon receipt of an Investment Plan from the Executive Director.

"(2) APPLICATION FUNDING RECOMMENDATION.--The Investment Council shall vote on whether or not to recommend funding an Investment Plan within 15 days of receipt and shall communicate the outcome of the vote to the Secretary.

"(3) NO MODIFICATION.--Investment Plans submitted by the Executive Director to the Investment Council shall not be changed.

"(4) RECOMMENDED PLANS.--Investment Plans recommended for funding shall be forwarded to the Secretary for approval.

"(5) FUNDING APPROVAL.--The Secretary shall consider each Investment Plan recommended by the Investment Council without modification, and either approve or reject the Investment Plan. Applications with approved Investment Plans shall be funded per their Investment Plan. Applications with rejected Investment Plans shall be returned to the Executive Director and may be reconsidered by the Fund no sooner than one year after the date of return.

"(i) PROJECT SPONSORSHIP; PUBLIC BENEFIT ANALYSIS; LEGAL COMPLIANCE.--

"(1) COMPLIANCE WITH APPLICABLE LAWS.--

"(A) For projects receiving financial assistance under this chapter that would otherwise be eligible for financial assistance under title 23 or chapter 53 of this title, the Fund shall establish policies for determining which requirements of the title or chapter shall be applied to the projects, except that labor standards shall be applied to projects receiving financial assistance under this chapter that would otherwise be eligible under title 23 or chapter 53 of this title, as required by the title or chapter including, when applicable, the requirement that all laborers and mechanics employed by contractors or subcontractors on construction work performed on the projects shall be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor under sections 3141-3144, 3146, and 3147 of title 40, United States Code.

"(B) A project that receives financial assistance under this chapter shall comply with (i) the applicable planning and programming requirements of sections 134 and 135 of title 23, and (ii) all applicable environmental laws and requirements, including the National Environmental Policy Act of 1969 (NEPA) and the National Historic Preservation Act (NHPA).

"(C) The Department of Transportation shall be the Federal lead agency in the environmental review process for a project carried out under

this chapter (and the Secretary of Transportation may delegate this responsibility to an operating administration), subject to the following:

"(i) Nothing in this section precludes another agency from being a joint lead agency in accordance with the regulations adopted by the President's Council on Environmental Quality.

"(ii) An eligible funding recipient that is a State or local governmental entity receiving funds under this chapter shall serve as a joint lead agency with the Department of Transportation under the National Environmental Policy Act of 1969, and such recipient may, at the discretion of the lead federal agency or agencies, prepare any environmental document required in support of the project if the lead Federal agency furnishes guidance in such preparation. The lead Federal agency must independently evaluate, approve and adopt the State or local government's environmental findings and determinations as set forth in the environmental documentation prepared by the State or local government agency prior to taking any action on the project.

"(iii) In the case of a project that is undertaken by an eligible funding recipient that is a nongovernmental entity, the State or local governmental co-sponsor of the project shall serve as a joint lead agency with the Department, and that public sponsor shall have the authority to prepare environmental documents as provided in subparagraph (ii).

"(2) DETERMINATION OF APPLICABLE MODAL REQUIREMENTS.--In the event that a project has cross-modal components, the Fund shall have the discretion to designate the specific requirements that shall apply to the project.

### **"Sec. 623. Authorizations**

"(a) AUTHORIZATION OF APPROPRIATIONS.--There are authorized to be appropriated from the General Fund to carry out this chapter the following amounts:

"(1) For fiscal year 2011, \$4,000,000,000, of which not more than \$150,000,000 may be expended for Planning Grants and Feasibility Grants, and not more than \$50,000,000 may be expended for the analysis of costs and benefits of projects.

"(2) For fiscal year 2012, \$5,000,000,000, of which not more than \$150,000,000 may be expended for Planning Grants and Feasibility Grants and not more than \$50,000,000 may be expended for the analysis of costs and benefits of projects.

"(3) For fiscal year 2013, \$5,000,000,000, of which not more than \$150,000,000 may be expended for Planning Grants and Feasibility Grants and not more than \$50,000,000 may be expended for the analysis of costs and benefits of projects.

"(4) For fiscal year 2014, \$5,000,000,000, of which not more than \$150,000,000 may be expended for Planning Grants and Feasibility Grants and

not more than \$50,000,000 may be expended for the analysis of costs and benefits of projects.

"(5) For fiscal year 2015, \$6,000,000,000, of which not more than \$150,000,000 may be expended for Planning Grants and Feasibility Grants and not more than \$50,000,000 may be expended for the analysis of costs and benefits of projects.

"(b) ADMINISTRATIVE EXPENSES.--Of the amounts authorized under subsection (a), the following amounts made available through appropriations acts may be expended by the Fund to pay the reasonable costs of administering this chapter, inclusive of any fees collected pursuant to section 622:

- "(1) In fiscal year 2012, not more than \$70,000,000.
- "(2) In fiscal year 2013, not more than \$50,000,000.
- "(3) In fiscal year 2014, not more than \$51,000,000.
- "(4) In fiscal year 2015, not more than \$51,000,000.
- "(5) In fiscal year 2016, not more than \$52,000,000.
- "(6) In fiscal year 2017, not more than \$52,000,000.

"(c) AVAILABILITY OF AMOUNTS.--Amounts made available under subsection (a) shall remain available until expended."

(b) CONFORMING AMENDMENT.--The analysis of chapter 6 of title 23, United States Code, is amended to read as follows:

"CHAPTER 6--INFRASTRUCTURE FINANCE

"SUBCHAPTER I--GENERAL

"Sec.

- "601. Generally applicable provisions.
- "602. Determination of eligibility and project selection.
- "603. Secured loans.
- "604. Lines of credit.
- "605. Program administration.
- "606. State and local permits.
- "607. Regulations.
- "608. Funding.
- "609. Reports to Congress.
- "610. State infrastructure bank program.
- "611. Continuation of TIFIA credit assistance.

"SUBCHAPTER II--NATIONAL INFRASTRUCTURE INNOVATION AND FINANCE FUND

- "621. National Infrastructure Innovation and Finance Fund; definitions.
- "622. Fund authorities and assistance.
- "623. Authorizations."

**SEC. 2102. TITLE 5 AMENDMENT.**

Section 5315 of title 5, United States Code, is amended by inserting the following at the end:

"Executive Director, National Infrastructure Innovation and Finance Fund."

**Part 2--Freight Policy Office****SEC. 2151. OFFICE OF FREIGHT POLICY.**

(a) OFFICE OF FREIGHT POLICY.--Section 102 of title 49, United States Code, is amended--

- (1) by redesignating subsection (h) as subsection (i); and
- (2) by inserting after subsection (g) the following:

"(h) OFFICE OF FREIGHT POLICY.--There is established within the Office of the Under Secretary of Transportation for Policy an Office of Freight Policy.

"(1) RESPONSIBILITIES.--The Office shall--

"(A) support the Secretary in the implementation of the National Freight Transportation Policy;

"(B) support the Secretary in the designation of the components of the National Freight Transportation System;

"(C) provide data and analysis to the Secretary on the conditions and performance of the National Freight Transportation System;

"(D) coordinate implementation of the National Freight Transportation Policy among the operating units of the Department of Transportation and among public and private stakeholders;

"(E) develop measures of the condition and performance of the freight transportation network, including measures of the condition and performance of highways, freight rail, ports and waterways, air cargo, and pipelines;

"(F) prepare the National Freight Transportation Strategic Plan;

"(G) work with the Bureau of Transportation Statistics, which shall coordinate the collection of freight transportation data by modal administrations, to improve condition and performance measures and data on costs, value, weight, and ton-miles of shipments;

"(H) oversee the Freight Transportation Joint Program Office;

"(I) facilitate the sharing of freight-related research, technology, and other best practices; and

"(J) carry out other duties as prescribed by the Secretary.

"(2) ORGANIZATION.--The head of the Office shall be the Director of Freight Policy and shall be appointed in the competitive service by the Secretary."

(b) FREIGHT TRANSPORTATION.--Chapter 3 of title 49, United States Code, is amended by adding at the end the following:

**"Sec. 310. Freight transportation**

"(a) NATIONAL FREIGHT TRANSPORTATION POLICY.--It is the policy of the United States to improve the condition and performance of the national freight transportation system so that it is economically efficient and environmentally sustainable, provides the foundation for the United States to compete in the global economy, and achieves the goals set forth in subsection (b) through cost-effective infrastructure investments, operational improvements, and appropriate safety, environmental, and energy policies.

"(b) GOALS.--The goals of the National Freight Transportation Policy are--

"(1) to invest in infrastructure improvements and to implement operational improvements that strengthen the contribution of the freight transportation system to the economic competitiveness of the United States, reduce congestion, and increase productivity, particularly for domestic industries and businesses that create high-value jobs;

"(2) to promote energy conservation and the environmental sustainability of freight movements;

"(3) to improve the safety, security, and resilience of freight transportation;

"(4) to improve the contribution of the freight transportation system to the livability of the American people;

"(5) to improve the state of good repair of the freight transportation system;

"(6) to use advanced technology to improve the safety and efficiency of the freight transportation system;

"(7) to incorporate concepts of performance, innovation, competition, and accountability into the operation and maintenance of the National Freight Transportation System; and

"(8) to improve the economic efficiency of the freight transportation system.

"(c) NATIONAL FREIGHT TRANSPORTATION SYSTEM.--The National Freight Transportation System shall consist of all modes of freight transportation operating in a unified, interconnected manner, including highways, freight rail, ports and waterways, air cargo, and pipelines. The Secretary shall designate the components of the National Freight Transportation System.

"(d) NATIONAL FREIGHT TRANSPORTATION STRATEGIC PLAN.--

"(1) IN GENERAL.-- Not later than two years after the date of the enactment of this section, and every third year thereafter, the Secretary shall issue a National Freight Transportation Strategic Plan to guide planning and investments in the National Freight Transportation System. The Plan shall be



designed to support a transparent, data-driven transportation infrastructure investment decisionmaking process that relies on market analysis and public participation to allocate the Nation's infrastructure investment resources in an economically efficient manner.

"(2) CONTENTS.--The Plan shall include, at a minimum--

"(A) an assessment of the condition and performance of the national freight transportation system;

"(B) forecasts of freight volumes for the 20-year period beginning in the year during which the plan is issued;

"(C) an identification of major trade gateways and national freight corridors that connect major population centers, trade gateways, and other major freight generators. The identification of major trade gateways and national freight corridors shall be revised, as appropriate, in subsequent plans;

"(D) an analysis of emerging and long-term projected trends in economics, national and international trade patterns, consumer demand, research and technology, logistics systems, and environmental conditions that affect or will affect the condition, performance, needs, and uses of the National Freight Transportation System;

"(E) an assessment of the major challenges to effectively meeting the policy and goals set forth in subsections (a) and (b);

"(F) an assessment of statutory, regulatory, technological, institutional, and other barriers to improved freight transportation performance, and opportunities for overcoming those barriers;

"(G) a list of priority freight corridors and gateways to be improved and developed;

"(H) a proposed investment plan identifying priorities for Federal investments to implement the policy and goals set forth in subsections (a) and (b);

"(I) a plan for operational improvements in the National Freight Transportation System; and

"(J) other actions needed to implement the policy and goals set forth in subsections (a) and (b).

"(3) PLAN DEVELOPMENT.--In developing the Plan, the Secretary shall consult with appropriate public and private transportation stakeholders; use a transparent, objective, data-driven approach that includes market analysis; consider ongoing Federal, State, and corridor-wide transportation plans; provide for public notice and comment; as appropriate, establish advisory committees to advise on developing the Plan; acquire and analyze the data necessary to assess the conditions and performance of the National Freight Transportation System; consider freight flows and locations of freight traffic generators; and address the unique needs of exporters of freight. The Secretary may conduct studies, gather information, and require the production and reporting of data necessary to develop and update the report. The Plan shall consider, in identifying national freight

corridors, the High Priority Corridors identified in section 1105 of the Intermodal Surface Transportation Efficiency Act of 1991, as amended.

"(4) SUBMISSION AND PUBLICATION.-- Upon completion of the Plan, the Secretary shall post it on the Department of Transportation public website.

"(e) FREIGHT TRANSPORTATION CONDITIONS AND PERFORMANCE REPORT.--Not later than two years after the date of the enactment of this section, and biennially thereafter, the Secretary shall prepare a report on the conditions and performance of the freight transportation system in the United States.

"(f) TRANSPORTATION INVESTMENT DATA AND PLANNING TOOLS.--  
"(1) IN GENERAL.--Not later than one year after the date of the enactment of this section, the Secretary shall--

"(A) develop new tools or improve existing tools to support an outcome-oriented, performance-based approach to evaluate proposed freight-related and other transportation projects, including--

"(i) methodologies for systematic analysis of benefits and costs;

"(ii) tools for ensuring that the evaluation of freight-related and other transportation projects can consider safety, economic competitiveness, environmental sustainability, livability, and state of good repair in the project selection process; and

"(iii) other elements to assist in effective transportation planning;

"(B) direct the collection of transportation-related data to support a broad range of evaluation methods and techniques such as demand forecasts, modal diversion forecasts, and estimates of the effects of proposed investments on congestion, pollution, public health, and other factors, to assist in making transportation investment decisions; and

"(C) at a minimum, in consultation with other relevant Federal agencies, consider any improvements to existing freight flow data collection efforts that could reduce identified freight data gaps and deficiencies and help improve forecasts of freight transportation demand.

"(2) CONSULTATION.--To the extent practicable, the Secretary shall consult with Federal, State, and local transportation planners to develop, improve, and implement the tools and collect the data in paragraph (1).

"(g) FINANCIAL ASSISTANCE.--The Secretary shall use the findings of the National Freight Transportation Strategic Plan to guide infrastructure investment decisions subject to the Secretary's discretion."

(c) CONFORMING AMENDMENT.--

(1) CHAPTER 3 ANALYSIS.--The analysis of chapter 3 of title 49, United States Code, is amended by inserting after the item relating to section 309 the following:

"310. Freight transportation."

(2) REPEAL OF OBSOLETE PROVISION.--Section 5503 of title 49, United States Code, is repealed.

**Subtitle C--Federal-Aid Highways**

**Part 1--Authorizations and Programs**

**SEC. 2201. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.--The following sums are authorized to be appropriated out of the Highway Account of the Transportation Trust Fund:

(1) SAFETY PROGRAM.--

(A) HIGHWAY SAFETY IMPROVEMENT PROGRAM.--For the highway safety improvement program under section 148 of title 23, United States Code--

- (i) \$2,246,000,000 for fiscal year 2012;
- (ii) \$2,418,000,000 for fiscal year 2013;
- (iii) \$2,523,000,000 for fiscal year 2014;
- (iv) \$2,638,000,000 for fiscal year 2015;
- (v) \$2,754,000,000 for fiscal year 2016; and
- (vi) \$2,877,000,000 for fiscal year 2017.

(B) HIGHWAY SAFETY DATA IMPROVEMENT PROGRAM.--For the highway safety data improvement program under section 149 of such title--

- (i) \$293,000,000 for fiscal year 2012;
- (ii) \$314,000,000 for fiscal year 2013;
- (iii) \$328,000,000 for fiscal year 2014;
- (iv) \$342,000,000 for fiscal year 2015;
- (v) \$358,000,000 for fiscal year 2016; and
- (vi) \$373,000,000 for fiscal year 2017.

(2) NATIONAL HIGHWAY PROGRAM.--

(A) HIGHWAY INFRASTRUCTURE PERFORMANCE PROGRAM.--For the highway infrastructure performance program under section 119 of such title--

- (i) \$16,750,000,000 for fiscal year 2012;
- (ii) \$17,100,000,000 for fiscal year 2013;
- (iii) \$17,800,000,000 for fiscal year 2014;
- (iv) \$18,600,000,000 for fiscal year 2015;
- (v) \$19,500,000,000 for fiscal year 2016; and
- (vi) \$20,300,000,000 for fiscal year 2017.

(B) FLEXIBLE INVESTMENT PROGRAM.--For the flexible investment program under section 133 of such title--

- (i) \$15,632,000,000 for fiscal year 2012;
- (ii) \$18,202,000,000 for fiscal year 2013;

- (ii) \$19,818,000,000 for fiscal year 2014;
- (iv) \$21,028,000,000 for fiscal year 2015;
- (v) \$21,879,000,000 for fiscal year 2016; and
- (vi) \$22,919,000,000 for fiscal year 2017.

**(3) LIVABILITY PROGRAM.--**

**(A) LIVABLE COMMUNITIES PROGRAM.--**For the livable communities program under section 150(a) of such title--

- (i) \$3,400,000,000 for fiscal year 2012;
- (ii) \$3,590,000,000 for fiscal year 2013;
- (iii) \$3,777,000,000 for fiscal year 2014;
- (iv) \$3,980,000,000 for fiscal year 2015;
- (v) \$4,188,000,000 for fiscal year 2016; and
- (vi) \$4,404,000,000 for fiscal year 2017.

**(B) INVESTMENTS FOR LIVABLE COMMUNITIES GRANT PROGRAM.--**For the investments for livable communities grant program under section 150(b) of such title--

- (i) \$500,000,000 for fiscal year 2012;
- (ii) \$500,000,000 for fiscal year 2013;
- (iii) \$500,000,000 for fiscal year 2014;
- (iv) \$500,000,000 for fiscal year 2015;
- (v) \$500,000,000 for fiscal year 2016; and
- (vi) \$500,000,000 for fiscal year 2017.

**(C) LIVABILITY CAPACITY BUILDING GRANT PROGRAM.--**For the livability capacity building grant program under section 2210(e) of this Act--

- (i) \$200,000,000 for fiscal year 2012;
- (ii) \$200,000,000 for fiscal year 2013;
- (iii) \$200,000,000 for fiscal year 2014;
- (iv) \$200,000,000 for fiscal year 2015;
- (v) \$200,000,000 for fiscal year 2016; and
- (vi) \$200,000,000 for fiscal year 2017.

**(4) FEDERAL ALLOCATION PROGRAM.--**

**(A) FEDERAL LANDS.--**

**(i) FEDERAL LANDS TRANSPORTATION PROGRAM.--**For the federal lands transportation program under section 203 of such title--

- (I) \$430,000,000 for fiscal year 2012, of which \$315,000,000 shall be for the National Park Service and the United States Fish and Wildlife Service;
- (II) \$457,000,000 for fiscal year 2013, of which \$335,000,000 shall be for the National Park Service and the United States Fish and Wildlife Service;
- (III) \$477,000,000 for fiscal year 2014, of which \$349,000,000 shall be for the National Park Service and the United States Fish and Wildlife Service;

(IV) \$498,000,000 for fiscal year 2015, of which \$365,000,000 shall be for the National Park Service and the United States Fish and Wildlife Service;

(V) \$520,000,000 for fiscal year 2016, of which \$381,000,000 shall be for the National Park Service and the United States Fish and Wildlife Service; and

(VI) \$540,000,000 for fiscal year 2017, of which \$396,000,000 shall be for the National Park Service and the United States Fish and Wildlife Service.

(ii) **FEDERAL LANDS ACCESS PROGRAM.**--For the federal lands access program under section 204 of such title--

(I) \$177,000,000 for fiscal year 2012;

(II) \$209,000,000 for fiscal year 2013;

(III) \$218,000,000 for fiscal year 2014;

(IV) \$228,000,000 for fiscal year 2015;

(V) \$238,000,000 for fiscal year 2016; and

(VI) \$249,000,000 for fiscal year 2017.

(B) **TRIBAL TRANSPORTATION PROGRAM.**--For the tribal transportation program under section 202 of such title--

(i) \$600,000,000 for fiscal year 2012;

(ii) \$628,000,000 for fiscal year 2013;

(iii) \$655,000,000 for fiscal year 2014;

(iv) \$685,000,000 for fiscal year 2015;

(v) \$715,000,000 for fiscal year 2016; and

(vi) \$747,000,000 for fiscal year 2017.

(C) **WORKFORCE DEVELOPMENT.**--

(i) **ON-THE-JOB TRAINING AND SUPPORTIVE SERVICES.**--For on-the-job training and supportive services under section 104(b) of such title--

(I) \$25,000,000 for fiscal year 2012;

(II) \$40,000,000 for fiscal year 2013;

(III) \$50,000,000 for fiscal year 2014;

(IV) \$60,000,000 for fiscal year 2015;

(V) \$70,000,000 for fiscal year 2016; and

(VI) \$70,000,000 for fiscal year 2017.

(ii) **DISADVANTAGED BUSINESS ENTERPRISES TRAINING.**--For disadvantaged business enterprises training under section 140(c) of such title--

(I) \$25,000,000 for fiscal year 2012;

(II) \$40,000,000 for fiscal year 2013;

(III) \$50,000,000 for fiscal year 2014;

(IV) \$60,000,000 for fiscal year 2015;

(V) \$70,000,000 for fiscal year 2016; and

(VI) \$70,000,000 for fiscal year 2017.

(b) **DISADVANTAGED BUSINESS ENTERPRISES.**--

(1) **DEFINITIONS.**--In this subsection, the following definitions apply:

(A) **SMALL BUSINESS CONCERN.**--The term "small business concern" has the meaning that term has under section 3 of the Small Business Act (15 U.S.C. 632), except that the term shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has average annual gross receipts over the preceding 3 fiscal years in excess of \$22,410,000, as adjusted annually by the Secretary for inflation.

(B) **SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.**--The term "socially and economically disadvantaged individuals" has the meaning that term has under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and relevant subcontracting regulations issued pursuant to that Act, except that women shall be presumed to be socially and economically disadvantaged individuals for purposes of this subsection.

(2) **GENERAL RULE.**--Except to the extent that the Secretary of Transportation determines otherwise, not less than 10 percent of the amounts made available for any program under titles I, II, and V of this Act and section 403 of title 23, United States Code, shall be expended through small business concerns owned and controlled by socially and economically disadvantaged individuals.

(3) **ANNUAL LISTING OF DISADVANTAGED BUSINESS ENTERPRISES.**--Each State shall annually--

(A) survey and compile a list of the small business concerns referred to in paragraph (2) and the location of the concerns in the State; and

(B) notify the Secretary, in writing, of the percentage of the concerns that are controlled by women, by socially and economically disadvantaged individuals (other than women), and by individuals who are women and are otherwise socially and economically disadvantaged individuals.

(4) **UNIFORM CERTIFICATION.**--The Secretary shall establish minimum uniform criteria for State governments to use in certifying whether a concern qualifies for purposes of this subsection. The minimum uniform criteria shall include, but not be limited to, on-site visits, personal interviews, licenses, analysis of stock ownership, listing of equipment, analysis of bonding capacity, listing of work completed, resume of principal owners, financial capacity, and type of work preferred.

(5) **COMPLIANCE WITH COURT ORDERS.**--Nothing in this subsection limits the eligibility of an entity or person to receive funds made available under titles I, III, and V of this Act and section 403 of title 23, United States Code, if the entity or person is prevented, in whole or in part, from complying with paragraph (2) because a Federal court issues a final order in which the court finds that the requirement of paragraph (2), or the program established under paragraph (2), is unconstitutional.

(c) **CRITICAL HIGHWAY INFRASTRUCTURE PROGRAM.**--There is authorized to be appropriated out of the Highway Account of the Transportation Trust Fund \$27,650,000,000 for fiscal year 2012 for critical highway infrastructure.

(1) **TRANSFER OF FUNDS TO GENERAL SERVICES**

**ADMINISTRATION.**--Of amounts authorized to be appropriated under this subsection, \$2,200,000,000 shall be made available and transferred to the General Services Administration for cross-border transportation activities.

(2) **TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT PROGRAM.**--Of amounts authorized to be appropriated under this subsection, \$450,000,000 shall be made available for credit assistance under the Transportation Infrastructure Finance and Innovation Act program, of which the Secretary may use up to \$5,000,000 for administrative expenses to carry out such program.

(3) **CRITICAL HIGHWAY INFRASTRUCTURE.**--

(A) **ADMINISTRATIVE EXPENSES.**--Of amounts authorized to be appropriated under this subsection, the Secretary may use up to \$20,000,000 for administrative expenses to carry out this paragraph. Such funds shall remain available until expended.

(B) **APPORTIONMENT OF FUNDS.**--On October 1 of fiscal year 2012, after making the set-asides under paragraphs (1) and (2) and subparagraph (A), the Secretary shall apportion the remainder of the sums authorized to be appropriated under this subsection to the several States in accordance with section 104(b)(1) of title 23, United States Code, for projects that would be eligible under section 119 of such title.

(4) **APPLICABILITY OF TITLE 23.**--Funds made available to carry out this subsection shall be available for obligation and administered in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall not be transferable, and the Federal share of the cost of a project or activity under this subsection may be up to 100 percent. Except as otherwise specified in this subsection, funds made available under this subsection shall be available for 3 years after the end of the year for which authorized.

**SEC. 2202. OBLIGATION CEILING.**

(a) **GENERAL LIMITATION.**--Subject to subsection (e), and notwithstanding any other provision of law, the obligations for Federal-aid highway and highway safety construction programs shall not exceed--

- (1) \$[69,675,000,000] for fiscal year 2012;
- (2) \$XX,XXX,XXX,XXX for fiscal year 2013;
- (3) \$XX,XXX,XXX,XXX for fiscal year 2014;
- (4) \$XXX,XXX,XXX,XXX for fiscal year 2015;
- (5) \$XX,XXX,XXX,XXX for fiscal year 2016; and
- (6) \$XX,XXX,XXX,XXX for fiscal year 2017.

(b) EXCEPTIONS.--The limitations under subsection (a) shall not apply to obligations under or for--

- (1) section 125 of title 23, United States Code;
- (2) section 147 of the Surface Transportation Assistance Act of 1978 (23 U.S.C. 144 note; 92 Stat. 2714);
- (3) section 9 of the Federal-Aid Highway Act of 1981 (Public Law 97-134; 95 Stat. 1701);
- (4) subsections (b) and (j) of section 131 of the Surface Transportation Assistance Act of 1982 (Public Law 97-424; 96 Stat. 2119);
- (5) subsections (b) and (c) of section 149 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17; 101 Stat. 198);
- (6) sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240; 105 Stat. 2027);
- (7) section 157 of title 23, United States Code (as in effect on June 8, 1998);
- (8) section 105 of title 23, United States Code (as in effect for fiscal years 1998 through 2004, but only in an amount equal to \$639,000,000 for each of those fiscal years);
- (9) Federal-aid highway programs for which obligation authority was made available under the Transportation Equity Act for the 21st Century (Public Law 105-178; 112 Stat. 107) or subsequent public laws for multiple years or to remain available until used, but only to the extent that the obligation authority has not lapsed or been used;
- (10) section 105 of title 23, United States Code (as in effect for fiscal years 2005 through 2011, but only in an amount equal to \$639,000,000 for each of those fiscal years);
- (11) section 1603 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59; 119 Stat. 1248), to the extent that funds obligated in accordance with that section were not subject to a limitation on obligations at the time at which the funds were initially made available for obligation; and
- (12) \*\*[section 133 of title 23, United State Code (but, for each of fiscal years 2012 through 2017, only in an amount equal to \$639,000,000 per fiscal year)].

(c) DISTRIBUTION OF OBLIGATION AUTHORITY.--For each of fiscal years 2012 through 2017, the Secretary--

- (1) shall not distribute obligation authority provided by subsection (a) for the fiscal year for--
  - (A) amounts authorized for administrative expenses and programs by section 104(a) of title 23, United States Code; and
  - (B) amounts authorized for the Bureau of Transportation Statistics;
- (2) shall not distribute an amount of obligation authority provided by subsection (a) that is equal to the unobligated balance of amounts made available from the Highway Account of the Transportation Trust Fund or the Highway



Trust Fund (other than the Mass Transit Account) for Federal-aid highway and highway safety programs for previous fiscal years the funds for which are allocated by the Secretary;

(3) shall determine the ratio that--

(A) the obligation authority provided by subsection (a) for the fiscal year, less the aggregate of amounts not distributed under paragraphs (1) and (2); bears to

(B) the total of the sums authorized to be appropriated for the Federal-aid highway and highway safety construction programs (other than sums authorized to be appropriated for provisions of law described in paragraphs (1) through (11) of subsection (b) [and sums authorized to be appropriated for section 133 of title 23, United States Code, equal to the amount referred to in subsection (b)(12) for the fiscal year]), less the aggregate of the amounts not distributed under paragraphs (1) and (2);

(4) shall distribute the obligation authority provided by subsection (a), less the aggregate amounts not distributed under paragraphs (1) and (2), for each of the programs that are allocated by the Secretary under this Act and title 23, United States Code (other than to programs to which paragraph (1) applies), by multiplying--

(A) the ratio determined under paragraph (3); by

(B) the amounts authorized to be appropriated for each such program for the fiscal year; and

(5) shall distribute the obligation authority provided by subsection (a), less the aggregate amounts not distributed under paragraphs (1) and (2) and the amounts distributed under paragraph (4), for Federal-aid highway and highway safety construction programs that are apportioned by the Secretary under this Act and title 23, United States Code [(other than the amounts apportioned for the flexible investment program in section 133 of title 23, United State Code, that are exempt from limitation under subsection (b)(12))] in the ratio that--

(A) amounts authorized to be appropriated for the programs that are apportioned to each State for the fiscal year; bear to

(B) the total of the amounts authorized to be appropriated for the programs that are apportioned to all States for the fiscal year.

(d) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.--

Notwithstanding subsection (c), the Secretary shall, after August 1 of each of fiscal years 2012 through 2017--

(1) revise a distribution of the obligation authority made available under subsection (c) if an amount distributed cannot be obligated during that fiscal year; and

(2) redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during that fiscal year, giving priority to those States having large unobligated balances of funds apportioned under sections 144 (as in effect on the date before the date of enactment of this Act) and 104 of title 23, United States Code.

- (e) NO-YEAR AND MULTI-YEAR OBLIGATION LIMITATION.--
- (1) TRANSPORTATION RESEARCH PROGRAMS.--
- (A) IN GENERAL.--Except as provided in subparagraph (B), obligation limitations imposed by subsection (a) shall apply to contract authority for transportation research programs carried out under--
- (i) chapter 5 of title 23, United States Code; and
- (ii) title V (research title) of this Act.
- (B) EXCEPTION.--Obligation authority made available under subparagraph (A) shall--
- (i) remain available until used for obligation of such funds for transportation research programs; and
- (ii) be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.
- (2) SURFACE TRANSPORTATION REVENUE ALTERNATIVES OFFICE.--Obligation authority distributed under subsection (c)(4) for the surface transportation revenue alternatives office under section 2218 of this Act shall--
- (A) remain available until used for obligation of funds for such office; and
- (B) be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.
- (3) ADMINISTRATIVE EXPENSES FOR THE CRITICAL HIGHWAY INFRASTRUCTURE PROGRAM.--Obligation authority distributed under subsection (c)(4) for administrative expenses for the critical highway infrastructure program under section 2201(c)(3)(A) of this Act shall--
- (A) remain available for a period of 3 fiscal years; and
- (B) be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.
- (f) REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.--
- (1) IN GENERAL.--Not later than 30 days after the date of distribution of obligation authority under subsection (c) for each of fiscal years 2012 through 2017, the Secretary shall distribute to the States any funds that--
- (A) are authorized to be appropriated for the fiscal year for Federal-aid highway programs; and
- (B) the Secretary determines will not be allocated to the States, and will not be available for obligation, in the fiscal year due to the imposition of any obligation limitation for the fiscal year.
- (2) RATIO.--Funds shall be distributed under paragraph (1) in the same ratio as the distribution of obligation authority under subsection (c)(5).
- (3) AVAILABILITY.--Funds distributed under paragraph (1) shall be available for any purpose described in section 133(c) of title 23, United States Code.

**SEC. 2203. APPORTIONMENTS.**

(a) IN GENERAL.--The text of section 104 of title 23, United States Code, is amended to read as follows:

"(a) ADMINISTRATIVE EXPENSES.--

"(1) IN GENERAL.--There are authorized to be appropriated from the Highway Account of the Transportation Trust Fund to be made available to the Secretary for administrative expenses of the Federal Highway Administration--

- "(A) \$445,661,000 for fiscal year 2012;
- "(B) \$ XXX,XXX,XXX for fiscal year 2013;
- "(C) \$ XXX,XXX,XXX for fiscal year 2014;
- "(D) \$ XXX,XXX,XXX for fiscal year 2015;
- "(E) \$ XXX,XXX,XXX for fiscal year 2016; and
- "(F) \$ XXX,XXX,XXX for fiscal year 2017.

"(2) PURPOSES.--The funds authorized by this subsection shall be used--

- "(A) to administer the provisions of law to be funded from appropriations for the Federal-aid highway program and programs authorized under chapter 2 of this title; and
- "(B) to make transfers of such sums as the Secretary determines to be appropriate to the Appalachian Regional Commission for administrative activities associated with the Appalachian development highway system.

"(3) AVAILABILITY.--The funds made available under paragraph (1) shall remain available until expended.

"(b) APPORTIONMENTS.--On October 1 of each fiscal year, the Secretary, after making the set-aside authorized by subsection (d), shall apportion the remainder of the sums authorized to be appropriated for expenditure on the highway infrastructure performance program, the flexible investment program, the livable communities program, the highway safety improvement program, and the highway safety data improvement program for that fiscal year, among the several States in the following manner:

"(1) HIGHWAY INFRASTRUCTURE PERFORMANCE PROGRAM.--

"(A) IN GENERAL.--For the highway infrastructure performance program in accordance with the following formula:

-----  
"(B) MINIMUM APPORTIONMENT.--Notwithstanding subparagraph (A), each State shall receive a minimum of \_\_\_ percent of the funds apportioned under this paragraph.

"(2) FLEXIBLE INVESTMENT PROGRAM.--

"(A) For the flexible investment program, \$52,000,000 for each of fiscal years 2012 through 2017 for the territorial highway program under section 215, and the remainder apportioned as follows:

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"(B) MINIMUM APPORTIONMENT.--Notwithstanding subparagraph (A), each State shall receive a minimum of \_\_\_ percent of the funds apportioned under this paragraph.

"(3) LIVABLE COMMUNITIES PROGRAM.--

"(A) IN GENERAL.--For the livable communities program,

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"(B) MINIMUM APPORTIONMENT.--Notwithstanding subparagraph (A), each State shall receive a minimum of \_\_\_ percent of the funds apportioned under this paragraph.

"(4) HIGHWAY SAFETY IMPROVEMENT PROGRAM.--

"(A) IN GENERAL.--For the highway safety improvement program, in accordance with the following formula:

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"(B) MINIMUM APPORTIONMENT.--Notwithstanding subparagraph (A), each State shall receive a minimum of \_\_\_ percent of the funds apportioned under this paragraph.

"(5) HIGHWAY SAFETY DATA IMPROVEMENT PROGRAM.--

"(A) IN GENERAL.--For the highway safety data improvement program, in accordance with the following formula:

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"(B) MINIMUM APPORTIONMENT.--Notwithstanding subparagraph (A), each State shall receive a minimum of \_\_\_ percent of the funds apportioned under this paragraph.

"(c) CERTIFICATION OF APPORTIONMENTS.--

"(1) IN GENERAL.--On October 1 of each fiscal year, the Secretary shall certify to each of the State transportation departments the sums which he or she has apportioned hereunder to each State for such fiscal year. To permit the States to develop adequate plans for the utilization of apportioned sums, the Secretary shall advise each State of the amount that will be apportioned each year under this section not later than ninety days before the beginning of the fiscal year for which the sums to be apportioned are authorized.

"(2) NOTICE TO STATES.--If the Secretary has not made an apportionment under section 104 by the 21st day of a fiscal year beginning after September 30, 1998, the Secretary shall transmit, by the 21st day, to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a written statement of the reason for not making such apportionment in a timely manner.

"(d) METROPOLITAN PLANNING.--

"(1) SET-ASIDE.--On October 1 of each fiscal year, the Secretary shall set aside 1 percent of the funds authorized to be appropriated for the highway infrastructure performance program, the flexible investment program, and the livable communities program authorized under this title to carry out the requirements of section 134 of this title.

"(2) APPORTIONMENT TO STATES OF SET-ASIDE FUNDS.--These funds shall be apportioned to the States in the ratio which the population in urbanized areas or parts thereof, in each State bears to the total population in such

urbanized areas in all the States as shown by the latest available census, except that no State shall receive less than 1/2 percent of the amount apportioned.

"(3) USE OF FUNDS.--

"(A) IN GENERAL.--The funds apportioned to any State under paragraph (2) of this subsection shall be made available by the State to the metropolitan planning organizations responsible for carrying out the provisions of section 134 of this title, except that States receiving the minimum apportionment under paragraph (2) may, in addition, subject to the approval of the Secretary, use the funds apportioned to finance transportation planning outside of urbanized areas.

"(B) UNUSED FUNDS.--Any funds that are not used to carry out section 134 may be made available by a metropolitan planning organization to the State to fund activities under section 135 of this title.

"(4) DISTRIBUTION OF FUNDS WITHIN STATES.--

"(A) IN GENERAL.--The distribution within any State of the planning funds made available to agencies under paragraph (3) of this subsection shall be in accordance with a formula developed by each State and approved by the Secretary which shall consider but not necessarily be limited to, population, status of planning, attainment of air quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of section 134 of this title and other applicable requirements of Federal law.

"(B) REIMBURSEMENT.--Not later than 30 days after the date of receipt by a State of a request for reimbursement of expenditures made by a metropolitan planning organization for carrying out section 134 of this title, the State shall reimburse, from funds distributed under this paragraph to the metropolitan planning organization by the State, the metropolitan planning organization for those expenditures.

"(5) DETERMINATION OF POPULATION FIGURES.--For the purposes of determining population figures under this subsection, the Secretary shall use the most recent estimate published by the Secretary of Commerce.

"(e) REPORT TO CONGRESS.--The Secretary shall submit to Congress a report, and also make such report available to the public in a user-friendly format via the Internet, for each fiscal year on--

"(1) the amount obligated, by each State, for Federal-aid highways and highway safety construction programs during the preceding fiscal year;

"(2) the balance, as of the last day of the preceding fiscal year, of the unobligated apportionment of each State by fiscal year under this section;

"(3) the rates of obligation of funds apportioned or set aside under this section according to--

"(A) program;

"(B) funding category or subcategory;

"(C) type of improvement; and

"(D) State.

**"(f) TRANSFER OF HIGHWAY AND TRANSIT FUNDS.--****"(1) TRANSFER OF HIGHWAY FUNDS FOR TRANSIT PROJECTS.--**

**"(A) IN GENERAL.--**Subject to subparagraph (B), funds made available for transit projects or transportation planning under this title may be transferred to and administered by the Secretary in accordance with chapter 53 of title 49.

**"(B) NON-FEDERAL SHARE.--**The provisions of this title relating to the non-Federal share shall apply to the funds transferred under subparagraph (A).

**"(2) TRANSFER OF TRANSIT FUNDS FOR HIGHWAY PROJECTS.--**

**"(A) IN GENERAL.--**Subject to subparagraph (B), funds made available for highway projects or transportation planning under chapter 53 of title 49 may be transferred to and administered by the Secretary in accordance with this title.

**"(B) NON-FEDERAL SHARE.--**The provisions of chapter 53 of title 49 relating to the non-Federal share shall apply to funds transferred under subparagraph (A).

**"(3) TRANSFER OF FUNDS AMONG STATES OR TO FEDERAL HIGHWAY ADMINISTRATION.--**

**"(A) IN GENERAL.--**Subject to subparagraph (B), the Secretary may, at the request of a State, transfer funds apportioned or allocated under this title to the State to another State, or to the Federal Highway Administration, for the purpose of funding one or more projects that are eligible for assistance with funds so apportioned or allocated.

**"(B) APPORTIONMENT.--**The transfer shall have no effect on any apportionment of funds to a State under this section.

**"(4) TRANSFER OF OBLIGATION AUTHORITY.--**Obligation authority for funds transferred under this subsection shall be transferred in the same manner and amount as the funds for the projects that are transferred under this subsection."

(b) Section 1120(c) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59; 1119 STAT. 1144, 1192) is repealed.

**SEC. 2204. DEFINITIONS.**

(a) **DEFINITIONS.--**Section 101(a) of title 23, United States Code, is amended--

(1) by striking paragraphs (7), (9), (12), (19), (20), (24), (25), (26), (28), (35), and (38);

(2) by redesignating paragraphs (2), (3), (4), (5), (6), (8), (10), (11), (21), (22), (23), (27), (29), (30), (31), (32), (33), (34), (36), and (37) as paragraphs (3), (4), (5), (6), (7), (10), (11), (12), (19), (20), (21), (22), (23), (24), (25), (26), (27), (29), (33), and (34), respectively;

- (3) by inserting, after paragraph (1), the following:
- "(2) ASSET MANAGEMENT.--The term 'asset management' means a strategic and systematic process of operating, maintaining, upgrading and expanding physical assets effectively throughout their lifecycles, focusing on business and engineering practices for resource allocation and utilization, with the objective of better decision making based upon quality information and well defined objectives.";
- (4) in paragraph (4), as redesignated, in the matter preceding subparagraph (A), by inserting "or any project eligible for assistance under this title" after "of a highway";
- (5) in paragraph (4)(A), as redesignated, to read as follows:
- "(A) preliminary engineering, engineering, and design related services directly related to the construction of a highway project including engineering, design, project development and management, construction project management and inspection, surveying, mapping (including the establishment of temporary and permanent geodetic markers in accordance with specifications of the National Oceanic and Atmospheric Administration of the Department of Commerce), and architectural related services;"
- (6) in paragraph (4)(B), as redesignated, by--
- (A) inserting "reconstruction," before "resurfacing";
- (B) striking "and"; and
- (C) inserting "and preservation" after "rehabilitation";
- (7) in paragraph (4)(E), as redesignated, by striking "railway" and inserting "railway-highway";
- (8) in paragraph (4)(F), as redesignated, by striking "obstacles" and inserting "hazards";
- (9) in paragraph (4)(H), by adding ", or such other capital improvements as enhance the efficiency or effectiveness of an eligible Federal-aid highway" after "scale houses";
- (10) in paragraph (6), as redesignated, by--
- (A) inserting "public" before "highway eligible"; and
- (B) inserting "functionally" before "classified";
- (11) in paragraph (7), as redesignated, by striking "any of the Federal-aid highway systems" and inserting "the National Highway System";
- (12) by inserting after paragraph (7), as redesignated, the following:
- "(8) FEDERAL LANDS ACCESS TRANSPORTATION FACILITY.--The term 'Federal Lands access transportation facility' means a public highway, road, bridge, trail, or transit system which is located on, is adjacent to, or that provides access to Federal lands, for which title or maintenance responsibility of such facility is vested in a State, county, town, township, Tribal, municipal, or local government.";
- (13) by inserting after new paragraph (8) the following:
- "(9) FEDERAL LANDS TRANSPORTATION FACILITY.--The term 'Federal lands transportation facility' means a public highway, road, bridge, trail, or transit system, which is located on, is adjacent to, or that provides access to

publicly-accessible Federal lands for which title and maintenance responsibility is vested in the Federal Government, and that appears on the national Federal lands transportation facility inventory defined in section 203(c) of this title.";

(14) in paragraph (13), by striking "(c)" and inserting "(d)";

(15) in paragraph (15), by--

(A) striking "as a" and inserting "as an air quality"; and

(B) inserting "air quality" before "attainment area";

(16) in paragraph (19), as redesignated, by--

(A) striking "an" and inserting "any"; and

(B) striking "to construct a particular portion of a highway, or if the context so implies, the particular portion of a highway so constructed or any other undertaking";

(17) in paragraph (20), as redesignated, by--

(A) striking "the State transportation department and"; and

(B) inserting "and the recipient" after "Secretary";

(18) by amending paragraph (24), as redesignated, to read as follows:

"(24) SAFETY IMPROVEMENT PROJECT.--The term 'safety improvement project' means strategies, activities, and projects on a public road consistent with the State strategic highway safety plan that corrects or improves a roadway feature that constitutes a hazard to road users or addresses a highway safety problem.";

(19) by inserting after paragraph (27), as redesignated, the following:

"(28) STATE STRATEGIC HIGHWAY SAFETY PLAN.--The term 'state strategic highway safety plan' means a comprehensive, data-driven safety plan developed, implemented, and evaluated by the State transportation department or the Governor's designee.";

(20) by moving paragraph (39), inserting it after paragraph (29), as redesignated, redesignating it as paragraph (30), and--

(A) in paragraph 30(A), as redesignated, by striking "program" and inserting "strategies"; and

(B) in paragraph 30(B), as redesignated, by amending clauses (i) and (ii) to read as follows:

"(i) actions such as traffic detection and surveillance, corridor management, freeway management, arterial management, active transportation and demand management, work zone management, emergency management, road weather management, traffic incident management, traveler information services, congestion pricing, parking management, automated enforcement, traffic control, commercial vehicle operations, freight management, and coordination of highway, rail, transit, bicycle, and pedestrian operations; and

"(ii) coordinating the implementation of regional transportation system management and operations investments requiring agreements, integration, and inter-operability to achieve targeted system performance, reliability, safety, and customer service levels. These regional investments include traffic incident



management, traveler information services, emergency management, roadway weather management, intelligent transportation systems, communication networks, and information sharing systems.";

(21) by inserting after paragraph (30), as redesignated, the following:

"(31) TRIBAL TRANSPORTATION FACILITY.--The term 'Tribal transportation facility' means a public highway, road, bridge, trail, or transit system that is located on or provides access to Tribal lands, and appears on the national Tribal transportation facility inventory defined in section 202(b)(2) of this title.";

(22) by inserting after paragraph (31) the following:

"(32) TRUCK STOP ELECTRIFICATION SYSTEM.--The term 'truck stop electrification system' means a system that delivers heat, air conditioning, electricity, or communications to a heavy duty vehicle.";

(b) DECLARATION OF POLICY.--Section 101(b), United States Code, is amended--

(1) in paragraph (1) by--

(A) striking the heading and inserting "CONSTRUCTION, RECONSTRUCTION AND REHABILITATION OF THE NATIONAL HIGHWAY SYSTEM.--"; and

(B) striking "the construction of Federal aid highway systems" and inserting "the construction, reconstruction and rehabilitation of the National Highway System";

(2) by striking paragraph (2);

(3) by redesignating paragraph (3) as paragraph (2);

(4) in paragraph (2)(H), as redesignated, by striking "Interstate System" and inserting "National Highway System";

(c) AMENDMENT OF SECTION 101(c).--Section 101(c) of title 23, United States Code, is amended by striking "system" and inserting "highway".

## **SEC. 2205. NATIONAL HIGHWAY PROGRAM.**

(a) ESTABLISHMENT OF PROGRAM.--The Secretary shall establish a National Highway Program to provide funding to preserve and improve the condition and performance of the highway infrastructure critical to the competitiveness of our economy and the livability of our communities.

(b) PROGRAM COMPONENTS.--The National Highway Program shall consist of the following two programs intended to increase the proportion of the Nation's highways and bridges in good physical condition and operation:

(1) The Highway Infrastructure Performance Program defined in section 119 of title 23, United States Code, will ensure strategic investments to achieve national goals for preserving and improving the infrastructure condition and

performance of the National Highway System, as defined in section 103 of title 23 of such Code; and

(2) The Flexible Investment Program defined in section 133 of title 23 of such Code will provide flexibility to States for investment decisions that improve the condition and performance of all Federal-aid highway facilities and of bridges on public roads.

(c) **PERFORMANCE-BASED MANAGEMENT.**--Obligation of funds apportioned to carry out the Highway Infrastructure Performance Program component of the National Highway Program shall be conditioned upon a State developing a performance-based framework for investments, including an asset management plan for the National Highway System that will be used for developing a program of projects to make progress toward achievement of national goals established for improving infrastructure condition and performance of the National Highway System.

## **SEC. 2206. NATIONAL HIGHWAY SYSTEM.**

(a) **IN GENERAL.**--Section 103 of title 23, United States Code, is amended to read as follows:

### **"Sec. 103. National highway system**

"(a) **IN GENERAL.**--For the purposes of this title, the Federal-aid system is the National Highway System, which includes the Interstate System.

"(b) **NATIONAL HIGHWAY SYSTEM.**--

"(1) **DESCRIPTION.**--The National Highway System consists of the highway routes and connections to transportation facilities that shall--

"(A) serve major population centers, international border crossings, ports, airports, public transportation facilities, and other intermodal transportation facilities and other major travel destinations;

"(B) meet national defense requirements; and

"(C) serve interstate and interregional travel and commerce.

"(2) **COMPONENTS.**--The National Highway System described in paragraph (1) consists of the following:

"(A) The National Highway System depicted on the map submitted by the Secretary of Transportation to Congress with the report entitled "Pulling Together: The National Highway System and its Connections to Major Intermodal Terminals" and dated May 24, 1996, and modifications approved by the Secretary prior to the enactment of this paragraph.

"(B) Other urban and rural principal arterial routes and border crossings on such routes not included on the National Highway System prior to the enactment of this paragraph.

"(C) Other connector highways (including toll facilities) that provide motor vehicle access between arterial routes on the National Highway System and a major intermodal transportation facility not

included on the National Highway System prior to the enactment of this paragraph.

"(D) A strategic highway network consisting of a network of highways that are important to the United States strategic defense policy and that provide defense access, continuity, and emergency capabilities for the movement of personnel, materials, and equipment in both peacetime and wartime that were not included on the National Highway System prior to the enactment of this paragraph. The highways may be highways on or off the Interstate System and shall be designated by the Secretary in consultation with appropriate Federal agencies and the States.

"(E) Major strategic highway network connectors consisting of highways that provide motor vehicle access between major military installations and highways that are part of the strategic highway network but were not included on the National Highway System prior to the enactment of this paragraph. The highways shall be designated by the Secretary in consultation with appropriate Federal agencies and the States.

"(3) MODIFICATIONS TO NHS.--

"(A) IN GENERAL.--The Secretary may make any modification, including any modification consisting of a connector to a major intermodal terminal, to the National Highway System that is proposed by a State if the Secretary determines that the modification--

"(i) meets the criteria established for the National Highway System under this title after the enactment of this subsection; and

"(ii) enhances the national transportation characteristics of the National Highway System.

"(B) COOPERATION.--

"(i) IN GENERAL.--In proposing a modification under this paragraph, a State shall cooperate with local and regional officials.

"(ii) URBANIZED AREAS.--In an urbanized area, the local officials shall act through the metropolitan planning organization designated for the area under section 134 of this title.

"(c) REQUIREMENT FOR STATE ASSET MANAGEMENT PLAN FOR THE NATIONAL HIGHWAY SYSTEM.--

"(1) IN GENERAL.--A State shall develop and implement a risk-based State asset management plan for managing infrastructure assets on the National Highway System based on a process defined by the Secretary.

"(2) PERFORMANCE GOALS.--A State asset management plan shall include strategies leading to a program of projects that will make progress toward achievement of the national goals for infrastructure condition and performance of the National Highway System consistent with the requirements of sections 134 and 135 of this title.

"(3) PLAN CONTENTS.--A State asset management plan shall, at a minimum, be in a form that the Secretary determines to be appropriate and include the following:

"(A) A summary listing of the highway infrastructure assets on the National Highway System in the State and their condition.

"(B) Asset management objectives and measures.

"(C) Performance gap identification.

"(D) Lifecycle cost and risk management analysis.

"(E) A financial plan.

"(F) Investment strategies.

"(d) INTERSTATE SYSTEM.--

"(1) DESCRIPTION.--

"(A) IN GENERAL.--The Dwight D. Eisenhower National System of Interstate and Defense Highways within the United States (including the District of Columbia and Puerto Rico) consists of highways designed, located, and selected in accordance with this paragraph.

"(B) DESIGN.--

"(i) IN GENERAL.--Except as provided in clause (ii), highways on the Interstate System shall be designed in accordance with the standards of section 109(b) of this title.

"(ii) EXCEPTION.--Highways on the Interstate System in Alaska and Puerto Rico shall be designed in accordance with such geometric and construction standards as are adequate for current and probable future traffic demands and the needs of the locality of the highway.

"(C) LOCATION.--Highways on the Interstate System shall be located so as--

"(i) to connect by routes, as direct as practicable, the principal metropolitan areas, cities, and industrial centers;

"(ii) to serve the national defense; and

"(iii) to the maximum extent practicable, to connect at suitable border points with routes of continental importance in Canada and Mexico.

"(D) SELECTION OF ROUTES.--To the maximum extent practicable, each route of the Interstate System shall be selected by joint action of the State transportation departments of the State in which the route is located and the adjoining States, in cooperation with local and regional officials, and subject to the approval of the Secretary.

"(2) MAXIMUM MILEAGE.--The mileage of highways on the Interstate System shall not exceed 43,000 miles, exclusive of designations under paragraph (4).

"(3) MODIFICATIONS.--The Secretary may approve or require modifications to the Interstate System in a manner consistent with the policies and procedures established under this subsection.

"(4) INTERSTATE SYSTEM DESIGNATIONS.--

"(A) ADDITIONS.--If the Secretary determines that a highway on the National Highway System meets all standards of a highway on the Interstate System and that the highway is a logical addition or connection

to the Interstate System, the Secretary may, upon the affirmative recommendation of the State or States in which the highway is located, designate the highway as a route on the Interstate System.

**"(B) DESIGNATIONS AS FUTURE INTERSTATE SYSTEM ROUTES.--**

"(i) If the Secretary determines that a highway on the National Highway System would be a logical addition or connection to the Interstate System and would qualify for designation as a route on the Interstate System under subparagraph (A) if the highway met all standards of a highway on the Interstate System, the Secretary may, upon the affirmative recommendation of the State or States in which the highway is located, designate the highway as a future Interstate System route.

"(ii) A designation under clause (i) shall be made only upon the written agreement of the State or States described in such clause that the highway will be constructed to meet all standards of a highway on the Interstate System by the date that is 25 years after the date of the agreement.

"(iii)(I) If the State or States described in clause (i) have not substantially completed the construction of a highway designated under this subparagraph within the time provided for under clause (ii), the Secretary shall remove the designation of the highway as a future Interstate System route.

"(II) Removal of the designation of a highway under subclause (I) shall not preclude the Secretary from designating the highway as a route on the Interstate System under subparagraph (A) or under any other provision of law providing for addition to the Interstate System.

"(III) An agreement described in clause (ii) that is entered into before August 10, 2005 shall be deemed to include the 25-year time limitation described in that clause, regardless of any earlier construction completion date in the agreement.

"(iv) No law, rule, regulation, map, document, or other record of the United States, or of any State or political subdivision of a State, shall refer to any highway designated as a future Interstate System route under this subparagraph, nor shall any such highway be signed or marked, as a highway on the Interstate System until such time as the highway is constructed to the geometric and construction standards for the Interstate System and has been designated as a route on the Interstate System.

**"(C) FINANCIAL RESPONSIBILITY.--**Except as provided in this title, the designation of a highway under this paragraph shall create no additional Federal financial responsibility with respect to the highway.

**"(5) EXEMPTION OF INTERSTATE SYSTEM.--**

"(A) IN GENERAL.--Except as provided in subparagraph (B), the Interstate System shall not be considered to be a historic site under section 303 of title 49 or section 138 of this title, regardless of whether the Interstate System or portions or elements of the Interstate System are listed on, or eligible for listing on, the National Register of Historic Places.

"(B) INDIVIDUAL ELEMENTS.--Subject to subparagraph (C), the Secretary shall determine, through the administrative process established for exempting the Interstate System from section 106 of the National Historic Preservation Act (16 U.S.C. 470f), those individual elements of the Interstate System that possess national or exceptional historic significance (such as a historic bridge or a highly significant engineering feature). Such elements shall be considered to be a historic site under section 303 of title 49 or section 138 of this title, as applicable.

"(C) CONSTRUCTION, MAINTENANCE, RESTORATION, AND REHABILITATION ACTIVITIES.--Subparagraph (B) does not prohibit a State from carrying out construction, maintenance, restoration, or rehabilitation activities for a portion of the Interstate System referred to in subparagraph (B) upon compliance with section 303 of title 49 or section 138 of this title, as applicable, and section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

"(e) TRANSFER OF INTERSTATE CONSTRUCTION FUNDS.--

"(1) IN GENERAL.--Upon application by a State and approval by the Secretary, the Secretary may transfer to the apportionment of the State under section 104(b)(2) of this title any remaining amount of funds apportioned to the State under section 104(b)(5)(A), as in effect on June 8, 1998.

"(2) EFFECT OF TRANSFER.--Upon transfer of an amount under subparagraph (A), the construction on which the amount is based, as included in the 1991 Interstate System cost estimate, shall not be eligible for funding under section 104(b)(5)(A) as in effect on June 8, 1998.

"(3) APPLICABILITY OF CERTAIN LAWS.--Funds transferred under this subsection shall be subject to the laws (including regulations, policies, and procedures) relating to the apportionment to which the funds are transferred.

"(f) NATIONAL FREIGHT CORRIDORS.--The term 'National Freight Corridors' means the national freight corridors identified under section 310 of title 49.

"(g) OPERATION OF CONVENTIONAL COMBINATION VEHICLES ON THE NATIONAL HIGHWAY SYSTEM.--

"(1) DEFINITION OF CONVENTIONAL COMBINATION VEHICLES.--The term 'conventional combination vehicles' means--

"(A) truck-tractor/semi-trailer combinations with semi-trailers up to 53-feet in length and 102 inches in width;

"(B) truck-tractor/semi-trailer/trailer combinations with each semi-trailer and trailer up to 28.5 feet in length and 102 inches in width; and

"(C) drive-away saddlemount combinations, not to exceed 97 feet in overall length, with up to three truck tractors, with or without a full mount, towed by a truck tractor.

"(2) NATIONAL NETWORK.--The National Network designated under the Surface Transportation Assistance Act of 1982 (Public Law 97-424; 96 Stat. 2119) is repealed.

"(3) OPERATION OF CONVENTIONAL COMBINATION VEHICLES.--

"(A) REQUIREMENT.--Conventional combination vehicles must be allowed to operate in all States on all segments of the National Highway System except segments that were open to traffic on the date of the enactment of this subsection and on which all non-passenger commercial motor vehicles were banned.

"(B) RESTRICTIONS.--A State may request temporary or permanent restrictions on the operation of commercial conventional combination vehicles, subject to approval by the Secretary, based on safety considerations, geometric constraints, work zones, weather, or traffic management requirements of special events or emergencies.

"(C) REASONABLE ACCESS.--Conventional combination vehicles must be given reasonable access between the National Highway System and facilities for food, fuel, and rest within one mile of the National Highway System, and access to terminal locations for the unloading and loading of cargo by the most reasonable, practicable, and safe route available, subject to review by the Secretary."

(b) CONFORMING AMENDMENTS.--Section 215 of title 23, United States Code, is amended--

(1) in subsection (f)(1)(A), by--

(A) striking "surface transportation program" and inserting "flexible investment program"; and

(B) striking "133(b)" and inserting "133(c)"; and

(2) in subsection (g), by striking "paragraphs (1), (3), and (4) of section 133(b)" and inserting "paragraphs (2), (5), and (8) of section 133(c) and section 133(f)".

## **SEC. 2207. HIGHWAY INFRASTRUCTURE PERFORMANCE PROGRAM.**

(a) IN GENERAL.--Section 119 of title 23, United States Code, is amended to read as follows:

### **"Sec. 119. Highway infrastructure performance program**

"(a) ESTABLISHMENT.--The Secretary of Transportation shall establish and implement a highway infrastructure performance program under this section.

"(b) PURPOSES.--The purposes of the highway infrastructure performance program shall be to--

"(1) provide support for the condition and operational performance of the National Highway System; and

"(2) ensure that investments of Federal-aid funds in highway infrastructure are directed to achievement of established national performance goals for infrastructure condition and operations.

"(c) ELIGIBLE FACILITIES.--Except as provided in subsections (d) and (f)(4) of this section, to be eligible for funding apportioned under 104(b)(1) of this title to carry out this section, a facility must be located on the National Highway System as defined in section 103 of this title.

"(d) ELIGIBLE PROJECTS.--Funds apportioned to a State to carry out the Highway Infrastructure Performance Program may be obligated only for a project on an eligible facility that--

"(1) is a project, or is part of a program of projects, supporting progress toward the achievement of national performance goals for improving infrastructure condition, safety, mobility, or freight movement on the National Highway System and is consistent with requirements of sections 134 and 135 of this title; and

"(2) is for one or more of the following purposes:

"(A) Reconstruction, resurfacing, restoration, rehabilitation, preservation or operational improvements of segments of the National Highway System.

"(B) Replacement (including replacement with fill material), rehabilitation, preservation, and protection (including scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events) of bridges on the National Highway System.

"(C) Replacement (including replacement with fill material), rehabilitation, preservation, and protection (including impact protection measures, security countermeasures, and protection against extreme events) of tunnels on the National Highway System.

"(D) Inspection and evaluation, as defined in section 151 of this title, of bridges and tunnels on the National Highway System, and inspection and evaluation of other highway infrastructure assets on the National Highway System, including signs and sign structures, earth retaining walls, and drainage structures.

"(E) Training of bridge and tunnel inspectors as defined in section 151 of this title.

"(F) Rehabilitation or replacement of existing ferry boats and ferry boat facilities, including approaches, that connect road segments of the National Highway System.



"(G) Reconstruction, resurfacing, restoration, rehabilitation, and preservation of, and operational improvements for, a Federal-aid highway not on the National Highway System, if--

"(i) the highway project is in the same corridor as, and in proximity to, a fully access-controlled highway designated as a part of the National Highway System;

"(ii) the improvements will enhance the level of service on the fully access-controlled highway described in clause (i) and improve regional traffic flow; and

"(iii) the improvements are more cost-effective, as determined by benefit-cost analysis, than an improvement to the fully access-controlled highway described in clause (i).

"(H) Bicycle transportation and pedestrian walkways in accordance with section 217 of this title.

"(I) Highway safety improvements for segments of the National Highway System.

"(J) Capital and operating costs for traffic management and traveler information monitoring, management, and control facilities and programs.

"(K) Development and implementation of a State asset management plan for the National Highway System and other public roads in accordance with section 103 of this title, including data collection, maintenance, and integration and the cost associated with obtaining, updating, and licensing software and equipment required for risk-based asset management and performance-based management.

"(L) Mitigation of damage to the human and natural environment, including wildlife, habitat, and ecosystems caused or anticipated to be caused by a transportation project funded under this section. Mitigation under this subsection includes the purchase of credits from commercial mitigation banks, establishing and managing agency sponsored mitigation banks, purchase of credits or establishment of in-lieu fee mitigation programs, contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands, and development of statewide and regional natural habitat and wetland conservation and mitigation plans, including any such banks, efforts, and plans as authorized under the Water Resources Development Act of 1990 (Public Law 101-640) (including crediting provisions). The following apply:

"(i) Contributions to a mitigation effort described in this subparagraph may take place concurrent with, in advance of, or subsequent to the construction of a project or projects.

"(ii) Credits from any agency-sponsored mitigation bank that are attributable to funding under this subparagraph may be used only for projects funded under this title unless the agency pays to the Secretary an amount equal to the Federal funds

attributable to the mitigation bank credits the agency uses for purposes other than mitigation of a project funded under this title.

"(iii) The agency shall pay an amount equal to the amount of Federal funds attributable to a mitigation site or unused mitigation bank credits if, within 10 years (or such longer period as the State requests and the Secretary determines to be reasonable) after the date on which Federal funds are first made available for such purpose under this title--

"(I) a project mitigation site funded under this subparagraph is not completed; or

"(II) in the case of an agency-sponsored mitigation bank funded under this subparagraph, if the bank's credits have not been fully applied to projects funded under this title.

"(iv) The Secretary shall deposit all amounts paid to the Secretary under this subparagraph into the Transportation Trust Fund.

"(M) Infrastructure-based intelligent transportation systems capital improvements.

"(N) Environmental restoration and pollution abatement in accordance with section 328 of this title.

"(O) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329 of this title.

"(P) Operational improvements to a freight railroad, marine highway, or intermodal facility in a National Freight Corridor that are a more cost effective means of improving performance in that National Freight Corridor, as determined by benefit-cost analysis, than improvements to a highway on the National Highway System, except that a State may not obligate in excess of 5 percent of funds apportioned to it to carry out this section for such purpose.

"(e) **LIMITATION ON NEW CAPACITY.**--The portion of the cost of any project undertaken under this section that is attributable to the expansion of the capacity of an eligible facility, where such new capacity consists of one or more new travel lanes shall not be eligible for funding under this section, except that construction of auxiliary lanes or widening of a bridge during rehabilitation or replacement to meet current geometric, construction and structural standards for the types and volumes of projected traffic over its design life shall be eligible for funding.

"(f) **STATE PERFORMANCE MANAGEMENT.**--

"(1) **IN GENERAL.**--To obligate funding apportioned under section 104(b)(1) of this title, a State shall develop a framework to invest such funding in projects or a program of projects designed to achieve State targets developed in consultation with the Secretary and identified in statewide and metropolitan transportation plans to support national goals for improving infrastructure condition and performance of the National Highway System.

"(2) STATE ASSET MANAGEMENT PLAN.--

"(A) REQUIREMENT FOR PLAN.--To obligate funding apportioned under section 104(b)(1) of this title, each State shall have in effect a risk-based asset management plan for the National Highway System in accordance with section 103(c) of this title, developed through a process defined and approved by the Secretary.

"(B) APPROVAL OF PLAN DEVELOPMENT PROCESS.--

"(i) Not later than 3 months after a State submits a request for approval of the process used by the State to develop the State National Highway System Asset Management Plan, the Secretary shall review such process and certify that the process meets the requirements defined by the Secretary or shall deny certification and define actions necessary for the State to correct deficiencies in the State process.

"(ii) Not less often than every 4 years, the Secretary shall review and recertify that the process used by a State to develop and maintain the State National Highway System Asset Management Plan meets the requirements for such process as defined by the Secretary.

"(3) PERFORMANCE REPORTS.--A State shall annually report to the Secretary on the condition and performance of the National Highway System, progress in achieving State targets for each of the national goals for the National Highway System, and the effectiveness of the investment strategy documented in the State National Highway System Asset Management Plan. A State that does not meet its targets for 2 consecutive years for each of these national goals established by the Secretary shall state the actions the State will undertake to meet its targets."

"(4) PERFORMANCE ACHIEVEMENT.--A State that demonstrates that it has met its targets for 3 consecutive years for each of the national goals for the National Highway System, may request approval from the Secretary to use apportionments under section 104(b)(1) of this title for the purposes described in section 133 of this title for a period of 12 months or until such time as the State does not meet its targets."

(b) TRANSITION PERIOD.--

(1) STATE PERFORMANCE MANAGEMENT.--

(A) IN GENERAL.--Except as provided in subparagraph (B), the Secretary shall approve obligations of funds apportioned to a State to carry out the Highway Infrastructure Performance Program under section 119 of title 23, United States Code only if, not later than one year after the measures and associated targets for improving infrastructure condition and performance of the National Highway System are established by the Secretary, a State has in effect State targets developed in consultation with the Secretary that will contribute to achieving such national goals as required by subsection (f) of such section, and section 2301 of this Act.

(B) INTERIM.--Until a State has in effect State targets developed in consultation with the Secretary that will contribute to achieving the national goals for improving the infrastructure condition and performance of the National Highway System, but not later than one year after national measures and associated targets as defined under section 2301 of this Act are established by the Secretary, the Secretary shall approve obligations of funds apportioned to a State to carry out the Highway Infrastructure Performance Program under section 119 of such title for projects that otherwise meet the requirements of such section.

(2) STATE ASSET MANAGEMENT PLAN.--

(A) IN GENERAL.--Except as provided in subparagraph (B), the Secretary shall approve obligations of funds apportioned to a State to carry out the Highway Infrastructure Performance Program under section 119 of title 23 of such Code, only if, not later than 6 months after promulgation of regulations to define the requirements for a State National Highway System Asset Management Plan and the process to be used in developing such plan in accordance with section 103 of such title, the Secretary has approved the State's process for developing such State National Highway System Asset Management Plan.

(B) INTERIM.--Until a State implements an approved process for a State Asset Management Plan and has the Plan in effect, but not later than 6 months after promulgation of regulations to implement section 103 of such title, the Secretary shall approve obligation of funds apportioned to a State to carry out the Highway Infrastructure Performance Program for projects that otherwise meet the requirements of such section.

(c) CONFORMING AMENDMENT.--The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 119 and inserting the following:

"119. Highway infrastructure performance program."

## **SEC. 2208. FLEXIBLE INVESTMENT PROGRAM.**

(a) IN GENERAL.--Section 133 of title 23, United States Code, is amended to read as follows:

### **"Sec. 133. Flexible investment program**

"(a) ESTABLISHMENT.--The Secretary of Transportation shall establish and implement a flexible investment program under this section.

"(b) PURPOSE.--The purposes of the flexible investment program shall be to provide flexibility to States to direct funding to improve the conditions and performance on Federal-aid highways and on bridges on any public road.

"(c) ELIGIBLE PROJECTS.--Funds apportioned under section 104(b)(2) of this title to carry out the flexible investment program may be obligated for any of following purposes:

"(1) Construction, reconstruction, rehabilitation, resurfacing, restoration, preservation, or operational improvements for Federal-aid highways, including construction of designated routes of the Appalachian Development Highway System.

"(2) Replacement (including replacement with fill material), rehabilitation, preservation, and protection (including painting, scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events), for bridges and tunnels on public roads of all functional classifications

"(3) Construction of a new bridge or tunnel on a new location on a Federal-aid highway.

"(4) Inspection and evaluation of bridges and tunnels and training of bridge and tunnel inspectors as defined in section 151 of this title and for other highway assets including signs, retaining walls, and drainage structures.

"(5) Fringe and corridor parking facilities.

"(6) Bicycle transportation and pedestrian walkways in accordance with section 217 of this title.

"(7) Highway safety infrastructure improvements and programs.

"(8) Highway research and development and technology transfer programs.

"(9) Capital and operating costs for traffic management and traveler information monitoring, management, and control facilities and programs, including advanced truck stop electrification systems.

"(10) Projects and strategies designed to support congestion pricing, including electronic toll collection and travel demand management strategies and programs.

"(11) Surface transportation planning.

"(12) Transportation control measures listed in section 108(f)(1)(A) (other than clause (xvi)) of the Clean Air Act (42 U.S.C. 7408(f)(1)(A)).

"(13) Development and implementation of a State asset management plan for the National Highway System and other public roads in accordance with section 103 of this title, including data collection, maintenance, and integration and the cost associated with obtaining, updating, and licensing software and equipment required for risk-based asset management and performance-based management.

"(14) Mitigation of impacts to the human and natural environment including wildlife, habitat, and ecosystems caused or anticipated to be caused by a transportation project funded under this title. Mitigation eligible under this subsection includes the purchase of credits from commercial mitigation banks, establishing and managing agency sponsored mitigation banks, purchase of credits or establishment of in-lieu fee mitigation programs, contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands, and development of statewide and regional natural habitat

and wetland conservation and mitigation plans, including any such banks, efforts, and plans authorized under the Water Resources Development Act of 1990 (Public Law 101-640) (including crediting provisions), as follows:

"(A) Contributions to a mitigation bank described in this paragraph may take place concurrent with, in advance of, or subsequent to the construction of a project or projects.

"(B) Credits from any agency-sponsored mitigation bank that are attributable to funding under this paragraph may be used only for projects funded under this title unless the agency pays to the Secretary an amount equal to the Federal funds attributable to the mitigation bank credits the agency uses for purposes other than mitigation of a project funded under this title.

"(C) The agency shall pay an amount equal to the amount of Federal funds attributable to a mitigation site or unused mitigation bank credits if, within 10 years (or such longer period as the State requests and the Secretary determines to be reasonable) after the date on which Federal funds are first made available for such purpose under this title--

"(i) a project mitigation site funded under this paragraph is not completed; or,

"(ii) an agency-sponsored mitigation bank funded under this paragraph has bank credits that have not been fully applied to projects funded under this title.

"(D) The Secretary shall deposit all amounts paid to the Secretary under this subparagraph into the Highway Trust Fund.

"(15) Infrastructure-based intelligent transportation systems capital improvements.

"(16) Environmental restoration and pollution abatement in accordance with section 328 of this title.

"(17) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329 of this title.

"(18) Capacity and operational improvements to a freight railroad, marine highway, or intermodal facility in a National Freight Corridor that are a more cost effective means of improving performance in that National Freight Corridor, as determined by benefit-cost analysis, than improvements to a highway on the National Highway System, except that a State may not obligate in excess of 5 percent of funds apportioned to it to carry out this section for such purpose.

"(d) LOCATION OF PROJECTS.--Except as provided in subsection (f) and except for projects described in subsections (c)(2), (c)(5), (c)(7), and (c)(8), flexible investment program projects may not be undertaken on roads functionally classified as local or rural minor collectors, unless the roads were on a Federal-aid highway system on January 1, 1991, and except as approved by the Secretary.

"(e) APPLICABILITY OF PLANNING REQUIREMENTS.--Programming and expenditure of funds for projects under this section shall be consistent with the requirements of sections 134 and 135 of this title.

**"(f) BRIDGES NOT ON FEDERAL-AID HIGHWAYS.--**

**"(1) SET-ASIDE.--**Of the amounts apportioned to a State for fiscal year 2012 and each fiscal year thereafter under section 104(b)(2) of this title, the State shall obligate for activities identified in subsection (c)(2) for highway bridges located on public roads, other than those on a Federal-aid highway, an amount which is not less than 15 percent of the amount of funds apportioned to the State for the Highway Bridge Program for fiscal year 2012.

**"(2) REDUCTION OF EXPENDITURES.--**The Secretary, after consultation with State and local officials, may reduce the requirement for expenditure for bridges not on a Federal-aid highway under paragraph (1) with respect to the State if the Secretary determines that the State has inadequate needs to justify the expenditure.

**"(3) CREDIT FOR BRIDGES NOT ON FEDERAL-AID HIGHWAYS.--**Notwithstanding any other provision of law, with respect to any project not on a Federal-aid highway for the replacement of a bridge or rehabilitation of a bridge which is wholly funded from State and local sources, is eligible for Federal funds under this section, is noncontroversial, is certified by the State to have been carried out in accordance with all standards applicable to such projects under this section, and is determined by the Secretary upon completion to be no longer a deficient bridge, any amount expended after the date of the enactment of this subsection from State and local sources for such project in excess of 20 percent of the cost of construction thereof may be credited to the non-Federal share of the cost of the projects in such State which are eligible for Federal funds under this section. Such crediting shall be in accordance with such procedures as the Secretary may establish."

**(b) CONFORMING AMENDMENT.--**The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 133 and inserting the following:

"133. Flexible investment program."

**SEC. 2209. HISTORIC HIGHWAY BRIDGES.**

**(a) IN GENERAL.--**Section 144 of title 23, United States Code, is amended to read as follows:

**"Sec. 144. Historic highway bridges**

**"(a) IN GENERAL.--**The Secretary of Transportation shall, in cooperation with the States, implement this section in a manner that encourages the inventory, retention, rehabilitation, adaptive reuse, and future study of historic highway bridges.

**"(b) HISTORIC HIGHWAY BRIDGE DEFINED.--**As used in this section, 'historic highway bridge' means any bridge that is listed on, or eligible for listing on, the National Register of Historic Places.

"(c) STATE INVENTORY.--The Secretary shall require each State to complete an inventory of all bridges on and off Federal-aid highways to determine their historic significance. The Secretary may, at the request of a State, inventory bridges on and off Federal aid highways for historic significance.

"(d) ELIGIBILITY.--Reasonable costs associated with actions to preserve, or reduce the impact of a project under this chapter on, the integrity of historic highway bridges shall be eligible as reimbursable project costs under this title if the load capacity and safety features of the bridge are adequate to serve the intended use for the life of the bridge; except that in the case of a bridge which is no longer used for motorized vehicular traffic, the costs eligible as reimbursable project costs under this subsection shall not exceed 200 percent of the estimated cost of demolition of such bridge.

"(e) PRESERVATION.--Any State that proposes to demolish an historic highway bridge for a replacement project with funds made available under this title shall first make the bridge available for donation to a State, locality, or responsible private entity if such State, locality, or responsible entity enters into an agreement to--

"(1) maintain the bridge and the features that give it its historic significance; and

"(2) assume all future legal and financial responsibility for the bridge, which may include an agreement to hold the State transportation department harmless in any liability action.

"(f) COSTS INCURRED.--Costs incurred by the State to preserve the historic highway bridge, including funds made available to the State, locality, or private entity to enable it to accept the bridge, shall be eligible as reimbursable project costs under this chapter up to an amount not to exceed 200 percent of the cost of demolition. If an historic highway bridge must be removed in order to accommodate a replacement structure on existing location, only those of a type which could reasonably be expected to be relocated (such as a metal truss bridge) need be made available for donation. Acceptance of these funds shall not preclude the preserved structure from eligibility for future funding for which it may qualify under other sections of this title.".

(b) CONFORMING AMENDMENT.--The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 144 and inserting the following:

"Sec. 144. Historic highway bridges.".

## **SEC. 2210. NATIONAL BRIDGE AND TUNNEL INVENTORY AND INSPECTION PROGRAMS.**

(a) IN GENERAL.--Section 151 of title 23, United States Code, is amended to read as follows:

**"Sec. 151. National bridge and tunnel inventory and inspection programs**



"(a) NATIONAL BRIDGE INVENTORY.--

"(1) HIGHWAY BRIDGES.--The Secretary, in consultation with the States, shall inventory all highway bridges on any public road, including privately owned bridges open to the public, on and off Federal-aid highways, that are bridges over waterways, other topographical barriers, other highways, and railroads.

"(2) TRIBAL AND FEDERAL LANDS PUBLIC BRIDGES.--The Secretary, in consultation with the Secretaries of appropriate Federal agencies, shall inventory all tribally-owned and Federally-owned highway bridges that are open to the public, over waterways, other topographical barriers, other highways, and railroads.

"(b) BRIDGE CONSTRUCTION COSTS.--The Secretary, in consultation with the States and the Secretaries of appropriate Federal agencies, shall determine the cost of replacing and rehabilitating bridges.

"(c) NATIONAL TUNNEL INVENTORY.--

"(1) HIGHWAY TUNNELS.--The Secretary, in consultation with the States, shall inventory all highway tunnels on any public road, on and off Federal-aid highways.

"(2) FEDERAL LANDS PUBLIC TUNNELS.--The Secretary, in consultation with the Secretaries of appropriate Federal agencies, shall inventory all Federally-owned highway tunnels that are open to the public.

"(d) TUNNEL CONSTRUCTION COSTS.--The Secretary, in consultation with the States and the Secretaries of appropriate Federal agencies, shall determine the cost of replacing and rehabilitating tunnels.

"(e) NATIONAL BRIDGE AND TUNNEL INSPECTION STANDARDS.--The Secretary, in consultation with the State transportation departments and interested and knowledgeable private organizations and individuals, shall establish national bridge inspection standards and national tunnel inspection standards for the proper safety inspection and evaluation of all highway bridges and tunnels.

"(f) MINIMUM REQUIREMENTS OF INSPECTION STANDARDS.--The standards established under subsection (a) shall, at a minimum--

"(1) specify in detail the method by which such inspections shall be carried out by the States, Federal Agencies, and Tribes;

"(2) establish the maximum time period between inspections;

"(3) establish the qualifications for those charged with carrying out the inspections;

"(4) require each State, Federal Agency, and Tribe to maintain and make available to the Secretary upon request--

"(A) written reports on the results of highway bridge and tunnel inspections together with notations of any action taken pursuant to the findings of such inspections; and

"(B) current inventory data for all highway bridges and tunnels reflecting the findings of the most recent inspections conducted; and

"(5) establish a procedure for national certification of highway bridge inspectors and tunnel inspectors.

"(g) TRAINING PROGRAM FOR BRIDGE AND TUNNEL INSPECTORS.-- The Secretary, in cooperation with the State transportation departments, shall establish a program designed to train appropriate governmental employees to carry out highway bridge and tunnel inspections. Such training program shall be revised from time to time to take into account new and improved techniques.

"(h) AVAILABILITY OF FUNDS.--To carry out this section, the Secretary may use funds made available pursuant to the provisions of sections 104(a) and 503 of this title.

"(i) NATIONAL BRIDGE INSPECTION STANDARDS AND NATIONAL TUNNEL INSPECTION STANDARDS COMPLIANCE REQUIREMENTS.--

"(1) REVIEWS OF STATE COMPLIANCE.--

"(A) ANNUAL REVIEW.--The Secretary shall annually review State compliance with the standards established under this section.

"(B) FINDING OF NONCOMPLIANCE.--Where an annual review in accordance with subparagraph (A) identifies noncompliance by a State, the Secretary shall issue a report detailing the issues of such noncompliance by December 31 of the calendar year in which the review was made, and shall provide the State an opportunity to address the noncompliance by--

"(i) developing a corrective action plan to remedy the noncompliance; or

"(ii) resolving the issues of noncompliance within 45 days of notification.

"(2) PENALTY FOR NONCOMPLIANCE.--

"(A) FUNDING REQUIREMENT.--Where a State fails to satisfy the requirements of paragraph (1)(B) by August 1 of the calendar year following the year of the finding of noncompliance, the Secretary shall, on October 1 of such year, and each year thereafter as may be necessary, require the State to dedicate funds apportioned to the State under sections 119 and 133 of this title after enactment of this paragraph to correct the noncompliance with this section.

"(B) AMOUNT OF FUNDING.--The amount of the funds directed to correcting noncompliance in accordance with subparagraph (A) shall--

"(i) be determined by the State based on an analysis of the actions needed to address the noncompliance; and

"(ii) require approval by the Secretary.

"(3) EXCEPTIONS. –

"(A) SPECIAL SAFETY CONCERNS.--Whenever bridges are discovered with safety concerns in need of immediate action such as improper postings for load restrictions or inadequate bridge closings, the Secretary shall immediately notify the State of noncompliance and require the State to correct the noncompliance. Notwithstanding section 145 of this title, after enactment of this paragraph the Secretary may require a State to use funds apportioned to the State for sections 119 or 133 of this title or other funds available to the State to correct bridges with special safety concerns.

"(B) AMOUNT OF FUNDING.--The amount of the funds directed for correcting noncompliance in accordance with subparagraph (A) shall--

"(i) be determined by the State based on an analysis of the actions needed to address the noncompliance; and

"(ii) if apportioned funds are used, require approval by the Secretary.

"(j) SET-ASIDE FOR BRIDGE AND TUNNEL INSPECTIONS.--Of funds apportioned to a State for fiscal year 2012 and each fiscal year thereafter, the following amounts shall be set aside and combined and administered as a single fund to carry out this section:

"(1) One percent of the funds apportioned to a State under section 104(b)(1) of this title for the Highway Infrastructure Performance Program under section 119 of this title; and

"(2) One percent of the funds apportioned to a State under section 104(b)(2) of this title for the Flexible Investment Program under section 133 of this title."

(b) CONFORMING AMENDMENT.--The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 151 and inserting the following:

"Sec. 151. National bridge and tunnel inventory and inspection programs."

**SEC. 2211. LIVABILITY PROGRAM.**

(a) ESTABLISHMENT.--The Secretary shall establish and implement a livability program in accordance with this section that shall consist of the livable communities program in section 150(a) of title 23, United States Code, the investments for livable communities grant program in section 150(b) of title 23, United States Code, and the livability capacity building grant program defined under subsection (e) of this section.

(b) PURPOSES.--The purposes of the livability program shall be to--

(1) promote safe and efficient multi-modal choices for transportation users in rural and urban areas throughout the country;

(2) increase access to transportation services;

- (3) enhance the relationship between transportation and land use while protecting the environment;
- (4) provide affordable connections from residences to employment centers and essential services, including safe routes to school; and
- (5) enhance economic opportunities and environmental sustainability.

(c) IN GENERAL.--Chapter 1 of title 23, United States Code, is amended by inserting after section 149 the following:

**"Sec. 150. Livability Program**

"(a) LIVABLE COMMUNITIES PROGRAM.--

"(1) ESTABLISHMENT.--The Secretary shall establish and implement a livable communities program in accordance with this subsection.

"(2) PURPOSES.--The purposes of the livable communities program shall be to--

"(A) help States to deliver transportation projects that improve quality of life for rural and urban areas;

"(B) improve the safety and efficiency of the transportation system for all transportation modes;

"(C) reduce the impacts of transportation on the environment, including the reduction of greenhouse gas emissions;

"(D) reduce the need for costly future transportation infrastructure;

"(E) ensure efficient access to jobs, education and essential services; and

"(F) encourage private sector development patterns and investments that support livability goals.

"(3) ELIGIBLE PROJECTS AND ACTIVITIES.--A State may obligate funds apportioned to carry out the livable communities program for any of the following projects or activities:

"(A) Planning, designing, or construction of boulevards, main streets and scenic byways, including--

"(i) redesign of an underused highway, particularly one that is no longer a principal route after construction of a bypass or Interstate System route, into a context sensitive boulevard or main street that supports multiple forms of transportation;

"(ii) new street construction that enhances connectivity, increases the efficiency of network performance, and encourages the use of public transportation, pedestrian walkways, or bicycle infrastructure;

"(iii) redesign of a street to enhance connectivity, increase the efficiency of network performance, and encourage the use of public transportation, pedestrian walkways, or bicycle infrastructure;

"(iv) redesign of a highway to support public transportation, including transit-only lanes and priority signalization for transit;

"(v) planning or implementation of changes to State or local laws, codes or ordinances that provide transportation facilities to support infill, transit-oriented or town center development that will support trip-chaining, non-motorized transportation or more efficient use of the road network;

"(vi) safety improvements to a State scenic byway, National Scenic Byway, All-American Road, or one of America's Byways;

"(vii) historic preservation and other improvements to the streetscape that support livable communities, and the rehabilitation of historic transportation buildings, structures, or facilities for transportation use; and

"(viii) community and environmental mitigation for projects undertaken in this Program, including –

"(I) historic preservation and rehabilitation of historic transportation buildings, structures, or facilities;

"(II) inventory, control, or removal of outdoor advertising where local and State laws prevent the re-erecting, moving, or replacing of outdoor advertising signs on the same parcel or in an area designated by agreement;

"(III) strategies to reduce water pollution due to roadway runoff;

"(IV) strategies to reduce transportation-related wildlife mortality and to restore and maintain connectivity among terrestrial and aquatic habitats; and

"(V) other mitigation at the watershed and ecosystem scale to support prioritized transportation investments, including--

"(a) mitigation of damage to the human and natural environment caused by a transportation project funded under this title; and

"(b) environmental restoration and pollution abatement in accordance with **\*\*[section 328??]**.

"(B) Providing transportation choices, including--

"(i) on-road and off-road trail facilities for pedestrians, bicyclists, and other nonmotorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other security-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

"(ii) the planning, design, and construction of infrastructure-related projects and systems that will provide safe

routes for non-drivers, including children, older adults, individuals with disabilities, and individuals with lower incomes to access daily needs;

"(iii) activities for safety and education of pedestrians and bicyclists and to encourage walking and bicycling, including efforts to encourage walking and bicycling to school and community centers;

"(iv) conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other nonmotorized transportation users; and

"(v) carpool, vanpool and car share projects.

"(C) Supporting livability through planning, project development, and programmatic mitigation, including--

"(i) archaeological and historic preservation planning and research; and

"(ii) stormwater management.

"(D) Improving air quality and reducing congestion by means of transportation projects or programs for an area in a State that is or was designated as a nonattainment area for ozone, carbon monoxide, nitrogen dioxide, or particulate matter under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) and classified pursuant to section 181(a), 186(a), 188(a), or 188(b) of the Clean Air Act (42 U.S.C. 7511(a), 7512(a), 7513(a), or 7513(b)) or is or was designated as a nonattainment area under section 107(d) after December 31, 1997, or is required to prepare, and file with the Administrator of the Environmental Protection Agency, maintenance plans under the Clean Air Act (42 U.S.C. 7401 et seq.), but only if--

"(i) the Secretary, after consultation with the Administrator of the Environmental Protection Agency determines, on the basis of information published by the Environmental Protection Agency pursuant to section 108(f)(1)(A) of the Clean Air Act (other than clause (xvi)) that the project or program is likely to contribute to--

"(I) the attainment of a national ambient air quality standard; or

"(II) the maintenance of a national ambient air quality standard in a maintenance area and a high level of effectiveness in reducing air pollution, in cases of projects or programs where sufficient information is available;

"(ii) the Secretary, after consultation with the Administrator of the Environmental Protection Agency determines that the project or program is part of a program, method, or strategy described in section 108(f)(1)(A) of the Clean Air Act;

"(iii) the project or program is included in a State implementation plan that has been approved pursuant to the Clean Air Act and the project will have air quality benefits; or

"(iv) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the project or program is likely to contribute to the attainment of a national ambient air quality standard, or to the reduction of greenhouse gases, whether through reductions in vehicle miles traveled, fuel consumption, or through other means.

"(E) Construction, rehabilitation, or replacement of ferry boats and ferry boat terminals as described in section 129(c) of this title.

"(F) Capital costs for transit projects eligible for assistance under chapter 53 of title 49, United States Code, including vehicles and facilities, whether publicly or privately owned, that are used to provide intercity passenger service by bus, and fringe and corridor parking or other transportation project to support transit-oriented development. A State may use up to 50 percent of funds apportioned to it under section 104(b)(3) of this title for purposes identified in this subparagraph, including any funds used to improve air quality and reduce congestion under subparagraph (D).

"(4) SET ASIDE FOR AIR QUALITY IMPROVEMENT.--

"(A) IN GENERAL.--The Secretary shall ensure that any State with a nonattainment area shall set aside a minimum of 15 percent of funds apportioned to it under section 104(b)(3) of this title for use only for projects to improve air quality in nonattainment areas as described in subsection (a)(3)(D).

"(B) LIMITATION ON USE OF FUNDS.--A State may not obligate any funds set aside under subparagraph (A) for a project that will result in the construction of new capacity available to single occupant vehicles unless the project consists of a high occupancy vehicle facility available to single occupant vehicles only at other than peak travel times.

"(5) REQUIRED STATE COORDINATORS.--Of funds apportioned to a State under section 104(b)(3) of this title, a State shall use such amount as may be necessary to fund in the State department of transportation--

"(A) one or more State bicycle and pedestrian coordinators for promoting and facilitating the increased use of nonmotorized modes of transportation, including developing facilities for the use of pedestrians and bicyclists and public education, promotional, and safety programs for using such facilities; and

"(B) a full-time safe routes to school coordinator to enable and encourage children, including those with disabilities, to walk and bicycle to school; to make walking and bicycling to school safe and more appealing, and to facilitate the planning, development and implementation of projects that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of schools.

"(6) STATE PERFORMANCE MANAGEMENT.--

"(A) IN GENERAL.--A State shall develop a strategy to invest funding apportioned to carry out this program for projects and activities to

achieve State targets established in consultation with the Secretary that support national goals for improving livability.

"(B) PERFORMANCE REPORTS.--A State shall annually report **\*\*[to the Secretary]** on its progress in achieving State targets for national goals for improving livability.

"(b) INVESTMENTS FOR LIVABLE COMMUNITIES GRANT PROGRAM.--

"(1) IN GENERAL.--The Secretary shall establish an investments for livable communities grant program in accordance with this subsection.

"(2) PURPOSE.--The purpose of the investments for livable communities grant program shall be to promote innovative, multi-modal, and multi-jurisdictional highway projects that promise significant environmental and economic benefits to an entire metropolitan area, a region, or the nation.

"(3) ELIGIBLE APPLICANTS.--A State department of transportation, tribal government, local government, or metropolitan planning organization shall be eligible to apply for a grant under this subsection.

"(4) ELIGIBLE PROJECTS.--A project eligible for funding under subsection (a)(3) of this section shall be eligible for funding under the investments for livable communities grant program.

"(5) ELIGIBLE PROJECT COSTS.--Eligible project costs shall include --

"(A) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities;

"(B) construction, reconstruction, rehabilitation, acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, acquisition of equipment directly related to improving system performance, and operational improvements; and

"(C) all financing costs, including subsidy costs, under the Transportation Infrastructure Finance and Innovation Act program.

"(6) APPLICATIONS AND AWARDS.--

"(A) APPLICATIONS.--An eligible applicant seeking a grant for an eligible project under this subsection shall submit an application in such form and in accordance with such requirements as the Secretary shall establish.

"(B) MINIMUM AWARD AMOUNT.--An eligible applicant must request at least \$250,000 for an eligible project under this subsection.

"(C) FEDERAL SHARE.--Except for eligible project costs under paragraph (5)(C), the Federal share of the cost of a project under the infrastructure for livable communities grant program shall not exceed 80 percent. For eligible project costs under paragraph (5)(C), the Federal share may be up to 100 percent of the financing costs.

"(D) CRITERIA FOR GRANTS.--In addition to eligibility requirements under paragraph (4), in awarding a grant under this subsection for a project, the Secretary shall consider the extent to which the project--



"(i) demonstrates a cohesive plan in which non-infrastructure elements, where proposed, reinforce achievement of the purpose of the program;

"(ii) commits more than 20 percent of State or local matching funds, in addition to Federal funds made available under this section, to projects eligible for assistance under this section;

"(iii) is expected to be completed in three years and demonstrates broad community support;

"(iv) will enhance the economic competitiveness of the metropolitan area, region, or nation;

"(v) will improve the condition of existing transportation facilities and systems, particularly the minimization of life-cycle costs;

"(vi) will improve energy efficiency, reduce dependence on oil, reduce greenhouse gas emissions, or provide overall environmental benefits; or

"(vii) will improve the safety of transportation facilities in metropolitan area, region, or nation."

**(d) TRANSITION PERIOD FOR STATE PERFORMANCE MANAGEMENT.--**

(1) **IN GENERAL.--**Except as provided in paragraph (2), the Secretary shall approve obligations of funds apportioned to a State to carry out the livable communities program under section 150(a) of title 23, United States Code, only if, not later than one year after the Secretary establishes national measures and associated targets for the livable communities program, the State has developed, in consultation with the Secretary, State targets that will contribute to achieving such national goals as required by such section.

(2) **INTERIM.--**Until a State has developed, in consultation with the Secretary, State targets that will contribute to achieving the national goals for improving livability, but not later than the date that is one year after the Secretary establishes national measures and associated targets for the livable communities program, the Secretary may approve obligations of funds apportioned to a State to carry out the livable communities program under section 150(a) of such title for projects that otherwise meet the requirements of such section.

**(e) LIVABILITY CAPACITY BUILDING GRANT PROGRAM.--**

(1) **IN GENERAL.--**The Secretary shall establish a livability capacity building grant program in accordance with this subsection.

(2) **PURPOSE.--**The purpose of the livability capacity building grant program shall be to improve capacity for addressing livability needs.

(3) **ELIGIBLE APPLICANTS.--**A State department of transportation, tribal government, local government, or metropolitan planning organization shall be eligible to apply for a grant under this subsection.

(4) **ELIGIBLE PROJECTS.--**To be eligible for funding under this subsection, a project shall be a project to--

(A) facilitate improved data collection to better incorporate livability into transportation planning through the use of a variety of data collection mechanisms, including household travel surveys, panel surveys, built environment inventories, employment inventories, and travel data collection related to bicyclists and pedestrians, including persons with disabilities;

(B) provide staff training to support livability-related transportation capacity building;

(C) furnish software and computer upgrades to support modeling and data collection as described in subparagraph (A);

(D) reorganize an eligible applicant's institution to better reflect the responsibilities and expertise needed to address livability in transportation plans and related activities;

(E) assist a transportation authority to develop integrated transportation, land use, housing, and environment planning efforts or to carry out a comprehensive plan supported by the community; or

(F) develop and implement transportation modeling, simulation, and analysis capabilities, including--

(i) methods for advanced travel models;

(ii) incremental improvements to trip-based models; and

(iii) emerging models for--

(I) providing reliable information for such applications as multimodal investment analyses, operational analyses, environmental assessments, evaluations of a wide range of policy alternatives, toll-facility revenue forecasts, and freight forecasts; and

(II) meeting Federal and State regulatory requirements.

**(5) APPLICATIONS AND AWARDS.--**

(A) **APPLICATIONS.--**An eligible applicant seeking a grant for an eligible project under this subsection shall submit an application in such form and in accordance with such requirements as the Secretary shall establish.

(B) **CRITERIA FOR GRANTS.--**In addition to eligibility requirements under paragraph (5), in awarding a grant under this subsection for a project, the Secretary shall consider--

(i) the extent to which the proposed project will help the applicant address the principles from the interagency partnership for sustainable communities between the Department of Housing and Urban Development, the Environmental Protection Agency, and the Department of Transportation;

(ii) the degree to which the project leverages investment; and

(iii) the extent of coordination and collaboration demonstrated between all relevant transportation entities in connection with the project.

(6) FEDERAL SHARE.--The Federal share of the cost of a project carried out under this subsection shall not exceed 80 percent.

(7) APPLICABILITY OF TITLE 23.--Funds made available to carry out this subsection shall be available for obligation and administered in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code.

(f) ACCELERATING PROJECT DELIVERY.—

(1) EXEMPTIONS FOR CERTAIN PROJECTS.--Projects eligible under sections 150(a)(3)(B) and 150(b) of title 23, United States Code, related to safe routes to schools and pedestrian, bicyclists, and other nonmotorized forms of transportation shall not be subject to--

(A) section 112 of such title; and

(B) section 113 of such title when a State uses qualified youth conservation or services corps for such project.

(2) INFRASTRUCTURE PROJECTS.--Not later than one year after the date of the enactment of this Act, the Secretary shall develop regulations or guidance for Federal-aid projects under this section that encourages the use of the programmatic approaches to environmental reviews, expedited procurement techniques, and other best practices to facilitate productive and timely expenditure for projects that are small, low impact, and constructed within an existing built environment.

(3) STATE PROCESSES.--The Secretary shall work with State departments of transportation to ensure that any regulation or guidance developed under paragraph (2) is consistently implemented by States and the Federal Highway Administration to avoid unnecessary delays in implementing projects and to ensure the effective use of Federal dollars.

(4) REPEAL.--Sections 1404(j) and 1807(g) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users are repealed.

(g) CONFORMING AMENDMENT.--The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 150 and inserting the following:

"Sec. 150. Livable communities program."

(h) RELATED AMENDMENTS.--

(1) Section 162 of chapter 1 of such title, is amended by striking subsections (b) through (f).

(2) Chapter 2 of such title, as amended by this Act, is amended by repealing section 206;

(3) The analysis of chapter 2 of title 23 is amended by striking the item related to section 206; and

(4) Section 217 of title 23 is amended to read as follows:

**"Sec. 217. Bicycle transportation and pedestrian walkways**

"(a) USE OF HIGHWAY INFRASTRUCTURE PERFORMANCE PROGRAM FUNDS.--Subject to project approval by the Secretary, funds apportioned to a State under section 104(b)(1) of this title may be obligated for construction of pedestrian walkways and bicycle transportation facilities on land adjacent to any highway on the National Highway System.

"(b) USE OF FLEXIBLE INVESTMENT PROGRAM FUNDS.--Subject to project approval by the Secretary, funds apportioned to a State under section 104(b)(2) of this title may be obligated for construction of pedestrian walkways and bicycle transportation facilities and for carrying out nonconstruction projects related to safe bicycle and pedestrian use.

"(c) USE OF FEDERAL LANDS HIGHWAY AND TRIBAL TRANSPORTATION FUNDS.--Funds authorized for the Federal Lands Transportation Program, the Federal Lands Access Program, and the Tribal Transportation Program shall be available, at the discretion of the department charged with the administration of such funds, for construction of pedestrian walkways and bicycle transportation facilities, or other provisions for pedestrians and bicycles.

"(d) USE OF LIVABLE COMMUNITIES PROGRAM FUNDS.--Subject to project approval by the Secretary, funds apportioned to a State under section 104(b)(3) of this title may be obligated for bicycle and pedestrian facilities as described in section 150.

"(e) REQUIRED STATE COORDINATORS.--Each State receiving an apportionment under section 104(b)(3) of this title shall use such amount of the apportionment as may be necessary to fund in the State department of transportation one or more positions of bicycle and pedestrian coordinators and a full-time safe-routes to school coordinator as required under section 150(a) of this title.

"(f) BRIDGES.--In any case where a highway bridge deck being replaced or rehabilitated with Federal financial participation is located on a highway on which pedestrians or bicyclists are permitted to operate at each end of such bridge, and the Secretary determines that the safe accommodation of pedestrians and bicyclists can be provided at reasonable cost as part of such replacement or rehabilitation, then the bridge shall be replaced rehabilitated so as to provide safe accommodations.

"(g) PLANNING AND DESIGN.--

"(1) IN GENERAL.--Bicyclists and pedestrians shall be given due consideration in the comprehensive transportation plans developed by each metropolitan planning organization and State in accordance with sections 134 and 135 of this title, respectively. Bicycle transportation facilities and pedestrian walkways shall be considered, where appropriate, in conjunction with all new construction and reconstruction of transportation facilities, except where bicycle and pedestrian use are not permitted.

"(2) SAFETY CONSIDERATIONS.--Transportation plans and projects shall provide due consideration for safety and contiguous routes for bicyclists and

pedestrians. Safety considerations shall include the installation, where appropriate, and maintenance of audible traffic signals and audible signs at street crossings.

"(h) USE OF MOTORIZED VEHICLES.--Motorized vehicles may not be permitted on trails and pedestrian walkways under subsections (a) through (c) of this section, except for--

- "(1) maintenance and law enforcement purposes;
- "(2) when snow conditions and State or local regulations permit, snowmobiles;
- "(3) motorized wheelchairs;
- "(4) when State or local regulations permit, electric bicycles; and
- "(5) such other circumstances as the Secretary deems appropriate.

"(i) TRANSPORTATION PURPOSE.--No bicycle or pedestrian project may be carried out under subsections (a) and (b) of this section unless the Secretary has determined that the project will serve a transportation purpose, in addition to any other stated purpose for the project.

"(j) DEFINITIONS.--In this section, the following definitions apply:

"(1) BICYCLE TRANSPORTATION FACILITY.--The term 'bicycle transportation facility' means a new or improved lane, path, or shoulder for use by bicyclists and a traffic control device, shelter, or parking facility for bicycles.

"(2) ELECTRIC BICYCLE.--The term 'electric bicycle' means any bicycle or tricycle with a low-powered electric motor weighing under 100 pounds, with a top motor-powered speed not in excess of 20 miles per hour.

"(3) PEDESTRIAN.--The term 'pedestrian' means any person traveling by foot and any mobility-impaired person using a wheelchair.

"(4) WHEELCHAIR.--The term 'wheelchair' means a mobility aid, usable indoors, and designed for and used by individuals with mobility impairments, whether operated manually or motorized."

## **SEC. 2212. FEDERAL LANDS AND TRIBAL TRANSPORTATION PROGRAMS.**

(a) IN GENERAL.--Chapter 2 of title 23, United States Code, is amended by striking sections 201 through 204 and inserting the following:

### **"Sec. 201. Federal lands and Tribal transportation programs**

"(a) PURPOSE.--Recognizing the need for all public Federal and tribal transportation facilities to be treated under uniform policies similar to the policies that apply to Federal-aid highways and other public transportation facilities, the Secretary of Transportation shall coordinate a uniform policy for all public Federal and Tribal transportation facilities that shall apply to Federal lands transportation facilities, Tribal transportation facilities, and Federal lands access transportation facilities.

"(b) AVAILABILITY OF FUNDS.--

"(1) AVAILABILITY.--Funds authorized for the Tribal transportation program, the Federal lands transportation program, and the Federal lands access program shall be available for contract upon apportionment, or on October 1 of the fiscal year for which authorized if no apportionment is required.

"(2) AMOUNT REMAINING.--Any amount remaining unexpended for a period of three years after the close of the fiscal year for which authorized shall lapse.

"(3) OBLIGATIONS.--The Secretary of the Department charged with the administration of such funds is granted authority to incur obligations, approve projects, and enter into contracts under such authorizations and his action in doing so shall be deemed a contractual obligation of the United States for the payment of the cost thereof and such funds shall be deemed to have been expended when so obligated.

"(4) EXPENDITURE.--Any funds hereafter authorized for any fiscal year under the Federal lands transportation program, the Federal lands access program, and the Tribal transportation program shall be deemed to have been expended if a sum equal to the total of the sums authorized for such fiscal year and previous fiscal years shall have been obligated. Any of such funds released by payment of final voucher or modification of project authorizations shall be credited to the balance of unobligated authorizations and be immediately available for expenditure.

"(5) APPLICABILITY.--The provisions of this section shall not apply to funds authorized before the date of the enactment of this section.

"(6) CONTRACTUAL OBLIGATION.--Notwithstanding any other provision of law, the authorization by the Secretary of engineering and related work for the development, design, and acquisition associated with a construction project, whether performed by contract or agreement authorized by law, or the approval by the Secretary of plans, specifications, and estimates for construction of a project, shall be deemed to constitute a contractual obligation of the Federal Government to pay the total eligible cost of any project funded under this title and any project funded pursuant to agreements authorized by this or other titles. Nothing in this provision shall be construed to affect application of the Federal share associated with the project being undertaken under this section or to modify the point of obligation associated with Federal salaries and expenses.

"(c) TRANSPORTATION PLANNING.--

"(1) TRANSPORTATION PLANNING PROCEDURES.--In consultation with the Secretary of each appropriate Federal land management agency, the Secretary shall implement transportation planning procedures for Federal lands and Tribal transportation facilities that are consistent with the planning processes required under sections 134 and 135 of this title.

"(2) APPROVAL OF TRANSPORTATION IMPROVEMENT PROGRAM.--The transportation improvement program developed as a part of the

transportation planning process under this section shall be approved by the Secretary.

"(3) INCLUSION IN OTHER PLANS.--All regionally significant Tribal transportation program, Federal lands transportation program, and Federal lands access program projects shall be--

"(A) developed in cooperation with State and metropolitan planning organizations; and

"(B) included in appropriate Tribal transportation program, Federal lands transportation program, and Federal lands access program, State and metropolitan plans, and transportation improvement programs.

"(4) INCLUSION IN STATE PROGRAMS.--The approved Tribal transportation program, Federal lands transportation program, and Federal lands access program transportation improvement programs shall be included in appropriate State and metropolitan planning organization plans and programs without further action on the transportation improvement program.

"(5) ASSET MANAGEMENT.--The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, have in place safety, bridge, pavement, and congestion management systems for facilities funded under the Tribal transportation program and the Federal lands transportation program in support of asset management.

"(6) DATA COLLECTION.--

"(A) DATA COLLECTION.--The Secretaries of the appropriate Federal land management agencies shall collect and report data necessary to implement the Federal lands transportation program, the Federal lands access program, and the Tribal transportation program including, but not limited to--

"(i) inventory and condition information on Federal lands transportation facilities and tribal transportation facilities; and

"(ii) bridge inspection and inventory information on any publicly-accessible Federal bridge.

"(B) STANDARDS.--The Secretary, in coordination with the Secretaries of the appropriate Federal land management agencies, shall define the collection and reporting data standards.

"(7) ADMINISTRATIVE EXPENSES.--For purposes of implementing the activities described in this subsection, including direct support of transportation planning activities among Federal land management agencies, the Secretary may use up to 5 percent for each fiscal year of the funds authorized under sections 203 and 204 of this title.

"(d) REIMBURSABLE AGREEMENTS.--In carrying out work under reimbursable agreements with any State, local, or Tribal government under this title, the Secretary may, without regard to any other provision of law or regulation, record obligations against accounts receivable from such entities, and shall credit amounts received from such entities to the appropriate account, such credit to occur within 90 days of the date of the original request by the Secretary for payment.

**"(e) TRANSFERS.--**

**"(1) IN GENERAL.--**Funds made available for the Federal lands transportation program and the Federal lands access program may be transferred by the Secretary within and between those programs with the concurrence of the Secretary and the affected Secretaries of the respective Federal land management agencies, State departments of transportation, or local government agencies to enable efficient use of such resources.

**"(2) CREDIT.--**The funds shall be credited back to the loaning entity with funds that are currently available for obligation at the time of the credit.

**"Sec. 202. Tribal transportation program****"(a) USE OF FUNDS.--**

**"(1) IN GENERAL.--**Funds made available under the Tribal transportation program shall be used by the Secretary of Transportation and the Secretary of the Interior to pay the costs of--

**"(A)** transportation planning, research, maintenance, engineering, rehabilitation, restoration, construction, and reconstruction of Tribal transportation facilities and--

**"(i)** adjacent vehicular parking areas;

**"(ii)** interpretive signage;

**"(iii)** acquisition of necessary scenic easements and scenic or historic sites;

**"(iv)** provision for pedestrians and bicycles;

**"(v)** environmental mitigation in or adjacent to Tribal lands to--

**"(I)** improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and

**"(II)** mitigate the damage to wildlife, aquatic organism passage, habitat, and ecosystem connectivity, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate;

**"(vi)** construction and reconstruction of roadside rest areas, including sanitary and water facilities; and

**"(vii)** other appropriate public road facilities as determined by the Secretary;

**"(B)** operation and maintenance of transit facilities which are located on, or provide access to Tribal lands; and

**"(C)** any transportation project eligible for assistance under this title that is within or that provides access to Tribal lands.

**"(2) CONTRACT.--**In connection with an activity described in paragraph (1), the Secretary and the Secretary of the Interior may enter into a contract or other appropriate agreement with respect to such activity with--

**"(A)** a State (including a political subdivision of a State); or

**"(B)** an Indian tribe.



"(3) INDIAN LABOR.--Indian labor may be employed, in accordance with such rules and regulations as may be promulgated by the Secretary of the Interior, to carry out any construction or other activity described in paragraph (1).

"(4) FEDERAL EMPLOYMENT.--No maximum limitation on Federal employment shall be applicable to construction or improvement of Tribal transportation facilities.

"(5) FUNDS FOR CONSTRUCTION AND IMPROVEMENT.--All funds made available for the construction and improvement of Tribal transportation facilities shall be administered in conformity with regulations and agreements jointly approved by the Secretary and the Secretary of the Interior.

"(6) ADMINISTRATIVE EXPENSES.--

"(A) IN GENERAL.--Of the funds authorized to be appropriated for the Tribal transportation program, up to six percent may be used by the Secretary or the Secretary of the Interior for program management and oversight and project-related administrative expenses.

"(B) RESERVATION OF FUNDS.--The Secretary of the Interior may reserve funds from administrative funds of the Bureau of Indian Affairs that are associated with the Tribal transportation program to fund Tribal technical assistance centers under section 504(b) of this title.

"(7) MAINTENANCE.--

"(A) USE OF FUNDS.--Notwithstanding any other provision of this title, of the amount of funds allocated to an Indian tribe from the Tribal transportation program, for the purpose of maintenance (excluding road sealing, which shall not be subject to any limitation), the Secretary shall not use more than the greater of--

"(i) an amount equal to 25 percent; or

"(ii) \$500,000.

"(B) BIA RESPONSIBILITY.--The Bureau of Indian Affairs shall continue to retain primary responsibility, including annual funding request responsibility, for road maintenance programs on Indian reservations, and the Secretary of the Interior shall ensure that funding made available under this subsection for maintenance of Tribal transportation facilities for each fiscal year is supplementary to and not in lieu of any obligation of funds by the Bureau of Indian Affairs for road maintenance programs on Indian reservations.

"(C) TRIBAL-STATE ROAD MAINTENANCE AGREEMENTS.--

"(i) An Indian tribe and a State may enter into a road maintenance agreement under which an Indian tribe assumes the responsibilities of the State for--

"(I) Tribal transportation facilities; and

"(II) roads providing access to Tribal transportation facilities.

"(ii) Agreements entered into under clause (i)--

"(I) shall be negotiated between the State and the Indian tribe; and

"(II) shall not require the approval of the Secretary.

"(8) COOPERATION.--Cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement, and any funds received from a State, county, or local subdivision shall be credited to appropriations available for the Tribal transportation program.

"(9) COMPETITIVE BIDDING.--Construction of each project shall be performed by contract awarded by competitive bidding, unless the Secretary or the Secretary of the Interior shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest.

Notwithstanding the foregoing, the provisions of section 23 of the "Buy Indian" Act of June 25, 1910 (36 Stat. 891), and the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (88 Stat. 2205) shall apply to all funds administered by the Secretary of the Interior that are appropriated for the construction and improvement of Tribal transportation facilities.

"(b) FUNDS DISTRIBUTION.--

"(1) IN GENERAL.--All funds authorized to be appropriated for the Tribal transportation program shall be allocated among Indian tribes in accordance with the formula established by the Secretary of the Interior in Chapter 25 of the Code of Federal Regulations, section 170.

"(2) NATIONAL TRIBAL TRANSPORTATION FACILITY INVENTORY.--

"(A) IN GENERAL.--The Secretary of the Interior, in cooperation with the Secretary, shall maintain a comprehensive national inventory of Tribal transportation facilities that are eligible for assistance under the Tribal transportation program.

"(B) TRANSPORTATION FACILITIES INCLUDED IN THE INVENTORY.--For purposes of identifying the Tribal transportation system and determining the relative transportation needs among Indian tribes, the Secretary shall include, at a minimum, transportation facilities that are eligible for assistance under the Tribal transportation program that a tribe has requested, including facilities that--

"(i) were included in the Bureau of Indian Affairs system inventory prior to October 1, 2004;

"(ii) are owned by an Indian Tribal government;

"(iii) are owned by the Bureau of Indian Affairs;

"(iv) were constructed or reconstructed with funds from the Highway Account of the Transportation Trust Fund under the Indian reservation roads program since 1983;

"(v) are community streets or bridges within the exterior boundary of Indian reservations, Alaska Native villages, and other recognized Indian communities (including communities in former Indian reservations in Oklahoma) in which the majority of residents are American Indians or Alaska Natives; or

"(vi) are primary access routes proposed by Tribal governments, including roads between villages, roads to landfills,

roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal terminals, such as airports, harbors, or boat landings.

"(C) LIMITATION ON PRIMARY ACCESS ROUTES.--For purposes of this paragraph, a proposed primary access route is the shortest practicable route connecting two points of the proposed route.

"(D) ADDITIONAL FACILITIES.--Nothing in this paragraph shall preclude the Secretary from including additional transportation facilities that are eligible for funding under the Tribal transportation program in the inventory used for the national funding allocation if such additional facilities are included in the inventory in a uniform and consistent manner nationally.

"(E) BRIDGES.--All bridges in the inventory shall be recorded in the national bridge inventory administered by the Secretary under section 151 of this title.

"(3) REGULATIONS.--Notwithstanding sections 563(a) and 565(a) of title 5, the Secretary of the Interior shall maintain regulations governing the Tribal transportation program and the funding formula under paragraph (4), in accordance with established policies and procedures.

"(4) BASIS FOR FUNDING FORMULA.--The funding formula under this paragraph shall be based on factors that reflect--

"(A) the relative needs of the Indian tribes, and reservation or Tribal communities, for transportation assistance;

"(B) the relative administrative capacities of, and challenges faced by, various Indian tribes, including the cost of road construction in each Bureau of Indian Affairs area, geographic isolation, and difficulty in maintaining all-weather access to employment, commerce, health, safety, and educational resources; and

"(C) the national Tribal transportation facility inventory described in paragraph (2), except that--

"(i) not less than fifty percent of the formula funds distributed to each tribe shall be derived from Tribal transportation facilities that are included in the inventory as a result of clauses (i), (ii), or (iii) under paragraph (2)(B); and

"(ii) up to fifty percent of the formula funds distributed to each tribe shall be derived from Tribal transportation facilities that are not included in the inventory as a result of clauses (i), (ii), or (iii) under paragraph (2)(B).

"(5) TRANSFERRED FUNDS.--

"(A) IN GENERAL.--Not later than 30 days after the date on which funds are made available to the Secretary of the Interior under this paragraph, the funds shall be distributed to, and available for immediate use by, eligible Indian tribes, in accordance with the formula for distribution of funds under the Tribal transportation program.

"(B) USE OF FUNDS.--Notwithstanding any other provision of this section, funds available to Indian tribes for Tribal transportation

facilities shall be expended on projects identified in a transportation improvement program approved by the Secretary.

"(6) HEALTH AND SAFETY ASSURANCES.--Notwithstanding any other provision of law, an Indian Tribal government may approve plans, specifications, and estimates and commence road and bridge construction with funds made available from the Tribal transportation program through a contract or agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.) if the Indian Tribal government--

"(A) provides assurances in the contract or agreement that the construction will meet or exceed applicable health and safety standards;

"(B) obtains the advance review of the plans and specifications from a State-licensed civil engineer that has certified that the plans and specifications meet or exceed the applicable health and safety standards; and

"(C) provides a copy of the certification under subparagraph (A) to the Deputy Assistant Secretary for Tribal Government Affairs, Department of Transportation, or the Assistant Secretary for Indian Affairs, Department of the Interior, as appropriate; and

"(D) obtains the advance written approval of the plans, specifications, and estimates from the facility owner or public authority having maintenance responsibility for the facility shown and provides a copy of the approval to the entities listed in subparagraph (C).

"(7) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.

"(A) IN GENERAL.--Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available under this chapter and section 125(e) of this title for Tribal transportation facilities to pay for the costs of programs, services, functions, and activities, or portions thereof, that are specifically or functionally related to the cost of planning, research, engineering, and construction of any Tribal transportation facility that provides access to or is located within the reservation or community of an Indian tribe shall be made available, upon request of the Indian Tribal government, to the Indian Tribal government for contracts and agreements for such planning, research, engineering, and construction in accordance with the Indian Self-Determination and Education Assistance Act.

"(B) EXCLUSION OF AGENCY PARTICIPATION.--Funds for programs, functions, services, or activities, or portions thereof, including supportive administrative functions that are otherwise contractible to which subparagraph (A) applies, shall be paid in accordance with subparagraph (A) without regard to the organizational level at which the Department of the Interior has previously carried out such programs, functions, services, or activities.

"(8) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.--

"(A) IN GENERAL.--Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available to an Indian Tribal government under

this chapter for a Tribal transportation facility program or project that is located on an Indian reservation or provides access to the reservation or a community of the Indian tribe shall be made available, on the request of the Indian Tribal government, to the Indian Tribal government for use in carrying out, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), contracts and agreements for the planning, research, design, engineering, construction, and maintenance relating to the program or project.

"(B) EXCLUSION OF AGENCY PARTICIPATION.--In accordance with subparagraph (A), all funds for a program or project to which subparagraph (A) applies shall be paid to the Indian Tribal government without regard to the organizational level at which the Department of the Interior has previously carried out, or the Department of Transportation has previously carried out under the Tribal Transportation Program, the programs, functions, services, or activities involved.

"(C) CONSORTIA.--Two or more Indian tribes that are otherwise eligible to participate in a program or project to which this chapter applies may form a consortium to be considered as a single Indian tribe for the purpose of participating in the project under this section.

"(D) SECRETARY AS SIGNATORY.--Notwithstanding any other provision of law, the Secretary is authorized to enter into a funding agreement with an Indian Tribal government to carry out a Tribal transportation facility program or project under subparagraph (A) that is located on an Indian reservation or provides access to the reservation or a community of the Indian tribe.

"(E) FUNDING.--The amount an Indian Tribal government receives for a program or project under subparagraph (A) shall equal the sum of the funding that the Indian Tribal government would otherwise receive for the program or project in accordance with the funding formula established under this subsection and such additional amounts as the Secretary determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project.

"(F) ELIGIBILITY.--

"(i) Subject to clause (ii) and the Secretary's approval, funds may be made available under subparagraph (A) to an Indian Tribal government for a program or project in a fiscal year only if the Indian Tribal government requesting such funds demonstrates to the satisfaction of the Secretary financial stability and financial management capability during the 3 fiscal years immediately preceding the fiscal year for which the request is being made.

"(ii) An Indian Tribal government that had no uncorrected significant and material audit exceptions in the required annual audit of the Indian Tribal government self-determination contracts or self-governance funding agreements with any Federal agency during the three-fiscal-year period referred in clause (i) shall be

conclusive evidence of the financial stability and financial management capability for purposes of clause (i).

"(G) ASSUMPTION OF FUNCTIONS AND DUTIES.--An Indian Tribal government receiving funding under subparagraph (A) for a program or project shall assume all functions and duties that the Secretary of the Interior would have performed with respect to a program or project under this chapter, other than those functions and duties that inherently cannot be legally transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.).

"(H) POWERS.--An Indian Tribal government receiving funding under subparagraph (A) for a program or project shall have all powers that the Secretary of the Interior would have exercised in administering the funds transferred to the Indian Tribal government for such program or project under this section if the funds had not been transferred, except to the extent that such powers are powers that inherently cannot be legally transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.).

"(I) DISPUTE RESOLUTION.--In the event of a disagreement between the Secretary or the Secretary of the Interior and an Indian tribe over whether a particular function, duty, or power may be lawfully transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.), the Indian tribe shall have the right to pursue all alternative dispute resolutions and appeal procedures authorized by such Act, including regulations issued to carry out the Act.

"(J) TERMINATION OF CONTRACT OR AGREEMENT.--On the date of the termination of a contract or agreement under this section by an Indian Tribal government, the Secretary shall transfer all funds that would have been allocated to the Indian Tribal government under the contract or agreement to the Secretary of the Interior to provide continued transportation services in accordance with applicable law.

"(c) PLANNING.--Up to 3 percent of funds made available for the Tribal transportation program for each fiscal year shall be allocated to those Indian Tribal governments applying for transportation planning pursuant to the provisions of the Indian Self-Determination and Education Assistance Act. The Indian Tribal government, in cooperation with the Secretary of the Interior and, as appropriate, with a State, local government, or metropolitan planning organization, shall carry out a transportation planning process in accordance with Section 201(c) of this title. Projects shall be selected by the Indian Tribal government from the transportation improvement program and shall be subject to the approval of the Secretary of the Interior and the Secretary.

"(d) TRIBAL TRANSPORTATION FACILITY BRIDGES.--

"(1) NATIONWIDE PRIORITY PROGRAM.--The Secretary shall maintain a nationwide priority program for improving deficient bridges eligible for the Tribal transportation program.

"(2) FUNDING.--Before making distributions under subsection (b), the Secretary shall set aside up to 5 percent of funds made available under the Tribal transportation program for each fiscal year to be allocated to carry out planning, design, engineering, preconstruction, construction, and inspection of projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions, or install scour countermeasures for deficient Tribal transportation facility bridges, including multiple-pipe culverts.

"(3) ELIGIBLE BRIDGES.--To be eligible to receive funding under this subsection, a bridge described in paragraph (1) must--

"(A) have an opening of 20 feet or more;

"(B) be classified as a Tribal transportation facility; and

"(C) be structurally deficient or functionally obsolete..

"(4) APPROVAL REQUIREMENT.--The Secretary may make funds available under this subsection for preliminary engineering, construction, and construction engineering activities after approval of required documentation and verification of eligibility in accordance with this title.

"(e) SAFETY.--

"(1) FUNDING.--Before making distributions under subsection (b), the Secretary shall set aside up to 2 percent of funds made available under the Tribal transportation program for each fiscal year to be allocated based on identification and analysis of highway safety issues and opportunities in Tribal lands, as determined by the Secretary, on application of the Indian Tribal governments for eligible projects as described in section 148(a)(2) of this title.

"(2) PROJECT SELECTION.--The Indian Tribal government, in cooperation with the Secretary of the Interior and, as appropriate, with a State, local government, or metropolitan planning organization, shall select projects from the transportation improvement program, subject to the approval of the Secretary and the Secretary of the Interior.

"(f) FEDERAL-AID ELIGIBLE PROJECTS.--Before approving as a project on a Tribal transportation facility any project eligible for funds apportioned under section 104 of this title in a State, the Secretary must determine that the obligation of funds for such project is supplementary to and not in lieu of the obligation, for projects on Tribal transportation facilities, of a fair and equitable share of funds apportioned to such State under section 104 of this title.

### **"Sec. 203. Federal lands transportation program**

"(a) USE OF FUNDS.--

"(1) IN GENERAL.--Funds made available under the Federal lands transportation program shall be used by the Secretary of Transportation and the Secretary of the appropriate Federal land management agency to pay the costs of--

"(A) transportation planning, research, preventive maintenance, engineering, rehabilitation, restoration, construction, and reconstruction of Federal transportation facilities, and--

"(i) adjacent vehicular parking areas;

"(ii) interpretive signage;

"(iii) acquisition of necessary scenic easements and scenic or historic sites;

"(iv) provision for pedestrians and bicycles;

"(v) environmental mitigation in or adjacent to publicly-accessible Federal lands to--

"(I) improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and

"(II) mitigate the damage to wildlife, aquatic organism passage, habitat, and ecosystem connectivity, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate;

"(vi) construction and reconstruction of roadside rest areas including sanitary and water facilities; and

"(vii) other appropriate public road facilities as determined by the Secretary; and

"(B) any transportation project eligible for assistance under this title that is within or adjacent to, or that provides access to, publicly-accessible Federal lands.

"(2) CONTRACT.--In connection with an activity described in paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency may enter into a contract or other appropriate agreement with respect to such activity with--

"(A) a State (including a political subdivision of a State); or

"(B) an Indian tribe.

"(3) ADMINISTRATION.--All appropriations for the construction and improvement of Federal lands transportation facilities shall be administered in conformity with regulations and agreements jointly approved by the Secretary and the Secretary of the appropriate Federal land managing agency.

"(4) COOPERATION.--Cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement, and any funds received from a State, county, or local subdivision shall be credited to appropriations available for the class of Federal lands transportation facilities to which such funds were contributed.

"(5) COMPETITIVE BIDDING.--Construction of each project shall be performed by contract awarded by competitive bidding, unless the Secretary or the Secretary of the appropriate Federal land management agency shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest.

"(b) AGENCY PROGRAM DISTRIBUTIONS. --



"(1) IN GENERAL.--On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for that fiscal year for the Federal lands transportation program on the basis of applications of need, as determined by the Secretary, and in coordination with the transportation plans required by section 201, of the respective transportation systems of the following Federal land management agencies:

- "(A) The National Park Service.
- "(B) The U.S. Forest Service.
- "(C) The U.S. Fish and Wildlife Service.
- "(D) The U.S. Army Corps of Engineers.
- "(E) The Bureau of Land Management.

"(2) APPLICATIONS.--

"(A) Each application from a Federal land management agency shall include proposed programs at various potential funding levels as defined by the Secretary.

"(B) The Secretary shall consider the extent to which the programs support--

"(i) the transportation goals of the Secretary across the entire agency's inventory, including--

- "(I) state of good repair of transportation facilities;
- "(II) reduction of bridge deficiencies, and
- "(III) improvement of safety;

"(ii) high use Federal recreational sites or Federal economic generators; and

"(iii) the resource management goals of the Secretary of the respective Federal lands management agency.

"(c) NATIONAL FEDERAL LANDS TRANSPORTATION FACILITY INVENTORY.--

"(1) IN GENERAL.--The Secretaries of the appropriate Federal land management agencies, in cooperation with the Secretary, shall maintain a comprehensive national inventory of public Federal lands transportation facilities.

"(2) TRANSPORTATION FACILITIES INCLUDED IN THE INVENTORIES.--For purposes of identifying the Federal lands transportation system and determining the relative transportation needs among Federal land management agencies, the inventories shall include, at a minimum, facilities that--

"(A) provide access to high use Federal recreation sites or Federal economic generators, as determined by the Secretary in coordination with the respective Secretaries of the appropriate Federal land management agencies; and

"(B) are owned by one of the following agencies:

- "(i) The National Park Service.
- "(ii) The U.S. Forest Service.
- "(iii) The U.S. Fish and Wildlife Service.
- "(iv) The Bureau of Land Management.
- "(v) The U.S. Army Corps of Engineers.

"(3) AVAILABILITY.--The inventories shall be made available to the Secretary.

"(4) UPDATES.--The Secretaries of the appropriate Federal land management agencies shall update their inventories as determined by the Secretary.

"(5) REVIEW.--A decision to add or remove a facility from the inventory shall not be considered a Federal action for purposes of review under the National Environmental Protection Act of 1969 (42 U.S.C. 4321 et seq.).

## **"Sec. 204. Federal lands access program**

"(a) USE OF FUNDS.--

"(1) IN GENERAL.--Funds made available under the Federal lands access program shall be used by the Secretary of Transportation and the Secretary of the appropriate Federal land management agency to pay the cost of--

"(A) transportation planning, research, engineering, preventive maintenance, rehabilitation, restoration, construction, and reconstruction of Federal lands access transportation facilities located on, adjacent to, or that provide access to Federal lands; and--

"(i) adjacent vehicular parking areas;

"(ii) interpretive signage;

"(iii) acquisition of necessary scenic easements and scenic or historic sites;

"(iv) provisions for pedestrians and bicycles;

"(v) environmental mitigation in or adjacent to Federal lands to--

"(I) improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and

"(II) mitigate the damage to wildlife, aquatic organism passage, habitat, and ecosystem connectivity, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate;

"(vi) construction and reconstruction of roadside rest areas including sanitary and water facilities; and

"(vii) other appropriate public road facilities as determined by the Secretary; and

"(B) any transportation project eligible for assistance under this title that is within or adjacent to, or that provides access to, Federal lands.

"(2) CONTRACT.--In connection with an activity described in paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency may enter into a contract or other appropriate agreement with respect to such activity with--

"(A) a State (including a political subdivision of a State); or

"(B) an Indian tribe.

"(3) ADMINISTRATION.--All appropriations for the construction and improvement of Federal lands access transportation facilities shall be administered in conformity with regulations and agreements approved by the Secretary.

"(4) COOPERATION.--Cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement, and any funds received from a State, county, or local subdivision for a Federal lands access transportation facility project shall be credited to appropriations available under the Federal lands access program.

"(5) COMPETITIVE BIDDING.--Construction of each project shall be performed by contract awarded by competitive bidding, unless the Secretary or the Secretary of the appropriate Federal land management agency shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest.

"(b) PROGRAM DISTRIBUTIONS.--

"(1) IN GENERAL.--Funding made available to carry out the Federal lands access program shall be allocated among those States having Federal lands in accordance with the following formula:

"(A) Seventy five percent of the available funding for use in those States that contain at least one and one half percent of the total public land in the United States managed by the agencies listed in paragraph (2), distributed as follows:

"(i) Twenty percent in the ratio that--

"(I) recreational visitation within each such State, bears to--

"(II) the recreational visitation within all such States;

"(ii) Ten percent in the ratio that--

"(I) the Federal land area within each such State, bears to--

"(II) the Federal land area in all such States;

"(iii) Fifty percent in the ratio that--

"(I) the Federal public road miles within each such State, bears to--

"(II) the Federal public road miles in all such States;

and

"(iv) Twenty percent in the ratio that--

"(I) the Federal public bridges within each such State, bears to--

"(II) the Federal public bridges in all such States.

"(B) Twenty five percent of the available funding for use in those States that do not contain at least one and one half percent of the total public land in the United States managed by the agencies listed in paragraph (2), distributed as follows:

"(i) Twenty percent in the ratio that--

"(I) recreational visitation within each such State, bears to--

"(II) the recreational visitation within all such States;

"(ii) Ten percent in the ratio that--

"(I) the Federal land area within each such State, bears to--

"(II) the Federal land area in all such States;

"(iii) Fifty percent in the ratio that--

"(I) the Federal public road miles within each such State, bears to--

"(II) the Federal public road miles in all such States;

and

"(iv) Twenty percent in the ratio that--

"(I) the Federal public bridges within each such State, bears to--

"(II) the Federal public bridges in all such States.

"(2) DATA SOURCE.--Data necessary to distribute funding under paragraph (1) shall be provided by the following Federal land management agencies:

"(A) The National Park Service.

"(B) The U.S. Forest Service.

"(C) The U.S. Fish and Wildlife Service.

"(D) The Bureau of Land Management.

"(E) The U.S. Army Corps of Engineers.

"(c) PROGRAMMING DECISIONS.--Programming decisions shall be made within each State by a committee comprised of a representative of the Federal Highway Administration, a representative of the State Department of Transportation, and a representative of county or other local governments within that State.

"(d) PROJECT PREFERENCE.--In making programming decisions under subsection (c), the committee shall give preference to projects that provide access to, are adjacent to, or are located within high use Federal recreation sites, Federal economic generators, or gateway communities to Federal lands, as identified by the Secretaries of the appropriate Federal land management agencies."

(b) PUBLIC LANDS DEVELOPMENT ROADS AND TRAILS.--Section 214 of title 23, United States Code, is repealed.

(c) CONFORMING AMENDMENTS.--

(1) CHAPTER 2 ANALYSIS.--The analysis for chapter 2 of title 23, United States Code, is amended by--

(A) striking the item relating to section 201 and inserting the following:

"201. Federal lands and Tribal transportation programs.";

- (B) striking the item relating to section 202 and inserting the following:  
 "202. Tribal transportation program.";
- (C) striking the item relating to section 203 and inserting the following:  
 "203. Federal lands transportation program.";
- (D) striking the item relating to section 204 and inserting the following:  
 "204. Federal lands access program."; and
- (E) striking the item relating to section 214.  
 (2) DEFINITION.--Section 138(a) of title 23, United States Code, is amended by striking "park road or parkway under section 204 of this title" and inserting "Federal lands transportation facility".

### **SEC. 2213. EMERGENCY RELIEF PROGRAM.**

Section 125 of title 23, United States Code, is amended to read as follows:

#### **"Sec. 125. Emergency relief**

"(a) IN GENERAL.--Subject to this section and section 120 of this title, an emergency fund is authorized for expenditure by the Secretary of Transportation for the repair or reconstruction of highways, roads, and trails, in any part of the United States, including Indian reservations, that the Secretary finds have suffered serious damage as a result of--

- "(1) natural disaster over a wide area, such as by a flood, hurricane, tidal wave, earthquake, severe storm, or landslide; or  
 "(2) catastrophic failure from any external cause.

"(b) RESTRICTION ON ELIGIBILITY.--In no event shall funds be used under this section for the repair or reconstruction of bridges--

- "(1) that have been permanently closed to all vehicular traffic by the State or responsible local official because of imminent danger of collapse due to a structural deficiency or physical deterioration; or  
 "(2) if a construction phase of a replacement structure is included in the approved Statewide Transportation Improvement Program (STIP) at the time of the event. As used in this section, the term 'construction phase' refers to the physical construction separate from any other identified phases in the STIP, such as planning, design, or right-of-way phases.

"(c) FUNDING.--Subject to the following limitations, there are authorized to be appropriated from the Highway Account of the Transportation Trust Fund such sums as may be necessary to establish the fund authorized by this section and to replenish it on an annual basis:

- "(1) Not more than \$100,000,000 is authorized to be obligated in any 1 fiscal year commencing after September 30, 1980, to carry out the provisions of

this section; except that, if in any fiscal year the total of all obligations under this section is less than the amount authorized to be obligated in such fiscal year, the unobligated balance of such amount shall remain available until expended and shall be in addition to amounts otherwise available to carry out this section each year.

"(2) Pending such appropriation or replenishment, the Secretary may obligate from any funds heretofore or hereafter appropriated for obligation in accordance with this title, including existing Federal-aid appropriations, such sums as may be necessary for the immediate prosecution of the work herein authorized. Funds obligated under this paragraph shall be reimbursed from such appropriation or replenishment.

"(d) ELIGIBILITY.--

"(1) IN GENERAL.--The Secretary may expend funds from the emergency fund herein authorized only for the repair or reconstruction of highways on Federal-aid highways under the provisions of this chapter, except that--

"(A) no funds shall be so expended unless an emergency has been declared by the Governor of the State with concurrence by the Secretary, unless the President has declared the emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) for which concurrence of the Secretary is not required; and

"(B) the Secretary has received an application from the State transportation department that includes a comprehensive list of all eligible project sites and repair costs within 2 years after the natural disaster or catastrophic failure;

"(2) COST LIMITATION.--The total cost of a project may not exceed the cost of repair or reconstruction of a comparable facility. As used in this section, 'a comparable facility' means a facility that meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry over its design life.

"(3) DEBRIS REMOVAL.--The costs of debris removal shall be an eligible expense only for events not eligible for assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

"(4) TERRITORIES.--The total obligations for projects under this section in any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not exceed \$20,000,000.

"(5) SUBSTITUTE TRAFFIC.--Notwithstanding any provision of this section, actual and necessary costs of maintenance and operation of ferryboats or additional transit service providing temporary substitute highway traffic service, less the amount of fares charges, may be expended from the emergency fund herein authorized for Federal-aid highways.

"(e) TRIBAL TRANSPORTATION FACILITIES AND FEDERAL LANDS TRANSPORTATION FACILITIES.--Notwithstanding subsection (d)(1), the Secretary may expend funds from the emergency fund herein authorized, either independently or in cooperation with any other branch of the Government, State agency, organization, or person, for the repair or reconstruction of tribal transportation facilities and Federal lands transportation facilities, whether or not such facilities are Federal-aid highways. The Secretary may reimburse Federal and State (including political subdivisions of the States) agencies for expenditures made on projects determined eligible under this section, including expenditures for emergency repairs made before a determination of eligibility. Such reimbursements to Federal agencies and Indian tribal governments shall be transferred to the account from which the expenditure was made, or to a similar account that remains available for obligation, and the budget authority associated with the expenditure shall be restored to the agency from which it was derived and shall be available for obligation until the end of the fiscal year following the year in which the transfer occurs.

"(f) TREATMENT OF TERRITORIES.--For purposes of this section, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be considered to be States and parts of the United States, and the chief executive officer of each such territory shall be considered to be a Governor of a State."

(b) CONFORMING AMENDMENTS.--[to be inserted.]

## **SEC. 2214. WORKFORCE DEVELOPMENT.**

(a) ON-THE-JOB TRAINING.--Section 140(b) of title 23, United States Code, is amended by--

(1) striking "Whenever apportionments are made under section 104(b)(3) of this title, the Secretary shall deduct such sums as necessary, not to exceed \$10,000,000 per fiscal year, for the administration of this subsection. Such sums so deducted shall remain available until expended."; and

(2) inserting in its place "Amounts authorized to carry out this subsection shall remain available until expended."

(b) DISADVANTAGED BUSINESS ENTERPRISE.--Section 140(c) of title 23, United States Code, is amended by--

(1) striking "Whenever apportionments are made under section 104(b)(3), the Secretary shall deduct such sums as necessary, not to exceed \$10,000,000 per fiscal year, for the administration of this subsection. Such sums so deducted shall remain available until expended."; and

(2) inserting in its place "Amounts authorized to carry out this subsection shall remain available until expended."

## **SEC. 2215. HIGHWAY SAFETY IMPROVEMENT PROGRAM.**

(a) IN GENERAL.--Section 148 of title 23, United States Code, is amended to read as follows:

**"Sec. 148. Highway safety improvement program**

"(a) DEFINITIONS.--In this section:

"(1) HIGHWAY SAFETY IMPROVEMENT PROGRAM.--The term 'highway safety improvement program' means projects, activities, plans and reports carried out under this section.

"(2) HIGHWAY SAFETY IMPROVEMENT PROJECT.--

"(A) IN GENERAL.--The term 'highway safety improvement project' means strategies, activities, and projects on public roads consistent with the State strategic highway safety plan that--

"(i) correct or improves a roadway feature that constitutes a hazard to road users; or

"(ii) address a highway safety problem.

"(B) PROJECT EXAMPLES.--The term 'highway safety improvement project' includes, but is not limited to, a project for one or more of the following:

"(i) An intersection safety improvement.

"(ii) Pavement and shoulder widening (including the addition of a passing lane to remedy an unsafe condition).

"(iii) Installation of rumble strips or other warning devices, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists, pedestrians, including persons with disabilities.

"(iv) Installation of a skid-resistant surface at an intersection or other location with a high frequency of crashes.

"(v) An improvement for pedestrian or bicyclist safety, including safety of persons with disabilities.

"(vi) Construction of a railway-highway grade crossing safety feature, including installation of protective devices.

"(vii) The conduct of a model traffic enforcement activity at a railway-highway grade crossing.

"(viii) Construction of a traffic calming feature.

"(ix) Elimination of a roadside hazard.

"(x) Improvement of highway signs and pavement markings.

"(xi) Installation of a priority control system for emergency vehicles at signalized intersections.

"(xii) Installation of a traffic control or other warning device at a location with high crash potential.

"(xiii) Transportation safety planning.

"(xiv) Collection and analysis of safety data.



"(xv) Installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of road users and workers), and crash attenuators.

"(xvi) The addition or retrofitting of structures or other measures to eliminate or reduce accidents involving vehicles and wildlife.

"(xvii) Installation of yellow-green signs and signals at pedestrian and bicycle crossings and in school zones.

"(xviii) Road safety audits.

"(xix) Systemic safety improvements.

"(3) ROAD SAFETY AUDIT.--The term 'road safety audit' means a formal safety performance examination of an existing or future road or intersection by an independent multidisciplinary audit team.

"(4) ROAD USERS.--The term 'road users' means motorists, passengers, public transportation operators and users, truck drivers, bicyclists, motorcyclists, pedestrians, including persons with disabilities.

"(5) SAFETY DATA.--The term 'safety data' includes, but is not limited to, crash, roadway, and traffic data on all public roads including, for railway-highway grade crossings, the characteristics of highway and train traffic, licensing, and vehicle data.

"(6) SAFETY PROJECT UNDER ANY OTHER SECTION.--

"(A) IN GENERAL.--The term 'safety project under any other section' means a project carried out for the purpose of safety under any other section of this title.

"(B) INCLUSION.-- The term 'safety project under any other section' includes projects consistent with the State strategic highway safety plan that promote the awareness of the public and educate the public concerning highway safety matters (including motorcycle safety), projects to enforce highway safety laws, and projects to provide infrastructure and equipment to support emergency services.

"(7) STATE HIGHWAY SAFETY IMPROVEMENT PROGRAM.--The term 'State highway safety improvement program' means a program of highway safety improvement projects, activities, plans and reports carried out as part of the State transportation improvement program under section 135(g).

"(8) STATE STRATEGIC HIGHWAY SAFETY PLAN.--The term 'State strategic highway safety plan' means a comprehensive, data-driven safety plan developed, implemented, and evaluated by the State transportation department or the Governor's designee.

"(9) SYSTEMIC SAFETY IMPROVEMENT.--The term 'systemic safety improvement' means an improvement that is widely implemented based on high-risk roadway features that are correlated with particular crash types, rather than crash frequency.

"(b) IN GENERAL.--The Secretary shall carry out a highway safety improvement program that is consistent with Section 311 of Title 49 to achieve a significant reduction in traffic fatalities and serious injuries on all public roads.

"(c) STATE HIGHWAY SAFETY IMPROVEMENT PROGRAM.--

"(1) IN GENERAL.--To obligate funds apportioned under [section 104(b)(4)] to carry out this section, a State shall have in effect a State highway safety improvement program that--

"(A) includes a set of programs, projects, and activities that are consistent with the State's strategic highway safety plan and meets the requirements of this section;

"(B) is consistent with the requirements of section 135(g).

"(2) DATA AND ANALYSIS.--No later than one year after the date of enactment of [this subsection], a State shall have in effect a safety data system to-

"(A) collect and maintain a record of safety data on all public roads;

"(B) advance the capabilities of the State for safety data collection, analysis, and integration consistent with the highway safety data improvement program in [section 149] of this title;

"(C) identify roadway features that constitute a danger to road users; and

"(D) perform safety problem identification and countermeasure analysis.

"(3) STRATEGIC HIGHWAY SAFETY PLAN.--A State shall have in effect, update at least every five years, and submit to the Secretary a strategic highway safety plan that--

"(A) is developed after consultation with--

"(i) a highway safety representative of the Governor of the State;

"(ii) regional transportation planning organizations and metropolitan planning organizations, if any;

"(iii) representatives of major modes of transportation;

"(iv) State and local traffic enforcement officials;

"(v) representatives conducting a motor carrier safety program;

"(vi) motor vehicle administration agencies; and

"(vii) other major Federal, State, tribal, regional and local safety stakeholders; and

"(viii) a highway-rail grade crossing safety representative of the Governor of the State;

"(B) is approved by the Governor of the State or a responsible State agency;

"(C) defines State safety goals and identifies State safety performance targets developed in consultation with the Secretary;

"(D) addresses engineering, management, operation, education, enforcement, and emergency services elements of highway safety for all road users, including behavioral and infrastructure problems and opportunities to advance safety on all public roads;

"(E) analyzes and makes effective use of State, regional, or local safety data as described in [paragraph (2)];

"(F) considers the results of Federal, State, regional or local transportation and highway safety planning processes;

"(G) identifies areas of greatest need;

"(H) describes a program of strategies to address high-risk roadway features;

"(4) IMPLEMENTATION.--

"(A) IDENTIFICATION AND ANALYSIS OF HIGHWAY SAFETY PROBLEMS AND OPPORTUNITIES.--As part of the State highway safety improvement program, a State shall, based on the data collection and analysis required in [paragraph (2)]--

"(i) identify roadway features that constitute a hazard to road users;

"(ii) identify highway safety improvement projects on the basis of crash experience, crash potential, or other data-supported means;

"(iii) establish the relative severity of roadway features based on crashes, injuries, fatalities, traffic volume levels, and other relevant data;

"(iv) consider which projects maximize opportunities to advance safety; and

"(v) consider annual progress made, in conjunction with the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration, in achieving State safety goals identified in the State strategic highway safety plan.

"(B) SCHEDULE OF HIGHWAY SAFETY IMPROVEMENT PROJECTS.--Based on the data analysis required under this section, a State shall--

"(i) determine priorities for the correction of roadway features that constitute a hazard to road users as identified through safety data analysis;

"(ii) establish and implement a schedule of highway safety improvement projects, activities or strategies to reduce identified safety problems;

"(iii) submit annually to the Secretary for review an implementation plan that --

"(I) describes how highway safety improvement program funds will be allocated, including projects, activities, and strategies to be implemented;

"(II) describes how the proposed projects, activities, and strategies funded under the State highway safety improvement program will allow the State to make progress toward achieving its safety performance targets; and

"(III) in the case of a State that does not meet its safety performance targets for 2 consecutive years, describes the actions the State will undertake to meet its targets.

"(5) ELIGIBLE PROJECTS.--

"(A) IN GENERAL.--A State may obligate funds apportioned to the State under [section 104(b)(4)] to carry out--

"(i) any highway safety improvement project on any public road or publicly owned pathway or trail; or

"(ii) as provided in paragraph (6), other safety projects.

"(B) USE OF OTHER FUNDING FOR SAFETY IMPROVEMENT PROJECTS.--

"(i) EFFECT OF SECTION.--Nothing in this section prohibits the use of funds made available under other provisions of this title for highway safety improvement projects.

"(ii) USE OF OTHER FUNDS.--States are encouraged to address the full scope of their safety needs and opportunities by using funds made available under other provisions of this title (except a provision that specifically prohibits that use).

"(6) FLEXIBLE FUNDING.--To further the implementation of a State strategic highway safety plan and achieve State safety targets, a State may use up to 25 percent of the amount of funds apportioned to the State under [section 104(b)(3)] for a fiscal year to carry out safety projects under any other section as provided in the State strategic highway safety plan if the State certifies that the funds are being used for the most effective projects to make progress toward achieving its safety performance targets.

"(7) RURAL ROADS.--

"(A) SET ASIDE.--Not less than 10 percent of funds apportioned to a State under [section 104(b)(4)] for fiscal year 2012 and each fiscal year thereafter shall be set aside for projects to improve the safety on public rural roads.

"(B) ADDITIONAL EXPENDITURES ON RURAL ROADS.--States are encouraged to expend additional funds apportioned under [section 104(b)(4)] on public rural roads to achieve State safety goals and make progress toward achieving its safety performance targets.

"(C) SPECIAL RULE.--A State may use funds set aside for purposes of this paragraph pursuant to this subsection for any project under this subsection if the State certifies to the Secretary that the State has met all State needs for safety improvements on public rural roads for the current fiscal year.

"(8) STATE PERFORMANCE MANAGEMENT.--

"(A) IN GENERAL.--A State shall--

"(i) establish a performance-based framework for its program under this section that--

"(I) is coordinated with the safety programs of the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration;

"(II) includes statewide roadway safety performance measures in the State's strategic highway safety plan;

"(III) includes a statewide set of safety performance targets in the State's strategic highway safety plan;

"(IV) tracks annual progress in achieving performance targets; and

"(ii) implements an evaluation approach to analyze and assess results achieved and set priorities for its program under this section.

"(B) PERFORMANCE REPORTS.--A State shall annually report to the Secretary on--

"(i) progress made to implement its program under this section;

"(ii) how its highway safety improvement program funds were allocated for projects, activities, and strategies;

"(iii) the extent to which the projects, activities, and strategies contributed to achieving the State's safety performance targets; and

"(iv) progress made, in conjunction with the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration, in achieving State safety goals identified in the State strategic highway safety plan;

"(C) PERFORMANCE ACHIEVEMENT.--

"(i) INCENTIVES.--If a State achieves its performance targets in a fiscal year based on the average of the most recent three prior years of available data, in the subsequent fiscal year, it may transfer up to 50 percent of funds apportioned to it under [section 104(b)(4)] in such fiscal year for use under other programs under this title.

"(ii) LIMITATION ON USE OF FUNDS.--A State that does not achieve its performance targets in a fiscal year, based on the average of the most recent three prior years of available data, in the subsequent fiscal year, shall use obligation authority equal to its prior year's apportionment under [section 104(b)(4)] only for highway safety improvement projects.

"(d) TRANSPARENCY.--A State shall make all plans and reports submitted to the Secretary under this section available to the public through.--

"(1) the Web site of the State Department of Transportation or equivalent;

or

"(2) such other means as the Secretary determines to be appropriate.

"(e) DISCOVERY AND ADMISSION INTO EVIDENCE OF CERTAIN REPORTS, SURVEYS, AND INFORMATION.--Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for any purpose directly relating to this section, or published in accordance with subsection (d), shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location identified or addressed in such reports, surveys, schedules, lists, or other data.

"(f) FEDERAL SHARE OF HIGHWAY SAFETY IMPROVEMENT PROJECTS.-- Except as provided in section 120(c), the Federal share of the cost of a highway safety improvement project carried out with funds apportioned to a State under [section 104(b)(4)] shall be 90 percent."

(b) TRANSITION PERIOD.--

(1) STRATEGIC HIGHWAY SAFETY PLAN.--

(A) UPDATED STRATEGIC HIGHWAY SAFETY PLAN.--

Except as provided in subparagraph (B), the Secretary shall approve obligations of funds apportioned under [section 104(b)(4)] of title 23, United States Code, to carry out the highway safety improvement program under section 148 of such title, only if, not later than [October 1 of the second fiscal year beginning after the date of enactment of this Act], a State has in effect and has submitted to the Secretary an updated strategic highway safety plan that meets the requirements under section 148(c) of such title.

(B) INTERIM PERIOD.--

(i) Before [October 1 of the second fiscal year beginning after the date of enactment of this Act] and until the date on which a State has in effect and submits to the Secretary an updated strategic highway safety plan as required under subparagraph (A), the Secretary shall apportion funds to a State for the highway safety improvement program and may obligate funds apportioned to the State for the highway safety improvement program under section 148 for eligible projects consistent with the State's existing strategic highway safety plan.

(ii) If a State does not have in effect and has not submitted to the Secretary an updated strategic highway safety plan by [October 1 of the second fiscal year beginning after the date of enactment of this Act], the State shall receive for the highway safety improvement program for each subsequent fiscal year until it has in effect and submits to the Secretary such updated plan, an amount that equals the amount apportioned to the State for that program for fiscal year **\*\*[2011]**.

(2) STATE PERFORMANCE MANAGEMENT.--

(A) IN GENERAL.-- Except as provided in subparagraph (B), the Secretary shall approve obligations of funds apportioned under section 104(b)(4) of title 23, United States Code, to carry out the highway safety

improvement program under section 148 of such title, only if, not later than one year after the Secretary establishes safety performance measures and a national target, a State has developed in consultation with the Secretary safety performance targets.

(B) INTERIM.--Until a State has developed State safety performance targets, or until the date that is one year after the Secretary establishes safety performance measures and a national target, the Secretary may approve obligations of funds apportioned to a State to carry out its highway safety improvement program under section 148 for eligible projects consistent with the State's strategic highway safety plan.

(c) CONFORMING AMENDMENTS.--Section 130 of such title is amended--

(1) by striking subsections (e) through (h), and redesignating subsection (i) as subsection (e);

(2) by striking subsections (j) and (k), and redesignating subsection (l) as subsection (f);

(3) in subsection (e), as redesignated, by striking "this section" and inserting "section 104(b)(4)"; and

(4) in subsection (f), as redesignated, by striking paragraphs (3) and (4).

## **SEC. 2216. HIGHWAY SAFETY DATA IMPROVEMENT PROGRAM.**

(a) IN GENERAL.--Section 149 of title 23, United States Code, is amended to read as follows:

### **"Sec. 149. Highway safety data improvement program.**

"(a) ESTABLISHMENT.--The Secretary shall establish and implement a highway safety data improvement program in accordance with this section.

"(b) PURPOSE.--The purposes of the highway safety data improvement program shall be to--

"(1) provide support for the enhancement of State roadway inventory data systems and analysis for all public roads;

"(2) collect roadway safety data to be linked to highway basemaps;

"(3) inform and support the Highway Safety Improvement Program under section 148 of this title; and

"(4) improve the timeliness, accuracy, completeness, consistency, integration, and accessibility of the roadway safety data of the State that is needed to identify priorities for national, State, and local highway and traffic safety programs.

"(c) DEFINITIONS.--In this section, the following definitions apply:

"(1) HIGHWAY BASEMAP.--The term "highway basemap" means a representation of all public roads that has the ability to geolocate attribute data through a linear referencing system.

"(2) HIGHWAY SAFETY DATA IMPROVEMENT PROJECT.--The term "highway safety data improvement project" means a project that supports the collection, maintenance, and sharing of roadway safety data on all public roads and related systems associated with the analytical usage of that data, to further the capacity of States to make more informed and effective safety infrastructure investment decisions.

"(3) MODEL INVENTORY OF ROADWAY ELEMENTS.--The term "model inventory of roadway elements" means the Federal Highway Administration's listing and standardized coding of roadway and traffic data elements critical to safety management, analysis and decision-making.

"(4) ROADWAY SAFETY ANALYSIS TOOL.--The term "roadway safety analysis tool" means an analytical tool designed to assist practitioners in understanding safety problems on their roadways, linking crashes to roadway environments, and selecting and applying appropriate countermeasures.

"(5) ROADWAY SAFETY DATA.--The term "roadway safety data" means roadway inventory and traffic elements critical to safety management, including those identified as part of the model inventory of roadway elements.

"(d) ELIGIBLE USES.--A State may obligate funds apportioned for the highway safety data improvement program to--

"(1) create, update, or enhance a highway basemap of all public roads in a State;

"(2) collect roadway safety data, including data identified as part of the model inventory of roadway elements, for creation of or use on a highway basemap of all public roads in a State;

"(3) store and maintain roadway safety data in an electronic format;

"(4) develop analytical processes for roadway safety data elements; and

"(5) acquire and implement roadway safety analysis tools.

"(e) STRATEGIC HIGHWAY SAFETY DATA IMPROVEMENT PLAN.--No later than one year after the date of enactment of this subsection, a State shall submit to the Secretary a strategic highway safety data improvement plan that describes a program of strategies to achieve a data-driven safety program and defines State safety data improvement goals and annual roadway safety data targets.

"(f) ANNUAL REPORT.--

"(1) IN GENERAL.--A State shall annually report to the Secretary on progress in achieving State roadway safety data targets.

"(2) CONTENTS.--The Secretary shall establish the content and schedule for the reports under this subsection.

"(3) TRANSPARENCY.--The State shall make such reports available to the public through--



- (A) the Web site of the State Department of Transportation or equivalent; or
- (B) such other means as the Secretary determines to be appropriate.

"(g) FEDERAL SHARE.--The Federal share of the cost of a project carried out under this section shall not exceed 90 percent.

"(h) SPECIAL RULE.--A State may use funds apportioned for the program under this section for any project under section 148 of this title if the State certifies to the Secretary that the State has met all State needs for highway safety data improvements."

(b) TRANSITION PERIOD.--

(1) IN GENERAL.--The Secretary shall approve obligations of funds apportioned to a State to carry out the highway safety data improvement program under section 149 of title 23, United States Code, only if not later than one year after the enactment of this Act, a State has submitted to the Secretary a strategic highway safety data improvement plan.

(2) INTERIM.--Until a State has submitted a strategic highway safety data improvement plan, or until the date that is one year after the date of enactment of this Act, the Secretary may approve obligations of funds apportioned to a State to carry out the highway safety data improvement program under section 149 of such title for projects that otherwise meet the requirements of such section.

(c) ANALYSIS AND APPLICATION.--Of the funds authorized to be appropriated for the highway safety data improvement program, the Secretary shall set aside \$17,500,000 to be expended by the Federal Highway Administration consistent with Section 311 of title 49 for intermodal coordination with the Federal Motor Carrier Safety Administration, the National Highway Traffic Safety Administration, the Research and Innovative Technology Administration, and other appropriate administrations of the Department of Transportation to--

- (1) evaluate and manage safety performance;
- (2) develop coordinated safety data plans;
- (3) improve timeliness, accuracy, completeness, consistency, integration, and accessibility of safety data, systems, and processes; and
- (4) foster cross modal implementation of roadway safety data programs.

(d) CONFORMING AMENDMENTS.-- The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 149 and inserting the following:

"Sec. 149. Highway safety data improvement program."

**SEC. 2217. TOLLING.**

(a) IN GENERAL.--Section 129 of title 23, United States Code, is amended by adding at the end the following--

"(d) METROPOLITAN CONGESTION REDUCTION.--

"(1) AUTHORIZATION.--Notwithstanding section 301 of this title, and subject to the conditions and other provisions of this subsection, the Secretary may permit States and other public authorities to impose tolls on highways, bridges or tunnels (including a highway, bridge or tunnel located on the Interstate System) in urbanized areas with populations over 1 million people (or, at the Secretary's discretion, other urbanized areas with high levels of congestion) for the purpose of reducing or managing high levels of congestion on a highway, bridge or tunnel, or network of such facilities, located around or within the urbanized area.

"(2) APPLICATION.--States and other public authorities wishing to receive toll authority under this subsection shall submit an application to the Secretary that contains--

"(A) an identification of the facility or facilities to be tolled;

"(B) a preliminary facility management plan that includes a description of how tolls will be implemented (including the pricing structure, toll collection points, tolling technology, transit services to be provided, and other relevant information available when the application is submitted);

"(C) preliminary traffic and revenue estimates and a proposed finance plan for construction, operations and maintenance;

"(D) a description of the congestion problems and how the proposed pricing plan will improve operational performance;

"(E) a demonstration that the proposed project is part of a well-coordinated, multi-modal transportation plan for the metropolitan area, including descriptions of--

"(i) existing transit service on the relevant corridors and the project sponsor's plans for enhancing transit service in these corridors to ensure that users of the facility have alternative transportation choices; and

"(ii) an analysis of anticipated traffic diversion and its affect on the routes onto which diversion may occur;

"(F) a proposed monitoring and reporting plan which shall be conducted through the metropolitan planning process under section 134 of this title and section 5303 of title 49, United States Code; and

"(G) such other information as the Secretary may require.

"(3) SELECTION CRITERIA.--The Secretary may approve the application of a State or public authority under paragraph (2) only if the Secretary determines that--

"(A) the proposed pricing plan will be effective in addressing the congestion sought to be addressed;

"(B) the proposed facility management plan takes into account the interests of local, regional, and interstate travelers;

"(C) the proposed project is part of a well-coordinated, multi-modal transportation plan for the metropolitan area, and--

"(i) there is sufficient existing transit service on the relevant corridors and/or the project sponsor plans to enhance transit service in these corridors to ensure that users of the facility have alternative transportation choices; and

"(ii) anticipated traffic diversion will not have an adverse impact on the parallel or alternative routes;

"(4) LETTERS OF INTEREST.--The State or public authority may submit an application in the form of a letter of interest to the Secretary to obtain toll authority under this subsection. The letter should include as much information required under paragraph (2) as possible as well as a discussion of the status of the National Environmental Policy Act process. If possible, applicants should submit applications prior to the completion of the process required under section 102 of the National Environmental Policy Act. The Secretary may respond to such letters of interest as deemed appropriate, but shall advise the State or public authority that the approval of the application will not occur until after the conclusion of the National Environmental Policy Act process.

"(5) DEMAND MANAGEMENT.--The tolls imposed under this subsection must be implemented in a manner that manages the demand of the facility or facilities being tolled, or, if appropriate in the context of the project, movement within a defined geographic region.

"(6) INTEROPERABILITY.--The tolls collected from motorists using the facility or facilities must be collected only through the use of noncash electronic technology that optimizes the free flow of traffic, except that cash collection may be employed at locations outside the main lanes of travel that do not impede the free flow of traffic and do not create unsafe operating conditions. The toll collection technology must meet any requirements for interoperability that are established by the Secretary.

"(7) LIMITATIONS ON USE OF REVENUES.--The following limitations on use of revenues shall apply:

"(A) Before any public authority imposes a toll under this subsection, the public authority (including the State transportation department) having jurisdiction over the highway, bridge, or tunnel must enter into an agreement with the Secretary providing that all toll revenues received from the operation of the toll facility or facilities will be used first for debt service; for reasonable return on investment of any private person financing the project; for the costs necessary for the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation, and any transit service provided within the corridor in which the facility is located; and for mitigating any adverse impacts identified under the NEPA process as a priority by the State or public authority imposing the tolls.

"(B) At the option of the public authority having jurisdiction over the facility, the toll agreement may further provide that if the State, or public authority with jurisdiction over the toll facility or facilities, certifies annually that the tolled facility or facilities are being adequately maintained, that priority for use of the revenues that have been collected

has been given to capital improvement projects located on the toll facility or facilities that reduce congestion, and if the State or public authority demonstrates that the pricing strategy has been effective in reducing or managing congestion, then the State or public authority may use any excess toll revenues for any project eligible for assistance under this title or title 49, chapters 53, United States Code, that directly benefit the operational performance of, or enhances transportation choices for users of the region's multi-modal transportation system.

"(C) If more than one facility comprises a project under this subsection, then the State or public authority may combine and use the toll revenues collected from any single facility to support the uses specified in subparagraph (A) for all facilities comprising the project.

"(D) The toll agreement shall incorporate the representations and conditions contained in the application submitted under paragraph (2), except that the Secretary may permit the State or public authority to modify such representations or conditions made with respect to the facility management plan if appropriate. The decision of the Secretary to permit the State to modify any representations or conditions made with respect to the facility management plan shall not be deemed a major federal action under section 102 of National Environmental Policy Act.

"(8) APPLICATION APPROVAL.--The execution of a toll agreement under paragraph (7) by the Secretary shall be deemed approval of the application submitted under this subsection.

"(9) HOV LANES.--For any lane designated as a high occupancy vehicle (HOV) lane, the State or relevant public authority may permit vehicles not meeting the established occupancy requirement to operate in the lane subject to the requirements of section 166 of this title, except that vehicles meeting the established occupancy requirement shall, as may be determined by the State or relevant public authority, either be permitted to travel at no charge or be charged a reduced toll, and public transportation vehicles shall be permitted to travel at no charge.

"(e) INTERSTATE SYSTEM IMPROVEMENTS.--

"(1) AUTHORIZATION.--Notwithstanding section 301 of this title, and subject to the conditions and other provisions of this subsection, the Secretary may permit States and other public authorities to impose tolls on Interstate highways, bridges or tunnels for the purpose of initially constructing Interstate highways, bridges and tunnels or for reconstructing Interstate highways, bridges or tunnels that include the addition of one or more lanes (including high occupancy vehicle lanes).

"(2) APPLICATION.--States and other public authorities wishing to receive toll authority under this subsection shall submit an application to the Secretary that contains--

"(A) an identification of the facility to be tolled, including the age, condition, intensity of use, and anticipated use of the facility;

"(B) a description of the proposed project and the mobility needs to be addressed;

"(C) in the case of initial construction, an analysis demonstrating that the facility could not reasonably be constructed from the State's apportionments and allocations made available by the Transportation Opportunities Act (including amendments) and from revenues for highways from any other source without toll revenues;

"(D) a preliminary facility management plan that includes a description of how tolls will be implemented (including the pricing structure, toll collection points, tolling technology, and other relevant information available when the application is submitted);

"(E) preliminary traffic and revenue estimates and a proposed finance plan for construction, operations and maintenance;

"(F) to the extent the proposed project will affect urbanized areas with multi-modal transportation systems, a demonstration that the proposed project is part of a well-coordinated, multi-modal transportation plan for the corridor located in such areas to be tolled, including descriptions of--

"(i) existing or planned transportation facilities that provide service on the relevant corridors; and

"(ii) anticipated traffic diversion and its affect on the routes onto which diversion may occur;

"(G) a proposed monitoring and reporting plan which shall be conducted through the state or metropolitan planning processes under sections 134 and 135 of this title and sections 5303 and 5304 of title 49, United States Code; and

"(H) such other information as the Secretary may require.

"(3) SELECTION CRITERIA.--The Secretary may approve the application of a State or public authority under paragraph (2) only if the Secretary determines that--

"(A) in the case of initial construction, the State or public authority is not reasonably able to construct the proposed toll facility using existing sources of revenue;

"(B) in the case of an existing facility, the proposed toll facility has a sufficient need (whether related to intensity of use, age, condition, or otherwise) to warrant the collection of tolls;

"(C) the plan for constructing or reconstructing the facility using toll revenues is reasonable;

"(D) the proposed facility management plan takes into account the interests of local, regional, and interstate travelers;

"(E) the project will adequately enhance the mobility and condition of the facility relative to the current and future needs of the facility; and

"(F) for projects affecting urbanized areas with multi-modal transportation systems, the proposed project is part of a well-coordinated, multi-modal transportation plan for the part of the corridor located in such

area, and anticipated traffic diversion will not have an adverse impact on parallel or alternative routes.

"(4) LETTERS OF INTEREST.--The State or public authority may submit an application in the form of a letter of interest to the Secretary to obtain toll authority under this subsection. The letter shall include as much information required under paragraph (2) as possible as well as a discussion of the status of the National Environmental Policy Act process. If possible, applicants should submit applications prior to the completion of the process required under section 102 of the National Environmental Policy Act. The Secretary may respond to such letters of interest as deemed appropriate, but shall advise the State or public authority that the approval of the application will not occur until after the conclusion of the National Environmental Policy Act process.

"(5) INTEROPERABILITY.--The tolls collected from motorists using the facility must be collected only through the use of noncash electronic technology that optimizes the free flow of traffic, except that cash collection may be employed at locations outside the main lanes of travel that do not impede the free flow of traffic and do not create unsafe operating conditions. The toll collection technology must meet any requirements for interoperability that are established by the Secretary.

"(6) LIMITATIONS ON USE OF REVENUES.-- The following limitations on use of revenues shall apply:

"(A) Before any public authority imposes a toll under this subsection, the public authority (including the State transportation department) having jurisdiction over the highway, bridge, or tunnel must enter into an agreement with the Secretary providing that all toll revenues received from the operation of the toll facility will be used first for debt service; for reasonable return on investment of any private person financing the project; for the costs necessary for the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation; and for mitigating any adverse impacts identified under the NEPA process as a priority by the State or public authority imposing the tolls.

"(B) The toll agreement shall incorporate the representations and conditions contained in the application submitted under paragraph (2), except that the Secretary may permit the State or public authority to adjust such representations or conditions made with respect to the facility management plan if appropriate. The decision of the Secretary to permit the State to modify any representations or conditions made with respect to the facility management plan shall not be deemed a major federal action under section 102 of National Environmental Policy Act.

"(7) APPLICATION APPROVAL.--The execution of a toll agreement under paragraph (6) by the Secretary shall be deemed approval of the application submitted under this subsection.

"(8) HOV LANES.--For any lane designated as a high occupancy vehicle lane, the State or relevant public authority may permit vehicles not meeting the established occupancy requirement to operate in the lane subject to the

requirements of section 166 of this title, except that vehicles meeting the established occupancy requirement shall, at the discretion of the State or relevant public authority, either be permitted to travel at no charge or charged a reduced toll."

(b) CONFORMING AMENDMENTS.--

(1) Section 1012(b) of the Intermodal Surface Transportation Efficiency Act of 1991, as amended by Section 1216(a) of the Transportation Equity Act for the 21<sup>st</sup> Century, public law 105-178, and Section 1604(a) the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, public law 109-59, is repealed, except that any project funded or approved for tolling, and subject to an executed cooperative agreement, shall continue pursuant to the terms of such approval.

(2) Section 1216(b) of the Transportation Equity Act for the 21<sup>st</sup> Century, public law 105-178, is repealed.

(3) Sections 1604(b)(1) through (5) and (7) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, public law 109-59, are repealed, except that any project approved under this section and operating pursuant to an executed toll agreement on the date of enactment of this Act may continue tolling under the terms of the agreement.

(4) Section 1604(b)(6)(A) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, public law 109-59, is amended by striking the words "under this section" and inserting "through an agreement with the Secretary".

(5) Section 1604(c) the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, public law 109-59, is repealed.

(6) Section 129(a)(8) of title 23, United States Code, is amended by striking the word "subsection" and inserting in its place the word "section".

(7) Section 166(c) of title 23, United States Code, is amended by--  
(A) striking "paragraphs (4) and (5)" and inserting "paragraph (4)" in paragraph (1);

(B) striking "paragraphs (4) and (5)" and inserting "paragraph (4)" in paragraph (2); and

(C) striking "on a HOV facility" and inserting "on existing HOV lanes or existing lanes newly designated as HOV".

**SEC. 2218. SURFACE TRANSPORTATION REVENUE ALTERNATIVES OFFICE.**

(a) ESTABLISHMENT.--The Secretary shall establish within the Federal Highway Administration a Surface Transportation Revenue Alternatives Office to analyze a range of revenue-generating alternatives that could convey prices to users to reflect system use and other travel externalities while serving as a funding source for surface transportation programs.

(b) **PURPOSES.**--The purposes of the Surface Transportation Revenue Alternatives Office shall be to--

- (1) create a study framework that defines the functionality of a mileage-based user fee system and other systems, including those suitable for vehicles using fuel not taxable under the Internal Revenue Code of 1986;
- (2) evaluate system design alternatives for such systems;
- (3) conduct field trials to demonstrate and test such systems;
- (4) increase public awareness regarding the need for an alternative funding source for surface transportation programs and provide information on possible approaches; and
- (5) provide recommendations regarding adoption and implementation of a mileage-based user fee system or other system.

(c) **SURFACE TRANSPORTATION REVENUE ALTERNATIVES POLICY DECISION GROUP.**--

(1) **IN GENERAL.**--Within 1 year of the enactment of this Act, the Surface Transportation Revenue Alternatives Office shall establish and lead a Surface Transportation Revenue Alternatives Policy Decision Group, hereinafter referred to as "the Group", to inform the selection and evaluation of mileage-based user fee systems.

(2) **MEMBERSHIP.**--The Group shall consist of public agency representatives as determined by the Secretary, including the Department of Energy; the Department of the Treasury; the Environmental Protection Agency; other appropriate Federal and State agencies and associations; and public toll authorities.

(3) **FUNCTIONS.**--Within 2 years of establishment, the Group shall, at a minimum--

- (A) create a study framework that defines the functionality of mileage-based user fee systems and other systems, including those suitable for vehicles using fuel not taxable under the Internal Revenue Code of 1986;
- (B) identify systems for field testing and provide objectives to assess technological, administrative, institutional, privacy, and other issues associated with identified systems;
- (C) establish a public awareness communications plan; and
- (D) define the system design of alternatives of interest, including consideration of high-level system architectures; interoperability standards and communication protocols; and equipment standards.

(4) **TRANSPARENCY.**--

(A) **OPEN MEETINGS.**--Interested persons shall be permitted to attend meetings of the Group or file statements with the Group, subject to any reasonable rules or regulations that may be prescribed.

(B) **AVAILABILITY OF RECORDS.**--The records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents which are made available to or prepared for or by the Group shall be made available to the public.



(C) LIMITATION.--The requirements of this paragraph shall not apply if the Secretary determines that it is in the public interest that such meeting or information should be closed to the public in order to prevent the disclosure of matters that--

- (i) should be kept secret in the interest of national defense or foreign policy;
- (ii) are specifically exempted from disclosure by statute;
- (iii) involve trade secrets and commercial or financial information that are obtained from a person and are privileged or confidential; or
- (iv) would likely frustrate the purposes of the Surface Transportation Revenue Alternatives Office.

(5) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.--The Group shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(d) FIELD TRIALS.--

(1) IN GENERAL.--No later than 4 years after the enactment of this Act, the Surface Transportation Revenue Alternatives Office shall conduct field trials of mileage-based user fee systems identified by the Group for testing.

(2) CONSIDERATIONS.--The Office shall consider, at a minimum, the following issues in constructing field trials--

- (1) capability of States to coordinate administrative and financial functions, including charging out-of-state vehicles and enforcing payment;
- (2) reliability of technology over greater distances and terrains;
- (3) administrative cost estimates; and
- (4) user acceptance.

(3) GROUP.--The Group shall provide recommendations for the field trials.

(4) REVENUE.--Any revenue collected from field trials conducted under this section shall not be deemed to be tolls prohibited under section 301 of title 23, United States Code, if the revenue collected is to be a substitute for, or supplement to, a State fuel tax.

(5) REPORT.--Not later than September 30, 2017, the Surface Transportation Revenue Alternatives Office shall make available a report of its findings to date in an electronic format accessible to the public.

(e) FUNDING.--

(1) AUTHORIZATION.--The following sums are authorized to be appropriated from the Highway Account of the Transportation Trust Fund to carry out this section:

- (A) \$20,000,000 for fiscal year 2012.
- (B) \$20,000,000 for fiscal year 2013.
- (C) \$130,000,000 for fiscal year 2014.
- (D) \$100,000,000 for fiscal year 2015.
- (E) \$25,000,000 for fiscal year 2016.

(F) \$5,000,000 for fiscal year 2017.

(2) ADMINISTRATIVE EXPENSES.-- Of amounts authorized under paragraph (1), the Secretary may use such sums as necessary for administrative expenses for implementing the activities described in this section.

(f) APPLICABILITY OF TITLE 23.-- Funds made available to carry out this section shall be available for obligation and administered in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall remain available until expended.

## **SEC. 2219. TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.**

(a) IN GENERAL.--Chapter 1 of title 23, United States Code, is amended by adding the following after section 167, as added by this Act:

### **"Sec. 168. Transportation systems management and operations**

"(a) ESTABLISHMENT.--The Secretary of Transportation shall establish and implement a transportation systems management and operations strategy in order to enable the national transportation system to perform in a safe and reliable manner at all times and under varying conditions.

"(b) PURPOSE.--The purposes of this strategy shall be to--

"(1) efficiently and effectively manage and operate the transportation system in order to promote the safe, reliable, and secure movement of people and goods at all times and under varying conditions;

"(2) improve the safety, performance, and reliability of existing infrastructure while bolstering the Nation's economic competitiveness and supporting livable and sustainable communities; and

"(3) ensure that the strategic performance of Federal transportation system investments is sustained for all those that depend upon the transportation system by the coordinated and collaborative implementation of a transportation systems management and operations strategy.

"(c) AUTHORITY.--

"(1) IMPLEMENTATION BY THE SECRETARY.--In implementing a transportation systems management and operations strategy, the Secretary may--

"(A) assist, guide, and cooperate with other Federal agencies, State and local governments, metropolitan planning organizations, private industry, and other interested parties to improve transportation systems management and operations so as to increase the performance, safety, reliability, and security of our surface transportation system; and

"(B) encourage each Governor with responsibility for a portion of a multi-state region or corridor to improve collaboration and coordination of transportation system management and operations strategies across the entire region or corridor.

"(2) STATE AGREEMENTS.--Any two or more States may enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of a transportation systems management operations strategy pertaining to interstate regions and corridors within the compacting States, and may establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

"(d) OBJECTIVES.--In carrying out this section, the Secretary shall seek to achieve the following objectives:

"(1) Reduce non-recurring congestion that occurs from causes, including crashes, disabled vehicles, work zones, adverse weather events, emergencies and homeland security, and planned special events.

"(2) Reduce recurring congestion through the implementation of projects and programs for the development and deployment of traffic control and travel demand management strategies designed to mitigate congestion on highway facilities during peak travel periods.

"(3) Improve day to day operations through asset management, application of traffic control devices and real time traveler information, and the use of traffic analysis tools to better model and understand problems and possible solutions

"(4) Plan for operations by integrating collaborative, objectives-driven, and performance based activities into metropolitan and statewide transportation plans described under this title and chapter 53 of title 49, that are intended to advance transportation system management and operations programs, and that bring together jurisdictions and agencies such as state departments of transportation, departments of public works, transit authorities, metropolitan planning organizations, and public safety/security agencies for improved coordination and reliability.

"(5) Organize operations by applying specific business and technical processes, organizational culture, workforce development, internal collaboration and coordination, and performance measurement methods that are intended to facilitate and advance transportation systems management and operations strategies.

"(6) Enhance freight management and operations by promoting efficient, seamless, and secure freight flows on the United States transportation system and across international borders including the use of advanced technologies, development of tools to evaluate infrastructure and operational needs at border crossings, and standards for exchanging electronic freight data.

"(7) Improve mobility and security through emergency transportation management in order to improve transportation network efficiency and public/responder safety when a non-recurring event either interrupts or overwhelms transportation operations."

(b) CONFORMING AMENDMENT.--The analysis for Chapter 1 of title 23, United States Code, is amended by adding at the end the following:

"Sec. 168. Transportation systems management and operations."

## **Part 2--Performance Management**

### **SEC. 2301. PERFORMANCE MANAGEMENT PROCESS.**

(a) **DECLARATION OF POLICY.**--Performance management will transform the Federal-aid highway program and will provide a means to the most efficient investment of Federal transportation dollars by re-focusing on national transportation goals, increasing the accountability and transparency of the Federal-aid program, and improving project decision-making through performance-based planning and programming.

(b) **NATIONAL GOALS.**--

(1) **IN GENERAL.**-- It is in the interest of the nation to focus the Federal-aid highway program on the following goals:

(A) **SAFETY.**-- To achieve a significant reduction in traffic fatalities and serious injuries on all public roads.

(B) **INFRASTRUCTURE CONDITION.**--To maintain the highway infrastructure asset system in a state of good repair.

(C) **SYSTEM RELIABILITY.**--To improve the efficiency of the transportation system.

(D) **FREIGHT MOVEMENT AND ECONOMIC VITALITY.**--To improve the national freight transportation system, strengthen the ability of rural communities to access national and international trade markets and support regional economic development.

(E) **ENVIRONMENTAL SUSTAINABILITY.**--To enhance the performance of our transportation system while protecting and enhancing the natural environment.

(F) **LIVABILITY.**--To foster livable communities through place-based policies and investments that increase transportation choices and access to transportation services.

(2) **LONG RANGE PLANS ADDRESS NATIONAL GOALS.**--State and metropolitan planning organization long-range transportation plans developed under sections 134 and 135 of title 23, United States Code, shall describe how the State or metropolitan planning organization will use program and project selection to help achieve the national goals identified in paragraph (1).

(c) **PERFORMANCE MANAGEMENT.**--The Secretary shall implement performance management of the Federal-aid program and require all recipients of Federal-aid funding to participate in the process.

(d) **ESTABLISHMENT OF PERFORMANCE MEASURES.**--The Secretary shall establish quantifiable performance measures to address the safety and infrastructure condition national goals identified in subsection (b)(1) of this section. After the Secretary has established performance measures for the safety and infrastructure condition goals, the Secretary shall, as the Secretary determines appropriate,

(1) establish performance measures for the remaining goal areas; and

(2) identify actions necessary to advance the implementation of performance measures for the remaining goal areas.

(e) IDENTIFICATION OF PERFORMANCE TARGETS.--

(1) NATIONAL TARGETS.--Based on the analysis of available information and stakeholder input, the Secretary shall set national targets for achieving the safety and infrastructure condition goals identified in subsection (b)(1) and shall set national targets for the remaining goal areas as he determines appropriate.

(2) STATE TARGETS.--In consultation with the Secretary, each State shall set a State target for safety and infrastructure condition performance that will support the safety and infrastructure condition national goals identified in subsection (b)(1). After the Secretary has identified the performance measures and associated targets for the remaining national goal areas identified in subsection (b)(1), the States shall set State targets for these goal areas, in consultation with the Secretary.

(f) PROGRAM DECISIONMAKING.--Program and project decisions at the State and metropolitan planning organization level shall reflect national goals through the performance-based planning and programming processes.

**SEC. 2302. METROPOLITAN TRANSPORTATION PLANNING.**

Section 134 is amended to read as follows:

**"Sec. 134. Metropolitan transportation planning**

"(a) POLICY.--It is in the national interest to--

"(1) encourage and promote the safe and efficient management, operation, and development of multimodal surface transportation systems that will serve efficiently the mobility needs of people and freight, provide safe routes to key community destinations, and foster economic growth and development within and between States and urbanized areas, while fitting the needs and complexity of individual communities, maximizing value for taxpayers, leveraging cooperative investments, and minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes identified in this title ;

"(2) encourage the continued improvement, evolution, and coordination of the metropolitan and statewide transportation planning processes by and among metropolitan planning organizations, State departments of transportation, regional planning organizations, interstate compacts, and public transit and intercity service operators as guided by the planning factors identified in subsection (h) and section 135 (d) ; and,

"(3) encourage and promote the following principles to ensure that transportation needs and decisions are integrated with other community

planning needs and priorities, and to maximize the effectiveness of the transportation investments:

- "(A) Provide transportation choices.
- "(B) Promote accessible, equitable, affordable housing.
- "(C) Enhance economic competitiveness.
- "(D) Support existing communities.
- "(E) Coordinate policies and leverage investments.
- "(F) Value communities and neighborhoods.

"(b) DEFINITIONS.--In this section and section 135 :

"(1) METROPOLITAN PLANNING AREA.--The term 'metropolitan planning area' means the geographic area determined by agreement between the metropolitan planning organization for the area and the Governor under subsection (e).

"(2) METROPOLITAN PLANNING ORGANIZATION.--The term 'metropolitan planning organization' means the policy board of an organization created as a result of the designation process in subsection (d).

"(3) MPO.--The term 'MPO' means metropolitan planning organization.

"(4) NON-METROPOLITAN AREA.--The term 'non-metropolitan area' means a geographic area outside a designated metropolitan planning area and includes small urbanized and non-urbanized areas.

"(5) NON-METROPOLITAN AREA LOCAL OFFICIAL.--The term 'non-metropolitan area local official' means elected and appointed officials of general purpose local government with responsibility for transportation outside of a designated metropolitan planning area.

"(6) METROPOLITAN TRANSPORTATION PLAN. --The term 'metropolitan transportation plan' means a 20 year plan developed by a metropolitan planning organization under subsection (j).

"(7) TIP.--The term 'TIP' means a transportation improvement program developed by a metropolitan planning organization under subsection (k).

"(8) URBANIZED AREA.--The term 'urbanized area' means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.

"(9) MAINTENANCE AREA.--The term "maintenance area" means an area that was designated as an air quality nonattainment area, but was later redesignated by the Administrator of the Environmental Protection Agency as an air quality attainment area, under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

"(10) NONATTAINMENT AREA.--The term 'nonattainment area' has the meaning given that term in section 171 of the Clean Air Act(42 U.S.C. 7501).

"(c) GENERAL REQUIREMENTS.--

"(1) DEVELOPMENT OF METROPOLITAN TRANSPORTATION PLANS AND TIPS.--To accomplish the objectives in subsection (a), MPOs designated under subsection (d), in cooperation with the State and public transportation operators, shall develop metropolitan transportation plans and TIPs for metropolitan planning areas of the State through a performance-driven, outcome-based approach to metropolitan transportation planning.

"(2) CONTENTS.--The metropolitan transportation plans and TIPs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

"(3) PROCESS OF DEVELOPMENT.--The process for developing the metropolitan transportation plans and TIPs shall provide for consideration of facilities and services for all modes of transportation across all levels of governmental and non-governmental authority and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation needs to be addressed.

"(4) TIERING.--

"(A) TIER I MPOS.--(i) MPOs operating primarily within urbanized areas of 1,000,000 or more persons according to the Bureau of the Census shall be designated as Tier I MPOs and shall fully implement the processes described in subsections (h) through (k) of this section within two years of the enactment of the Surface Transportation Transformation Act

"(ii) MPOs operating primarily within urbanized areas of more than 200,000, but less than 1 million persons, that are designated as Tier II MPOs as described in paragraph (B), may, with the support of the Governor, request designation as a Tier I MPO upon a determination by the Secretary that such MPO has demonstrated adequate technical capacity to implement the processes described in subsections (h) through (k).

"(B) TIER II MPOS.--(i) MPOs operating primarily within urbanized areas of less than 1,000,000 persons but more than 200,000 persons shall be designated as Tier II MPOs and shall follow processes set forth under subsection (l) of this section.

"(ii) Existing MPOs operating primarily within urbanized areas of less than 200,000 persons but more than 50,000 persons prior to enactment of this section may, with the support of the Governor, request designation as a Tier II MPO upon a determination by the Secretary that such MPO has demonstrated adequate technical capacity and commitment to collaborative

transportation decision-making to implement the processes set forth under subsection (l) of this section and the requirements of the Clean Air Act (42 U.S.C. 7506(c)) in nonattainment and maintenance areas.

"(iii) In the absence of such designation as a Tier II MPO, the MPO and State shall, within 12 months of the enactment of the Surface Transportation Transformation Act, submit, a two-year plan to transfer the MPO's responsibilities back to the State or to a planning organization designated by the State, and to dissolve the MPO.

"(iv) If the MPO is dissolved, such metropolitan planning area shall continue to receive metropolitan transportation planning funds for the period of time until the MPO is dissolved, not to exceed 24 months after enactment of this section and shall be treated by the State as a non-metropolitan area under this title.

"(C) CONSOLIDATION.--MPOs operating within contiguous or adjacent urbanized areas may elect to consolidate in order to meet the requisite population thresholds necessary in order to achieve designation as a Tier I or Tier II MPO. Nothing in this subsection shall be construed as to require or prevent consolidation among multiple MPOs located within a single urbanized area.

"(d) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.--

"(1) IN GENERAL.--To carry out the metropolitan transportation planning process required by this section, an MPO shall be designated for each urbanized area with a population of more than 200,000 individuals--

"(A) by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city (based on population) as named by the Bureau of the Census); or

"(B) in accordance with procedures established by applicable State or local law.

"(2) STRUCTURE.--Each MPO, when designated or redesignated under this subsection, shall consist of--

"(A) local elected officials;

"(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; and

"(C) appropriate State officials.

"(3) LIMITATION ON STATUTORY CONSTRUCTION.--Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities to--

"(A) develop the metropolitan transportation plans and TIPs for adoption by an MPO; and



"(B) develop capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

"(4) CONTINUING DESIGNATION.--A designation of an MPO under this subsection or any other provision of law--

"(A) for an urbanized area with a population of 200,000 or more persons shall remain in effect--

"(i) if the structure of the existing MPO complies with the requirements of paragraph (2); or

"(ii) until the existing MPO is redesignated under paragraph (5).

"(B) for an urbanized area with a population of less than 200,000 persons, shall be terminated unless reaffirmed by the existing MPO and the Governor, and approved by the Secretary, on the basis of demonstrated adequate technical capacity and commitment to collaborative transportation decision-making under subsection (c) paragraph (4)(b)(i).

"(5) REDESIGNATION PROCEDURES.--An MPO designated under this subsection shall remain in effect until the MPO is redesignated by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing planning area population (including the largest incorporated city (based on population) as named by the Bureau of the Census) as appropriate to carry out this section. Redesignation of MPOs shall be made in accordance with this section.

"(6) DESIGNATION OF MORE THAN ONE METROPOLITAN PLANNING ORGANIZATION.--More than one MPO may be designated within an existing metropolitan planning area only if the Governor and the existing MPO determine that the size and complexity of the existing metropolitan planning area make designation of more than one MPO for the area appropriate.

"(e) METROPOLITAN PLANNING AREA BOUNDARIES.--

"(1) IN GENERAL.--For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

"(2) INCLUDED AREA.--Each metropolitan planning area--

"(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and

"(B) may encompass the entire metropolitan statistical area as defined by the Office of Management and Budget.

"(3) IDENTIFICATION OF NEW URBANIZED AREAS WITHIN EXISTING PLANNING AREA BOUNDARIES.--The designation by the Bureau of the Census of new urbanized areas within an

existing metropolitan planning area shall not require the redesignation of the existing MPO.

"(4) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.--Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment or maintenance area under the Clean Air Act (42 U.S.C. 7401 et seq.) as of the date of enactment of the Transportation Opportunities Act, the boundaries of the metropolitan planning area in existence as of such date of enactment shall be retained; except that the boundaries may be adjusted by agreement of the Governor and affected MPOs in the manner described in subsection (d)(5).

"(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.--In the case of an urbanized area designated after the date of enactment of the Transportation Opportunities Act as a nonattainment or maintenance area, the boundaries of the metropolitan planning area--

"(A) shall be established in the manner described in subsection (d)(1);

"(B) shall encompass the areas described in paragraph (2)(A);

"(C) may encompass the areas described in paragraph (2)(B); and

"(D) may address any nonattainment or maintenance area identified under the Clean Air Act.

"(f) COORDINATION IN MULTISTATE AREAS.--

"(1) IN GENERAL.--The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate MPOs to provide coordinated transportation planning for the entire metropolitan area.

"(2) COORDINATION ALONG DESIGNATED TRANSPORTATION CORRIDORS.--The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate MPOs to provide coordinated transportation planning for the entire designated transportation corridor. The Secretary may consider the effectiveness of multistate transportation coordination for the designated transportation corridor as a criterion for funding multistate corridor projects, facilities, and services, and when administering certain discretionary programs.

"(3) MPO COORDINATION WITH INTERSTATE COMPACTS.--The Secretary shall encourage MPOs to consider, during development of metropolitan transportation plans and TIPs, any relevant transportation studies concerning planning for regional transportation (including, but not limited to, high-speed and intercity rail corridor studies, commuter rail corridor studies, intermodal terminals, and interstate highways) in support of intercity or multistate area projects, and

services that have been developed by interstate compacts, agreements, or organizations established under Section 135 of this title.

"(g) MPO CONSULTATION IN METROPOLITAN TRANSPORTATION PLAN AND TIP COORDINATION.--

"(1) NONATTAINMENT AREAS.--If more than one MPO has authority within a metropolitan area or designated nonattainment or maintenance area under the Clean Air Act, each MPO shall consult with the other MPOs designated for such area and the State in the coordination of metropolitan transportation plans and TIPs required by this section.

"(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE METROPOLITAN PLANNING AREAS.--If a transportation improvement, funded under this title or chapter 53 of Title 49, is located within the boundaries of more than one metropolitan planning area, the MPOs shall coordinate metropolitan transportation plans and TIPs regarding the transportation improvement.

"(3) COORDINATION OF ADJACENT MPOS.--The Secretary shall require MPOs that are adjacent or are located in reasonably close proximity of each other to coordinate their planning processes, including coordinated preparation of metropolitan transportation plans and TIPs, to the maximum extent practicable.

"(4) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.-  
-The Secretary shall require each MPO to cooperate with officials and entities responsible for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, telecommunications infrastructure, infrastructure services, housing, health services, human services, environmental protection, airport operations, high-speed and intercity passenger rail, freight rail, port access, transportation system safety, and freight movements) to the maximum extent practicable, with such planning activities to ensure that the metropolitan transportation planning process, metropolitan transportation plans and TIPs are developed in cooperation with other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the metropolitan area that are provided by--

"(A) recipients of assistance under chapter 53 of title 49;

"(B) recipients of assistance under section 204 of this title;

"(C) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and

"(D) sponsors of regionally significant programs, projects, and services that are related to transportation and who are receiving assistance from any public and/or private sources, in accordance with subsection (i) of this Section.

**"(h) SCOPE OF PLANNING PROCESS.--**

**"(1) IN GENERAL.--**The metropolitan transportation planning process for a metropolitan planning area under this section shall provide for consideration of projects and strategies that will achieve the following outcomes--

**"(A)** improved economic competitiveness of the Nation and improved economic vitality of the metropolitan area, especially by enabling global competitiveness and productivity;

**"(B)** increased efficiency of the multimodal transportation system that moves people and freight;

**"(C)** improved accessibility to functional needs for all transportation users, including people with disabilities, older Americans, and low income individuals;

**"(D)** increased safety and security of the transportation system for motorized and nonmotorized users;

**"(E)** enhanced environmental sustainability through protection and enhancement of the environment, promotion of energy conservation, improvement of quality of life, and promotion of consistency between transportation improvements and State and local planned growth and economic development patterns;

**"(F)** increased efficiency in systems management and operation, including deployment of congestion management strategies across transportation networks;

**"(G)** increased emphasis on preservation of the existing system and maintaining it in a state of good repair, including elevators, escalators and communications technology for use of people with disabilities and older adults;

**"(H)** increased adoption of technology-based solutions to transportation needs;

**"(I)** improved accountability and transparency for public dollars, delivering projects as forecasted; and,

**"(J)** improved public participation by interested parties and transparency in the planning process.

**"(2) ESTABLISHMENT AND USE OF A PERFORMANCE-BASED APPROACH TO METROPOLITAN TRANSPORTATION PLAN AND TIP DEVELOPMENT.--**

**"(A) IN GENERAL.--**The metropolitan transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decision-making to achieve the outcomes set forth in paragraph (1).

**"(B) NATIONAL PERFORMANCE OBJECTIVES.--**The Secretary shall, from time to time, identify performance measures and intermediate and long-term targets for those measures to use in tracking attainment of national transportation performance goals,

including the factors specified in paragraph (1), and other factors that the Secretary determines are consistent with the transportation objectives of the Nation.

"(C) MPO ESTABLISHMENT OF PERFORMANCE MEASURES.--The MPO shall identify and select performance measures and intermediate and long-term targets for those measures to use in tracking attainment of critical outcomes for the region, including the factors specified in paragraph (1), and other factors deemed appropriate by the MPO, unless otherwise specified by the Secretary in accordance with subparagraph (B). Identification and selection of performance measures by the MPO shall be coordinated with the State to establish consistency, to the extent practicable.

"(D) INTEGRATION OF OTHER PERFORMANCE-BASED PLANS.--The MPO shall integrate into the metropolitan transportation planning process, either directly or by reference, the outcomes, goals, objectives, performance measures, and targets in other State plans and processes required as part of a performance-based program, including, but not limited to such plans as the State national highway system asset management plan, the State strategic highway safety plan, the locally coordinated public transit human services transportation plan, state rail plan, and the statewide transportation plan.

"(E) SYSTEM PERFORMANCE REPORT.

"(i) MPOs shall develop and publish a system performance report describing the condition of, and performance of, the transportation system in relation to the performance measures and objectives established in subparagraphs (A) through (C). The system performance report shall be updated on a schedule and at a level of detail necessary to measure progress achieved by the MPO in meeting system performance objectives and targets. The system performance report shall inform the MPO's planning process for the development of the subsequent metropolitan transportation plan and TIPS.

"(ii) Within 24 months of enactment of this section MPOs shall develop and publish a system performance report describing the condition of, and performance of, the transportation system in relation to the performance measures and objectives established in subparagraphs (A) through (C).

"(iii) MPOs shall periodically update the system performance report no later than 24 months after the adoption of the most recent metropolitan transportation plan, except for any metropolitan transportation plans adopted within 24 months of the enactment of this section.

Updates to the system performance report shall describe the condition of, and performance of, the transportation system in relation to the performance measures and objectives established in subparagraphs (A) through (C), and include a report of progress achieved in meeting performance goals and objectives in comparison with system performance recorded in past system performance reports.

"(iv) Updates to the system performance report shall include an accounting of the MPO's performance on outlay of obligated project funds and delivery of projects that have reached substantial completion in relation to the projects currently on the TIP and those projects that have been removed from the previous TIP.

"(v) The system performance report described in subparagraph (i) shall be developed in consultation with the State department of transportation and shall be submitted to the Secretary on the World Wide Web in an electronically accessible format, by means to be determined by the Secretary.

"(F) USE OF PERFORMANCE MEASURES AND SYSTEM PERFORMANCE REPORTS.--The performance measures and system performance reports shall be used, at a minimum, by the MPO as the basis for development of policies, programs, and investment priorities reflected in the metropolitan transportation plan and TIP.

"(G) PERFORMANCE-BASED PLAN DEVELOPMENT.--Metropolitan transportation plan amendments or updates, except those that are adopted within 24 months of enactment of this subsection, shall incorporate a performance-based approach to metropolitan transportation planning. Metropolitan TIPs updated or amended after enactment of this subsection shall be consistent with the most recent metropolitan transportation plan.

"(H) EVALUATION OF PERFORMANCE-BASED PLANNING.--The Secretary shall consider the MPO's effectiveness in implementing and maintaining a performance-based planning process that addresses the outcomes in subsection (h) and demonstrates progress on the achievement of those outcomes when periodically reviewing the MPO under subsection (n).

"(3) FAILURE TO CONSIDER FACTORS.--The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title, chapter 53 of Title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a metropolitan transportation plan, a TIP, a project or strategy, or the certification of a planning process.

"(i) PARTICIPATION BY INTERESTED PARTIES.--

"(1) IN GENERAL.--Each MPO shall provide citizens; affected public agencies; representatives of public transportation employees; freight shippers and providers of freight transportation services; private providers of transportation; representatives of users of public transportation, pedestrian walkways and bicycle transportation facilities; representatives of people with disabilities, older Americans, and low income individuals; and other interested parties with a reasonable opportunity to comment on the metropolitan transportation plan and TIP.

"(2) METHODS.--In carrying out paragraph (1), the MPO shall, to the maximum extent practicable--

"(A) develop the metropolitan transportation plan and TIP in consultation with all interested parties, including by the formation of advisory groups representative of the community and interested parties that participate in the development of the metropolitan plan and TIP;

"(B) provide that all interested parties have reasonable opportunities to comment on the contents of the metropolitan transportation plan and TIP;

"(C) hold any public meetings at convenient and ADA-compliant accessible locations and times;

"(D) employ interactive visualization techniques to describe plans and TIPs; and,

"(E) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

"(3) NOTICE AND COMMENT.--Before approving a metropolitan transportation plan or TIP, an MPO, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the plan and program documents, in accordance with this section. The notice shall include the public outreach methods used to develop the metropolitan transportation plan or TIP.

"(j) DEVELOPMENT OF A METROPOLITAN TRANSPORTATION PLAN.--

"(1) IN GENERAL.--Each MPO shall prepare a metropolitan transportation plan for its metropolitan planning area in accordance with the requirements of this subsection. The MPO shall prepare and update such plan every 5 years (or more frequently, if the MPO elects to update more frequently), except in the cases of either of the following:

"(A) Any MPO operating within an air quality control region designated as a nonattainment area, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407 (d)) shall prepare and

update such metropolitan transportation plan every 4 years (or more frequently, if the MPO elects to update more frequently).

"(B) Any MPO operating within an air quality control region that was designated as a nonattainment area and subsequently designated to attainment in accordance with section 107(d)(3) of that Act (42 U.S.C. 7407(d)(3)) and that is subject to a maintenance plan under section 175A of that Act (42 U.S.C. 7505a) shall prepare and update such metropolitan transportation plan every 4 years (or more frequently, if the MPO elects to update more frequently).

"(2) METROPOLITAN TRANSPORTATION PLAN.--A metropolitan transportation plan under this section shall be in a form that the Secretary determines to be appropriate and shall contain, at a minimum, the following:

"(A) the existing transportation infrastructure, including an inventory of highways, local streets and roads, bicycle and pedestrian facilities, transit facilities and services, commuter rail facilities and services, high-speed and intercity passenger rail facilities and services, freight facilities (including freight railroad and port facilities), multimodal and intermodal facilities, and intermodal connectors that, together, function as an integrated metropolitan transportation system;

"(B) the performance measures and regionally adopted performance targets for use in assessing the existing and future performance of the transportation system with respect to the outcomes identified in subsection (h) paragraph (1) and other outcomes that the MPO deems appropriate, including the projected progress towards outcomes where investment priorities identified through the most recent system performance report are linked to the National objectives and locally adopted performance targets under subsection (h)(2).

"(C) the current and projected future usage of the transportation system, by using analyses and forecasts of key socio-economic and demographic factors that affect system outcomes;

"(D) an evaluation of the existing and future condition and performance of the transportation system with respect to the performance outcomes identified in subsection (h);

"(E) recommended strategies and investments for improving system performance over the planning horizon, including system operations strategies, maintenance strategies, demand management strategies, asset management strategies, capacity and enhancement investments, land use improvements, intelligent transportation systems deployment, technology adoption strategies, and others, and, for informational purposes, high-speed and intercity passenger rail and freight rail projects and services, as



determined by their projected support of outcomes identified in subsection (h);

"(F) recommended strategies and investments to improve and integrate disability-related access to transportation infrastructure;

"(G) investment priorities for using projected available and proposed revenues over the short and long-term stages of the planning horizon, in accordance with the financial plan required under paragraph (3);

"(H) a description of Interstate compacts entered into in order to promote coordinated transportation planning in multistate areas, if applicable

"(I) to the extent practicable, an identification of existing or planned transportation rights-of-way, corridors, facilities, and related real properties at risk of abandonment or development for non-transportation uses;

"(J) an illustrative list of projects, containing investments not included in the metropolitan transportation plan but that would be included if additional resources beyond those identified in the financial plan were available;

"(K) a coordinated public transit human services transportation element that identifies community-based priorities for coordinated delivery strategies for meeting the access and mobility needs of people with disabilities, older Americans, and low income individuals; and

"(L) a discussion (developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies) of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

"(3) FINANCIAL PLAN.--

"(A) PLAN CONTENTS.--A Financial Plan shall be prepared to support the metropolitan transportation plan containing--

"(i) projected resource requirements for implementing projects, strategies, and services recommended in the statewide transportation plan, including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from federal, state, local, and private sources, innovative financing techniques to finance projects and programs; and

"(ii) the projected difference between costs and revenues, and strategies for securing additional new revenue will be included in the financial plan.

"(B) COOPERATIVE REVENUE FORECASTS.--The MPO, public transportation agency, and State shall cooperatively develop estimates of future funds included in the financial plan that are reasonably expected to be available to support the investment priorities recommended in the metropolitan transportation plan.

"(C) REQUIREMENT OF ANTICIPATED FULL FUNDING.--The metropolitan transportation plan shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

"(4) COORDINATION WITH CLEAN AIR ACT AGENCIES.--In metropolitan areas that are nonattainment or maintenance areas under the Clean Air Act, the MPO shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

"(5) PUBLICATION.--A metropolitan transportation plan involving Federal and non-federal participation in regionally significant programs, projects, and strategies shall be published or otherwise made readily available by the MPO for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, approved by the MPO and submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

"(6) CONSULTATION.--

"(A) In general.--In each metropolitan area, the MPO shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a metropolitan transportation plan.

"(B) ISSUES.--The consultation shall involve, as appropriate--

"(i) consideration of metropolitan transportation plans with State conservation plans or maps, if available;

"(ii) consideration of inventories of natural or historic resources, if available; and

"(iii) consideration of State climate action plans, State energy plans, or other State plans to reduce greenhouse gas emissions, improve energy conservation, and promote infrastructure resiliency, if available, in the development of the metropolitan transportation plan.

"(7) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.--Notwithstanding paragraph (3), a State or MPO shall not be required to select any project from the illustrative list of additional

projects included in the metropolitan transportation plan under paragraph (2)(J).

"(k) METROPOLITAN TIP.--

"(1) DEVELOPMENT.--

"(A) IN GENERAL.--In cooperation with the State and any affected public transportation operator, the MPO designated for a metropolitan area shall develop a TIP for the metropolitan planning area that contains projects drawn only from the current metropolitan transportation plan and reflects the investment priorities set forth in the current metropolitan transportation plan that are based on the most recent system performance report.

"(B) OPPORTUNITY FOR COMMENT.--In developing the TIP, the MPO, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i).

"(C) UPDATING AND APPROVAL.--The TIP shall be updated at least once every 4 years, and on a cycle compatible with the STIP development under section 135, and shall be approved by the MPO and the Governor.

"(2) CONTENTS.--

"(A) PRIORITY LIST.--The TIP shall include a priority list of proposed federally supported projects and strategies, and, for informational purposes, non-federally supported regionally significant programs, projects, and strategies to be carried out within each 4-year period after the initial adoption of the TIP using existing and reasonably available revenues in accordance with the financial plan required under paragraph (3).

"(B) DESCRIPTIONS.--Each project in the TIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project, and the effect that the project or phase of the project will have in addressing the outcomes identified in subsection (h), above.

"(C) OUTCOME ACHIEVEMENT.--Each project in the TIP shall include a projected attainment of outcomes associated with such project, linking investment priorities to outcomes and locally adopted performance targets; and

"(D) BENEFIT-COST ANALYSIS.--The TIP shall, for illustrative purposes, include preliminary elements of benefit-cost analysis for each project (including multi-phase projects) included in either of the Year 1 forecast or the Year 2 forecast of the TIP that have an expected total cost of at least **\*\*[need entry]**\$\_\_\_million.

"(E) ILLUSTRATIVE LIST OF PROJECTS.--An illustrative list of projects may be prepared containing additional investment priorities not included in the TIP that would be included if reasonable additional resources beyond those identified in the financial plan for the TIP were available.

"(3) FINANCIAL PLAN.--A Financial Plan shall be prepared to support the TIP containing--

"(A) RESOURCE REQUIREMENTS.--Projected resource requirements will be included for implementing projects, strategies, and services recommended in the TIP, including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from federal, state, local, and private sources, innovative financing techniques to finance projects and programs;

"(B) PROJECTED COST/REVENUE COMPARISON.--The projected difference between costs and revenues, and strategies for securing additional new revenue will be included in the financial plan.

"(C) COOPERATIVE REVENUE FORECASTS.--The MPO, public transportation agency, and State shall cooperatively develop estimates of future funds included in the financial plan that are reasonably expected to be available to support the investment priorities recommended in the TIP.

"(D) REQUIREMENT OF ANTICIPATED FULL FUNDING.--The TIP shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

"(4) INCLUDED PROJECTS.--

"(A) PROJECTS UNDER THIS TITLE AND CHAPTER 53 OF TITLE 49 .--A TIP developed under this subsection for a metropolitan area shall include the projects within the area that are proposed for funding under chapter 1 of this title and chapter 53 of Title 49..

"(B) PROJECTS UNDER CHAPTER 2 OF THIS TITLE.--

"(i) Regionally significant projects.--Regionally significant projects proposed for funding under chapter 2 of this title shall be identified individually in the TIP.

"(ii) Other projects.--Projects proposed for funding under chapter 2 of this title that are not determined to be regionally significant shall be grouped in one line item or identified individually in the TIP.

"(C) PROJECTS NOT UNDER THIS TITLE OR CHAPTER 53 OF TITLE 49.--

"(i) For information and coordination purposes, regionally significant projects not proposed for funding under this title or chapter 53 of Title 49 for which implementation is planned in the metropolitan planning area over the program period of the TIP shall be identified individually in the TIP.

"(ii) For information and coordination purposes, high-speed and intercity passenger rail, and freight rail projects proposed for funding under subtitle V of title 49 for which implementation is planned in the metropolitan planning area over the program period of the TIP shall be identified individually in the TIP.

"(5) NOTICE AND COMMENT.--Before approving a TIP, an MPO, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i) paragraph (3).

"(6) SELECTION OF PROJECTS.--

"(A) IN GENERAL.--All federally funded projects carried out within the boundaries of a metropolitan planning area under this title (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program) or under chapter 53 of Title 49 shall be selected for implementation from the approved TIP by the Tier I MPO designated for the metropolitan planning area in cooperation with the State and any affected public transportation operator.

"(B) NATIONAL HIGHWAY SYSTEM PROJECTS.--Projects carried out within the boundaries of a metropolitan planning area on the National Highway System and projects carried out within such boundaries under the bridge program or the Interstate maintenance program under this title shall be selected for implementation from the approved TIP by the State in cooperation with the MPO designated for the metropolitan planning area.

"(C) MODIFICATIONS TO PROJECT PRIORITY.--Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved TIP in place of another project in the TIP.

"(7) PUBLICATION.--

"(A) PUBLICATION OF TIPS.--A TIP shall be published or otherwise made readily available by the MPO in electronically accessible format and means, such as the World Wide Web, for public review .

"(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.--An annual listing of projects, including investments in accessible pedestrian walkways, bicycle transportation facilities,

and intermodal facilities that support intercity transportation, for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and MPO in electronically accessible format and means, such as the World Wide Web, for public review. The listing shall be consistent with the categories identified in the TIP.

"(I) PLANNING REQUIREMENTS FOR TIER II METROPOLITAN PLANNING ORGANIZATIONS.--

"(1) IN GENERAL.--In the case of a Tier II MPO, as determined under the provisions of subsection (c), the Secretary may provide for the performance-based development of a metropolitan transportation plan and TIP for the metropolitan planning area in a manner that the Secretary determines is appropriate to achieve the outcomes identified in subsection (h) paragraph (1) above, taking into account the complexity of transportation needs in the area.

"(2) EVALUATION OF PERFORMANCE-BASED PLANNING FOR TIER II MPOS.--The Secretary shall consider a Tier II MPO's effectiveness in implementing and maintaining a performance-based planning process that addresses the outcomes in subsection (h) and demonstrates progress on the achievement of those outcomes when periodically reviewing the MPO under subsection (n).

"(3) NONATTAINMENT AND MAINTENANCE AREAS.--The Secretary shall establish planning processes that do not conflict with the conformity provisions under the Clean Air Act (42 U.S.C. 7506(c)) for such Tier II MPOs that serve metropolitan areas that are designated nonattainment or maintenance areas under the Clean Air Act.

"(m) CERTIFICATION.--

"(1) IN GENERAL.--The Secretary shall--

"(A) ensure that the metropolitan transportation planning process of an MPO is being carried out in accordance with applicable provisions of Federal law; and

"(B) subject to subparagraph (2), certify, not less often than once every 4 years, that the requirements of this paragraph are met with respect to the metropolitan transportation planning process.

"(2) REQUIREMENTS FOR CERTIFICATION.--The Secretary may make the certification under subparagraph (1) if--

"(A) for Tier I MPOs--

"(i) the metropolitan transportation planning process complies with the requirements of this section and other applicable requirements of Federal law; and

"(ii) there is a TIP for the metropolitan planning area that has been approved by the MPO and the Governor.

"(B) for Tier II MPOs--

"(i) the metropolitan transportation planning process complies with the requirements of this section and other applicable requirements of Federal law; and

"(ii) there is a TIP for the metropolitan planning area that has been approved by the MPO and the Governor.

"(C) The Secretary may delegate fact-finding authority regarding Tier II MPO certification to the State, and may make the certification under subparagraph (1) in consultation with the State.

"(3) EFFECT OF FAILURE TO CERTIFY.--

"(A) WITHHOLDING OF PROJECT FUNDS.--If a metropolitan transportation planning process of an MPO is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the MPO for projects funded under this title and chapter 53 of Title 49.

"(B) RESTORATION OF WITHHELD FUNDS.--The withheld funds shall be restored to the metropolitan planning area at such time as the metropolitan transportation planning process is certified by the Secretary.

"(4) REVIEW OF CERTIFICATION.--In making certification determinations under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan planning area under review.

"(n) PERFORMANCE-BASED PLANNING PROCESSES EVALUATION.--

"(1) IN GENERAL.--The Secretary may establish criteria to evaluate the effectiveness of the performance-based planning processes of MPOs. The Secretary may, in making certification determinations under this section, designate certain MPOs as exhibiting highly-effective or highly-improved performance-based planning processes, subject to the criteria that the Secretary establishes. The Secretary may consider the designation of an MPO as exhibiting highly-effective or highly-improved performance-based planning processes as a selection criterion when administering certain discretionary programs.

"(2) CRITERIA.--In establishing criteria to evaluate the effectiveness of the performance-based planning process of MPOs the Secretary shall consider the following:

"(A) The extent to which the MPO has achieved, or is currently making substantial progress towards achieving, the outcomes specified in its performance measurement plan, including the outcomes specified above in subsection (h). In evaluating this criterion, the Secretary shall consider whether the MPO developed a meaningful performance measurement plan that-

"(i) is based on a realistic inventory of current performance;

"(ii) identifies appropriately ambitious outcomes;

"(iii) sets significant and consequential targets; and,  
"(iv) is regularly modified or adjusted to incorporate best practices and lessons learned.

"(B) The extent to which the MPO has used proven best practices that help ensure robust, sustainable multi-modal transportation investment that is both efficient and cost-effective. The Secretary shall consider the following best practices in evaluating an MPO's alignment with this criterion--

"(i) Commitment to a variety of sustainable transportation funding options (including taxes, fees and user charges) that provide flexibility to make investments across all modes of transportation.

"(ii) Use of analytical tools in the investment decision-making process, including economic analysis, life-cycle costing, asset management, value for money and public sector comparator approaches, and use of innovations in design, procurement, purchasing or other elements of project delivery.

"(iii) Use of operating practices, such as congestion pricing, ramp metering, and market-oriented pricing for curbside parking, that make more efficient use of capacity and reduce the need for investing in new highway capacity.

"(iv) Deployment of technologies to improve the condition and performance of transportation networks and to address other transportation needs.

"(v) Adoption of laws, rules and regulations, and commitment of resources toward practices that are proven to reduce transportation-related fatalities and injuries.

"(vi) Integration of transportation planning and investment decisions with other land-use and economic development decisions to improve connectivity and accessibility.

"(vii) Collection and use of data in longitudinal analyses of investment performance.

"(viii) Adoption of laws, regulations, and practices that are proven to improve air quality, reduce greenhouse gas emissions, enhance community quality of life, and expand transportation choices, including adoption of a complete streets policy that considers the needs of all transportation users.

"(C) The extent to which the MPO has developed an investment process that relies on public input and awareness to ensure that investments are transparent and accountable, and the extent to which the MPO provides regular reports allowing the public to have access to the information that is being collected in a format that allows the public to meaningfully assess the MPO's performance.



"(o) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.--

"(1) IN GENERAL.--Notwithstanding any other provisions of this title or chapter 53 of Title 49, for metropolitan planning areas classified as nonattainment or maintenance areas pursuant to the Clean Air Act, Federal funds may not be advanced in such area for any highway project that will result in a significant increase in the carrying capacity for single-occupant vehicles unless the project demonstrates that it will achieve the outcomes adopted as part of the metropolitan transportation planning process required by subsection (h).

"(2) APPLICABILITY.--This subsection applies to a nonattainment or maintenance area within the metropolitan planning area boundaries determined under subsection (e).

"(p) LIMITATION ON STATUTORY CONSTRUCTION.--Nothing in this section shall be construed to confer on an MPO the authority to impose legal requirements on any transportation facility, provider, or project not eligible under this title or chapter 53 of Title 49.

"(q) FUNDING.--Funds set aside under section 104(f) of this title or section 5305 (g) of Title 49 shall be available to carry out this section.

"(r) CONTINUATION OF CURRENT REVIEW PRACTICE.--Since metropolitan transportation plans and TIPs described in this section are subject to a reasonable opportunity for public comment, since individual projects included in metropolitan transportation plans and TIPs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning metropolitan transportation plans and TIPs described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a metropolitan transportation plan or TIP described in this section shall not be considered to be a Federal action subject to review under such Act."

**SEC. 2303. STATEWIDE AND NON-METROPOLITAN TRANSPORTATION PLANNING.**

(a) IN GENERAL.--Section 135 is amended to read as follows:  
**"Sec. 135. Statewide and non-metropolitan transportation planning**

"(a) GENERAL REQUIREMENTS.--

"(1) DEVELOPMENT OF PLANS AND PROGRAMS.--To accomplish the objectives stated in section 134 (a), each State shall develop a statewide transportation plan and a statewide transportation improvement program (STIP) for all areas of the State, subject to section 134

"(A) INCORPORATION OF METROPOLITAN TRANSPORTATION PLANS AND TIPS. --States shall incorporate without change or by reference, the metropolitan transportation plans and TIPS for metropolitan planning areas as prepared by the cognizant MPOs for those areas into the statewide transportation plans and STIPs respectively.

"(B) NON-METROPOLITAN AREAS.--States shall coordinate with local officials in small urbanized and non-urbanized areas of the States in preparing the non-metropolitan portions of statewide transportation plans and STIPs.

"(2) CONTENTS.--The statewide transportation plan and the STIP developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways bicycle transportation facilities, and intermodal facilities that support intercity transportation) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

"(3) PROCESS OF DEVELOPMENT.--The process for developing the statewide transportation plan and the STIP shall provide for consideration of facilities and services for all modes of transportation across all levels of government and non-governmental authority and the policies stated in section 134(a), and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation needs to be addressed.

"(b) COORDINATION WITH METROPOLITAN TRANSPORTATION PLANNING; STATE IMPLEMENTATION PLAN.--A State shall--

"(1) coordinate planning carried out under this section with the transportation planning activities carried out under section 134 for metropolitan areas of the State and with statewide trade and economic development planning activities and related multistate planning efforts; and

"(2) develop the transportation portion of the State implementation plan as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

"(c) COORDINATION IN MULTISTATE AREAS.--

"(1) In general.--The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan planning area and the appropriate MPOs to provide coordinated transportation planning for the entire metropolitan area.

"(2) COORDINATION ALONG DESIGNATED TRANSPORTATION CORRIDORS.--The Secretary shall encourage each Governor with responsibility for a portion of a multistate transportation corridor and the appropriate States to provide coordinated transportation planning for the entire designated corridor. The Secretary may consider the effectiveness of multistate transportation coordination for the

designated transportation corridor as a criterion for funding multistate corridor projects, facilities, and services, and when administering certain discretionary programs.

"(3) INTERSTATE COMPACTS.--The consent of Congress is granted to any two or more States--

"(A) to enter into compacts, agreements, or organizations, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States;

"(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective; and

"(C) to encourage such compacts, agreements, or organizations to develop planning documents in support of intercity or multistate area projects, facilities, and services, the relevant components of which would be reflected in STIPs and statewide transportation plans.

"(4) RESERVATION OF RIGHTS.--The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

"(d) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.--The Secretary shall require States to cooperate with officials responsible for other types of planning activities that affect and are affected by transportation in the area (including State and local planned growth, economic development, telecommunications infrastructure, infrastructure services, housing, health services, human services, environmental protection, airport operations, high-speed and intercity passenger rail, freight rail, transportation system safety, and freight movements), to the maximum extent practicable, to ensure that the statewide and non-metropolitan planning process, statewide transportation plans and STIPs are developed in full coordination and cooperation with other related planning activities within the State, and the process shall provide for the design and delivery of transportation services within the State that are provided by--

"(1) recipients of assistance under chapter 53 of title 49;

"(2) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services;

"(3) recipients of assistance under section 204 of this title; and

"(4) sponsors of regionally significant programs, projects, and services that are related to transportation and who are receiving assistance from any public and/or private sources, in accordance with Subsection I of this Section.

"(e) SCOPE OF PLANNING PROCESS.--

"(1) IN GENERAL.--Each State shall carry out a statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that will achieve the following outcomes--

"(A) improved economic competitiveness of the Nation and improved economic vitality of the metropolitan area, especially by enabling global competitiveness and productivity;

"(B) increased efficiency of the multimodal transportation system that moves people and freight;

"(C) improved accessibility to daily needs for all transportation users, including people with disabilities, older Americans, and low income individuals;

"(D) increased safety and security of the transportation system for motorized and nonmotorized users;

"(E) enhanced environmental sustainability through protection and enhancement of the environment, promotion of energy conservation, improvement of quality of life, and promotion of consistency between transportation improvements and State and local planned growth and economic development patterns;

"(F) increased efficiency in systems management and operation, including deployment of congestion management strategies across transportation networks;

"(G) increased emphasis on preservation of the existing system and maintaining it in a state of good repair;

"(H) increased adoption of technology-based solutions to transportation needs;

"(I) improved accountability and transparency for public dollars, delivering projects as forecasted; and,

"(J) improved public participation and transparency in the planning process.

"(2) ESTABLISHMENT AND USE OF A PERFORMANCE-BASED APPROACH TO STATEWIDE TRANSPORTATION PLAN AND STIP DEVELOPMENT.--

"(A) IN GENERAL.--The statewide transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decision-making to achieve the outcomes set forth in paragraph (1).

"(B) NATIONAL PERFORMANCE OBJECTIVES.--The Secretary shall, from time to time, identify performance measures and intermediate and long-term targets for those measures to use in tracking attainment of national transportation performance goals, including the factors specified in paragraph (1), and other factors that the Secretary determines are consistent with the transportation objectives of the Nation.

"(C) STATE ESTABLISHMENT OF PERFORMANCE MEASURES.--The State shall identify and select performance

measures and intermediate and long-term targets for those measures to use in tracking attainment of critical outcomes for the region, including the factors specified in paragraph (1), and other factors deemed appropriate by the State, unless otherwise specified by the Secretary in accordance with subparagraph (A). Identification and selection of performance measures by the State shall be coordinated with MPOs to establish consistency, to the extent practicable

"(D) INTEGRATION OF OTHER PERFORMANCE-BASED PLANS.--The State shall integrate into the statewide transportation planning process, either directly or by reference, the outcomes, goals, objectives, performance measures, and targets in other State plans and processes required as part of a performance-based program, including, but not limited to such plans as the State national highway system asset management plan, the State strategic highway safety plan, the locally coordinated public transit human services transportation plan and the state rail plan.

"(E) SYSTEM PERFORMANCE REPORT.

"(i) States shall develop and publish a system performance report describing the condition of, and performance of, the transportation system in relation to the performance measures and objectives established in subparagraphs (A) through (C). The system performance report shall be updated on a schedule and at a level of detail necessary to measure progress achieved by the State in meeting system performance objectives and targets. The system performance report shall inform the State's planning process for the development of the subsequent statewide transportation plan and STIPs.

"(ii) Within 24 months of enactment of this section States shall develop and publish a system performance report describing the condition of, and performance of, the transportation system in relation to the performance measures and objectives established in subparagraphs (A) through (C).

"(iii) States shall periodically update the system performance report no later than 24 months after the adoption of the most recent statewide transportation plan, except for any statewide transportation plans adopted within 24 months of the enactment of this section. Updates to the system performance report shall describe the condition of, and performance of, the transportation system in relation to the performance measures and objectives established in subparagraphs (A) through (C), and include a report of progress achieved in meeting performance goals

and objectives in comparison with system performance recorded in past system performance reports.

"(iv) Updates to the system performance report shall include an accounting of the State's performance on outlay of obligated project funds and delivery of projects that have reached substantial completion in relation to the projects currently on the STIP and those projects that have been removed from the previous STIP.

"(v) The system performance report described in subparagraph (i) shall be submitted to the Secretary on the World Wide Web in an electronically accessible format, by means to be determined by the Secretary.

"(F) USE OF PERFORMANCE MEASURES AND SYSTEM PERFORMANCE REPORTS.--The performance measures and system performance reports shall be used, at a minimum, as the basis for development of policies, programs, and investment priorities reflected in the statewide transportation plan and STIP.

"(G) PERFORMANCE-BASED PLAN DEVELOPMENT.--Statewide transportation plan amendments or updates, except those that are adopted within 24 months of enactment of this subsection, shall incorporate a performance-based approach to statewide transportation planning. STIPs updated or amended after enactment of this subsection shall be consistent with the most recent statewide transportation plan.

"(H) EVALUATION OF PERFORMANCE-BASED PLANNING.--The Secretary shall consider the State's effectiveness in implementing and maintaining a performance-based planning process that addresses the outcomes in subsection (h) and demonstrates progress on the achievement of those outcomes when periodically reviewing the State under subsection (m).

"(3) FAILURE TO CONSIDER FACTORS.--The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title, chapter 53 of Title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a statewide transportation plan, the transportation improvement program, a project or strategy, or the certification of a planning process.

"(f) PARTICIPATION BY INTERESTED PARTIES.--

"(1) IN GENERAL.--Each State shall provide citizens; affected public agencies; representatives of public transportation employees; freight shippers and providers of freight transportation services; private providers of transportation; representatives of users of public transportation, pedestrian walkways and bicycle transportation facilities; representatives of people with disabilities, older Americans, and low

income individuals; and other interested parties with a reasonable opportunity to comment on the statewide transportation plan and STIP.

"(2) METHODS.--In carrying out paragraph (1), the State shall, to the maximum extent practicable--

"(A) develop the statewide transportation plan and STIP in consultation with all interested parties;

"(B) provide that all interested parties have reasonable opportunities to comment on the contents of the statewide transportation plan and STIP;

"(C) hold any public meetings at convenient and accessible locations and times;

"(D) employ interactive visualization techniques to describe plans and STIPs; and,

"(E) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

"(3) NOTICE AND COMMENT.--Before approving a statewide transportation plan or STIP, the State, in cooperation with MPOs and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the plan and program documents, in accordance with this section. The notice shall include the public outreach methods used to develop the statewide transportation plan or STIP.

"(g) COORDINATION AND CONSULTATION WITH GOVERNMENTS.--

"(1) METROPOLITAN AREAS.--The statewide transportation plan and STIP shall be developed for each metropolitan area in the State by incorporating without change, or by reference, the metropolitan transportation plans and TIPs respectively prepared by MPOs designated for the metropolitan areas under section 134 .

"(2) NON-METROPOLITAN AREAS.--With respect to non-metropolitan areas, the statewide transportation plan and STIP shall be developed in coordination with affected non-metropolitan officials with responsibility for transportation.

"(3) INDIAN TRIBAL AREAS.--With respect to each area of the State under the jurisdiction of an Indian tribal government, the statewide transportation plan and STIP shall be developed in consultation with the tribal government and the Secretary of the Interior.

"(4) CONSULTATION, COMPARISON, AND CONSIDERATION.--

"(A) IN GENERAL.--The statewide transportation plan and STIP shall be developed, as appropriate, in consultation with State, tribal, and local agencies responsible for land use management,

natural resources, environmental protection, conservation, and historic preservation.

"(B) COMPARISON AND CONSIDERATION.--

Consultation under subparagraph (A) shall involve comparison of statewide transportation plans to State and tribal conservation plans or maps, if available, and comparison of statewide transportation plans to inventories of natural or historic resources, if available.

"(h) STATEWIDE TRANSPORTATION PLAN.--

"(1) DEVELOPMENT OF A STATEWIDE TRANSPORTATION PLAN.--Each State shall develop a statewide transportation plan, with a minimum 20-year forecast period for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State. The plan shall identify existing and future transportation facilities that should function as an integrated statewide transportation system, giving emphasis to those facilities that serve important national and regional transportation functions. The plan shall be updated by the State at least once every five years and prepared in a form that the Secretary determines to be appropriate, containing, at a minimum, the following:

"(A) the existing transportation infrastructure, including an inventory of highways, local streets and roads, bicycle and pedestrian facilities, transit facilities and services, commuter rail facilities and services, high-speed and intercity passenger rail facilities and services, freight facilities (including freight railroad and port facilities), multimodal and intermodal facilities, and intermodal connectors that, together, function as an integrated metropolitan transportation system;

"(B) the performance measures and regionally adopted performance targets for use in assessing the existing and future performance of the transportation system with respect to the outcomes identified in subsection (e) paragraph (1) and other outcomes that the State deems appropriate, including the projected progress towards outcomes, where investment priorities identified through the most recent system performance report are linked to the National objectives and locally adopted performance targets under subsection (e) paragraph (2).

"(C) the current and projected future usage of the transportation system, by using analyses and forecasts of key socio-economic and demographic factors that affect system outcomes;

"(D) an evaluation of the existing and future condition and performance of the transportation system with respect to the performance outcomes identified in subsection (e);

"(E) recommended strategies and investments for improving system performance over the planning horizon,



including system operations strategies, maintenance strategies, demand management strategies, asset management strategies, capacity and enhancement investments, land use improvements, intelligent transportation systems deployment, technology adoption strategies, and others, and, for informational purposes, high-speed and intercity passenger rail, and freight rail and services, as determined by their projected support of outcomes identified in subsection (h);

"(F) recommended strategies and investments to improve and integrate disability-related access to transportation infrastructure;

"(G) investment priorities for using projected available and proposed revenues over the short and long-term stages of the planning horizon, in accordance with the financial plan required under paragraph (3);

"(H) a description of Interstate compacts entered into in order to promote coordinated transportation planning in multistate areas, if applicable

"(I) recommended strategies and investments including those developed by the State as part of interstate compacts, agreements, or organizations, that support intercity transportation;

"(J) to the extent practicable, an identification of existing or planned transportation rights-of-way, corridors, facilities, and related real properties at risk of abandonment or development for non-transportation uses;

"(K) an illustrative list of projects, containing investments not included in the metropolitan transportation plan but that would be included if additional resources beyond those identified in the financial plan were available.

"(L) a coordinated public transit human services transportation element that identifies community-based priorities for coordinated delivery strategies for meeting the access and mobility needs of people with disabilities, older Americans, and low income individuals.

"(M) a discussion (developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies) of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

"(2) FINANCIAL PLAN.--

"(A) PLAN CONTENTS.--A Financial Plan shall be prepared to support the statewide transportation plan containing--

"(i) projected resource requirements for implementing projects, strategies, and services recommended in the statewide transportation plan,

including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from federal, state, local, and private sources, innovative financing techniques to finance projects and programs; and

"(ii) the projected difference between costs and revenues, and strategies for securing additional new revenue will be included in the financial plan.

"(B) COOPERATIVE REVENUE FORECASTS.--The State, public transportation agency, and MPOs shall cooperatively develop estimates of future funds included in the financial plan that are reasonably expected to be available to support the investment priorities recommended in the statewide transportation plan.

"(C) REQUIREMENT OF ANTICIPATED FULL FUNDING.--The statewide transportation plan shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

"(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.--In non-metropolitan areas that are nonattainment or maintenance areas under the Clean Air Act, the State shall coordinate the development of the statewide transportation plan with the process for development of the transportation control measures of the state implementation plan required by the Clean Air Act.

"(4) PUBLICATION OF STATEWIDE TRANSPORTATION PLANS.--A statewide transportation plan involving Federal and non-federal participation in regionally significant programs, projects, and strategies shall be published or otherwise made readily available by the State for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, in such manner as the Secretary shall establish.

"(5) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.--Notwithstanding paragraph (2), a State shall not be required to select any project from the illustrative list of additional projects included in the statewide transportation plan under paragraph (1) subparagraph (K).

"(i) STIP.--

"(1) DEVELOPMENT.--

"(A) IN GENERAL.--In cooperation with non-metropolitan officials with responsibility for transportation and any affected public transportation operator, the State shall develop a STIP for the State that contains projects drawn exclusively from the statewide transportation plan and reflects the investment priorities set forth in the statewide transportation plan. The STIP shall cover a period of 4 years and be updated every 4 years or more

frequently if the Governor elects to update more frequently. The STIP shall incorporate the TIPs developed by MPOs under section 134 of this title without change. Each project included in the STIP shall be--

"(i) consistent with the statewide transportation plan developed under this section for the State;

"(ii) identical to the project or phase of the project as described in an approved metropolitan TIP; and

"(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act, if the project is carried out in an area designated as a nonattainment or maintenance area under that Act.

"(B) OPPORTUNITY FOR COMMENT.--In developing the STIP, the State, in cooperation with any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (f).

"(2) CONTENTS.--

"(A) PRIORITY LIST.--The STIP shall include a priority list of proposed federally supported projects and strategies, and, for informational purposes, non-federally supported regionally significant programs, projects, and strategies to be carried out within each 4-year period after the initial adoption of the STIP using existing and reasonably available revenues in accordance with the financial plan required under paragraph (3).

"(B) DESCRIPTIONS.--Each project in the STIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project, and the effect that the project or phase of the project will have in addressing the outcomes identified in subsection (e), above.

"(C) OUTCOME ACHIEVEMENT.--Each project in the STIP shall include a projected attainment of outcomes associated with such project, linking investment priorities to outcomes and locally adopted performance targets; and

"(D) BENEFIT-COST ANALYSIS.--The STIP shall, for illustrative purposes, include preliminary elements of benefit-cost analysis for each project (including multi-phase projects) included in either of the Year 1 forecast or the Year 2 forecast of the STIP that have an expected total cost of at least **\*\*[need entry]**\$\_\_\_\_\_ million.

"(E) ILLUSTRATIVE LIST OF PROJECTS.--An illustrative list of projects may be prepared containing additional investment priorities not included in the STIP that would be included if reasonable additional resources beyond those identified in the financial plan for the STIP were available.

"(3) FINANCIAL PLAN.--

"(A) IN GENERAL.--A Financial Plan shall be prepared to support the STIP containing--

"(i) projected resource requirements will be included for implementing projects, strategies, and services recommended in the STIP, including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from federal, state, local, and private sources, innovative financing techniques to finance projects and programs;

"(ii) the projected difference between costs and revenues, and strategies for securing additional new revenue will be included in the financial plan.

"(B) COOPERATIVE REVENUE FORECASTS.--The State, public transportation agency, and MPOs shall cooperatively develop estimates of future funds included in the financial plan that are reasonably expected to be available to support the investment priorities recommended in the STIP.

"(C) REQUIREMENT OF ANTICIPATED FULL FUNDING.--The STIP shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

"(4) INCLUDED PROJECTS.--

"(A) PROJECTS UNDER THIS TITLE AND CHAPTER 53 OF TITLE 49.--A STIP developed under this subsection for a State shall include the projects within the area that are proposed for funding under chapter 1 of this title and chapter 53 of Title 49.

"(B) PROJECTS UNDER CHAPTER 2 OF TITLE 23.----

"(i) Regionally significant projects proposed for funding under chapter 2 of this title shall be identified individually in the STIP.

"(ii) Projects proposed for funding under chapter 2 of this title that are not determined to be regionally significant shall be grouped in one line item or identified individually in the STIP.

"(C) PROJECTS NOT UNDER THIS TITLE OR CHAPTER 53 OF TITLE 49.--

"(i) For information and coordination purposes, regionally significant projects not proposed for funding under this title or chapter 53 of Title 49 for which implementation is planned in the State over the program period of the STIP shall be identified individually in the STIP.

"(ii) For information and coordination purposes, high-speed and intercity passenger rail projects, and freight rail projects proposed for funding under subtitle V of title 49 for which implementation is planned in the State over the program period of the STIP shall be identified individually in the STIP.

"(5) PUBLICATION.--

"(A) PUBLICATION OF STIPS.--A STIP shall be published or otherwise made readily available by the State in electronically accessible format and means, such as the World Wide Web, for public review.

"(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.--An annual listing of projects, including investments in accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation, for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and MPO in electronically accessible format and means, such as the World Wide Web, for public review. The listing shall be consistent with the categories identified in the TIP.

"(6) PROJECT SELECTION FOR URBANIZED AREAS OF LESS THAN 200,000 POPULATION AND ARE NOT METROPOLITAN PLANNING AREAS.--Projects carried out in urbanized areas with populations of less than 200,000 individuals shall be selected, from the approved transportation improvement program (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program under this title or sections 5310, 5311, 5316, and 5317 of Title 49) by the State in cooperation with the affected nonmetropolitan local officials with responsibility for transportation. Projects carried out in urbanized areas with populations of less than 200,000 individuals and that are not metropolitan planning areas on the National Highway System or under the bridge program or the Interstate maintenance program under this title or sections 5310, 5311, 5316, and 5317 of Title 49 shall be selected, from the approved statewide transportation improvement program, by the State in consultation with the affected nonmetropolitan local officials with responsibility for transportation.

"(7) STIP APPROVAL.--Every 4 years, a transportation improvement program developed under this subsection shall be reviewed and approved by the Secretary if based on a current planning finding.

"(8) PLANNING FINDING.--A finding shall be made by the Secretary at least every 5 years that the transportation planning process through which statewide transportation plans and programs are developed is consistent with this section and section 134.

"(9) MODIFICATIONS TO PROJECT PRIORITY.--

Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved STIP in place of another project in the program.

"(j) FUNDING.--Funds set aside pursuant to section 104 (i) of this title and section 5305(g) of Title 49 shall be available to carry out this section.

"(k) CONTINUATION OF CURRENT REVIEW PRACTICE.--Since the statewide transportation plan and the STIP described in this section are subject to a reasonable opportunity for public comment, since individual projects included in the statewide transportation plans and the STIPs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning statewide transportation plans or the STIPs described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a metropolitan or statewide transportation plan or the TIP or STIP described in this section shall not be considered to be a Federal action subject to review under such Act.

"(l) CERTIFICATION. --

"(1) IN GENERAL.--The Secretary shall --

"(A) ensure that the statewide transportation planning process of a State is being carried out in accordance with applicable provisions of Federal law; and

"(B) subject to paragraph (2), certify, not less often than once every 5 years, that the requirements of this paragraph are met with respect to the statewide transportation planning process.

"(2) REQUIREMENTS FOR CERTIFICATION.--The Secretary may make the certification under paragraph (1) if--

"(A) the statewide transportation planning process complies with the requirements of this section and other applicable requirements of Federal law; and

"(B) there is a STIP for the State that has been approved by the Governor.

"(3) EFFECT OF FAILURE TO CERTIFY.--

"(A) WITHHOLDING OF PROJECT FUNDS.--If a statewide transportation planning process of a State is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the State for projects funded under this title and chapter 53 of Title 49.

"(B) RESTORATION OF WITHHELD FUNDS.--The withheld funds shall be restored to the State at such time as the statewide transportation planning process is certified by the Secretary.

"(4) REVIEW OF CERTIFICATION.--In making certification determinations under this paragraph, the Secretary shall provide for public involvement appropriate to the State under review.

"(m) PERFORMANCE-BASED PLANNING PROCESSES EVALUATION.--

"(1) IN GENERAL.--The Secretary may establish criteria to evaluate the effectiveness of the performance-based planning processes of States. The Secretary may, in making certification determinations under this section, designate certain States as exhibiting highly-effective or highly-improved performance-based planning processes, subject to the criteria that the Secretary establishes. The Secretary may consider the designation of a State as exhibiting highly-effective or highly-improved performance-based planning processes as a selection criterion when administering certain discretionary programs.

"(2) CRITERIA.--In establishing criteria to evaluate the effectiveness of the performance-based planning process of States the Secretary shall consider the following:

"(A) The extent to which the State has achieved, or is currently making substantial progress towards achieving, the outcomes specified in its performance measurement plan, including the outcomes specified above in subsection (e). In evaluating this criterion, the Secretary shall consider whether the State developed a meaningful performance measurement plan that-

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"(i) is based on a realistic inventory of current performance;

"(ii) identifies appropriately ambitious outcomes;

"(iii) sets significant and consequential targets; and,

"(iv) is regularly modified or adjusted to incorporate best practices and lessons learned.

"(B) The extent to which the State has used proven best practices that help ensure robust, sustainable multi-modal transportation investment that is both efficient and cost-effective. The Secretary shall consider the following best practices in evaluating a State's alignment with this criterion--

"(i) Commitment to a variety of sustainable transportation funding options (including taxes, fees and user charges) that provide flexibility to make investments across all modes of transportation.

"(ii) Use of analytical tools in the investment decision-making process, including economic analysis, life-cycle costing, asset management, value for money and public sector comparator approaches, and use of innovations in design, procurement, purchasing or other elements of project delivery.

"(iii) Use of operating practices, such as congestion pricing, ramp metering, and market-oriented pricing for curbside parking, that make more efficient use of capacity and reduce the need for investing in new highway capacity.

"(iv) Deployment of technologies and to improve the condition and performance of transportation networks and address other transportation challenges.

"(v) Adoption of laws, rules and regulations, and commitment of resources toward practices that are proven to reduce transportation-related fatalities and injuries.

"(vi) Integration of transportation planning and investment decisions with other land-use and economic development decisions to improve connectivity and accessibility.

"(vii) Collection and use of data in longitudinal analyses of investment performance.

"(viii) Adoption of laws, regulations, and practices that are proven to improve air quality, reduce greenhouse gas emissions, enhance community quality of life, and expand transportation choices, including adoption of a complete streets policy that considers the needs of all transportation users.

"(C) The extent to which the State has developed an investment process that relies on public input and awareness to ensure that investments are transparent and accountable, and the extent to which the State provides regular reports allowing the public to have access to the information that is being collected in a format that allows the public to meaningfully assess the State's performance.

"(n) TRANSPORTATION LEADERSHIP AWARDS.--The Secretary shall establish a competitive program to promote the implementation of policies and procedures that support a performance-based transportation system. The program shall be jointly administered by the Office of the Secretary, the Federal Highway Administration and Federal Transit Administration.

"(1) PURPOSES.--The purpose of this program is to--

"(A) reform the way transportation investments and decisions are made and implemented to achieve performance outcomes and integrate performance management into project selection;

"(B) encourage innovation and reward applicants that are most aggressive in implementing best practices;

"(C) strengthen collaboration among different levels of government and across governmental agencies to create a more interconnected transportation system;

"(D) increase the amount of transportation funding at all levels that is allocated in ways that generate the strongest performance and multiple outcomes; and



"(E) encourage the development of a multimodal transportation system focused on connecting people to opportunities and goods to markets.

"(2) BEST PRACTICES.--Applicants shall be evaluated based on the extent to which each has adopted or implemented best practices that help create a robust, sustainable multimodal transportation investment that is both efficient and cost-effective, with a demonstrated broad impact, and describe how these practices are reflected in the list of projects required under paragraph (3), including the following best practices:

"(A) Commitment to a variety of sustainable and innovative non-federal sources of transportation funding that provide flexibility to make investments across all modes of transportation, including value capture and tax increment financing.

"(B) Use of analytical tools in the investment decision-making process, including economic analysis, life-cycle costing, asset management, value for money and public sector comparator approaches, and use of innovations in design, procurement, purchasing, and other elements of project delivery.

"(C) Use of operating practices that increase the efficient use of system capacity and reduce the need to invest in new highway capacity, including the use of congestion pricing, ramp metering, and market-oriented pricing for parking.

"(D) Deployment of technologies to improve the condition and performance of transportation networks and to address other transportation needs.

"(E) Adoption of laws, rules and regulations, and commitment of resources toward practices that are proven to reduce transportation-related fatalities and injuries.

"(F) Integration of transportation planning and investment decisions with other land-use and economic development decisions to improve connectivity and accessibility and to focus transportation investments near existing infrastructure.

"(G) Collection and use of data in longitudinal analyses of investment performance.

"(H) Adoption of laws, regulations, and practices that are proven to improve air quality, reduce greenhouse gas emissions, enhance community quality of life, and expand transportation choices, including adoption of a complete streets policy that considers the needs of all transportation users and passenger-based level of service standards.

"(I) Use of a performance-based distribution process for the allocation of a significant portion of non-Federal funds and Federal transportation formula funds under the control of the applicant, as developed in accordance with the planning requirements developed under this Section and Sections 134 of Title 23 and 5303 and 5304 of Title 49.

"(3) LIST OF PROJECTS.--Applicants shall submit a program of transportation projects, developed with Metropolitan Planning Organizations and local governments within the applicant's jurisdiction, that are related to the best practices identified in paragraph (2) to demonstrate how funds, if awarded, will be spent. The extent to which best practices have been incorporated into this list shall be evaluated based on how the list of projects--

"(A) includes priorities of Metropolitan Planning Organizations within the applicant's jurisdiction as identified in their TIPs;

"(B) promotes national transportation priorities, including--

"(i) Strengthening economic competitiveness, including improvement to goods movement and encouragement of reuse of underutilized developed land;

"(ii) Reducing transportation fatalities;

"(iii) Improving the state of repair of the transportation system;

"(iv) Improving community livability by increasing access to jobs and necessities, particularly for non drivers; and

"(v) Supporting environmental sustainability by reducing emissions and water pollution and protecting sensitive lands;

"(C) was developed through the use of a multimodal, performance-based, comprehensive transportation planning process that includes linkage to housing, economic development, environmental, land use and other infrastructure investment planning and investment and a strong, interactive public input and awareness process; and

"(D) furthers the best practices and reform initiatives identified under subsection (2) in the areas most aggressively implementing them and relied upon in the application.

"(4) ELIGIBILITY.--States, the District of Columbia, Puerto Rico, and Tribal Governments are eligible for funding under this section, provided that the entity--

"(A) demonstrates meaningful participation of MPOs and local governments within the applicant's jurisdiction in the development of the application; and

"(B) has experience in successfully and independently administering Federal-aid highway or transit programs or projects.

"(5) AWARD OF FUNDS.--The Secretary, in conjunction with the Federal Highway Administrator and Federal Transit Administrator, shall make **\*\*\$31,866,000,000** available for this program and shall--

"(A) award funds under this section annually, starting in 2013, which shall include--

"(i) the publishing of detailed criteria for the first round grant awards at least one year before making awards.

"(ii) making available for awards up to--

**"(I) \$3,400,000,000 in 2013;**

**"(II) \$5,000,000,000 in 2014 and 2015; and**

**"(III) \$8,000,000,000 in 2016 and 2017.**

"(iii) withholding a reasonable amount of funds under this section for administration of the program, but not to exceed \$100,000,000;

"(B) devise a methodology for the award of funds under this program based on a State's share of the Federal transportation formula allocation with awards being no less than \$100,000,000 and no more than \$1,000,000,000;

"(C) reserve the right to adjust an award amount for a Tribal Government as appropriate relative to the applicant's share of Federal transportation formula allocation;

"(D) award funding to applicants that demonstrate the greatest performance as well as applicants that have made the greatest progress in implementing the best practices listed in paragraph (2);

"(E) for applicants who are awarded funding under paragraph (7), consider the progress in implementing the grant and the best practices for which the capacity building funding was sought;

"(F) take such measures so as to ensure an equitable geographic distribution of funds and an appropriate balance in addressing the needs of urban and rural communities; and

"(G) consider the performance of recipients of earlier grants if awardees apply for subsequent rounds of funding under this program.

**"(6) ELIGIBLE ACTIVITIES.--**

"(A) **\$17,152,000,000** of funds provided under this program will be reserved for projects eligible for funding under Title 23 and **\$14,714,000,000** of funds provided for under this program will be reserved for projects eligible for funding under chapter 53 of title 49.

"(B) A portion of the funding awarded under this program may be reserved to create a State-based competitive grant program that supports the implementation of reforms contained in this section at the local level and that includes at least an equal amount of non-Federal funds.

**"(7) MANAGING PERFORMANCE GRANT PROGRAM.--**

Three percent of the funds made available under this section shall be reserved for a managing performance grant program to build capacity to implement best practices listed in paragraph (2).

"(A) **AWARD OF FUNDS.--**The Secretary, in conjunction with the Federal Highway Administrator and Federal Transit Administrator, shall conduct three rounds of grant-making in the first three years of the this Act, which shall include--

"(i) awards of no less than \$1,000,000 and no more than \$25,000,000; and

"(ii) ensuring an equitable geographic distribution of funds and an appropriate balance of the variety of State needs to improve

capability and resource capacity.

"(B) ELIGIBILITY.--Entities eligible for funding under this section may include States, local governments, Metropolitan Planning Organizations, transit providers, and Tribal Governments, provided that the entity--

"(i) has a recognized need to improve its capability and resource capacity to better manage performance;

"(ii) has experience in successfully and independently administering Federal-aid highway programs or projects;

"(iii) has clearly demonstrated the need to improve the process to manage performance in a strategic priority area; and

"(iv) has developed a well-defined plan to implement changes in its business practice to improve the process used to manage performance.

"(C) CRITERIA FOR GRANT SELECTION.--In awarding a grant under this subsection, the Secretary shall consider the extent to which the application--

"(i) shows how funds awarded will promote national transportation priorities as identified under paragraph(3)(B);

"(ii) demonstrates an ability for organizational transformation in the use of performance-based program management for transportation decision making;

"(iii) builds on an existing or develops a new performance management system;

"(iv) provides for a multi-modal approach to solving transportation needs;

"(v) provides for multi-jurisdictional planning;

"(vi) demonstrates the progress made through earlier grant awards, for applicants who are awarded funding in previous rounds of grant-making under this program; and

"(v) meets such other criteria as the Secretary may require.

"(D) Eligible activities may include but are not limited to improvements in and implementation of--

"(i) data collection, storage and analysis systems;

"(ii) advanced transportation modeling, simulation, and analysis capable of providing reliable information for such applications as multimodal investment analyses, operational analyses, environmental assessments, evaluations of a wide range of policy alternatives, toll-facility revenue forecasts, and freight forecasts; and

(iii) staff training to utilize new, more advanced systems and departmental reorganization to support implementation of best practices."

(b) CONFORMING AMENDMENT.--The item relating to section 135 in the analysis of Title 23 is amended to read as follows:

"135. Statewide and non-metropolitan transportation planning."

### **Part 3--Improved Federal Stewardship**

#### **SEC. 2501. SPECIAL PERMITS DURING PERIODS OF NATIONAL EMERGENCY.**

(a) IN GENERAL.--Section 127 of title 23, United States Code, is amended by inserting at the end the following:

"(i) SPECIAL PERMITS DURING PERIODS OF NATIONAL EMERGENCY.-  
-Notwithstanding any other provision of this section, States are authorized to issue special permits during an emergency to overweight vehicles and loads which can easily be dismantled or divided, except that (1) the President has declared such emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), (2) permits under this subsection are issued in accordance with the laws of the State, and (3) such permits are issued exclusively to vehicles and loads which are delivering relief supplies. All permits issued under this subsection shall expire not later than 120 days after the declaration of emergency."

(b) SPECIAL PERMITS DURING PERIODS OF NATIONAL EMERGENCY.--  
Section 31112 of title 49, United States Code, is amended by inserting at the end the following:

"(h) SPECIAL PERMITS DURING PERIODS OF NATIONAL EMERGENCY.-  
- Notwithstanding any other provision of this section, States are authorized to issue special permits during an emergency to vehicles and loads which can easily be dismantled or divided and which exceed the length limitation authorized by this section, except that (1) the President has declared such emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), (2) permits under this subsection are issued in accordance with the laws of the State, and (3) such permits are issued exclusively to vehicles and loads which are delivering relief supplies. All permits issued under this subsection shall expire not later than 120 days after the declaration of emergency."

#### **SEC. 2502. CHARGING INFRASTRUCTURE IN INTERSTATE RIGHTS-OF-WAY.**

Section 111 of title 23, United States Code, is amended by adding at the end the following:

"(d) CHARGING INFRASTRUCTURE IN INTERSTATE RIGHTS-OF-WAY.--

"(1) IN GENERAL.--To foster the use of electric vehicles, and notwithstanding subsection (a), a State may--

"(A) permit charging infrastructure to be placed in safety rest areas or other sites constructed or located within rights-of-way of the Interstate System in the State, so long as such use will not impair the highway or interfere with the free and safe flow of traffic thereon; and

"(B) charge a fee, or permit the charging of a fee, for electric vehicles to use the charging infrastructure.

"(2) SUBJECT TO APPROVAL BY SECRETARY.--Use of a safety rest area or other site within the right-of-way of an Interstate for the purpose described in paragraph (1) is subject to approval by the Secretary.

"(3) CHARGING INFRASTRUCTURE.--For purposes of this subsection, the term 'charging infrastructure' means any property (not including a building or the structural components of a building) if the property is used for the recharging of motor vehicles propelled by electricity, including electrical panel upgrades, wiring, conduit, trenching, pedestals, and related equipment."

### **Sec. 2503. FEDERAL SHARE PAYABLE.**

Section 120 of title 23, United States Code, is amended--

(1) in subsection (c)--

(A) by striking paragraph (2); and

(B) in paragraph (1), by--

(i) inserting "shoulder and centerline rumble strips and stripes" after "pavement marking"; and

(ii) striking the heading and moving the matter following such heading to after the heading of subsection (c);

(2) in subsection (e), by--

(A) striking "on such highway" and inserting "on such system";

(B) striking "forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads" and inserting "Federal lands transportation facilities and tribal transportation facilities"; and

(C) striking "The total cost of a project may not exceed the cost of repair or reconstruction of a comparable facility. As used in this section with respect to bridges and in section 144 of this title, the term, 'a comparable facility,' means a facility that meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry over its design life.";

(3) by striking subsection (g) and redesignating subsections (h) through (l) as (g) through (k) respectively;

(4) in subsection (j), as redesignated, by--

(A) striking the heading "USE OF FEDERAL LAND MANAGEMENT AGENCY FUNDS" and inserting "USE OF FEDERAL AGENCY FUNDS"; and

(B) striking "the funds appropriated to any Federal land management agency" and inserting "any non-title 23 Federal funds"; and

(5) in subsection (k), as redesignated--

(A) by striking the heading "USE OF FEDERAL LANDS HIGHWAY PROGRAM FUNDS" and inserting "USE OF FEDERAL LANDS AND TRIBAL TRANSPORTATION FUNDS";

(B) by striking "Federal lands highways program under section 204," and inserting "Tribal transportation program under section 202, the Federal lands transportation program under section 203, and the Federal lands access program under section 204"; and

(C) by striking "Indian" and inserting "tribal".

## **SEC. 2504. HOV FACILITIES.**

Section 166 of title 23, United States Code, is amended--

(1) in subsection (b)--

(A) in paragraph (1), by striking "5" and inserting "4"; and

(B) by striking paragraph (5);

(2) in subsection (c)--

(A) in paragraph (1), by--

(i) striking "paragraphs" in the first place it appears and inserting "paragraph"; and

(ii) striking "and (5)";

(B) in paragraph (2) by--

(i) striking "paragraphs" and inserting "paragraph"; and

(ii) striking "and (5)";

(C) in paragraph (3) by--

(i) striking "paragraphs" and inserting "paragraph"; and

(ii) striking "and (5)";

(3) in subsection (d)--

(A) in paragraph (1), by--

(i) striking "or (5)"; and

(ii) inserting "submit a report to the Secretary

demonstrating that the facility is not already degraded and that the presence of such vehicles will not cause the facility to become degraded and" before the word "certify";

(B) in paragraph (1)(A), by inserting "and providing semi-annual reports of such impacts to the Secretary" after "adjacent highways";

(C) in paragraph (1)(C), by striking "if the presence of the vehicles has degraded the operation of the facility" and inserting "whenever the operation of the facility is degraded";

(D) by amending paragraph (2)(C) to read as follows:

"(C) MAINTENANCE OF OPERATING PERFORMANCE.--

Facilities which have become degraded must be brought back into compliance with the minimum average operating speed performance standard within six (6) months through changes to operation including the following:

"(i) Increase the occupancy requirement for HOVs.

"(ii) Vary the toll charged to vehicles allowed under subsection (b) to reduce demand.

"(iii) Discontinue allowing vehicles under subsection (b).

"(iv) Increase the available capacity of the HOV facility.;

and

(E) by adding at the end the following new subparagraph:

"(D) COMPLIANCE.--If the State fails to bring the facility into compliance, the Secretary shall subject the State to appropriate program sanctions under 23 CFR 1.36 until the performance is no longer degraded.";

(4) by striking subsection (e);

(5) by redesignating subsection (f) as subsection (e); and

(6) by amending subsection (e), as redesignated, to read as follows:

"(e) DEFINITIONS.--In this section:

"(1) HOV FACILITY.--The term 'HOV facility' means a high occupancy vehicle facility.

"(2) PUBLIC TRANSPORTATION VEHICLE.--The term 'public transportation vehicle' means a vehicle that-

"(A) provides designated public transportation (as defined in section 221 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12141) or provides public school transportation (to and from public or private primary, secondary, or tertiary schools); and

"(B)(i) is owned or operated by a public entity;

"(ii) is operated under a contract with a public entity; or

"(iii) is operated pursuant to a license by the Secretary or a State agency to provide motorbus or school vehicle transportation services to the public.

"(3) STATE AGENCY.--

"(A) IN GENERAL.--The term 'State agency', as used with respect to a HOV facility, means an agency of a State or local government having jurisdiction over the operation of the facility.

"(B) INCLUSION.--The term 'State agency' includes a State transportation department."

#### **Part 4--Other**

##### **SEC. 2601. PROGRAM EFFICIENCIES.**

Section 102(b) of title 23, United States Code, is amended by striking "made available" the second time it appears and inserting "reimbursed."

##### **SEC. 2602. ALASKA HIGHWAY.**

Section 218(c) of title 23, United States Code, is amended by inserting "related to the State's ferry system" after "equipment in Alaska".



**SEC. 2603. LETTING OF CONTRACTS.**

(a) FLEXIBILITY.--Section 112(a) of title 23, United States Code, is amended by inserting before the period at the end of the second sentence "unless the Secretary affirmatively finds that, under the circumstances relating to the relevant project, it is not in the public interest to do so".

(b) BIDDING FLEXIBILITY.-- Section 112(b)(1) of title 23, United States Code, is amended by inserting before the period at the end of the first sentence ", or unless the Secretary affirmatively finds that, under the circumstances relating to such project, some other method is in the public interest".

**SEC. 2604. CONSTRUCTION.**

Section 114 of title 23, United States Code, is amended--

(1) in subsection (a), by inserting ", except as provided in section 321 of this title" after "Secretary of Transportation";

(2) in subsection (b)--

(A) in paragraph (1), by--

(i) inserting "Federal-aid" before "highways" each time it appears; and

(ii) striking "located on a Federal-aid system"; and

(B) in paragraph (3), by inserting "in existence at that time" after "located on a Federal-aid system"; and

(3) in subsection (c)--

(A) in paragraph (1), by--

(i) inserting "Federal-aid" before "highway" each time it appears; and

(ii) striking "located on a Federal-aid system"; and

(B) in paragraph (3)(C) by--

(i) inserting "Federal-aid" before "highway" each time it appears; and

(ii) striking "located on a Federal-aid system".

**SEC. 2605. MAINTENANCE.**

Section 116 of title 23, United States Code, is amended--

(1) in subsection (a), by--

(A) inserting "or other direct recipient" after "State transportation department"; and

(B) striking "The State's obligation to the United States to maintain any such project shall cease when it no longer constitutes a part of a Federal-aid system";

(2) in subsection (b), by--

(A) inserting "or other direct recipient" after "State transportation department";

(B) striking "constructed on the Federal-aid secondary system, or within a municipality," and inserting "described under (a)"; and

(C) inserting "or other direct recipient" after "such transportation department"; and

(3) in subsection (c), by inserting "or other direct recipient" after "State transportation department".

## **SEC. 2606. PROJECT APPROVAL AND OVERSIGHT.**

Section 106 of title 23, United States Code, is amended--

(1) in subsection (a)(2) by inserting "recipient" before "formalizing";

(2) in subsection (c)--

(A) by striking "Non-Interstate" in the heading of paragraph (1);

(B) by striking "but not on the Interstate System" in paragraph (1);

and

(C) by amending paragraph (4) to read as follows:

"(4) **LIMITATION ON INTERSTATE PROJECTS.**--The Secretary shall not assign any responsibilities to a State for projects the Secretary deems high risk. The high risk categories may be defined by the Secretary on a national basis or on a State-by-State basis, or both, as deemed appropriate by the Secretary.";

(3) in subsection (e)--

(A) in paragraph (1)(A)--

(i) by striking "concept" and inserting "planning"; and

(ii) by striking "multidisciplined" and inserting "multi-disciplinary";

(B) in paragraph (1)(A)(i)--

(i) by inserting "and achieving the established commitments (including environmental, community, agency)" before "safely"; and

(ii) by inserting "life-cycle" after "overall";

(C) in paragraph (1)(B)(ii)--

(i) by striking "completely" and inserting "refining or";

(ii) by inserting ", as appropriate," after "redesigning"; and

(iii) by striking "original purpose of the project" and inserting "purpose, functions, and established commitments (including environmental, community, agency) of the project";

(D) in paragraph (2), by striking "or other cost reduction analysis";

(E) in paragraph (2)(A), by striking "Federal-aid system" and inserting "National Highway System receiving Federal assistance";

(F) in paragraph (2)(B), by inserting "on the National Highway System receiving Federal assistance" after "project"; and

(G) by amending paragraph (4) to read as follows:

"(4) **REQUIREMENTS.**--

"(A) **VALUE ENGINEERING PROGRAM.**--The State shall develop and sustain a value engineering program that--

"(i) establishes and documents value engineering program policies and procedures;

"(ii) ensures that the required value engineering analysis is conducted prior to completing the final design of a project;

"(iii) ensures that the value engineering analysis that is conducted and the recommendations developed and implemented for each project are documented in a final value engineering report; and

"(iv) monitors, evaluates and reports annually to the Secretary the results of the value analyses that are conducted and the recommendations implemented for all of the projects described in paragraph (2) that are completed in the State.

"(B) BRIDGE PROJECTS.--Analyses described in paragraph (1) for a bridge project shall include bridge superstructure and substructure requirements based on construction material and shall be evaluated--

"(i) on engineering and economic bases, taking into consideration acceptable designs for bridges; and

"(ii) using an analysis of life-cycle costs and duration of project construction."; and

(4) in subsection (g)(4), by adding at the end the following:

"(C) FUNDING.--Subject to project approval by the Secretary, a State may obligate funds apportioned to the State under section 104(b)(2) for carrying out its responsibilities as provided in subparagraph (A). Eligible activities include State administration of subgrants and oversight of subrecipients. To avail itself of such funding, the State shall submit an annual work plan identifying activities to be carried out during the course of the year. The Federal share of the cost of activities carried out in accordance with this subsection shall be 100 percent."

## **SEC. 2607. ADJUSTMENTS TO PENALTY PROVISIONS.**

(a) VEHICLE WEIGHT LIMITATIONS.--Section 127(a)(1) of title 23, United States Code, is amended by striking "No funds shall be apportioned in any fiscal year under section 104(b)(1) of this title to any State which" and inserting "The Secretary shall withhold 50 percent of the apportionment under section 104(b)(1) of this title in any fiscal year in which a State".

(b) ENFORCEMENT OF VEHICLE SIZE AND WEIGHT LAWS.--Section 141(b)(2) of such title is amended by--

(1) striking "10 per centum" and inserting "7 percent"; and

(2) striking "section 104" and inserting "paragraphs (1) through (4) of section 104(b)".

(c) PROOF OF PAYMENT OF THE HEAVY VEHICLE USE TAX.--Section 141(c) of such title is amended by--

(1) striking "section 104(b)(4)" each place it appears and inserting "section 104(b)(1)"; and

(2) striking "25 per centum" and inserting "10 percent".

(d) CONTROL OF JUNKYARDS.--Section 136(b) of such title is amended by--  
 (1) striking "10 per centum" and inserting "7 percent"; and  
 (2) striking "section 104" and inserting "paragraphs (1) through (4) of section 104(b)".

(e) NATIONAL MINIMUM DRINKING AGE.--Section 158(a)(1) of such title is amended by adding at the end, "For fiscal years beginning after September 30, 2011, the amount to be withheld under this section shall be 7 percent of the amount apportioned to the noncompliant State under paragraphs (1) and (2) of section 104(b) of this title."

(f) DRUG OFFENDERS.--Section 159 of such title is amended--  
 (1) in subsection (a), by striking paragraph (1), redesignating paragraph (2) as paragraph (1) and inserting after redesignated paragraph (1) the following:  
 "(2) BEGINNING IN FISCAL YEAR 2012.--The Secretary shall withhold 7 percent of the amount required to be apportioned to any State under each of paragraphs (1) and (2) of section 104(b) on the first day of each fiscal year that begins after September 30, 2011, if the State does not meet the requirements of paragraph (3) on the first day of such fiscal year."; and

(2) by amending subsection (b) to read as follows:

"(b) EFFECT OF NONCOMPLIANCE.--No funds withheld under this section from apportionments to any State shall be available for apportionment to such State."

(g) USE OF SAFETY BELTS.--Section 153(h) of such title is amended--  
 (1) by striking paragraph (1) and redesignating paragraph (2) as paragraph (1);

(2) in paragraph (1) as redesignated--

(A) in the heading, by striking "THEREAFTER" and inserting "PRIOR TO FISCAL YEAR 2012"; and

(B) by inserting "and before October 1, 2011," after "September 30, 1994,"; and

(3) by inserting after redesignated paragraph (1) the following:

"(2) THEREAFTER.--If, at any time in a fiscal year beginning after September 30, 2011, a State does not have in effect a law described in subsection (a)(2), the Secretary shall transfer 1.5 percent of the funds apportioned to the State for the succeeding fiscal year under each of paragraphs (1) through (3) of section 104(b) of this title to the apportionment of the State under section 402 of this title."

(h) ZERO TOLERANCE BLOOD ALCOHOL CONCENTRATION FOR MINORS.--Section 161(a) of such title is amended--

(1) by striking paragraph (1) and redesignating paragraph (2) as paragraph (1);

(2) in paragraph (1) as redesignated--

(A) in the heading, by striking "THEREAFTER" and inserting "PRIOR TO FISCAL YEAR 2012";

(B) by inserting "through October 1, 2010" after "each fiscal year thereafter"; and

(C) by inserting after redesignated paragraph (1) the following:

"(2) THEREAFTER.--The Secretary shall withhold 7 percent of the amount required to be apportioned to any State under each of paragraphs (1) and (2) of section 104(b) on October 1, 2011, and on October 1 of each fiscal year thereafter, if the State does not meet the requirement of paragraph (3) on that date."

(i) OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS.--Section 163(e) of such title is amended by amending paragraphs (1) and (2) to read as follows:-

"(1) BEFORE FISCAL YEAR 2012.--On October 1, 2006 and October 1 of each fiscal year thereafter through October 1, 2010, if a State has not enacted or is not enforcing a law described in subsection (a), the Secretary shall withhold 8 percent of the amounts to be apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b).

"(2) FISCAL YEAR 2012 AND THEREAFTER.--On October 1, 2011 and October 1 of each fiscal year thereafter, if a State has not enacted or is not enforcing a law described in subsection (a), the Secretary shall withhold 6 percent of the amounts to be apportioned to the State on that date under each of paragraphs (1) and (2) of section 104(b)."

(j) COMMERCIAL DRIVER'S LICENSE.--Section 31314 of title 49, United States Code is amended by redesignating subsection (c) as subsection (d) and inserting the following after subsection (b):

"(c) PENALTIES IMPOSED IN FISCAL YEAR 2012 AND THEREAFTER.--After September 30, 2011, the penalty for the first noncompliance shall be up to 4 percent of funds required to be apportioned to the noncompliant State under paragraphs (1) and (2) of section 104(b) of title 23, United States Code. The penalty for subsequent noncompliance shall be up to 8 percent of such funds."

## **SEC. 2608. OPEN CONTAINER REQUIREMENTS.**

Section 154(c) of title 23, United States Code, is amended--

(1) by revising paragraph (2) to read as follows:

"(2) FISCAL YEAR 2012 AND THEREAFTER.--On October 1, 2011, and each October 1, thereafter, if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall reserve an amount equal to 2 percent of the funds to be apportioned to the State on that date under each of paragraphs (1) and (2) of section 104(b) until the State identifies to the Secretary how it will use such reserved funds among the uses authorized under subparagraph (A) and (B) of paragraph (1) and paragraph (3). Thereafter, the Secretary shall transfer those funds identified by the State for use as described under subparagraph (A) and (B) of paragraph (1) to the apportionment of the State

under section 402, and shall release those funds identified by the State for use as described under paragraph (3).";

(2) by revising paragraph (3) to read as follows:

"(3) USE FOR HIGHWAY SAFETY IMPROVEMENT PROGRAM.--A State may elect to use all or a portion of the funds transferred under paragraph (2) for activities eligible under section 148 of this title."; and

(3) by revising paragraph (5) to read as follows:

"(5) DERIVATION OF AMOUNT TO BE TRANSFERRED.--The amount to be transferred under paragraph (2) may be derived from the following:

"(A) The apportionment of the State under section 104(b)(1).

"(B) The apportionment of the State under section 104(b)(2).".

**SEC. 2609. MINIMUM PENALTIES FOR REPEAT OFFENDERS FOR DRIVING WHILE INTOXICATED OR DRIVING UNDER THE INFLUENCE.**

(a) REPEAT INTOXICATED DRIVER LAW.--Section 164(a)(5) of title 23, United States Code, is amended by striking, in subparagraph (A)(ii), "for the purpose of getting to and from work, school, or an alcohol treatment program".

(b) TRANSFER OF FUNDS.--Section 164(b) of such title is amended--

(1) by revising paragraph (2) to read as follows:

"(2) FISCAL YEAR 2012 AND THEREAFTER.--

"(A) RESERVATION OF FUNDS.--On October 1, 2011, and each October 1, thereafter, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall reserve an amount equal to 2 percent of the funds to be apportioned to the State on that date under each of paragraphs (1) and (2) of section 104(b) until the State identifies to the Secretary how it will use such reserved funds among the uses authorized under subparagraph (A) and (B) of paragraph (1), and paragraph (3).

"(B) TRANSFER OF FUNDS.--Thereafter, the Secretary shall transfer those funds identified by the State for use as described under subparagraph (A) and (B) of paragraph (1) to the apportionment of the State under section 402, and shall release those funds identified by the State for use as described under paragraph (3).";

(2) by revising paragraph (3) to read as follows:

"(3) USE FOR HIGHWAY SAFETY IMPROVEMENT PROGRAM.--A State may elect to use all or a portion of the funds transferred under paragraph (2) for activities eligible under section 148."; and

(3) by revising paragraph (5) to read as follows:

"(5) DERIVATION OF AMOUNT TO BE TRANSFERRED.--The amount to be transferred under paragraph (2) may be derived from the following:

"(A) The apportionment of the State under section 104(b)(1).

"(B) The apportionment of the State under section 104(b)(2).".

**SEC. 2610. UNIFORM RELOCATION ASSISTANCE ACT AMENDMENTS.**

(a) MOVING AND RELATED EXPENSES.--Section 202 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4622) is amended--

- (1) in subsection (a)(4), by striking "\$10,000" and inserting "\$25,000, as adjusted by regulation, in accordance with section 213(d) of this Act"; and
- (2) in subsection (c), by striking "\$20,000" and inserting "\$40,000, as adjusted by regulation, in accordance with section 213(d) of this Act".

(b) REPLACEMENT HOUSING FOR HOMEOWNERS.--Section 203(a)(1) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4623(a)(1)) is amended by--

- (1) striking "\$22,500" and inserting "\$31,000, as adjusted by regulation, in accordance with 213(d) of this Act,"; and
- (2) striking "one hundred and eighty" and inserting "90".

(c) REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS.--Section 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4624) is amended--

- (1) in subsection (a), by striking "\$5,250" and inserting "\$7,200, as adjusted by regulation, in accordance with section 213(d) of this Act"; and
- (2) in subsection (b), by striking ", except" and all that follows through the end of the subsection.

(d) DUTIES OF LEAD AGENCY.--Section 213 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4633) is amended--

- (1) in subsection (b), by--
  - (A) striking "and" at the end of paragraph (2);
  - (B) striking the period at the end of paragraph (3) and inserting "; and"; and
  - (C) by adding at the end the following:

"(4) that each Federal agency that has programs or projects requiring the acquisition of real property or causing a displacement from real property subject to the provisions of this Act shall provide an annual summary report of its activities to the lead agency."; and
- (2) by adding at the end the following:

"(d) ADJUSTMENT OF PAYMENTS.--The head of the lead agency may adjust, by regulation, the amounts of relocation payments provided under sections 202(a)(4), 202(c), 203(a), and 204(a) of this Act when the head of the lead agency determines that cost of living, inflation, or other factors indicate that the payments should be adjusted to meet the policy objectives of this Act."

(e) AGENCY COORDINATION.--Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) is amended by adding the following new section:

"Sec. 214. AGENCY COORDINATION

"(a) AGENCY CAPACITY.--Each Federal agency responsible for funding or carrying out relocation and acquisition activities shall have adequately trained personnel, and such other resources as are necessary, to manage and oversee its relocation and acquisition program in accordance with this Act.

"(b) INTERAGENCY AGREEMENTS. --Each Federal agency responsible for funding relocation and acquisition activities (other than the agency serving as the lead agency) shall, within one year after the date of the enactment of this section, enter into a memorandum of understanding with the lead agency that--

"(1) provides for periodic training of the Federal agency's personnel, and in the case of a Federal agency that provides Federal financial assistance, such training may include personnel of any displacing agency that receives Federal financial assistance;

"(2) addresses ways in which the lead agency may provide assistance and coordination to the Federal agency, relating to compliance with the Act, on a program or project basis; and

"(3) addresses the funding of the training, assistance, and coordination activities provided by the lead agency, in accordance with subsection (c).

"(c) INTERAGENCY PAYMENTS.--

"(1) Beginning in the first fiscal year that commences one year after the date of the enactment of this section, each Federal agency responsible for funding relocation and acquisition activities (other than the agency serving as the lead agency) shall transfer to the lead agency each fiscal year, such funds as are necessary, but not less than \$35,000, to support the training, assistance, and coordination activities of the lead agency described in subsection (b).

"(2) The cost to a Federal agency of providing the funds described in paragraph (1) shall be included as part of the cost of one or more programs or projects, undertaken by the Federal agency or with Federal financial assistance, that result in the displacement of persons or the acquisition of real property."

(f) COOPERATION WITH FEDERAL AGENCIES.--Section 308(a) of title 23, United States Code, is amended to read as follows:

"(a) The Secretary is authorized to perform, by contract or otherwise, authorized engineering or other services in connection with the survey, construction, maintenance, or improvement of highways for other Government agencies, cooperating foreign countries, and State cooperating agencies. Such other services may include activities authorized under section 214 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Reimbursement for services rendered under this subsection, which may include depreciation on engineering and road-building equipment used, shall be credited to the appropriation concerned."



(g) EFFECTIVE DATES.--

(1) Except as provided in paragraph (2), the amendments made by this section, shall take effect on the date of the enactment of this Act.

(2) The amendments made to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 by subsections (a) through (c) of this section, shall take effect 2 years after the date of the enactment of this Act.

**SEC. 2611. COMPLETE STREETS.**

(a) IN GENERAL.--Section 109(a)(1) of title 23, United States Code, is amended by inserting before the semicolon the following: "and consistent with complete street design policies and principles and practical design standards".

(b) DESIGN CRITERIA FOR NATIONAL HIGHWAY SYSTEM.--Section 109(c) of title 23, United States Code, is amended--

(1) in paragraph (1) by striking "may take into account" and inserting "shall take into account"; and

(2) in paragraph (2) by striking "may develop" and inserting "shall develop".

(c) PROTECTION OF NONMOTORIZED TRANSPORTATION TRAFFIC.--Section 109(m) of title 23, United States Code, is amended by inserting before the period at the end the following: "to provide a safe and continuous route for all nonmotorized and light motorcycle traffic".

(d) DEFINITION.--Section 109 of title 23, United States Code, is amended by adding at the end the following:

"(r) DEFINITIONS.--In this section, the term 'complete street' means a transportation facility that is planned, designed, operated, and maintained to provide safe mobility for all users, including bicyclists, pedestrians, transit vehicles, truckers and motorists, appropriate to the function and context of the facility."

(e) GUIDANCE ON COMPREHENSIVE STREET DESIGN PRINCIPLES--Not later than one year after the date of the enactment of this Act, the Secretary shall issue guidance on the Department's implementation of the requirements related to comprehensive street design policies and principles and practical design standards under section 109(a) of title 23, United States Code, as they relate to all users.

**Subtitle D--Public Transportation**

**SEC. 2901. SHORT TITLE; AMENDMENT OF TITLE 49,  
UNITED STATES CODE.**

(a) SHORT TITLE.--This Subtitle may be cited as the "Federal Public Transportation Act of 2011."

(b) AMENDMENT OF TITLE 49, UNITED STATES CODE.--Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

## **SEC. 2902. DEFINITIONS.**

(a) CAPITAL PROJECT.--Section 5302(a)(1) is amended--

(1) in subparagraph (A), by striking "relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing" and inserting "and relocation assistance, including acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing of last resort";

(2) by striking subparagraph (G) and inserting a new subparagraph (G), to read as follows:

"(G) a joint development improvement that enhances economic development or incorporates private investment, such as commercial and residential development, as follows:

"(i) The joint development improvement shall--

"(I) enhance the effectiveness of public transportation and be related physically or functionally to public transportation, or establish new or enhanced coordination between public transportation and other transportation;

"(II) provide a fair share of revenue for public transportation that will be used for public transportation; and

"(III) provide that a person making an agreement to occupy space in a facility constructed under this paragraph shall pay a reasonable share of the costs of the facility through rental payments and other means.

"(ii) The joint development improvement may include property acquisition; demolition of existing structures; site preparation; utilities; building foundations; walkways; pedestrian and bicycle access to a public transportation facility; construction, renovation, and improvement of intercity bus and intercity rail stations and terminals; renovation and improvement of historic transportation facilities; open space; safety and security equipment and facilities (including lighting, surveillance and related intelligent transportation system applications); facilities that incorporate community services such as daycare or health care; and a capital project for, and

improving, equipment or a facility for an intermodal transfer facility or transportation mall.

"(iii) The joint development improvement shall not include construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or a part of a public facility not related to public transportation;"

(3) in subparagraph (K), by striking "or" at the end;

(4) in subparagraph (L)--

(A) in clause (i), by striking "section 5309" and inserting "sections 5306 and 5309"; and

(B) by striking the period at the end and inserting a semicolon; and

(5) by adding at the end the following:

"(M) public transportation asset management systems;

"(N) access for bicycles to public transportation facilities, providing shelters and parking facilities for bicycles in or around public transportation facilities; or installing equipment for transporting bicycles on public transportation vehicles;

"(O) equipment and facilities designed to support access to and use of transit by people with sensory disabilities;

"(P) improvements to path of travel to and in transportation facilities to increase ADA accessibility; or

"(Q) mobility training for older adults and people with disabilities."

(b) EMERGENCY REGULATION.--Section 5302(a)(3)(A) is amended by striking "5334(b)" and inserting "5334(c)(2)".

(c) FIXED GUIDEWAY.--Section 5302(a)(4)(A) is amended--

(1) by inserting "that is" after "rail"; and

(2) by inserting ", and excludes single occupancy vehicles" after "vehicles".

(d) PUBLIC TRANSPORTATION.--Section 5302(a)(10) is amended to read as follows:

"(10) PUBLIC TRANSPORTATION.--The term 'public transportation' means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income, and excludes--

"(A) intercity passenger rail service;

"(B) intercity bus service;

"(C) charter bus service;

- "(D) school bus service;
- "(E) sightseeing service;
- "(F) courtesy shuttle service for patrons of one or more specific establishments; and
- "(G) intra-terminal or intra-facility shuttle services."

(e) PUBLIC TRANSPORTATION ASSET MANAGEMENT.--Section 5302(a) is amended--

(1) by redesignating paragraphs 11, 12, 13, 14, 15, 16, and 17 as paragraphs 12, 13, 14, 15, 16, 17, and 18, respectively; and

(2) by adding a new paragraph (11) after paragraph (10) to read as follows:

"(11) PUBLIC TRANSPORTATION ASSET MANAGEMENT SYSTEM.--The term 'public transportation asset management system' means a strategic and systematic process of maintaining and upgrading physical assets cost-effectively throughout their lifecycles. It focuses on using quality information and engineering and economic analysis to identify a sequence of maintenance, repair, and rehabilitation actions that will achieve and maintain a desired state of good repair over the lifecycle of the asset at the minimum possible cost."

## **SEC. 2903. METROPOLITAN TRANSPORTATION PLANNING.**

Section 5303 is amended to read as follows:

### **"Sec. 5303. Metropolitan transportation planning**

"(a) POLICY.--It is in the national interest to--

"(1) encourage and promote the safe and efficient management, operation, and development of multimodal surface transportation systems that will serve efficiently the mobility needs of people and freight, provide safe routes to key community destinations, and foster economic growth and development within and between States and urbanized areas, while fitting the needs and complexity of individual communities, maximizing value for taxpayers, leveraging cooperative investments, and minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes identified in this chapter;

"(2) encourage the continued improvement, evolution, and coordination of the metropolitan and statewide transportation planning processes by and among metropolitan planning organizations, State departments of transportation, regional planning organizations, interstate compacts, and public transit and intercity service operators as guided by the planning factors identified in subsection (h) and section 5304(e); and

"(3) encourage and promote the following principles to ensure that transportation needs and decisions are integrated with other community

planning needs and priorities, and to maximize the effectiveness of the transportation investments:

- "(A) Provide transportation choices.
- "(B) Promote accessible, equitable, affordable housing.
- "(C) Enhance economic competitiveness.
- "(D) Support existing communities.
- "(E) Coordinate policies and leverage investments.
- "(F) Value communities and neighborhoods.

"(b) DEFINITIONS.--In this section and section 5304:

"(1) METROPOLITAN PLANNING AREA.--The term 'metropolitan planning area' means the geographic area determined by agreement between the metropolitan planning organization for the area and the Governor under subsection (e).

"(2) METROPOLITAN PLANNING ORGANIZATION.--The term 'metropolitan planning organization' means the policy board of an organization created as a result of the designation process in subsection (d).

"(3) MPO.--The term 'MPO' means metropolitan planning organization.

"(4) NON-METROPOLITAN AREA.--The term 'non-metropolitan area' means a geographic area outside a designated metropolitan planning area and includes small urbanized and non-urbanized areas.

"(5) NON-METROPOLITAN AREA LOCAL OFFICIAL.--The term 'non-metropolitan area local official' means elected and appointed officials of general purpose local government with responsibility for transportation outside of a designated metropolitan planning area.

"(6) METROPOLITAN TRANSPORTATION PLAN. --The term 'metropolitan transportation plan' means a 20 year plan developed by a metropolitan planning organization under subsection (j).

"(7) TIP.--The term 'TIP' means a transportation improvement program developed by a metropolitan planning organization under subsection (k).

"(8) URBANIZED AREA.--The term 'urbanized area' means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.

"(9) MAINTENANCE AREA.--The term 'maintenance area' means an area that was designated as an air quality nonattainment area, but was later redesignated by the Administrator of the Environmental Protection Agency as an air quality attainment area, under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

"(10) NONATTAINMENT AREA.--The term 'nonattainment area' has the meaning given that term in section 171 of the Clean Air Act (42 U.S.C. 7501).

"(c) GENERAL REQUIREMENTS.--

"(1) DEVELOPMENT OF METROPOLITAN TRANSPORTATION PLANS AND TIPS.--To accomplish the objectives in subsection (a), MPOs designated under subsection (d), in cooperation with the State and public transportation operators, shall develop metropolitan transportation plans and TIPs for metropolitan planning areas of the State through a performance-driven, outcome-based approach to metropolitan transportation planning.

"(2) CONTENTS.--The metropolitan transportation plans and TIPs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

"(3) PROCESS OF DEVELOPMENT.--The process for developing the metropolitan transportation plans and TIPs shall provide for consideration of facilities and services for all modes of transportation across all levels of governmental and non-governmental authority and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation needs to be addressed.

"(4) TIERING.--

"(A) TIER I MPOS.--

"(i) MPOs operating primarily within urbanized areas of 1,000,000 or more persons according to the Bureau of the Census shall be designated as Tier I MPOs and shall fully implement the processes described in subsections (h) through (k) of this section within two years of the enactment of the **Federal Public Transportation Act of 2011**.

"(ii) MPOs operating primarily within urbanized areas of more than 200,000, but less than 1 million persons, that are designated as Tier II MPOs as described in subparagraph (B), may, with the support of the Governor, request designation as a Tier I MPO upon a determination by the Secretary that the MPO has demonstrated adequate technical capacity to implement the processes described in subsections (h) through (k).

"(B) TIER II MPOS.--

"(i) MPOs operating primarily within urbanized areas of less than 1,000,000 persons but more than 200,000 persons shall be designated as Tier II MPOs and shall follow processes set forth under subsection (l) of this section.

"(ii) Existing MPOs operating primarily within urbanized areas of less than 200,000 persons but more than

50,000 persons prior to the enactment of this section may, with the support of the Governor, request designation as a Tier II MPO upon a determination by the Secretary that the MPO has demonstrated adequate technical capacity and commitment to collaborative transportation decision-making to implement the processes set forth under subsection (l) of this section and the requirements of the Clean Air Act (42 U.S.C. 7506(c)) in nonattainment and maintenance areas.

"(iii) In the absence of designation as a Tier II MPO, the MPO and State shall, within 12 months of the enactment of the **Federal Public Transportation Act of 2011**, submit, a two-year plan to transfer the MPO's responsibilities back to the State or to a planning organization designated by the State, and to dissolve the MPO.

"(iv) If the MPO is dissolved, such metropolitan planning area shall continue to receive metropolitan transportation planning funds for the period of time until the MPO is dissolved, not to exceed 24 months after enactment of this section and shall **\*\*[therafter??]** be treated by the State as a non-metropolitan area under this title.

"(C) CONSOLIDATION.--MPOs operating within contiguous or adjacent urbanized areas may elect to consolidate in order to meet the requisite population thresholds necessary to achieve designation as a Tier I or Tier II MPO. Nothing in this subsection shall be construed as to require or prevent consolidation among multiple MPOs located within a single urbanized area.

"(d) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.--

"(1) IN GENERAL.--To carry out the metropolitan transportation planning process required by this section, an MPO shall be designated for each urbanized area with a population of more than 200,000 individuals--

"(A) by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city (based on population) as named by the Bureau of the Census); or

"(B) in accordance with procedures established by applicable State or local law.

"(2) STRUCTURE.--Each MPO, when designated or redesignated under this subsection, shall consist of--

"(A) local elected officials;

"(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; and

"(C) appropriate State officials.

"(3) LIMITATION ON STATUTORY CONSTRUCTION.--

Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities to--

"(A) develop the metropolitan transportation plans and TIPs for adoption by an MPO; and

"(B) develop capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

"(4) CONTINUING DESIGNATION.--A designation of an MPO under this subsection or any other provision of law--

"(A) for an urbanized area with a population of 200,000 or more persons shall remain in effect--

"(i) if the structure of the existing MPO complies with the requirements of paragraph (2); or

"(ii) until the existing MPO is redesignated under paragraph (5); and

"(B) for an urbanized area with a population of less than 200,000 persons, shall be terminated unless reaffirmed by the existing MPO and the Governor, and approved by the Secretary, on the basis of demonstrated adequate technical capacity and commitment to collaborative transportation decision-making under subsection (c)(4)(b)(i).

"(5) REDESIGNATION PROCEDURES.--An MPO designated under this subsection shall remain in effect until the MPO is redesignated by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing planning area population (including the largest incorporated city (based on population) as named by the Bureau of the Census) as appropriate to carry out this section. Redesignation of MPOs shall be made in accordance with this section.

"(6) DESIGNATION OF MORE THAN ONE METROPOLITAN PLANNING ORGANIZATION.--More than one MPO may be designated within an existing metropolitan planning area only if the Governor and the existing MPO determine that the size and complexity of the existing metropolitan planning area make designation of more than one MPO for the area appropriate.

"(e) METROPOLITAN PLANNING AREA BOUNDARIES.--

"(1) IN GENERAL.--For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

"(2) INCLUDED AREA.--Each metropolitan planning area--



"(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and

"(B) may encompass the entire metropolitan statistical area as defined by the Office of Management and Budget.

"(3) IDENTIFICATION OF NEW URBANIZED AREAS WITHIN EXISTING PLANNING AREA BOUNDARIES.--The designation by the Bureau of the Census of new urbanized areas within an existing metropolitan planning area shall not require the redesignation of the existing MPO.

"(4) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.--Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment or maintenance area under the Clean Air Act (42 U.S.C. 7401 et seq.) as of the date of enactment of the **Transportation Opportunities Act**, the boundaries of the metropolitan planning area in existence as of the date of enactment shall be retained; except that the boundaries may be adjusted by agreement of the Governor and affected MPOs in the manner described in subsection (d)(5).

"(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.--In the case of an urbanized area designated after the date of the enactment of the **Transportation Opportunities Act** as a nonattainment or maintenance area, the boundaries of the metropolitan planning area--

"(A) shall be established in the manner described in subsection (d)(1);

"(B) shall encompass the areas described in paragraph (2)(A);

"(C) may encompass the areas described in paragraph (2)(B); and

"(D) may address any nonattainment or maintenance area identified under the Clean Air Act.

"(f) COORDINATION IN MULTISTATE AREAS.--

"(1) IN GENERAL.--The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate MPOs to provide coordinated transportation planning for the entire metropolitan area.

"(2) COORDINATION ALONG DESIGNATED TRANSPORTATION CORRIDORS.--The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate MPOs to provide coordinated transportation planning for the entire designated transportation corridor. The Secretary may consider the effectiveness of multistate transportation coordination for the designated transportation corridor as a criterion for funding

multistate corridor projects, facilities, and services, and when administering certain discretionary programs.

"(3) MPO COORDINATION WITH INTERSTATE COMPACTS.--The Secretary shall encourage MPOs to consider, during development of metropolitan transportation plans and TIPs, any relevant transportation studies concerning planning for regional transportation (including, but not limited to, high-speed and intercity rail corridor studies, commuter rail corridor studies, intermodal terminals, and interstate highways) in support of intercity or multistate area projects, and services that have been developed by interstate compacts, agreements, or organizations established under section 5304(c)(3) of this title.

"(g) MPO CONSULTATION IN METROPOLITAN TRANSPORTATION PLAN AND TIP COORDINATION.--

"(1) NONATTAINMENT AND MAINTENANCE AREAS.--If more than one MPO has authority within a metropolitan area or designated nonattainment or maintenance area under the Clean Air Act, each MPO shall consult with the other MPOs designated for such area and the State in the coordination of metropolitan transportation plans and TIPs required by this section.

"(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE METROPOLITAN PLANNING AREAS.--If a transportation improvement, funded under title 23 or under this chapter, is located within the boundaries of more than one metropolitan planning area, the MPOs shall coordinate metropolitan transportation plans and TIPs regarding the transportation improvement.

"(3) COORDINATION OF ADJACENT MPOS.--The Secretary shall require MPOs that are adjacent to or are located in reasonably close proximity of each other to coordinate their planning processes, including coordinated preparation of metropolitan transportation plans and TIPs, to the maximum extent practicable.

"(4) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.-  
-The Secretary shall require each MPO to cooperate with officials and entities responsible for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, telecommunications infrastructure, infrastructure services, housing, health services, human services, environmental protection, airport operations, high-speed and intercity passenger rail, freight rail, port access, transportation system safety, and freight movements) to the maximum extent practicable, with such planning activities to ensure that the metropolitan transportation planning process, metropolitan transportation plans and TIPs are developed in cooperation with other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the metropolitan area that are provided by--

"(A) recipients of assistance under this chapter;

- "(B) recipients of assistance under section 204 of title 23;
- "(C) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and
- "(D) sponsors of regionally significant programs, projects, and services that are related to transportation and who are receiving assistance from any public or private sources, in accordance with subsection (i) of this section.

"(h) SCOPE OF PLANNING PROCESS.--

"(1) IN GENERAL.--The metropolitan transportation planning process for a metropolitan planning area under this section shall provide for consideration of projects and strategies that will achieve the outcomes of--

- "(A) improved economic competitiveness of the Nation and improved economic vitality of the metropolitan area, especially by enabling global competitiveness and productivity;
- "(B) increased efficiency of the multimodal transportation system that moves people and freight;
- "(C) improved accessibility to functional needs for all transportation users, including people with disabilities, older Americans, and low income individuals;
- "(D) increased safety and security of the transportation system for motorized and nonmotorized users;
- "(E) enhanced environmental sustainability through protection and enhancement of the environment, promotion of energy conservation, improvement of quality of life, and promotion of consistency between transportation improvements and State and local planned growth and economic development patterns;
- "(F) increased efficiency in systems management and operation, including deployment of congestion management strategies across transportation networks;
- "(G) increased emphasis on preservation of the existing system and maintaining it in a state of good repair, including elevators, escalators and communications technology for use of people with disabilities and older adults;
- "(H) increased adoption of technology-based solutions to transportation needs;
- "(I) improved accountability and transparency for public dollars, delivering projects as forecasted; and,
- "(J) improved public participation by interested parties and transparency in the planning process.

"(2) ESTABLISHMENT AND USE OF A PERFORMANCE-BASED APPROACH TO METROPOLITAN TRANSPORTATION PLAN AND TIP DEVELOPMENT.--

"(A) IN GENERAL.--The metropolitan transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decision-making to achieve the outcomes set forth in paragraph (1).

"(B) NATIONAL PERFORMANCE OBJECTIVES.--The Secretary shall, from time to time, identify performance measures and intermediate and long-term targets for those measures to use in tracking attainment of national transportation performance goals, including the factors specified in paragraph (1), and other factors that the Secretary determines are consistent with the transportation objectives of the Nation.

"(C) MPO ESTABLISHMENT OF PERFORMANCE MEASURES.--The MPO shall identify and select performance measures and intermediate and long-term targets for those measures to use in tracking attainment of critical outcomes for the region, including the factors specified in paragraph (1), and other factors deemed appropriate by the MPO, unless otherwise specified by the Secretary under subparagraph (B). Identification and selection of performance measures by the MPO shall be coordinated with the State to establish consistency, to the extent practicable.

"(D) INTEGRATION OF OTHER PERFORMANCE-BASED PLANS.--The MPO shall integrate into the metropolitan transportation planning process, either directly or by reference, the outcomes, goals, objectives, performance measures, and targets in other State plans and processes required as part of a performance-based program, including, but not limited to such plans as the State national highway system asset management plan, the State strategic highway safety plan, the locally coordinated public transit human services transportation plan, state rail plan, and the statewide transportation plan.

"(E) SYSTEM PERFORMANCE REPORT.--

"(i) MPOs shall develop and publish a system performance report describing the condition of, and performance of, the transportation system in relation to the performance measures and objectives established in subparagraphs (A) through (C). The system performance report shall be updated on a schedule and at a level of detail necessary to measure progress achieved by the MPO in meeting system performance objectives and targets. The system performance report shall inform the MPO's planning process for the development of the subsequent metropolitan transportation plan and TIPs.

"(ii) Within 24 months of the enactment of this section MPOs shall develop and publish a system performance report describing the condition of, and performance of, the transportation system in relation to the performance measures and objectives established in subparagraphs (A) through (C).

"(iii) MPOs shall periodically update the system performance report no later than 24 months after the adoption of the most recent metropolitan transportation plan, except for any metropolitan transportation plans adopted within 24 months of the enactment of this section. Updates to the system performance report shall describe the condition of, and performance of, the transportation system in relation to the performance measures and objectives established in subparagraphs (A) through (C), and include a report of progress achieved in meeting performance goals and objectives in comparison with system performance recorded in past system performance reports.

"(iv) Updates to the system performance report shall include an accounting of the MPO's performance on outlay of obligated project funds and delivery of projects that have reached substantial completion in relation to the projects currently on the TIP and those projects that have been removed from the previous TIP.

"(v) The system performance report described in clause (i) shall be developed in consultation with the State department of transportation and shall be submitted to the Secretary on the World Wide Web in an electronically accessible format, by means to be determined by the Secretary.

"(F) USE OF PERFORMANCE MEASURES AND SYSTEM PERFORMANCE REPORTS.--The performance measures and system performance reports shall be used, at a minimum, by the MPO as the basis for development of policies, programs, and investment priorities reflected in the metropolitan transportation plan and TIP.

"(G) PERFORMANCE-BASED PLAN DEVELOPMENT.--Metropolitan transportation plan amendments or updates, except those that are adopted within 24 months of enactment of this subsection, shall incorporate a performance-based approach to metropolitan transportation planning. Metropolitan TIPs updated or amended after the enactment of this subsection shall be consistent with the most recent metropolitan transportation plan.

"(H) EVALUATION OF PERFORMANCE-BASED PLANNING.--The Secretary shall consider the MPO's

effectiveness in implementing and maintaining a performance-based planning process that addresses the outcomes in subsection (h) and demonstrates progress on the achievement of those outcomes when periodically reviewing the MPO under subsection (n).

"(3) FAILURE TO CONSIDER FACTORS.--The failure to consider a factor specified in paragraph (1) shall not be reviewable by a court under this chapter, title 23, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a metropolitan transportation plan, a TIP, a project or strategy, or the certification of a planning process.

"(i) PARTICIPATION BY INTERESTED PARTIES.--

"(1) IN GENERAL.--Each MPO shall provide citizens; affected public agencies; representatives of public transportation employees; freight shippers and providers of freight transportation services; private providers of transportation; representatives of users of public transportation, pedestrian walkways and bicycle transportation facilities; representatives of people with disabilities, older Americans, and low income individuals; and other interested parties with a reasonable opportunity to comment on the metropolitan transportation plan and TIP.

"(2) METHODS.--In carrying out paragraph (1), the MPO shall, to the maximum extent practicable--

"(A) develop the metropolitan transportation plan and TIP in consultation with all interested parties, including by the formation of advisory groups representative of the community and interested parties that participate in the development of the metropolitan plan and TIP;

"(B) provide that all interested parties have reasonable opportunities to comment on the contents of the metropolitan transportation plan and TIP;

"(C) hold any public meetings at convenient and ADA-compliant accessible locations and times;

"(D) employ interactive visualization techniques to describe plans and TIPs; and

"(E) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

"(3) NOTICE AND COMMENT.--Before approving a metropolitan transportation plan or TIP, an MPO, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the plan and program documents, in accordance with this section. The notice shall include the public outreach methods used to develop the metropolitan transportation plan or TIP.

"(j) DEVELOPMENT OF A METROPOLITAN TRANSPORTATION PLAN.--

"(1) IN GENERAL.--Each MPO shall prepare a metropolitan transportation plan for its metropolitan planning area in accordance with the requirements of this subsection. The MPO shall prepare and update its plan every 5 years (or more frequently, if the MPO elects to update more frequently), except in the cases of either of the following:

"(A) An MPO operating within an air quality control region designated as a nonattainment area, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) shall prepare and update its metropolitan transportation plan every 4 years (or more frequently, if the MPO elects to update more frequently).

"(B) An MPO operating within an air quality control region that was designated as a nonattainment area and subsequently designated to attainment in accordance with section 107(d)(3) of the Clean Air Act (42 U.S.C. 7407(d)(3)) and that is subject to a maintenance plan under section 175A of that Act (42 U.S.C. 7505a) shall prepare and update its metropolitan transportation plan every 4 years (or more frequently, if the MPO elects to update more frequently).

"(2) METROPOLITAN TRANSPORTATION PLAN.--A metropolitan transportation plan under this section shall be in a form that the Secretary determines to be appropriate and shall contain, at a minimum, the following:

"(A) the existing transportation infrastructure, including an inventory of highways, local streets and roads, bicycle and pedestrian facilities, transit facilities and services, commuter rail facilities and services, high-speed and intercity passenger rail facilities and services, freight facilities (including freight railroad and port facilities), multimodal and intermodal facilities, and intermodal connectors that, together, function as an integrated metropolitan transportation system;

"(B) the performance measures and regionally adopted performance targets for use in assessing the existing and future performance of the transportation system with respect to the outcomes identified in subsection (h)(1) and other outcomes that the MPO deems appropriate, including the projected progress towards outcomes where investment priorities identified through the most recent system performance report are linked to the National objectives and locally adopted performance targets under subsection (h)(2).

"(C) the current and projected future usage of the transportation system, by using analyses and forecasts of key socio-economic and demographic factors that affect system outcomes;

"(D) an evaluation of the existing and future condition and performance of the transportation system with respect to the performance outcomes identified in subsection (h);

"(E) recommended strategies and investments for improving system performance over the planning horizon, including system operations strategies, maintenance strategies, demand management strategies, asset management strategies, capacity and enhancement investments, land use improvements, intelligent transportation systems deployment, technology adoption strategies, and others, and, for informational purposes, high-speed and intercity passenger rail and freight rail projects and services, as determined by their projected support of outcomes identified in subsection (h);

"(F) recommended strategies and investments to improve and integrate disability-related access to transportation infrastructure;

"(G) investment priorities for using projected available and proposed revenues over the short and long-term stages of the planning horizon, in accordance with the financial plan required under paragraph (3);

"(H) a description of Interstate compacts entered into to promote coordinated transportation planning in multistate areas, if applicable;

"(I) to the extent practicable, an identification of existing or planned transportation rights-of-way, corridors, facilities, and related real properties at risk of abandonment or development for non-transportation uses;

"(J) an illustrative list of projects, containing investments not included in the metropolitan transportation plan but that would be included if additional resources beyond those identified in the financial plan were available;

"(K) a coordinated public transit human services transportation element that identifies community-based priorities for coordinated delivery strategies for meeting the access and mobility needs of people with disabilities, older Americans, and low income individuals; and

"(L) a discussion (developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies) of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

"(3) FINANCIAL PLAN.--

"(A) PLAN CONTENTS.--A Financial Plan shall be prepared to support the metropolitan transportation plan containing--



"(i) projected resource requirements for implementing projects, strategies, and services recommended in the statewide transportation plan, including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from federal, state, local, and private sources, innovative financing techniques to finance projects and programs; and

"(ii) the projected difference between costs and revenues, and strategies for securing additional new revenue will be included in the financial plan.

"(B) COOPERATIVE REVENUE FORECASTS.--The MPO, public transportation agency, and State shall cooperatively develop estimates of future funds included in the financial plan that are reasonably expected to be available to support the investment priorities recommended in the metropolitan transportation plan.

"(C) REQUIREMENT FOR ANTICIPATED FULL FUNDING.--The metropolitan transportation plan shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

"(4) COORDINATION WITH CLEAN AIR ACT AGENCIES.--In metropolitan areas that are nonattainment or maintenance areas under the Clean Air Act, the MPO shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

"(5) PUBLICATION.--A metropolitan transportation plan involving Federal and non-federal participation in regionally significant programs, projects, and strategies shall be published or otherwise made readily available by the MPO for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, approved by the MPO and submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

"(6) CONSULTATION.--

"(A) IN GENERAL.--In each metropolitan area, the MPO shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a metropolitan transportation plan.

"(B) ISSUES.--The consultation shall involve, as appropriate--

"(i) consideration of metropolitan transportation plans with State conservation plans or maps, if available;

"(ii) consideration of inventories of natural or historic resources, if available; and

"(iii) consideration of State climate action plans, State energy plans, or other State plans to reduce greenhouse gas emissions, improve energy conservation, and promote infrastructure resiliency, if available, in the development of the metropolitan transportation plan.

"(7) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.--Notwithstanding paragraph (3), a State or MPO shall not be required to select any project from the illustrative list of additional projects included in the metropolitan transportation plan under paragraph (2)(J).

"(k) METROPOLITAN TIP.--

"(1) DEVELOPMENT.--

"(A) IN GENERAL.--In cooperation with the State and any affected public transportation operator, the MPO designated for a metropolitan area shall develop a TIP for the metropolitan planning area that contains projects drawn only from the current metropolitan transportation plan and reflects the investment priorities set forth in the current metropolitan transportation plan that are based on the most recent system performance report.

"(B) OPPORTUNITY FOR COMMENT.--In developing the TIP, the MPO, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i).

"(C) UPDATING AND APPROVAL.--The TIP shall be updated at least once every 4 years, and on a cycle compatible with the STIP development under section 5304 of this title, and shall be approved by the MPO and the Governor.

"(2) CONTENTS.--

"(A) PRIORITY LIST.--The TIP shall include a priority list of proposed federally supported projects and strategies and, for informational purposes, non-federally supported regionally significant programs, projects, and strategies to be carried out within each 4-year period after the initial adoption of the TIP using existing and reasonably available revenues in accordance with the financial plan required under paragraph (3).

"(B) DESCRIPTIONS.--Each project in the TIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project, and the effect that the project or phase of the project will have in addressing the outcomes identified in subsection (h).

"(C) OUTCOME ACHIEVEMENT.--Each project in the TIP shall include a projected attainment of outcomes associated with the project, linking investment priorities to outcomes and locally adopted performance targets; and

"(D) BENEFIT-COST ANALYSIS.--The TIP shall, for illustrative purposes, include preliminary elements of benefit-cost analysis for each project (including multi-phase projects) included in either of the Year 1 forecast or the Year 2 forecast of the TIP that have an expected total cost of at least **\*\*[need entry]**\$\_\_\_\_\_million.

"(E) ILLUSTRATIVE LIST OF PROJECTS.--An illustrative list of projects may be prepared containing additional investment priorities not included in the TIP that would be included if reasonable additional resources beyond those identified in the financial plan for the TIP were available.

"(3) FINANCIAL PLAN.--A Financial Plan shall be prepared to support the TIP containing the following:

"(A) Projected resource requirements will be included for implementing projects, strategies, and services recommended in the TIP, including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from federal, state, local, and private sources, innovative financing techniques to finance projects and programs.

"(B) The projected difference between costs and revenues, and strategies for securing additional new revenue will be included in the financial plan.

**\*\*[part of list??]**"(C) The MPO, public transportation agency, and State shall cooperatively develop estimates of future funds included in the financial plan that are reasonably expected to be available to support the investment priorities recommended in the TIP.

**\*\*[part of list??]**"(D) The TIP shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

"(4) INCLUDED PROJECTS.--

"(A) PROJECTS UNDER THIS CHAPTER AND TITLE 23.--A TIP developed under this subsection for a metropolitan area shall include the projects within the area that are proposed for funding under this chapter and chapter 1 of title 23.

"(B) PROJECTS UNDER CHAPTER 2 OF TITLE 23.--

"(i) Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the TIP.

"(ii) Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in one line item or identified individually in the TIP.

"(C) PROJECTS NOT UNDER THIS CHAPTER OR TITLE 23.--

"(i) For information and coordination purposes, regionally significant projects not proposed for funding under this chapter or title 23 for which implementation is planned in the metropolitan planning area over the program period of the TIP shall be identified individually in the TIP.

"(ii) For information and coordination purposes, high-speed and intercity passenger rail, and freight rail projects proposed for funding under subtitle V of title 49 for which implementation is planned in the metropolitan planning area over the program period of the TIP shall be identified individually in the TIP.

"(5) NOTICE AND COMMENT.--Before approving a TIP, an MPO, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(3)(I).

"(6) SELECTION OF PROJECTS.--

"(A) IN GENERAL.--All federally funded projects carried out within the boundaries of a metropolitan planning area under title 23 (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program) or under this chapter shall be selected for implementation from the approved TIP by the Tier I MPO designated for the metropolitan planning area in cooperation with the State and any affected public transportation operator.

"(B) NATIONAL HIGHWAY SYSTEM PROJECTS.--Projects carried out within the boundaries of a metropolitan planning area on the National Highway System and projects carried out within the boundaries under the bridge program or the Interstate maintenance program under title 23 shall be selected for implementation from the approved TIP by the State in cooperation with the MPO designated for the metropolitan planning area.

"(C) MODIFICATIONS TO PROJECT PRIORITY.--Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved TIP in place of another project in the TIP.

"(7) PUBLICATION.--

"(A) PUBLICATION OF TIPS.--A TIP shall be published or otherwise made readily available by the MPO in electronically

accessible format and means, such as the World Wide Web, for public review .

"(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.--An annual listing of projects, including investments in accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation, for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and MPO in electronically accessible format and means, such as the World Wide Web, for public review. The listing shall be consistent with the categories identified in the TIP.

"(I) PLANNING REQUIREMENTS FOR TIER II METROPOLITAN PLANNING ORGANIZATIONS.--

"(1) IN GENERAL.--In the case of a Tier II MPO, as determined under the provisions of subsection (c), the Secretary may provide for the performance-based development of a metropolitan transportation plan and TIP for the metropolitan planning area in a manner that the Secretary determines is appropriate to achieve the outcomes identified in subsection (h)(1), taking into account the complexity of transportation needs in the area.

"(2) EVALUATION OF PERFORMANCE-BASED PLANNING FOR TIER II MPOS.--The Secretary shall consider a Tier II MPO's effectiveness in implementing and maintaining a performance-based planning process that addresses the outcomes in subsection (h) and demonstrates progress on the achievement of those outcomes when periodically reviewing the MPO under subsection (n).

"(3) NONATTAINMENT AND MAINTENANCE AREAS.--The Secretary shall establish planning processes that do not conflict with the conformity provisions under the Clean Air Act (42 U.S.C. 7506(c)) for Tier II MPOs that serve metropolitan areas that are designated nonattainment or maintenance areas under the Clean Air Act.

"(m) CERTIFICATION.--

"(1) IN GENERAL.--The Secretary shall--

"(A) ensure that the metropolitan transportation planning process of an MPO is being carried out in accordance with applicable provisions of Federal law; and

"(B) subject to subparagraph (2), certify, not less often than once every 4 years, that the requirements of this paragraph are met with respect to the metropolitan transportation planning process.

"(2) REQUIREMENTS FOR CERTIFICATION.--The Secretary may make the certification under paragraph (1) if--

"(A) for Tier I MPOs--

"(i) the metropolitan transportation planning process complies with the requirements of this section and other applicable requirements of Federal law; and

"(ii) there is a TIP for the metropolitan planning area that has been approved by the MPO and the Governor; and

"(B) for Tier II MPOs--

"(i) the metropolitan transportation planning process complies with the requirements of this section and other applicable requirements of Federal law; and

"(ii) there is a TIP for the metropolitan planning area that has been approved by the MPO and the Governor.

**\*\*[part of list??]**"(C) The Secretary may delegate fact-finding authority regarding Tier II MPO certification to the State, and may make the certification under subparagraph (1) in consultation with the State.

"(3) EFFECT OF FAILURE TO CERTIFY.--

"(A) WITHHOLDING OF PROJECT FUNDS.--If a metropolitan transportation planning process of an MPO is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the MPO for projects funded under this chapter and title 23.

"(B) RESTORATION OF WITHHELD FUNDS.--The withheld funds shall be restored to the metropolitan planning area at such time as the metropolitan transportation planning process is certified by the Secretary.

"(4) REVIEW OF CERTIFICATION.--In making certification determinations under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan planning area under review.

"(n) PERFORMANCE-BASED PLANNING PROCESSES EVALUATION.--

"(1) IN GENERAL.--The Secretary may establish criteria to evaluate the effectiveness of the performance-based planning processes of MPOs. The Secretary may, in making certification determinations under this section, designate certain MPOs as exhibiting highly-effective or highly-improved performance-based planning processes, subject to criteria that the Secretary establishes. The Secretary may consider the designation of an MPO as exhibiting highly-effective or highly-improved performance-based planning processes as a selection criterion when administering certain discretionary programs.

"(2) CRITERIA.--In establishing criteria to evaluate the effectiveness of the performance-based planning process of MPOs the Secretary shall consider the following:

"(A) The extent to which the MPO has achieved, or is currently making substantial progress towards achieving, the

outcomes specified in its performance measurement plan, including the outcomes specified above in subsection (h). In evaluating this criterion, the Secretary shall consider whether the MPO developed a meaningful performance measurement plan that-

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"(i) is based on a realistic inventory of current performance;

"(ii) identifies appropriately ambitious outcomes;

"(iii) sets significant and consequential targets; and

"(iv) is regularly modified or adjusted to incorporate best practices and lessons learned.

"(B) The extent to which the MPO has used proven best practices that help ensure robust, sustainable multi-modal transportation investment that is both efficient and cost-effective. The Secretary shall consider the following best practices in evaluating an MPO's alignment with this criterion:

"(i) Commitment to a variety of sustainable transportation funding options (including taxes, fees and user charges) that provide flexibility to make investments across all modes of transportation.

"(ii) Use of analytical tools in the investment decision-making process, including economic analysis, life-cycle costing, asset management, value for money and public sector comparator approaches, and use of innovations in design, procurement, purchasing or other elements of project delivery.

"(iii) Use of operating practices, such as congestion pricing, ramp metering, and market-oriented pricing for curbside parking, that make more efficient use of capacity and reduce the need for investing in new highway capacity.

"(iv) Deployment of technologies to improve the condition and performance of transportation networks and to address other transportation needs.

"(v) Adoption of laws, rules and regulations, and commitment of resources toward practices that are proven to reduce transportation-related fatalities and injuries.

"(vi) Integration of transportation planning and investment decisions with other land-use and economic development decisions to improve connectivity and accessibility.

"(vii) Collection and use of data in longitudinal analyses of investment performance.

"(viii) Adoption of laws, regulations, and practices that are proven to improve air quality, reduce greenhouse gas emissions, enhance community quality of life, and expand transportation choices, including adoption of a

complete streets policy that considers the needs of all transportation users.

"(C) The extent to which the MPO has developed an investment process that relies on public input and awareness to ensure that investments are transparent and accountable, and the extent to which the MPO provides regular reports allowing the public to have access to the information that is being collected in a format that allows the public to meaningfully assess the MPO's performance.

"(o) **ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.--**

"(1) **IN GENERAL.--**Notwithstanding any other provisions of this chapter or title 23, for metropolitan planning areas classified as nonattainment or maintenance areas pursuant to the Clean Air Act, Federal funds may not be advanced in such area for any highway project that will result in a significant increase in the carrying capacity for single-occupant vehicles, unless the project demonstrates that it will achieve the outcomes adopted as part of the metropolitan transportation planning process required by subsection (h).

"(2) **APPLICABILITY.--**This subsection applies to a nonattainment or maintenance area within the metropolitan planning area boundaries determined under subsection (e).

"(p) **LIMITATION ON STATUTORY CONSTRUCTION.--**Nothing in this section shall be construed to confer on an MPO the authority to impose legal requirements on any transportation facility, provider, or project not eligible under this chapter or title 23.

"(q) **FUNDING.--**Funds set aside under section 5305(g) of this title or section 104(f) of title 23 shall be available to carry out this section.

"(r) **CONTINUATION OF CURRENT REVIEW PRACTICE.--**Since metropolitan transportation plans and TIPs described in this section are subject to a reasonable opportunity for public comment, since individual projects included in metropolitan transportation plans and TIPs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning metropolitan transportation plans and TIPs described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a metropolitan transportation plan or TIP described in this section shall not be considered to be a Federal action subject to review under such Act."

**SEC. 2904. STATEWIDE AND NON-METROPOLITAN TRANSPORTATION PLANNING.**



(a) IN GENERAL.--Section 5304 is amended to read as follows:

**"Sec. 5304. Statewide and non-metropolitan transportation planning**

"(a) GENERAL REQUIREMENTS.--

"(1) DEVELOPMENT OF PLANS AND PROGRAMS.--To accomplish the objectives stated in section 5303(a) of this title, each State shall develop a statewide transportation plan and a statewide transportation improvement program (STIP) for all areas of the State, subject to section 5303.

"(A) INCORPORATION OF METROPOLITAN TRANSPORTATION PLANS AND TIPS.--States shall incorporate without change or by reference, the metropolitan transportation plans and TIPS for metropolitan planning areas as prepared by the cognizant MPOs for those areas into the statewide transportation plans and STIPs respectively.

"(B) NON-METROPOLITAN AREAS.--States shall coordinate with local officials in small urbanized and non-urbanized areas of the States in preparing the non-metropolitan portions of statewide transportation plans and STIPs.

"(2) CONTENTS.--The statewide transportation plan and the STIP developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways bicycle transportation facilities, and intermodal facilities that support intercity transportation) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

"(3) PROCESS OF DEVELOPMENT.--The process for developing the statewide transportation plan and the STIP shall provide for consideration of facilities and services for all modes of transportation across all levels of government and non-governmental authority and the policies stated in section 5303(a), and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation needs to be addressed.

"(b) COORDINATION WITH METROPOLITAN TRANSPORTATION PLANNING; STATE IMPLEMENTATION PLAN.--A State shall--

"(1) coordinate planning carried out under this section with the transportation planning activities carried out under section 5303 for metropolitan areas of the State and with statewide trade and economic development planning activities and related multistate planning efforts; and

"(2) develop the transportation portion of the State implementation plan as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

"(c) COORDINATION IN MULTISTATE AREAS.--

"(1) IN GENERAL.--The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan planning area and the appropriate MPOs to provide coordinated transportation planning for the entire metropolitan area.

"(2) COORDINATION ALONG DESIGNATED TRANSPORTATION CORRIDORS.--The Secretary shall encourage each Governor with responsibility for a portion of a multistate transportation corridor and the appropriate States to provide coordinated transportation planning for the entire designated corridor. The Secretary may consider the effectiveness of multistate transportation coordination for the designated transportation corridor as a criterion for funding multistate corridor projects, facilities, and services, and when administering certain discretionary programs.

"(3) INTERSTATE COMPACTS.--The consent of Congress is granted to any two or more States--

"(A) to enter into compacts, agreements, or organizations, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States;

"(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective; and

"(C) to encourage such compacts, agreements, or organizations to develop planning documents in support of intercity or multistate area projects, facilities, and services, the relevant components of which would be reflected in STIPs and statewide transportation plans.

"(4) RESERVATION OF RIGHTS.--The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

"(d) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.--The Secretary shall require States to cooperate with officials responsible for other types of planning activities that affect and are affected by transportation in the area (including State and local planned growth, economic development, telecommunications infrastructure, infrastructure services, housing, health services, human services, environmental protection, airport operations, high-speed and intercity passenger rail, freight rail, transportation system safety, and freight movements), to the maximum extent practicable, to ensure that the statewide and non-metropolitan planning process, statewide transportation plans and STIPs are developed in full coordination and cooperation with other related planning activities within the State, and the process shall provide for the design and delivery of transportation services within the State that are provided by--

"(1) recipients of assistance under this chapter;

"(2) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services;

"(3) recipients of assistance under section 204 of title 23; and

"(4) sponsors of regionally significant programs, projects, and services that are related to transportation and who are receiving assistance from any public and/or private sources, in accordance with Subsection I of this Section.

"(e) SCOPE OF PLANNING PROCESS.--

"(1) IN GENERAL.--Each State shall carry out a statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that will achieve the outcomes of--

"(A) improved economic competitiveness of the Nation and improved economic vitality of the metropolitan area, especially by enabling global competitiveness and productivity;

"(B) increased efficiency of the multimodal transportation system that moves people and freight;

"(C) improved accessibility to daily needs for all transportation users, including people with disabilities, older Americans, and low income individuals;

"(D) increased safety and security of the transportation system for motorized and nonmotorized users;

"(E) enhanced environmental sustainability through protection and enhancement of the environment, promotion of energy conservation, improvement of quality of life, and promotion of consistency between transportation improvements and State and local planned growth and economic development patterns;

"(F) increased efficiency in systems management and operation, including deployment of congestion management strategies across transportation networks;

"(G) increased emphasis on preservation of the existing system and maintaining it in a state of good repair;

"(H) increased adoption of technology-based solutions to transportation needs;

"(I) improved accountability and transparency for public dollars, delivering projects as forecasted; and

"(J) improved public participation and transparency in the planning process.

"(2) ESTABLISHMENT AND USE OF A PERFORMANCE-BASED APPROACH TO STATEWIDE TRANSPORTATION PLAN AND STIP DEVELOPMENT.--

"(A) IN GENERAL.--The statewide transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decision-making to achieve the outcomes set forth in paragraph (1).

"(B) NATIONAL PERFORMANCE OBJECTIVES.--The Secretary shall, from time to time, identify performance measures and intermediate and long-term targets for those measures to use in tracking attainment of national transportation performance goals, including the factors specified in paragraph (1), and other factors that the Secretary determines are consistent with the transportation objectives of the Nation.

"(C) STATE ESTABLISHMENT OF PERFORMANCE MEASURES.--The State shall identify and select performance measures and intermediate and long-term targets for those measures to use in tracking attainment of critical outcomes for the region, including the factors specified in paragraph (1), and other factors deemed appropriate by the State, unless otherwise specified by the Secretary in accordance with subparagraph (A). Identification and selection of performance measures by the State shall be coordinated with MPOs to establish consistency, to the extent practicable

"(D) INTEGRATION OF OTHER PERFORMANCE-BASED PLANS.--The State shall integrate into the statewide transportation planning process, either directly or by reference, the outcomes, goals, objectives, performance measures, and targets in other State plans and processes required as part of a performance-based program, including, but not limited to such plans as the State national highway system asset management plan, the State strategic highway safety plan, the locally coordinated public transit human services transportation plan and the state rail plan.

"(E) SYSTEM PERFORMANCE REPORT.--

"(i) States shall develop and publish a system performance report describing the condition of, and performance of, the transportation system in relation to the performance measures and objectives established in subparagraphs (A) through (C). The system performance report shall be updated on a schedule and at a level of detail necessary to measure progress achieved by the State in meeting system performance objectives and targets. The system performance report shall inform the State's planning process for the development of the subsequent statewide transportation plan and STIPs.

"(ii) Within 24 months of the enactment of this section, States shall develop and publish a system performance report describing the condition of, and performance of, the transportation system in relation to the

performance measures and objectives established in subparagraphs (A) through (C).

"(iii) States shall periodically update the system performance report no later than 24 months after the adoption of the most recent statewide transportation plan, except for any statewide transportation plans adopted within 24 months of the enactment of this section. Updates to the system performance report shall describe the condition of, and performance of, the transportation system in relation to the performance measures and objectives established in subparagraphs (A) through (C), and include a report of progress achieved in meeting performance goals and objectives in comparison with system performance recorded in past system performance reports.

"(iv) Updates to the system performance report shall include an accounting of the State's performance on outlay of obligated project funds and delivery of projects that have reached substantial completion in relation to the projects currently on the STIP and those projects that have been removed from the previous STIP.

"(v) The system performance report described in subparagraph (i) shall be submitted to the Secretary on the World Wide Web in an electronically accessible format, by means to be determined by the Secretary.

"(F) USE OF PERFORMANCE MEASURES AND SYSTEM PERFORMANCE REPORTS.--The performance measures and system performance reports shall be used, at a minimum, as the basis for development of policies, programs, and investment priorities reflected in the statewide transportation plan and STIP.

"(G) PERFORMANCE-BASED PLAN DEVELOPMENT.--Statewide transportation plan amendments or updates, except those that are adopted within 24 months of enactment of this subsection, shall incorporate a performance-based approach to statewide transportation planning. STIPs updated or amended after enactment of this subsection shall be consistent with the most recent statewide transportation plan.

"(H) EVALUATION OF PERFORMANCE-BASED PLANNING.--The Secretary shall consider the State's effectiveness in implementing and maintaining a performance-based planning process that addresses the outcomes in subsection (h) and demonstrates progress on the achievement of those outcomes when periodically reviewing the State under subsection (m).

"(3) FAILURE TO CONSIDER FACTORS.--The failure to consider any factor specified in paragraph (1) shall not be reviewable by

any court under this chapter, title 23, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a statewide transportation plan, the transportation improvement program, a project or strategy, or the certification of a planning process.

"(f) PARTICIPATION BY INTERESTED PARTIES.--

"(1) IN GENERAL.--Each State shall provide citizens; affected public agencies; representatives of public transportation employees; freight shippers and providers of freight transportation services; private providers of transportation; representatives of users of public transportation, pedestrian walkways and bicycle transportation facilities; representatives of people with disabilities, older Americans, and low income individuals; and other interested parties with a reasonable opportunity to comment on the statewide transportation plan and STIP.

"(2) METHODS.--In carrying out paragraph (1), the State shall, to the maximum extent practicable--

"(A) develop the statewide transportation plan and STIP in consultation with all interested parties;

"(B) provide that all interested parties have reasonable opportunities to comment on the contents of the statewide transportation plan and STIP;

"(C) hold any public meetings at convenient and accessible locations and times;

"(D) employ interactive visualization techniques to describe plans and STIPs; and

"(E) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

"(3) NOTICE AND COMMENT.--Before approving a statewide transportation plan or STIP, the State, in cooperation with MPOs and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the plan and program documents, in accordance with this section. The notice shall include the public outreach methods used to develop the statewide transportation plan or STIP.

"(g) COORDINATION AND CONSULTATION WITH GOVERNMENTS.--

"(1) METROPOLITAN AREAS.--The statewide transportation plan and STIP shall be developed for each metropolitan area in the State by incorporating without change, or by reference, the metropolitan transportation plans and TIPs respectively prepared by MPOs designated for the metropolitan areas under section 5303 of this title.

"(2) NON-METROPOLITAN AREAS.--With respect to non-metropolitan areas, the statewide transportation plan and STIP shall be

developed in coordination with affected non-metropolitan officials with responsibility for transportation.

"(3) INDIAN TRIBAL AREAS.--With respect to each area of the State under the jurisdiction of an Indian tribal government, the statewide transportation plan and STIP shall be developed in consultation with the tribal government and the Secretary of the Interior.

"(4) CONSULTATION, COMPARISON, AND CONSIDERATION.--

"(A) IN GENERAL.--The statewide transportation plan and STIP shall be developed, as appropriate, in consultation with State, tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation.

"(B) COMPARISON AND CONSIDERATION.-- Consultation under subparagraph (A) shall involve comparison of statewide transportation plans to State and tribal conservation plans or maps, if available, and comparison of statewide transportation plans to inventories of natural or historic resources, if available.

"(h) STATEWIDE TRANSPORTATION PLAN.--

"(1) DEVELOPMENT OF A STATEWIDE TRANSPORTATION PLAN.--Each State shall develop a statewide transportation plan, with a minimum 20-year forecast period for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State. The plan shall identify existing and future transportation facilities that should function as an integrated statewide transportation system, giving emphasis to those facilities that serve important national and regional transportation functions. The plan shall be updated by the State at least once every five years and prepared in a form that the Secretary determines to be appropriate, containing, at a minimum-

"(A) the existing transportation infrastructure, including an inventory of highways, local streets and roads, bicycle and pedestrian facilities, transit facilities and services, commuter rail facilities and services, high-speed and intercity passenger rail facilities and services, freight facilities (including freight railroad and port facilities), multimodal and intermodal facilities, and intermodal connectors that, together, function as an integrated metropolitan transportation system;

"(B) the performance measures and regionally adopted performance targets for use in assessing the existing and future performance of the transportation system with respect to the outcomes identified in subsection (e)(1) and other outcomes that the State deems appropriate, including the projected progress towards outcomes, where investment priorities identified through the most recent system performance report are linked to the

National objectives and locally adopted performance targets under subsection (e)(2).

"(C) the current and projected future usage of the transportation system, by using analyses and forecasts of key socio-economic and demographic factors that affect system outcomes;

"(D) an evaluation of the existing and future condition and performance of the transportation system with respect to the performance outcomes identified in subsection (e);

"(E) recommended strategies and investments for improving system performance over the planning horizon, including system operations strategies, maintenance strategies, demand management strategies, asset management strategies, capacity and enhancement investments, land use improvements, intelligent transportation systems deployment, technology adoption strategies, and others, and, for informational purposes, high-speed and intercity passenger rail, and freight rail and services, as determined by their projected support of outcomes identified in subsection (h);

"(F) recommended strategies and investments to improve and integrate disability-related access to transportation infrastructure;

"(G) investment priorities for using projected available and proposed revenues over the short and long-term stages of the planning horizon, in accordance with the financial plan required under paragraph (3);

"(H) a description of Interstate compacts entered into in order to promote coordinated transportation planning in multistate areas, if applicable;

"(I) recommended strategies and investments including those developed by the State as part of interstate compacts, agreements, or organizations, that support intercity transportation;

"(J) to the extent practicable, an identification of existing or planned transportation rights-of-way, corridors, facilities, and related real properties at risk of abandonment or development for non-transportation uses;

"(K) an illustrative list of projects, containing investments not included in the metropolitan transportation plan but that would be included if additional resources beyond those identified in the financial plan were available;

"(L) a coordinated public transit human services transportation element that identifies community-based priorities for coordinated delivery strategies for meeting the access and mobility needs of people with disabilities, older Americans, and low income individuals; and



"(M) a discussion (developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies) of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

"(2) FINANCIAL PLAN.--

"(A) PLAN CONTENTS.--A Financial Plan shall be prepared to support the statewide transportation plan containing--

"(i) projected resource requirements that will be included for implementing projects, strategies, and services recommended in the statewide transportation plan, including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from federal, state, local, and private sources, and innovative financing techniques to finance projects and programs; and

"(ii) the projected difference between costs and revenues, and strategies for securing additional new revenue that will be included in the financial plan.

"(B) COOPERATIVE REVENUE FORECASTS.--The State, public transportation agency, and MPOs shall cooperatively develop estimates of future funds included in the financial plan that are reasonably expected to be available to support the investment priorities recommended in the statewide transportation plan.

"(C) REQUIREMENT FOR ANTICIPATED FULL FUNDING.--The statewide transportation plan shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

"(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.--

In non-metropolitan areas that are nonattainment or maintenance areas under the Clean Air Act, the State shall coordinate the development of the statewide transportation plan with the process for development of the transportation control measures of the state implementation plan required by the Clean Air Act.

"(4) PUBLICATION OF STATEWIDE TRANSPORTATION PLANS.--A statewide transportation plan involving Federal and non-federal participation in regionally significant programs, projects, and strategies shall be published or otherwise made readily available by the State for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, in such manner as the Secretary shall establish.

"(5) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.--Notwithstanding paragraph (2), a State shall not be required to

select any project from the illustrative list of additional projects included in the statewide transportation plan under paragraph (1)(K).

"(i) STIP.--

"(1) DEVELOPMENT.--

"(A) IN GENERAL.--In cooperation with non-metropolitan officials with responsibility for transportation and any affected public transportation operator, the State shall develop a STIP for the State that contains projects drawn exclusively from the statewide transportation plan and reflects the investment priorities set forth in the statewide transportation plan. The STIP shall cover a period of 4 years and be updated every 4 years or more frequently if the Governor elects to update more frequently. The STIP shall incorporate the TIPs developed by MPOs under section 5303 of this title without change. Each project included in the STIP shall be--

"(i) consistent with the statewide transportation plan developed under this section for the State;

"(ii) identical to the project or phase of the project as described in an approved metropolitan TIP; and

"(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act, if the project is carried out in an area designated as a nonattainment or maintenance area under that Act.

"(B) OPPORTUNITY FOR COMMENT.--In developing the STIP, the State, in cooperation with any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (f).

"(2) CONTENTS.--

"(A) PRIORITY LIST.--The STIP shall include a priority list of proposed federally supported projects and strategies, and, for informational purposes, non-federally supported regionally significant programs, projects, and strategies to be carried out within each 4-year period after the initial adoption of the STIP using existing and reasonably available revenues in accordance with the financial plan required under paragraph (3).

"(B) DESCRIPTIONS.--Each project in the STIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project, and the effect that the project or phase of the project will have in addressing the outcomes identified in subsection (e).

"(C) OUTCOME ACHIEVEMENT.--Each project in the STIP shall include a projected attainment of outcomes associated

with the project, linking investment priorities to outcomes and locally adopted performance targets.

"(D) BENEFIT-COST ANALYSIS.--The STIP shall, for illustrative purposes, include preliminary elements of benefit-cost analysis for each project (including multi-phase projects) included in either of the Year 1 forecast or the Year 2 forecast of the STIP that have an expected total cost of at least **\*\*[need entry]**\$\_\_\_\_\_ million.

"(E) ILLUSTRATIVE LIST OF PROJECTS.--An illustrative list of projects may be prepared containing additional investment priorities not included in the STIP that would be included if reasonable additional resources beyond those identified in the financial plan for the STIP were available.

"(3) FINANCIAL PLAN.--

"(A) IN GENERAL.--A Financial Plan shall be prepared to support the STIP containing--

"(i) projected resource requirements that will be included for implementing projects, strategies, and services recommended in the STIP, including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from federal, state, local, and private sources, and innovative financing techniques to finance projects and programs; and

"(ii) the projected difference between costs and revenues, and strategies for securing additional new revenue that will be included in the financial plan.

"(B) COOPERATIVE REVENUE FORECASTS.--The State, public transportation agency, and MPOs shall cooperatively develop estimates of future funds included in the financial plan that are reasonably expected to be available to support the investment priorities recommended in the STIP.

"(C) REQUIREMENT FOR ANTICIPATED FULL FUNDING.--The STIP shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

"(4) INCLUDED PROJECTS.--

"(A) PROJECTS UNDER THIS CHAPTER AND TITLE 23.--A STIP developed under this subsection for a State shall include the projects within the area that are proposed for funding under this chapter and chapter 1 of title 23.

"(B) PROJECTS UNDER CHAPTER 2 OF TITLE 23.--Projects under chapter 2 of title 23.--

"(i) Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the STIP.

"(ii) Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in one line item or identified individually in the STIP.

"(C) PROJECTS NOT UNDER THIS CHAPTER OR TITLE 23.--

"(i) For information and coordination purposes, regionally significant projects not proposed for funding under this chapter or title 23 for which implementation is planned in the State over the program period of the STIP shall be identified individually in the STIP.

"(ii) For information and coordination purposes, high-speed and intercity passenger rail projects, and freight rail projects proposed for funding under subtitle V of title 49 for which implementation is planned in the State over the program period of the STIP shall be identified individually in the STIP.

"(5) PUBLICATION.--

"(A) PUBLICATION OF STIPS.--A STIP shall be published or otherwise made readily available by the State in electronically accessible format and means, such as the World Wide Web, for public review.

"(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.--An annual listing of projects, including investments in accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation, for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and MPO in electronically accessible format and means, such as the World Wide Web, for public review. The listing shall be consistent with the categories identified in the TIP.

"(6) PROJECT SELECTION FOR URBANIZED AREAS OF LESS THAN 200,000 POPULATION AND ARE NOT METROPOLITAN PLANNING AREAS.--Projects carried out in urbanized areas with populations of less than 200,000 individuals shall be selected, from the approved transportation improvement program (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program under title 23 or sections 5310, 5311, 5316, and 5317 of this title) by the State in cooperation with the affected nonmetropolitan local officials with responsibility for transportation. Projects carried out in urbanized areas with populations of less than 200,000 individuals and that

are not metropolitan planning areas on the National Highway System or under the bridge program or the Interstate maintenance program under title 23 or sections 5310, 5311, 5316, and 5317 of this title shall be selected, from the approved statewide transportation improvement program, by the State in consultation with the affected nonmetropolitan local officials with responsibility for transportation.

"(7) STIP APPROVAL.--Every 4 years, a transportation improvement program developed under this subsection shall be reviewed and approved by the Secretary if based on a current planning finding.

"(8) PLANNING FINDING.--A finding shall be made by the Secretary at least every 5 years that the transportation planning process through which statewide transportation plans and programs are developed is consistent with this section and section 5303 of this title.

"(9) MODIFICATIONS TO PROJECT PRIORITY.--  
Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved STIP in place of another project in the program.

"(j) FUNDING.--Funds set aside under section 5305(g) of this title and section 104(i) of title 23 shall be available to carry out this section.

"(k) CONTINUATION OF CURRENT REVIEW PRACTICE.--Since the statewide transportation plan and the STIP described in this section are subject to a reasonable opportunity for public comment, since individual projects included in the statewide transportation plans and the STIPs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning statewide transportation plans or the STIPs described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a metropolitan or statewide transportation plan or the TIP or STIP described in this section shall not be considered to be a Federal action subject to review under such Act.

"(l) CERTIFICATION. --

"(1) IN GENERAL.--The Secretary shall --

"(A) ensure that the statewide transportation planning process of a State is being carried out in accordance with applicable provisions of Federal law; and

"(B) subject to paragraph (2), certify, not less often than once every 5 years, that the requirements of this paragraph are met with respect to the statewide transportation planning process.

"(2) REQUIREMENTS FOR CERTIFICATION.--The Secretary may make the certification under paragraph (1) if--

"(A) the statewide transportation planning process complies with the requirements of this section and other applicable requirements of Federal law; and

"(B) there is a STIP for the State that has been approved by the Governor.

"(3) EFFECT OF FAILURE TO CERTIFY.--

"(A) WITHHOLDING OF PROJECT FUNDS.--If a statewide transportation planning process of a State is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the State for projects funded under this chapter and title 23.

"(B) RESTORATION OF WITHHELD FUNDS.--The withheld funds shall be restored to the State at such time as the statewide transportation planning process is certified by the Secretary.

"(4) REVIEW OF CERTIFICATION.--In making certification determinations under this paragraph, the Secretary shall provide for public involvement appropriate to the State under review.

"(m) PERFORMANCE-BASED PLANNING PROCESSES EVALUATION.--

"(1) IN GENERAL.--The Secretary may establish criteria to evaluate the effectiveness of the performance-based planning processes of States. The Secretary may, in making certification determinations under this section, designate certain States as exhibiting highly-effective or highly-improved performance-based planning processes, subject to the criteria that the Secretary establishes. The Secretary may consider the designation of a State as exhibiting highly-effective or highly-improved performance-based planning processes as a selection criterion when administering certain discretionary programs.

"(2) CRITERIA.--In establishing criteria to evaluate the effectiveness of the performance-based planning process of States the Secretary shall consider the following:

"(A) The extent to which the State has achieved, or is currently making substantial progress towards achieving, the outcomes specified in its performance measurement plan, including the outcomes specified above in subsection (e). In evaluating this criterion, the Secretary shall consider whether the State developed a meaningful performance measurement plan that-

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"(i) is based on a realistic inventory of current performance;

"(ii) identifies appropriately ambitious outcomes;

"(iii) sets significant and consequential targets; and

"(iv) is regularly modified or adjusted to incorporate best practices and lessons learned.

"(B) The extent to which the State has used proven best practices that help ensure robust, sustainable multi-modal transportation investment that is both efficient and cost-effective.

The Secretary shall consider the following best practices in evaluating a State's alignment with this criterion:

"(i) Commitment to a variety of sustainable transportation funding options (including taxes, fees and user charges) that provide flexibility to make investments across all modes of transportation.

"(ii) Use of analytical tools in the investment decision-making process, including economic analysis, life-cycle costing, asset management, value for money and public sector comparator approaches, and use of innovations in design, procurement, purchasing or other elements of project delivery.

"(iii) Use of operating practices, such as congestion pricing, ramp metering, and market-oriented pricing for curbside parking, that make more efficient use of capacity and reduce the need for investing in new highway capacity.

"(iv) Deployment of technologies to improve the condition and performance of transportation networks and address other transportation challenges.

"(v) Adoption of laws, rules and regulations, and commitment of resources toward practices that are proven to reduce transportation-related fatalities and injuries.

"(vi) Integration of transportation planning and investment decisions with other land-use and economic development decisions to improve connectivity and accessibility.

"(vii) Collection and use of data in longitudinal analyses of investment performance.

"(viii) Adoption of laws, regulations, and practices that are proven to improve air quality, reduce greenhouse gas emissions, enhance community quality of life, and expand transportation choices, including adoption of a complete streets policy that considers the needs of all transportation users.

"(C) The extent to which the State has developed an investment process that relies on public input and awareness to ensure that investments are transparent and accountable, and the extent to which the State provides regular reports allowing the public to have access to the information that is being collected in a format that allows the public to meaningfully assess the State's performance.

"(n) **TRANSPORTATION LEADERSHIP AWARDS.**--The Secretary shall establish a competitive program to promote the implementation of policies and procedures that support a performance-based transportation system. The program shall be jointly administered by the Office of the Secretary, the Federal Highway Administration and Federal Transit Administration.

"(1) PURPOSES.--The purpose of this program is to--

"(A) reform the way transportation investments and decisions are made and implemented to achieve performance outcomes and integrate performance management into project selection;

"(B) encourage innovation and reward applicants that are most aggressive in implementing best practices;

"(C) strengthen collaboration among different levels of government and across governmental agencies to create a more interconnected transportation system;

"(D) increase the amount of transportation funding at all levels that is allocated in ways that generate the strongest performance and multiple outcomes; and

"(E) encourage the development of a multimodal transportation system focused on connecting people to opportunities and goods to markets.

"(2) BEST PRACTICES.--Applicants shall be evaluated based on the extent to which each has adopted or implemented best practices that help create a robust, sustainable multimodal transportation investment that is both efficient and cost-effective, with a demonstrated broad impact, and describe how these practices are reflected in the list of projects required under paragraph (3), including the following best practices:

"(A) Commitment to a variety of sustainable and innovative non-federal sources of transportation funding that provide flexibility to make investments across all modes of transportation, including value capture and tax increment financing.

"(B) Use of analytical tools in the investment decision-making process, including economic analysis, life-cycle costing, asset management, value for money and public sector comparator approaches, and use of innovations in design, procurement, purchasing, and other elements of project delivery.

"(C) Use of operating practices that increase the efficient use of system capacity and reduce the need to invest in new highway capacity, including the use of congestion pricing, ramp metering, and market-oriented pricing for parking.

"(D) Deployment of technologies to improve the condition and performance of transportation networks and to address other transportation needs.

"(E) Adoption of laws, rules and regulations, and commitment of resources toward practices that are proven to reduce transportation-related fatalities and injuries.

"(F) Integration of transportation planning and investment decisions with other land-use and economic development decisions to improve connectivity and accessibility and to focus transportation investments near existing infrastructure.



"(G) Collection and use of data in longitudinal analyses of investment performance.

"(H) Adoption of laws, regulations, and practices that are proven to improve air quality, reduce greenhouse gas emissions, enhance community quality of life, and expand transportation choices, including adoption of a complete streets policy that considers the needs of all transportation users and passenger-based level of service standards.

"(I) Use of a performance-based distribution process for the allocation of a significant portion of non-Federal funds and Federal transportation formula funds under the control of the applicant, as developed in accordance with the planning requirements developed under this Section and Sections 134 of Title 23 and 5303 and 5304 of Title 49.

"(3) LIST OF PROJECTS.--Applicants shall submit a program of transportation projects, developed with Metropolitan Planning Organizations and local governments within the applicant's jurisdiction, that are related to the best practices identified in paragraph (2) to demonstrate how funds, if awarded, will be spent. The extent to which best practices have been incorporated into this list shall be evaluated based on how the list of projects--

"(A) includes priorities of Metropolitan Planning Organizations within the applicant's jurisdiction as identified in their TIPs;

"(B) promotes national transportation priorities, including--

"(i) Strengthening economic competitiveness, including improvement to goods movement and encouragement of reuse of underutilized developed land;

"(ii) Reducing transportation fatalities;

"(iii) Improving the state of repair of the transportation system;

"(iv) Improving community livability by increasing access to jobs and necessities, particularly for non drivers; and

"(v) Supporting environmental sustainability by reducing emissions and water pollution and protecting sensitive lands;

"(C) was developed through the use of a multimodal, performance-based, comprehensive transportation planning process that includes linkage to housing, economic development, environmental, land use and other infrastructure investment planning and investment and a strong, interactive public input and awareness process; and

"(D) furthers the best practices and reform initiatives identified under subsection (2) in the areas most aggressively implementing them and relied upon in the application.

"(4) ELIGIBILITY.--States, the District of Columbia, Puerto Rico, and Tribal Governments are eligible for funding under this section, provided that the entity--

"(A) demonstrates meaningful participation of MPOs and local governments within the applicant's jurisdiction in the development of the application; and

"(B) has experience in successfully and independently administering Federal-aid highway or transit programs or projects.

"(5) AWARD OF FUNDS.--The Secretary, in conjunction with the Federal Highway Administrator and Federal Transit Administrator, shall make **\*\*\$31,866,000,000** available for this program and shall--

"(A) award funds under this section annually, starting in 2013, which shall include--

"(i) the publishing of detailed criteria for the first round grant awards at least one year before making awards.

"(ii) making available for awards up to--

**"(I) \$3,400,000,000 in 2013;**

**"(II) \$5,000,000,000 in 2014 and 2015; and**

**"(III) \$8,000,000,000 in 2016 and 2017.**

"(iii) withholding a reasonable amount of funds under this section for administration of the program, but not to exceed \$100,000,000;

"(B) devise a methodology for the award of funds under this program based on a State's share of the Federal transportation formula allocation with awards being no less than \$100,000,000 and no more than \$1,000,000,000;

"(C) reserve the right to adjust an award amount for a Tribal Government as appropriate relative to the applicant's share of Federal transportation formula allocation;

"(D) award funding to applicants that demonstrate the greatest performance as well as applicants that have made the greatest progress in implementing the best practices listed in paragraph (2);

"(E) for applicants who are awarded funding under paragraph (7), consider the progress in implementing the grant and the best practices for which the capacity building funding was sought;

"(F) take such measures so as to ensure an equitable geographic distribution of funds and an appropriate balance in addressing the needs of urban and rural communities; and

"(G) consider the performance of recipients of earlier grants if awardees apply for subsequent rounds of funding under this program.

"(6) ELIGIBLE ACTIVITIES.--

"(A) **\$17,152,000,000** of funds provided under this program will be reserved for projects eligible for funding under Title 23 and **\$14,714,000,000** of funds provided for under this program will be reserved for projects eligible for funding under chapter 53 of title 49.

"(B) A portion of the funding awarded under this program may be reserved to create a State-based competitive grant program that supports the implementation of reforms contained in this

section at the local level and that includes at least an equal amount of non-Federal funds.

"(7) MANAGING PERFORMANCE GRANT PROGRAM.--

Three percent of the funds made available under this section shall be reserved for a managing performance grant program to build capacity to implement best practices listed in paragraph (2).

"(A) AWARD OF FUNDS.--The Secretary, in conjunction with the Federal Highway Administrator and Federal Transit Administrator, shall conduct three rounds of grant-making in the first three years of the this Act, which shall include--

"(i) awards of no less than \$1,000,000 and no more than \$25,000,000; and

"(ii) ensuring an equitable geographic distribution of funds and an appropriate balance of the variety of State needs to improve capability and resource capacity.

"(B) ELIGIBILITY.--Entities eligible for funding under this section may include States, local governments, Metropolitan Planning Organizations, transit providers, and Tribal Governments, provided that the entity--

"(i) has a recognized need to improve its capability and resource capacity to better manage performance;

"(ii) has experience in successfully and independently administering Federal-aid highway programs or projects;

"(iii) has clearly demonstrated the need to improve the process to manage performance in a strategic priority area; and

"(iv) has developed a well-defined plan to implement changes in its business practice to improve the process used to manage performance.

"(C) CRITERIA FOR GRANT SELECTION.--In awarding a grant under this subsection, the Secretary shall consider the extent to which the application--

"(i) shows how funds awarded will promote national transportation priorities as identified under paragraph(3)(B);

"(ii) demonstrates an ability for organizational transformation in the use of performance-based program management for transportation decision making;

"(iii) builds on an existing or develops a new performance management system;

"(iv) provides for a multi-modal approach to solving transportation needs;

"(v) provides for multi-jurisdictional planning;

"(vi) demonstrates the progress made through earlier grant awards, for applicants who are awarded funding in previous rounds of grant-making under this program; and

"(v) meets such other criteria as the Secretary may require.

"(D) Eligible activities may include but are not limited to improvements in and implementation of—

- "(i) data collection, storage and analysis systems;
- "(ii) advanced transportation modeling, simulation, and analysis capable of providing reliable information for such applications as multimodal investment analyses, operational analyses, environmental assessments, evaluations of a wide range of policy alternatives, toll-facility revenue forecasts, and freight forecasts; and
- (iii) staff training to utilize new, more advanced systems and departmental reorganization to support implementation of best practices."

(b) CONFORMING AMENDMENT.--The item relating to section 5304 in the analysis of chapter 53 is amended to read as follows:

"5304. Statewide and non-metropolitan transportation planning."

## **SEC. 2905. PLANNING PROGRAMS.**

Section 5305 is amended--

(1) by striking "metropolitan planning organizations" each place it appears and inserting "MPOs";

(2) in subsection (c), by striking "5303, 5304, and 5306" and inserting "5303 and 5304";

(3) in subsection (d)(1)(A), by striking "sections 5303 and 5306" and inserting "section 5303";

(4) by revising subsection (d)(2) to read as follows:

"(2) ALLOCATION FOR PLANNING FOR URBANIZED AREAS.--

"(A) ALLOCATION FORMULA.--Amounts apportioned to a State under paragraph (2) shall be allocated by the State under a formula that--

"(i) considers the population of urbanized areas with a population of 50,000 or more;

"(ii) provides an appropriate distribution for metropolitan planning organizations and the State to carry out the cooperating planning process described in sections 5303 and 5304 of this title for urbanized areas;

"(iii) the State develops in cooperation with the metropolitan planning organizations; and

"(iv) the Secretary approves.

"(B) AVAILABILITY OF FUNDS.--Funds allocated to an urbanized area for which--

"(i) a metropolitan planning organization has been established under section 5303 of this title shall be made available to the metropolitan planning organization not less

than 30 days after apportionment of the funds to the State;  
and

"(ii) the State is responsible for the planning activities required under sections 5303 and 5304 of this title shall be available to the State."

(5) in the heading of subsection (e), by striking "RESEARCH" and inserting "NON-METROPOLITAN PLANNING"; and

(6) in subsection (e)(1)(A), by striking "sections 5306, 5306, 5315, and 5322" and inserting "sections 5304 and 5314(d)".

## **SEC. 2906. STATE OF GOOD REPAIR FORMULA GRANTS PROGRAM.**

(a) IN GENERAL.--Section 5306 is amended to read as follows:

### **"Sec. 5306. State of good repair formula grants program**

"(a) DEFINITIONS.--In this section:

"(1) RECIPIENT.--The term 'recipient' means a designated recipient as defined in section 5307(a)(2) of this title and a State that receives a grant under this section directly.

"(2) CAPITAL PROJECT.--The term 'capital project' means a capital project as defined in section 5302(a)(1)(A) through (D), (F) and (M) of this title.

"(3) STATE OF GOOD REPAIR.--The term 'state of good repair' means a situation in which the capital asset base of a public transportation system operated by a recipient is in sufficient condition, as defined by the Secretary of Transportation, to support safe, reliable, cost effective, and accessible provision of planned levels of service.

"(b) GENERAL AUTHORITY.--The Secretary may make grants under this section to a recipient for a capital project that restores or replaces existing public transportation assets related to bus and fixed guideway systems, provided that the recipient has established and utilizes a public transportation asset management system as defined in section 5302(a)(11) of this title.

"(c) FORMULA FACTORS.--The Secretary shall develop a formula to apportion funds made available or appropriated in each fiscal year to carry out this program under section 5338 of this title that--

"(1) allocates funds based on the relative cost to restore public transportation assets of recipients eligible under this section to a state of good repair, taking into account the funding made available under sections 5307 and 5311 of this title;

"(2) does not inequitably reward public transportation agencies that have failed to adequately maintain their capital assets in a state of good repair, as defined under this section;

"(3) assures equitable treatment of relative needs of rail and bus systems;

"(4) provides an incentive for the development and implementation of aggressive asset management methods and techniques; and

"(5) takes into account any other factors deemed necessary by the Secretary.

"(d) ALLOCATION OF FUNDS.--Of the funds made available to carry out this section under section 5338 of this title for fiscal years 2012 through 2017, **\*\*XXX [dollars or percent]** shall be available for the restoration or replacement of existing public transportation assets related to bus systems.

"(e) GRANT REQUIREMENTS.--A grant awarded under this section shall be subject to such terms and conditions as the Secretary deems necessary.

"(f) GOVERNMENT'S SHARE OF COSTS.--

"(1) IN GENERAL.--A grant for a capital project under this section shall be, at the option of the recipient, up to 80 percent of the net capital costs of the project, as determined by the Secretary.

"(2) REMAINDER.--The remainder of the net project costs may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital."

(b) CONFORMING AMENDMENT.--The Item relating to section 5306 in the analysis of chapter 53 is amended to read as follows:

"5306. State of good repair formula grants program."

## **SEC. 2907. URBANIZED AREA FORMULA GRANTS.**

(a) DEFINITIONS.--Section 5307(a) is amended to read as follows:

"(a) DEFINITIONS.--In this section, the term 'designated recipient' means--

"(1) an entity designated, in accordance with the planning process under sections 5303 and 5304 of this title, by the chief executive officer of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under section 5336 of this title that are attributable to transportation management areas identified under section 5303 of this title; or

"(2) a State or regional authority if the authority is responsible under the laws of a State for a capital project and for financing and directly providing public transportation."

(b) GENERAL AUTHORITY.--Section 5307(b) is amended--

(1) in paragraph (1),

(A) by striking "and associated capital maintenance items";

(B) by revising subparagraph (D) to read as follows:

"(D) operating costs of equipment and facilities for use in public transportation in an urbanized area with a population of less than 200,000 or in accordance with paragraph (2) of this subsection; and";

(C) by revising subparagraph (E) to read as follow:

"(E) for operating costs of equipment and facilities for use in public transportation in the event of a national or regional emergency declared consistent with the authorities identified in section 5316(b) of this title, under terms and conditions as determined by the Secretary."; and

(D) by striking subparagraph (F);

(2) by striking paragraph (2) and redesignating paragraph (3) as paragraph (7);

(3) by inserting new paragraphs (2), (3), (4), (5) and (6) after paragraph (1) to read as follows:

"(2) TEMPORARY AND TARGETED OPERATING ASSISTANCE.--The Secretary may make grants under this section to finance the operating cost of equipment and facilities for use in public transportation to a recipient in an area of at least 200,000 in population provided--

"(A) there is a decline in employment in the recipient's metropolitan area over a period of three consecutive months as reported by the United States Department of Labor, Bureau of Labor Statistics, and the decline during such period is significant as determined by the Secretary;

"(B) no more than 25 percent of the amount allocated to the recipient is available for operating assistance during the first fiscal year in which a significant decline in employment is determined under subparagraph (A);

"(C) no more than 15 percent of the amount allocated to the recipient is available for operating assistance during the second fiscal year following a significant decline in employment as determined under subparagraph (A); and

"(D) no more than 10 percent of the amount allocated to the recipient is available for operating assistance during the third fiscal year following a significant decline in employment as determined under subparagraph (A).

"(3) PERIOD OF AVAILABILITY FOR OPERATING ASSISTANCE.--Operating assistance awarded under paragraph (2) of this subsection shall be available to the recipient for expenditure until the end of the third fiscal year following a significant decline in employment as determined under paragraph (2)(A), after which time any unexpended funds shall be available for other eligible activities under this section.

"(4) EXCLUSION PERIOD.--A recipient of a grant under paragraph (2) of this subsection shall not be eligible for a future grant

awarded for a period equal to the number of fiscal years in which the recipient was awarded a grant under that paragraph.

"(5) CERTIFICATION.--The Secretary may make a grant under paragraph (2) of this subsection only if the recipient's grant application includes--

"(A) an assurance that its non-Federal funding partners, including the State and local governmental entities, will maintain the tax rate or rate of allocations dedicated to public transportation at or above the rate in the previous fiscal year for each fiscal year a grant is awarded under paragraph (2) of this subsection; and

"(B) a certification that the recipient shall maintain public transportation service levels at or above the current service level for each fiscal year a grant is awarded under paragraph (2) of this subsection, which shall be demonstrated by an equal or greater number of vehicle hours of service for each fiscal year a grant is awarded under paragraph (2) when compared to the number of vehicle hours provided in the previous fiscal year.

"(6) SPECIAL RULE FOR FISCAL YEARS 2013 THROUGH 2016--

"(A) INCREASED FLEXIBILITY.--The Secretary may award grants under this section, from funds made available to carry out this section for each of the fiscal years 2013 through 2016, to finance the operating cost of equipment and facilities for use in public transportation in an urbanized area with a population of at least 200,000, as determined by the 2010 decennial census of population, if--

"(i) the urbanized area had a population of less than 200,000, as determined by the 2000 decennial census of population;

"(ii) a portion of the urbanized area was a separate urbanized area with a population of less than 200,000, as determined by the 2000 decennial census of population;

"(iii) the area was not designated as an urbanized area, as determined by the 2000 decennial census of population; or

"(iv) a portion of the area was not designated as an urbanized area, as determined by the 2000 decennial census, and received assistance under section 5311 of this title in fiscal year 2011.

"(B) MAXIMUM AMOUNTS IN FISCAL YEAR 2013.--  
In fiscal year 2013--

"(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than the 80 percent of the amount apportioned in fiscal year 2011 to the urbanized area with a population of



less than 200,000, as determined in the 2000 decennial census of population;

"(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 80 percent the amount apportioned to the urbanized area under section 5311 of this title for fiscal year 2011; and

"(iii) each urbanized area that includes a portion of any area not designated as an urbanized area, as determined by the 2000 decennial census, and eligible to receive funds under subparagraph (A)(iv), may utilize an amount of funds for purposes described in paragraph (A) that is not more than 80 percent the amount the portion of the area received under section 5311 of this title for fiscal year 2011.

"(C) MAXIMUM AMOUNTS IN FISCAL YEAR 2014. In fiscal year 2014--

"(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than the 60 percent of the amount apportioned in fiscal year 2011 to the urbanized area with a population of less than 200,000, as determined in the 2000 decennial census of population;

"(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 60 percent the amount apportioned to the urbanized area under section 5311 of this title for fiscal year 2011; and

"(iii) each urbanized area that includes a portion of any area not designated as an urbanized area, as determined by the 2000 decennial census, and eligible to receive funds under subparagraph (A)(iv), may utilize an amount of funds for purposes described in paragraph (A) that is not more than 60 percent the amount the portion of the area received under section 5311 for fiscal year 2011.

"(D) MAXIMUM AMOUNTS IN FISCAL YEAR 2015.-- In fiscal year 2015--

"(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 40 percent of the amount apportioned in fiscal year 2011 to the urbanized area with a population of less than 200,000, as determined in the 2000 decennial census of population;

"(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 40 percent of the amount apportioned to the urbanized area under section 5311 of this title for fiscal year 2011; and

"(iii) each urbanized area that includes a portion of any area not designated as an urbanized area, as determined

by the 2000 decennial census, and eligible to receive funds under subparagraph (A)(iv), may use an amount of funds for purposes described in paragraph (A) that is not more than 40 percent of the amount the portion of the area received under section 5311 of this title in fiscal year 2011.

"(E) MAXIMUM AMOUNTS IN FISCAL YEAR 2016.--

In fiscal year 2016--

"(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 20 percent of the amount apportioned in fiscal year 2011 to the urbanized area with a population of less than 200,000, as determined in the 2000 decennial census of population;

"(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 20 percent of the amount apportioned to the urbanized area under this section for fiscal year 2011; and

"(iii) each urbanized area that includes a portion of any area not designated as an urbanized area, as determined by the 2000 decennial census, and eligible to receive funds under subparagraph (A)(iv), may use an amount of funds for purposes described in paragraph (A) that is not more than 20 percent of the amount the portion of the area received under section 5311 of this title in fiscal year 2011."; and

(4) in redesignated paragraph (7), by striking "a transportation management area designated under section 5303(k) of this title" and inserting "an urbanized area with a population of at least 200,000".

(c) GRANT RECIPIENT REQUIREMENTS.--Section 5307(c)(1) is amended--

(1) by revising subparagraph (E) to read as follows:

"(E) in carrying out a procurement under this section, will comply with sections 5323 and 5325 of this title"; and

(2) by revising subparagraph (H) to read as follows:

"(H) will comply with sections 5301(d), 5303, 5304, and 5335 of this title;" .

(d) GOVERNMENT SHARE OF COSTS.--Section 5307(e)(1) is amended to read as follows:

"(1) CAPITAL PROJECTS.--A grant for a capital project under this section shall be, at the option of the recipient, for up to 80 percent of the net project costs of the project."

(e) TECHNICAL AMENDMENTS.--Section 5307 is amended--

(1) by striking subsection (g);

(2) by redesignating subsection (h) as subsection (g);

- (3) in redesignated subsection (g), by striking "5306" and inserting "5304";
- (4) by striking subsection (i);
- (5) by redesignating subsections (j), (k) and (l) as subsections (i), (j) and (k), respectively; and
- (6) in redesignated subsection (k)--
  - (A) by striking paragraph (1) and paragraph (2)(A); and
  - (B) by striking "(B) TITLE 5.--".

## **SEC. 2908. GREENHOUSE GAS AND ENERGY REDUCTION PROGRAMS.**

(a) IN GENERAL.--Section 5308 is amended to read as follows:

### **"Sec. 5308. Greenhouse gas and energy reduction programs**

"(a) CLEAN AND ENERGY EFFICIENT PUBLIC TRANSPORTATION RESEARCH.--The Secretary of Transportation may make grants, contracts, cooperative agreements, and other agreements (including agreements with departments, agencies and instrumentalities of the United States) to administer and undertake nationally significant research, development, demonstration, deployment and evaluation projects, that the Secretary determines will reduce energy consumption or emissions of public transportation systems or support public transportation's contribution to larger emission or energy consumption reductions.

"(b) PUBLIC TRANSPORTATION TEST BEDS DEMONSTRATION PROGRAM.-- The Secretary may make grants, contracts, cooperative agreements, and other agreements (including agreements with departments, agencies and instrumentalities of the United States) to administer and undertake a public transportation test beds demonstration program with public transit agencies, consortiums of public transportation agencies or other entities for research, testing, evaluation and demonstration of innovative technologies at public transportation agencies that reduce greenhouse gas emissions or energy consumption of public transportation systems or improves public transportation efficiency, reliability, or information services.

"(c) GREENHOUSE GAS AND ENERGY REDUCTION DEMONSTRATION PROGRAM.--The Secretary may make grants to, or cooperative agreements with public or private operators of public transportation or States for nationally significant and innovative projects that demonstrate practices or technologies to reduce greenhouse gas emissions or energy consumption of public transportation systems or support public transportation's contribution to larger emission or energy consumption reductions.

"(d) PROJECT AND PROGRAM EVALUATION AND TECHNICAL ASSISTANCE.--The Secretary may use up to 3 percent of the amount made available to carry out this section--

- "(1) for project and program evaluation and analysis;
- "(2) for program management; and
- "(2) to provide technical assistance.

"(e) REQUIREMENTS.--Funds made available by or appropriated to carry out this section shall be subject to such terms and conditions as the Secretary deems necessary.

"(f) GOVERNMENT'S SHARE OF THE COSTS.--The Secretary shall determine the Government's share of the costs of a project carried out under this section."

(b) CONFORMING AMENDMENT.--The item relating to section 5308 in the table of sections for chapter 53 is amended to read as follows:

"5308. Greenhouse gas and energy reduction programs."

## **SEC. 2909. CAPITAL INVESTMENT GRANTS.**

Section 5309 is amended to read as follows:

### **"Sec. 5309. Capital investment grants**

"(a) CAPITAL INVESTMENT.--In this section, the term 'capital investment' means a capital project for an operable segment of--

- "(1) a new fixed guideway system or an extension to an existing fixed guideway system;
- "(2) a new project in which a substantial portion of the project operates in a separate right-of-way dedicated for public transit use during peak hour operations; or
- "(3) a new project representing a substantial investment in a defined corridor as demonstrated by features such as park-and-ride lots, transit stations, bus arrival and departure signage, intelligent transportation systems technology, traffic signal priority, off-board fare collection, advanced bus technology, and other features that support the long-term corridor investment.

"(b) GENERAL AUTHORITY.--The Secretary may make grants (which may include full funding grant agreements and project construction grant agreements) under this section to State and local governmental authorities for--

- "(1) construction of capital investments under subsections (d) and (e), including the acquisition of real property, acquisition of rolling stock, acquisition of rights-of-way, and utility relocation; and

"(2) project development of capital investments under subsections (d) and (e), including engineering, environmental studies, and protecting rights-of-way through acquisition.

"(c) GRANT REQUIREMENTS.--

"(1) IN GENERAL.--The Secretary may not approve a grant for a project under this section unless the Secretary determines that--

"(A) the project is part of an approved transportation plan and program of projects required under sections 5303, 5304, and 5306 of this title; and

"(B) the applicant has, or will have--

"(i) the legal, financial, and technical capacity to carry out the project, including safety and security aspects of the project;

"(ii) satisfactory continuing control over the use of the equipment or facilities; and

"(iii) the capability and willingness to maintain the equipment or facilities.

"(2) CERTIFICATION.--An applicant that has submitted the certifications required under subparagraphs (A), (B), (C), and (H) of section 5307(d)(1) of this title shall be deemed to have provided sufficient information upon which the Secretary may make the determinations required under this subsection.

"(3) GRANTEE REQUIREMENTS.--The Secretary shall require that a grant awarded under this section to a recipient be subject to all terms, conditions, requirements, and provisions that the Secretary determines to be necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in the value of real property resulting from the project assisted under this section.

"(d) CAPITAL INVESTMENT GRANT REQUIREMENTS, APPROVAL, EVALUATION, ADVANCEMENT, AND RATING.--

"(1) REQUIREMENTS.--

"(A) FULL FUNDING GRANT AGREEMENTS.--Except as provided for in subsection (e), a capital investment construction project for which funding under this section is \$100,000,000 or more shall be carried out through a full funding grant agreement.

"(B) PROJECT CONSTRUCTION GRANT AGREEMENTS.-- Except as provided for in subsection (e) and paragraph (C), a capital investment construction project for which funding under this section is less than \$100,000,000 shall be carried out through a project construction grant agreement.

"(C) CONSTRUCTION GRANTS.--Except as provided for in subsection (e), a capital investment construction project for which funding under this section is less than \$100,000,000 and for

which a commitment of future funds is not required may be carried out through a construction grant.

"(D) CRITERIA.--The Secretary shall enter into a full funding grant agreement, a project construction grant agreement, or a construction grant, based on the evaluations and ratings required under this subsection, with each grantee receiving assistance for a capital investment project that--

"(i) is authorized for project development and construction; and

"(ii) has been rated as medium, medium-high, or high on both project performance and project finance in accordance with paragraph (5)(B).

"(2) APPROVAL OF GRANTS.--The Secretary may approve a grant (including a full funding grant agreement, a project construction grant agreement or a construction grant) under this section for a capital investment project only if the Secretary determines that--

"(A) the project performs well based on a comprehensive review of its transportation effects, environmental effects, economic development effects, and a comparison of its effects to its cost; and

"(B) the project is supported by an acceptable financial plan (including evidence of stable and dependable financing sources) to construct, maintain, and operate the project, and recapitalize, maintain and operate the entire public transportation system without requiring a reduction in existing public transportation services or level of service to operate the proposed project.

"(3) CONSIDERATIONS RELATED TO PROJECT PERFORMANCE.--In making the determinations under paragraph (2)(A), the Secretary shall consider--

"(A) the reliability of the forecasts of costs and performance;

"(B) the capability of the grant recipient to effectively manage the development and construction of the project;

"(C) local public transportation supportive land use policies and future patterns; and

"(D) other factors that the Secretary determines to be appropriate to carry out this subsection.

"(4) CONSIDERATIONS RELATED TO PROJECT FINANCE.--In making the determinations under paragraph (2)(B), the Secretary shall analyze, evaluate and consider--

"(A) the degree to which the proposed project plan provides for the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases;

"(B) the degree to which each proposed local source of capital and operating financing is stable, reliable, available, and

dedicated to the proposed purposes within the proposed project financial plan;

"(C) the availability of local resources to recapitalize and operate the overall proposed public transportation system, including essential feeder bus and other services necessary to achieve the projected ridership levels without requiring a reduction in existing public transportation services or level of service to operate the proposed project;

"(D) the reliability of the forecasts of costs and revenues made by the recipient;

"(E) existing grant commitments;

"(F) any debt obligation that exists, or is proposed by the recipient, for the proposed project or other public transportation purpose; and

"(G) the extent to which the project has a local financial commitment that exceeds the required non-Federal share of the cost of the project.

"(5) PROJECT ADVANCEMENT AND RATINGS.--

"(A) PROJECT ADVANCEMENT.--A proposed project under this section may advance to project development and a full funding grant agreement, a project construction grant agreement, or a grant for construction, only if the Secretary determines that the project meets the requirements of this section and there is a reasonable likelihood that the project will continue to meet such requirements. A proposed project under this section may advance to project development only if the Secretary determines that it is covered by an environmental categorical exclusion or is the subject of a completed an environmental assessment or final environmental impact study.

"(B) RATINGS.--In making a determination under subparagraph (A), the Secretary shall evaluate and rate project performance and finance each on a 5-point scale (high, medium-high, medium, medium-low, or low). The Secretary shall provide, in addition to a project rating on project performance and project finance, individual ratings for each of the criteria established under paragraphs (2)(A) and (2)(B) and shall give comparable, but not necessarily equal, numerical weight to each project performance criteria in calculating the overall project performance rating.

"(6) PROGRAMS OF INTERRELATED PROJECTS.--

"(A) DESIGNATION.--The Secretary may designate a number of operable public transportation segments eligible under this subsection and subsection (e) as program elements in a program of interrelated projects. The elements must be carried out as a comprehensive simultaneous effort over a defined future period.

"(B) REVIEW.--When reviewing a proposed program of interrelated projects, the Secretary may consider the project performance, project finance and other assessment factors of all program elements together to the extent that it expedites carrying out each project element of the program.

"(C) APPLICABILITY OF GOVERNMENT REQUIREMENTS.--Including a program element not financed by the Government in a program of interrelated projects does not impose Government requirements that would otherwise not apply to the element.

"(6) POLICY GUIDANCE.--The Secretary shall publish policy guidance, in accordance with the requirements of section 5334(l) of this title, regarding the capital investment project review and evaluation process and criteria each time significant changes are made by the Secretary to the process and criteria, but not less frequently than once every 2 years.

"(e) EXEMPT CAPITAL INVESTMENT GRANTS.--

"(1) IN GENERAL.--

"(A) PROJECTS RECEIVING LESS THAN 10 PERCENT AND NO MORE THAN \$100,000,000 UNDER THIS SECTION.--Except as provided by subparagraph (B), a capital investment project shall be subject to the requirements of this subsection if the Federal assistance provided or to be provided under this section for the project is less than 10 percent of the total capital cost and no more than \$100,000,000.

"(B) PROJECTS RECEIVING LESS THAN \$25,000,000 UNDER THIS SECTION.--If the assistance provided under this section with respect to a capital investment project is less than \$25,000,000, the requirements of this subsection shall apply to the project until the effective date of the policy guidance that is first issued under paragraph (d)(6) of this section after the enactment of the Federal Public Transportation Act of 2011.

"(2) ADVANCEMENT OF PROJECT TO PROJECT DEVELOPMENT AND CONSTRUCTION.--A proposed project under this subsection may advance to project development and a full funding grant agreement, project construction grant agreement, or a grant for construction only if the Secretary finds that the project meets the requirements of subsection (c) of this section and there is a reasonable likelihood that the project will continue to meet such requirements.

"(3) TERMS AND CONDITIONS.--A full funding grant agreement, project construction grant agreement, or a grant for construction provided under this subsection shall be subject to terms and conditions deemed appropriate by the Secretary.



"(f) PREVIOUSLY ISSUED LETTER OF INTENT, FULL FUNDING GRANT AGREEMENTS OR PROJECT CONSTRUCTION GRANT AGREEMENTS.--Subsections (d) and (e) do not apply to projects for which the Secretary has issued a letter of intent or entered into a full funding grant agreement or project construction grant agreement before the date of the enactment of the Federal Public Transportation Act of 2011.

"(g) LETTERS OF INTENT, FULL FUNDING GRANT AGREEMENTS, PROJECT CONSTRUCTION GRANT AGREEMENTS, AND EARLY SYSTEMS WORK AGREEMENTS.--

"(1) LETTERS OF INTENT.--

"(A) AMOUNTS INTENDED TO BE OBLIGATED.--The Secretary may issue a letter of intent to an applicant announcing an intention to obligate, for a capital project under this section, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project. When a letter is issued for fixed guideway projects, the amount shall be sufficient to complete at least an operable segment.

"(B) TREATMENT.--The issuance of a letter under subparagraph (A) is deemed not to be an obligation under sections 1108(c), 1108(d), 1501, and 1502(a) of title 31 or an administrative commitment.

"(2) FULL FUNDING GRANT AGREEMENTS.--

"(A) TERMS.--The Secretary may make a full funding grant agreement with an applicant. The agreement shall--

"(i) establish the terms of participation by the Government in a project under this section;

"(ii) establish the maximum amount of Government financial assistance for the project;

"(iii) cover the period of time for completing the project, including a period extending beyond the period of an authorization; and

"(iv) make timely and efficient management of the project easier according to the law of the United States.

"(B) SPECIAL FINANCIAL RULES.--

"(i) A full funding grant agreement under this paragraph obligates an amount of available budget authority specified in law and may include a commitment, contingent on amounts to be specified in law in advance for commitments under this paragraph, to obligate an additional amount from future available budget authority specified in law.

"(ii) The agreement shall state that the contingent commitment is not an obligation of the Government.

"(iii) Interest and other financing costs of efficiently carrying out a part of the project within a reasonable time are a cost of carrying out the project under a full funding grant agreement.

"(iv) The amount stipulated in an agreement under this paragraph for a fixed guideway project shall be sufficient to complete at least an operable segment.

"(3) PROJECT CONSTRUCTION GRANT AGREEMENTS.--A project construction grant agreement under this section shall specify the scope of the project to be constructed, the estimated net project cost of the project, the schedule under which the project shall be constructed, the maximum amount of funding to be obtained under this subsection, the proposed schedule for obligation of future Federal grants, and the sources of funding from other than the Government. The agreement may include a commitment on the part of the Secretary to provide funding for the project in future fiscal years.

"(4) EARLY SYSTEM WORK AGREEMENTS.--

"(A) CONDITIONS.--The Secretary may make an early systems work agreement with an applicant if a categorical exclusion, finding of no significant impact, or a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued on the project and the Secretary finds there is reason to believe--

"(i) a full funding grant agreement, project construction grant agreement, or construction grant for the project will be made; and

"(ii) the terms of the work agreement will promote ultimate completion of the project more rapidly and at less cost.

"(B) CONTENTS.--

"(i) A work agreement under this paragraph obligates an amount of available budget authority specified in law and shall provide for reimbursement of preliminary costs of carrying out the project, including land acquisition, timely procurement of system elements for which specifications are decided, and other activities the Secretary decides are appropriate to make efficient, long-term project management easier.

"(ii) A work agreement under this paragraph shall cover the period of time the Secretary considers appropriate. The period may extend beyond the period of current authorization.

"(iii) Interest and other financing costs of efficiently carrying out the work agreement within a reasonable time are a cost of carrying out the agreement.

"(iv) If an applicant does not carry out the project for reasons within the control of the applicant, the applicant shall repay all Government payments made under the work agreement plus reasonable interest and penalty charges the Secretary establishes in the agreement.

"(5) CONTINGENT COMMITMENT AUTHORITY.--

"(A) LIMITATION.--The total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all outstanding letters of intent, full funding grant agreements, project construction grant agreements, and early systems work agreements under this subsection for capital investment projects may be not more than the sum of the amount authorized under section 5338 of this title for such projects and an amount equivalent to the last 3 fiscal years of funding allocated under section 5338 for such projects, less an amount the Secretary reasonably estimates is necessary for grants under this section for those of such projects that are not covered by a letter or agreement. The total amount covered by new letters and contingent commitments included in full funding grant agreements, project construction grant agreements, and early systems work agreements for such projects may be not more than a limitation specified in law.

"(B) AUTHORIZATION REQUIRED.--An obligation may be made under this subsection only when amounts are authorized for the obligation.

"(6) NOTIFICATION OF CONGRESS.--At least 30 days before issuing a letter of intent or entering into a full funding grant agreement or project construction grant agreement under this section, the Secretary shall notify, in writing, the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement as well as the evaluations and ratings for the project.

"(h) BEFORE AND AFTER STUDY.--

"(1) IN GENERAL.--A full funding grant agreement or project construction grant agreement under this section shall require the applicant to submit a report, not more than three years after the opening for service of the capital project, that describes and analyzes the impacts of the capital investment project on transit services and transit ridership and evaluates the consistency of predicted and actual project characteristics, cost, and performance.

"(2) INFORMATION COLLECTION AND ANALYSIS PLAN.--During project development, applicants seeking an agreement under this section shall submit a plan for approval by the Secretary for the development of the report required by this subsection. Preparation of this

plan shall be included in the full funding grant agreement or project construction grant agreement as an eligible activity.

"(3) COLLECTION OF DATA ON CURRENT SYSTEM.--Prior to approval of a full funding grant agreement or project construction grant agreement, recipients shall have collected data on the current system, according to the plan required by paragraph (2), before the beginning of construction of the proposed capital investment project. Collection of this data shall be included in the full funding grant agreement as an eligible activity.

"(i) GOVERNMENT'S SHARE OF NET PROJECT COST.--

"(1) IN GENERAL.--Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the net project cost. A grant for the project shall be for 80 percent of the net capital project cost, unless the grant recipient requests a lower grant percentage.

"(2) ADJUSTMENT FOR COMPLETION UNDER BUDGET.--In any instance in which the originally defined project has been completed at a cost below the original estimate, the Government and grant recipient shall share the savings in proportion to the matching ratio specified in the original grant. The Secretary may adjust the final net project cost of a capital investment project evaluated under subsections (d) and (e) to include the cost of eligible activities not included in the originally defined project if the Secretary determines that the originally defined project has been completed at a cost that is significantly below the original estimate.

"(3) REMAINDER OF NET PROJECT COST.--The remainder of net project costs shall be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

"(4) LIMITATION ON STATUTORY CONSTRUCTION.--Nothing in this section, including paragraph (1) and subsection (d)(4)(G), shall be construed as authorizing the Secretary to require a non-Federal financial commitment for a project that is more than 20 percent of the net capital project cost.

"(5) SPECIAL RULE FOR ROLLING STOCK COSTS.--In addition to amounts allowed under paragraph (1), a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the applicant satisfies the Secretary that only amounts other than amounts of the Government were used and that the purchase was made for use on the extension. A refund or reduction of the remainder may be made only if a refund of a proportional amount of the grant of the Government is made at the same time.

"(6) LIMITATION ON APPLICABILITY.--This subsection does not apply to projects for which the Secretary has entered into a full funding grant agreement or project construction grant agreement before the date of the enactment of the Federal Public Transportation Act of 2011.

"(j) AVAILABILITY OF AMOUNTS.--

"(1) IN GENERAL.--An amount made available or appropriated under section 5338 of this title for capital investment projects shall remain available for 3 fiscal years, including the fiscal year in which the amount is made available or appropriated. Any portion of the amount that is unobligated at the end of the 3-fiscal-year period may be used by the Secretary for any purpose under this section.

"(2) USE OF DEOBLIGATED AMOUNTS.--An amount available under this section that is deobligated may be used for any purpose under this section.

"(k) ANNUAL REPORT ON FUNDING RECOMMENDATIONS.--Not later than the first Monday in February of each year, the Secretary shall submit to the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate a report that includes--

"(1) a proposal of allocations of amounts to be available to finance grants for capital investment projects among applicants for these amounts; and

"(2) evaluations and ratings, as required under subsection (d), for each such project that is in project development.

"(l) BEFORE AND AFTER STUDY REPORTS.--Not later than the first Monday of August of each year, the Secretary shall submit to the committees referred to in subsection (k) a report containing a summary of the results of the studies conducted under subsection (g)(2)(C).

"(m) ALLOCATING AMOUNTS.--Not more than 8 percent of amounts made available by section 5338 of this title for this section may be expended on project development prior to issuance of a full funding grant agreement or project construction grant agreement."

## **SEC. 2910. CONSOLIDATED SPECIALIZED TRANSPORTATION GRANT PROGRAM.**

(a) IN GENERAL.--Section 5310 is amended to read as follows:

### **"Sec. 5310. Consolidated specialized transportation grant program**

"(a) DEFINITIONS.--In this section:

"(1) ACCESS TO JOBS PROJECT.--The term 'access to jobs project' means a project relating to the development and maintenance of transportation services designed to transport eligible low-income individuals to and from jobs and activities related to their employment, including--

"(A) transportation projects to finance planning, capital, and operating costs of providing access to jobs under this chapter;

"(B) promoting public transportation by low-income workers, including the use of public transportation by workers with nontraditional work schedules;

"(C) promoting the use of transit vouchers for welfare recipients and eligible low-income individuals; and

"(D) promoting the use of employer-provided transportation, including the transit pass benefit program under section 132 of the Internal Revenue Code of 1986 (26 U.S.C. 132).

"(2) DISABILITY.--The term 'disability' has the meaning defined in section 3 of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12102).

"(3) ELIGIBLE LOW-INCOME INDIVIDUAL.--The term 'eligible low-income individual' means an individual whose family income is at or below 150 percent of the poverty line (as that term is defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that section) for a family of the size involved.

"(4) RECIPIENT.--The term 'recipient' means a designated recipient (as defined in section 5307(a)(2) of this title) or a State that receives a grant under this section directly, or a local governmental authority authorized by the designated recipient to receive the funds directly.

"(5) REVERSE COMMUTE PROJECT.--The term 'reverse commute project' means a public transportation project designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities, including any projects to--

"(A) subsidize the costs associated with adding reverse commute bus, train, carpool, van routes, or service from urbanized areas and other than urbanized areas to suburban workplaces;

"(B) subsidize the purchase or lease by a nonprofit organization or public agency of a van or bus dedicated to shuttling employees from their residences to a suburban workplace; or

"(C) otherwise facilitate the provision of public transportation services to suburban employment opportunities.

"(6) SUBRECIPIENT.--The term 'subrecipient' means a State or local governmental authority, nonprofit organization, or operator of public transportation services that receives a grant under this section indirectly through a recipient.

"(b) GENERAL AUTHORITY.--The Secretary may make grants under this section for--

"(1) planning, capital, and operating assistance for public transportation designed to fill gaps in or enhance transportation services available to accommodate the needs of older adults, people with a disabilities, or low-income individuals;

"(2) planning, capital and operating assistance for shared ride alternatives to public transportation designed to fill gaps in or enhance transportation services available to older adults, people with a disabilities, or low-income individuals; and

"(3) access to jobs and reverse commute projects.

"(c) ADMINISTRATIVE EXPENSES.--A designated recipient or a State apportioned funds under this section may use up to 10 percent of the amounts apportioned to the recipient to administer, plan, and provide technical assistance for a project funded under this section.

"(d) FORMULA.--

(1) IN GENERAL.--Of the funds made available to carry out this section--

"(A) 20 percent shall be allocated to the States in accordance with paragraph (2) for use in other than urbanized areas;

"(B) 20 percent shall be allocated to States in accordance with paragraph (3) for use in urbanized areas with a population of less than 200,000; and

"(C) 60 percent shall be allocated to a designated recipient in urbanized areas with a population of 200,000 in accordance with paragraph (4) for use in such areas.

"(2) OTHER THAN URBANIZED AREAS.--The Secretary shall apportion funds for use in other than urbanized areas pursuant to paragraph (1)(A) under a formula that considers--

"(A) the number of older adults in such State outside of urbanized areas;

"(B) the number of people with disabilities in such State outside of urbanized areas;

"(C) the number of eligible low-income individuals in such State outside of urbanized areas ; and

"(D) any other factors the Secretary deems necessary.

"(3) SMALL URBANIZED AREAS.--The Secretary shall apportion funds for use in urbanized areas with a population of less than 200,000 pursuant to paragraph (1)(B) under a formula that considers--

"(A) the number of older adults in such urbanized areas;

"(B) the number of people with disabilities in such urbanized areas;

"(C) the number of eligible low-income individuals in such urbanized areas; and

"(D) any other factors the Secretary deems necessary.

"(4) LARGE URBANIZED AREAS.--The Secretary shall apportion funds for use in urbanized areas with a population of 200,000 or more pursuant to paragraph (1)(C) under a formula that considers--

"(A) the number of older adults in such urbanized areas;

"(B) the number of people with disabilities in such urbanized areas;

"(C) the number of eligible low-income individuals in such urbanized areas; and

"(D) any other factors the Secretary deems necessary.

"(5) EXCEPTIONS.--A State may use funds apportioned under paragraphs (2) and (3)--

"(A) for projects serving areas other than the area specified in paragraphs (2) and (3), if the Governor of the State certifies that all of the objectives of this section are being met in the specific area; or

"(B) for projects anywhere in the State if the State has established a statewide program for meeting the objections of this section.

"(e) LEASING VEHICLES.--Vehicles acquired under this section may be leased to local governmental authorities, private non-profit organizations and operators of public transportation to improve transportation services designed to meet the needs of older adults and people with disabilities.

"(f) MEAL DELIVERY FOR HOMEBOUND INDIVIDUALS.--Public transportation service providers receiving assistance under this section or section 5311(c) of this title may coordinate and assist in regularly providing meal delivery service for homebound individuals if the delivery service does not conflict with providing public transportation service or reduce service to public transportation passengers.

"(g) GRANT REQUIREMENTS.--

"(1) IN GENERAL.--A grant under this section shall be subject to the requirements of a grant under section 5307 of this title to the extent the Secretary deems appropriate.

"(2) PROGRAM OF PROJECTS.--A grant under this section may be awarded only if a State or designated recipient apportioned funds under this section submits to the Secretary a program of projects annually.

"(3) DISTRIBUTION.--The program of projects required under paragraph (2) shall ensure that allocations are distributed on a fair and equitable basis.

"(h) COORDINATION.--

"(1) IN GENERAL.--The Secretary shall coordinate activities under this section with related activities under programs of other Federal departments and agencies.

"(2) PROJECT SELECTION AND PLANNING.--A grant under this section may be awarded only if a designated recipient or a State apportioned funds under this section certifies that--



"(A) the projects selected were derived from, and reflect the priorities articulated in, a locally developed, coordinated public transit-human services transportation plan as required in sections 5303(j)(1)(G) and 5304(h)(1)(G) of this title;

"(B) the plan was developed and approved through a process that included representatives of public, private, nonprofit transportation and human services providers, and participation by the public, particularly older adults, people with disabilities, and low-income individuals.

"(3) STATE PROGRAM OF PROJECTS.--A program of projects that a State submits to the Secretary pursuant to subsection (g)(2) shall contain an assurance that the program provides for maximum feasible coordination of transportation services assisted under this section with transportation services assisted by other Government sources.

"(4) AVAILABILITY OF CAPITAL ASSETS FOR DISASTER RESPONSE.--Assets acquired under this section shall be available for disaster evacuation response and exercises or drills.

"(i) GOVERNMENT'S SHARE OF COSTS.--

"(1) CAPITAL PROJECTS.--A grant for a capital project under this section may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

"(2) EXCEPTION.--A State described in section 120(b) of title 23 shall receive a Government share of the net costs in accordance with the formula under that section.

"(3) OPERATING ASSISTANCE.--A grant made under this section for operating assistance may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary.

"(4) EXCEPTION.--A State described in section 120(b) of title 23 shall receive a Government share of the net operating costs equal to 62.5 percent of the Government share provided for under paragraph (2) of this subsection.

"(5) REMAINDER.--The remainder of the net project costs--

"(A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; and

"(B) may be derived from amounts appropriated to or made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation.

"(C) notwithstanding subparagraph (B), may be derived from amounts made available to carry out the Federal lands highway program established by section 204 of title 23.

"(4) USE OF CERTAIN FUNDS.--For purposes of paragraph (5)(B), the prohibitions on the use of funds for matching requirements

under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

"(j) PERIOD OF AVAILABILITY.--An amount apportioned under this section may be obligated by the recipient for up to 3 fiscal years, beginning with the year of apportionment plus two additional years. The amount that is not obligated by the end of that period shall be added to the amount that may be apportioned under this section in the next fiscal year.

"(k) TRANSFERS OF FACILITIES AND EQUIPMENT.--With the consent of the recipient in possession of a facility or equipment acquired with a grant under this section, a State may transfer the facility or equipment to any recipient eligible to receive assistance under this chapter if the facility or equipment will continue to be used as required under this section."

(b) CONFORMING AMENDMENT.--The item relating to section 5310 in the analysis of chapter 53 is amended to read as follows:

"5310. Consolidated specialized transportation grant program."

## **SEC. 2911. FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.**

(a) IN GENERAL.--Section 5311(b) is amended--

(1) in paragraph (1)--

(A) by redesignating subparagraphs (A), (B), and (C) as subparagraphs (B), (C), and (D), respectively;

(B) by inserting a new subparagraph (A) at the beginning to read as follows:

"(A) planning, provided that a grant under this section for such activities is in addition to funding awarded to a State under section 5305 of this title for planning activities that are directed specifically at the needs of other than urbanized areas in the State;"

(C) in subparagraph (B) as redesignated--

(i) by striking "public transportation"; and

(ii) by inserting at the end "and project administration".

(2) by striking paragraph (3);

(3) by redesignating paragraph (4) as paragraph (3); and

(4) in paragraph (3), as redesignated, by inserting "planning activities," before "capital".

(b) APPORTIONMENTS.--Section 5311(c) is amended--

(1) by striking paragraph (1);

- (2) by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively;
- (3) in paragraph (1), as redesignated--
  - (A) by striking "Remaining amounts" after "(1)" and inserting "In general";
  - (B) by striking "subsections (a)(1)(C)(v)" and all that follows through (1)" and inserting "section 5338";
  - (C) in subparagraph (A), by striking "(3)" and inserting "(2)"; and
  - (D) in subparagraph (B), by striking "(4)" and inserting "(3)";
- (4) in paragraph (2), as redesignated, by striking "(2)" and inserting "(1)"; and
- (5) in paragraph (3), as redesignated, by striking "(2)" and inserting "(1)".

(c) SPECIAL RULE FOR SUBRECIPIENTS.--Section 5311 is amended--

- (1) by redesignating subsections (e), (f), (g), (h), and (i) as subsections (f), (h), (i), (j) and (k), respectively; and

- (2) by adding a new subsection (e) after subsection (d) to read as follows:

"(e) SPECIAL RULE FOR SUBRECIPIENTS.--A subrecipient of funds under this section in an other than urbanized area as determined by the 2000 decennial census, but eligible to receive urbanized area formula funds pursuant to section 5307 of this title as determined by the 2010 decennial census, may transfer such urbanized area formula funds to the State for administration under this section."

(d) USE FOR ADMINISTRATION, PLANNING AND TECHNICAL ASSISTANCE.--Redesignated section 5311(f) is amended--

- (1) by striking "of Transportation";
- (2) by striking "not more than" and inserting "up to";
- (3) by striking "administer" and all that follows through to the end and inserting the following:

"(1) administer this section;  
 "(2) provide technical assistance to a subrecipient; and  
 "(3) conduct project planning, program and management development, coordination of public transportation programs, and research the State considers appropriate to promote effective delivery of public transportation to an area other than an urbanized area."; and

- (4) by inserting a dash immediately following the second place "to" appears in the subsection.

(e) RESEARCH, TECHNICAL ASSISTANCE AND TRAINING.--Section 5311 is amended by adding a new subsection (g) after redesignated subsection (f) to read as follows:

"(g) USE FOR RURAL TRANSPORTATION RESEARCH, TECHNICAL ASSISTANCE, AND TRAINING.--Of the funds apportioned under this section, and in addition to amounts utilized under subsection (f), each State shall utilize at least 2 percent to carry out a program of rural transportation assistance in the State that incorporates transportation research, technical assistance, training, and related support services."

(f) CERTIFICATION.--Redesignated section 5311(h)(2) is amended by inserting "and the affected other-than-urbanized areas" after "providers".

(g) RELATIONSHIP TO OTHER LAWS.--Redesignated section 5311(k) is amended--

- (1) by striking "(1) section 5333(b)" and inserting "Section 5333(b) of this title"; and
- (2) by striking subparagraph (2).

## **SEC. 2912. RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.**

Section 5312(a) is amended--

- (1) by striking paragraph (1) and inserting the following:
  - "(1) IN GENERAL.--The Secretary may enter into grants, contracts, cooperative agreements, and other agreements for nationally significant research, development, demonstration, deployment and evaluation projects that the Secretary determines will improve public transportation service, and to support such activities, with--
    - "(A) departments, agencies, and instrumentalities of the United States Government;
    - "(B) State and local governmental entities;
    - "(C) private organizations;
    - "(D) institutions of higher education, including those institutions with a particular emphasis on providing higher educational opportunities to minorities, ethnic groups, or women; and
    - "(E) persons."; and
- (2) by adding at the end the following:
  - "(4) COOPERATIVE RESEARCH.--The Secretary may use amounts appropriated under this section to supplement amounts made available for section 5313(a) of this title.
  - "(5) GOVERNMENT'S SHARE.--The Secretary shall establish a Government share consistent with the clear and direct financial benefit to a recipient of funds under this section."

## **SEC. 2913. TRANSIT COOPERATIVE RESEARCH PROGRAM.**

Section 5313(a) is amended--

- (1) by striking "subsections (a)(5)(C)(iii) and (d)(1) of"; and

(2) by inserting "to carry out this section" after "5338 of this title".

**SEC. 2914. TECHNICAL ASSISTANCE AND WORKFORCE DEVELOPMENT PROGRAM.**

(a) IN GENERAL.--Section 5314 is amended to read as follows:

**"Sec. 5314. Technical assistance and workforce development program**

"(a) TECHNICAL ASSISTANCE.--The Secretary may enter into grants, contracts or cooperative agreements, and other agreements, to provide technical assistance that will assist recipients of funds under this chapter to more effectively and efficiently provide public transportation service, including services to older adults, people with disabilities, and individuals with lower incomes, and to administer funds received under this chapter in compliance with Federal laws.

"(b) WORKFORCE DEVELOPMENT PROGRAM.--

"(1) IN GENERAL.--The Secretary may enter into grants, contracts, cooperative agreements, and other agreements to develop, implement, and manage a comprehensive national transit workforce development program to meet the human resource needs of the public transportation industry.

"(2) ELIGIBLE PROJECT ACTIVITIES.--For purposes of carrying out this subsection, eligible activities include--

"(A) pre-employment training;

"(B) on-the-job training; and

"(C) technical assistance and training--

"(i) directed at targeted populations;

"(ii) on safety and security;

"(iii) related to institutional and policy matters; and

"(iv) for capacity building.

"(c) FELLOWSHIPS.--The Secretary may make grants to States, local governmental authorities, and operators of public transportation systems to provide fellowships to train personnel employed in managerial, technical, and professional positions in the public transportation field.

"(d) NATIONAL PUBLIC TRANSPORTATION INSTITUTES.--

"(1) IN GENERAL.--The Secretary may enter into grants, contracts or cooperative agreements, and other agreements to conduct one or more national public transportation institutes to develop and conduct training and educational programs for Federal, State, and local transportation employees, United States citizens, and foreign nationals engaged or to be engaged in Government-aid public transportation work.

"(2) COOPERATIVE EFFORT.-- In cooperation with the Secretary, State transportation departments, public transportation authorities, and national and international entities, the institutes under

paragraph (1) shall develop and conduct training and educational programs for Federal, State, and local transportation employees, United States citizens, and foreign nationals engaged or to be engaged in public transportation work.

"(3) TRAINING AND EDUCATIONAL PROGRAMS.--The training and educational programs developed under paragraph (2) may include courses in recent developments, techniques, and procedures related to--

- "(A) intermodal and public transportation planning;
- "(B) management;
- "(C) environmental factors;
- "(D) acquisition and joint use rights-of-way;
- "(E) engineering and architectural design;
- "(F) procurement strategies for public transportation systems;
- "(G) turnkey approaches to delivering public transportation systems;
- "(H) new technologies;
- "(I) emission reduction technologies;
- "(J) ways to make public transportation ADA-accessible to individuals with disabilities;
- "(K) construction, construction management, insurance, and risk management;
- "(L) maintenance;
- "(M) contract administration;
- "(N) inspection;
- "(O) innovative finance;
- "(P) workplace safety; and
- "(Q) public transportation security.

"(4) PROVIDING EDUCATION AND TRAINING.--Education and training of Government, State, and local transportation employees under this subsection shall be provided by the Secretary at no cost to the States and local governments for subjects that are a Government program responsibility.

"(e) RURAL TRANSPORTATION ASSISTANCE PROGRAM.--The Secretary may make grants, contracts or cooperative agreements, and other agreements for transportation research, technical assistance, training, and related support services to carry out a National Rural Transportation Assistance Program in support of operators of public transportation in other than urbanized areas.

"(f) AMERICANS WITH DISABILITIES ACT AWARENESS.--The Secretary may enter into grants, contracts or cooperative agreements, and other agreements to provide public transportation-related technical assistance, demonstration programs, research, public education, and other activities the Secretary considers appropriate to help public transportation providers comply

with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). To the extent practicable, the Secretary shall carry out this subsection through a contract with a national nonprofit organization serving people with disabilities that has a demonstrated capacity to carry out the activities.

"(g) GOVERNMENT'S SHARE.--The Secretary shall establish a Government share consistent with the clear and direct financial benefit to a recipient of funds under this section.

"(h) ALLOCATION OF FUNDS.--The funds made available or appropriated for this section under section 5338 of this title shall be allocated as follows:

"(1) \$5,000,000 in fiscal year 2012, \$6,000,000 in fiscal year 2013, \$6,000,000 in fiscal year 2014, \$7,000,000 in fiscal year 2015, \$7,000,000 in fiscal year 2016, and \$8,000,000 in fiscal year 2017 shall be provided for activities under subsection (d);

"(2) \$5,000,000 in fiscal year 2012, \$6,000,000 in fiscal year 2013, \$7,000,000 in fiscal year 2014, \$8,000,000 in fiscal year 2015, \$9,000,000 in fiscal year 2016, and \$10,000,000 in fiscal year 2017 shall be provided for activities under subsection (b); and

"(3) Funds remaining after allocation under paragraphs (1) and (2) shall be provided for activities under subsections (a), (c), (e), and (f).

"(i) TRAINING.--In addition to funds made available under this section, not more than 0.5 percent of the amounts made available for a fiscal year under sections 5306, 5307, 5310 and 5311 of this title to a recipient and a subrecipient is available for expenditure by the recipient and subrecipient, with the approval of the Secretary, to pay up to 80 percent of the cost of tuition and direct educational expenses related to educating and training State and local transportation employees in developments, techniques and procedures related to public transportation."

(b) CONFORMING AMENDMENT.--The item relating to section 5314 in the table of sections for chapter 53 is amended to read as follows:

"5314. Technical assistance and workforce development program."

## **SEC. 2915. TRIBAL TRANSIT PROGRAM.**

(a) IN GENERAL.--Section 5315 is amended to read as follows:  
**"Sec. 5315. Tribal Transit Program**

"(a) GENERAL AUTHORITY.--The Secretary may make grants to an Indian tribe for capital projects, operating assistance, planning activities, and for any purpose eligible under section 5310 of this title to carry out this program.

"(b) GRANT REQUIREMENTS.--The Secretary shall establish the terms and conditions of grants awarded under this section, including a Government

share, in consultation with the Indian tribes. Such terms and conditions shall apply to all grants made under this chapter to Indian tribes.

"(c) SELECTION CRITERIA.--The Secretary shall establish the criteria for project selection under this section in consultation with the Indian tribes."

(b) CONFORMING AMENDMENT.--The item relating to section 5315 in the table of sections for chapter 53 is amended to read as follows:

"5315. Tribal transit program."

## **SEC. 2916. PUBLIC TRANSPORTATION EMERGENCY RELIEF PROGRAM.**

(a) IN GENERAL.--Section 5316 is amended to read as follows:

### **"Sec. 5316. Public transportation emergency relief program**

"(a) GENERAL AUTHORITY.--

"(1) CAPITAL ASSISTANCE.--The Secretary of Transportation may make grants, enter into contracts, and other agreements (including agreements with departments, agencies and instrumentalities of the United States Government) for a capital project to protect, repair, reconstruct, or replace equipment and facilities of any public transportation system operating in the United States, or on an Indian reservation, that the Secretary finds to be in danger of suffering serious damage, or to have suffered serious damage, as a result of--

"(A) a natural disaster over a wide area, such as by a flood, hurricane, tidal wave, earthquake, severe storm, or landslide; or

"(B) a catastrophic failure from any external cause.

"(2) OPERATING ASSISTANCE.--Of the funds made available or appropriated to carry out this section, the Secretary may make grants, and enter into contracts or other agreements for the operating costs of public transportation equipment and facilities in an area directly affected by the emergency for a period of not to exceed one year after the date the emergency has been declared consistent with subsection (b) of this section, except that, as determined otherwise by the Secretary for a compelling need, funds may be available for not more than one additional year. Eligible operating costs include--

"(A) evacuation services;

"(B) rescue operations;

"(C) temporary public transportation service; and

"(D) re-establishing, expanding, or relocating public transportation route service before, during, or after the emergency.

"(b) DECLARATIONS.--The Secretary may not obligate funds made available or appropriated under this chapter unless--



"(1) an emergency has been declared by the Governor of the State and concurred in by the Secretary; or

"(2) The President has declared such emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

"(c) COORDINATION OF EMERGENCY FUNDS.--Funds made available or appropriated to carry out this section shall be in addition to any other funds available--

"(1) under sections 5306, 5307 or 5311 of this title; or

"(2) for the same purposes as authorized under this section by any other branch of the Federal government, including the Federal Emergency Management Agency, or a State agency, local governmental entity, organization, or person.

"(d) INTERAGENCY TRANSFERS.--Amounts made available for emergency purposes to any other branch of the Federal government, including the Federal Emergency Management Agency, and which are eligible for purposes authorized under this section, may be transferred to and administered by the Secretary of Transportation under this section.

"(e) ADMINISTRATION EXPENSES.--The Secretary may use up to 1 percent of the amount made available or appropriated to carry out this section and up to 1 percent of any funds transferred under subsection (d) of this section to administer and provide technical assistance for this program.

"(f) GRANT REQUIREMENTS.--A grant awarded under this section shall be subject to such terms and conditions as the Secretary deems necessary.

"(g) GOVERNMENT'S SHARE OF COSTS.--

"(1) CAPITAL PROJECTS AND OPERATING ASSISTANCE.--A grant, contract or agreement for a capital project or operating assistance under this section shall be, at the option of the recipient, up to 80 percent of the net costs of the project, as determined by the Secretary.

"(2) REMAINDER.--The remainder of the net project costs may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

"(3) WAIVER.--The Secretary may waive, in whole or part, the non-Federal share required under this subsection.

"(h) AVAILABILITY OF AMOUNTS.--Amounts made available or appropriated to carry out this section that remain unobligated after 1 fiscal year may be used for any purpose authorized under this chapter."

(b) CONFORMING AMENDMENT.--The item relating to section 5316 in the analysis of chapter 53 is amended to read as follows:

"5316. Public transportation emergency relief program."

**SEC. 2917. LIVABILITY DEMONSTRATION GRANTS PROGRAM.**

(a) IN GENERAL.--Section 5317 is amended to read as follows:

**"Sec. 5317. Livability demonstration grants program**

"(a) DEFINITION OF SUBRECIPIENT.-- In this section, the term 'subrecipient' means a State or local governmental entity, or a private nonprofit organization.

"(b) IN GENERAL.--The Secretary may make grants under this section to a State or local governmental entity for planning and capital projects that demonstrate--

"(1) the integration of a public transportation facility or service into a community, including activities that enhance the effectiveness of the public transportation facility or service that are physically or functionally related to the public transportation facility or service; or

"(2) innovative improvements to an existing underdeveloped public transportation facility and surrounding area, provided that the improvements in such area are physically or functionally related to the public transportation facility.

"(c) ELIGIBLE PROJECT ACTIVITIES.--For purposes of carrying out this program, eligible activities include--

"(1) transit station area planning;

"(2) real estate acquisition;

"(3) streetscape improvements;

"(4) pedestrian and bicycle access improvements;

"(5) demolition;

"(6) site preparation;

"(7) open space improvement;

"(8) permitting;

"(9) transit facility improvement;

"(10) intermodal facilities;

"(11) land preservation for affordable housing;

"(12) coordination of a public transportation facility or service with other community service facilities; and

"(13) increasing ADA accessibility.

"(d) SELECTION CRITERIA.--The Secretary shall select projects for Federal assistance under this section based on the degree to which the project--

"(1) demonstrates innovative or best practices;

"(2) provides additional transportation choices;

"(3) promotes accessible, equitable, affordable housing;

"(4) enhances economic competitiveness;

"(5) supports existing communities;

"(6) coordinates Federal policies and leverages Federal investment;  
and

"(7) enhances the characteristics of rural, urban or suburban communities in a manner that includes promoting the planning process under sections 5303 and 5304 of this title.

"(e) PROJECT AND PROGRAM EVALUATION AND TECHNICAL ASSISTANCE.--The Secretary may use up to 2 percent of the amount made available or appropriated to carry out this section for--

"(1) project and program evaluation and analysis; and

"(2) technical assistance with respect to this section, including--

"(A) knowledge sharing;

"(B) peer-to-peer exchange;

"(C) information-sharing; and

"(D) industry-dialogue activities to best relate lessons learned.

"(f) GRANT REQUIREMENTS.--A grant awarded under this section shall be subject to such terms and conditions as the Secretary deems necessary.

"(g) GOVERNMENT'S SHARE OF COSTS.--

"(1) IN GENERAL.--A grant for a planning or capital project under this section shall be, at the option of the recipient, up to 50 percent of the net capital costs of the project, as determined by the Secretary.

"(2) REMAINDER.--The remainder of the net project costs--

"(A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital; and

"(B) may be derived from amounts appropriated to or made available to a department or agency of the Federal government (other than the Department of Transportation) that are eligible to be expended for transportation."

(b) CONFORMING AMENDMENT.--The item relating to section 5317 in the analysis of chapter 53 is amended to read as follows:

"5317. Livability demonstration grants program."

## **SEC. 2918. BUS TESTING FACILITY.**

Section 5318 is amended to read as follows:

### **"Sec. 5318. Bus testing facility**

"(a) FACILITY.--The Secretary shall maintain one facility for testing a new bus model to be acquired with Federal public transportation assistance provided under this chapter.

"(b) TESTING.--The types of tests performed on a new bus model at the facility under subsection (a) shall be determined by the Secretary.

"(c) IN SERVICE.--In addition to tests performed at the facility under subsection (b), the Secretary may prescribe additional testing, which may be conducted during the operation of a new model bus by a recipient under this chapter.

"(d) OPERATION AND MAINTENANCE.--The Secretary shall enter into a contract or cooperative agreement with, or make a grant to, a qualified person or organization to operate and maintain the facility. The contract, cooperative agreement, or grant may provide for the testing of rail cars and other public transportation vehicles at the facility.

"(e) FEES.--The operator of the facility shall establish and collect fees for the testing of vehicles at the facility. The Secretary shall approve the fees.

"(f) AVAILABILITY OF AMOUNTS TO PAY FOR TESTING.--The Secretary shall enter into a contract or cooperative agreement with, or make a grant to, the operator of the facility under which the Secretary shall pay 80 percent of the cost of testing a vehicle at the facility from amounts available to carry out this section. The entity having the vehicle tested shall pay 20 percent of the cost.

"(g) ACQUIRING NEW BUS MODELS.--Amounts appropriated or made available under this chapter for the acquisition of buses may be obligated or expended to acquire a new bus model only if a bus of that model has been tested, evaluated, and rated in accordance with the testing prescribed by the Secretary under subsection (b) prior to entering into a contract for such model."

## **SEC. 2919. DEBT FINANCING INSTRUMENTS.**

(a) IN GENERAL.--Section 5319 is amended to read as follows:  
**"Sec. 5319. Debt financing instruments**

"(a) DEFINITIONS.--In this section, the term 'debt financing instrument' means bonds, notes, certificates, capital lease agreements, or any other financing instrument the Secretary deems appropriate that is issued by a State, local governmental authority, or other recipient of public transportation assistance under this chapter, and the proceeds are used for an eligible capital project.

"(b) ELIGIBLE COSTS.--A grant awarded under this chapter may include reimbursement of eligible debt financing instrument costs of--

"(1) interest, provided that the interest shall be at a rate that was the most favorable of financing terms available for the capital project at the time of borrowing;

"(2) the retirement of principal for an eligible capital project; and  
"(3) other related expenses, including the refinancing of an existing eligible capital project provided--

"(A) the effect of such refinancing reduces the interest rate by a percentage to be determined by the Secretary; and

"(B) the debt service costs are reduced by an amount deemed reasonable by the Secretary.

"(c) GRANT REQUIREMENTS.--The eligible costs under subsection (b) may be reimbursed only if--

"(1) the Secretary has approved the plans and specifications for the capital project or any portion of such project that is subject to chapter 53 requirements;

"(2) the capital project for which the debt financing instrument was issued complies with the relevant chapter 53 and other applicable Federal grant requirements;

"(3) the Secretary has determined that the amount awarded in a grant for eligible debt financing costs is appropriate relative to the funds available to the recipient under this chapter; and

"(4) the recipient certifies, in a manner satisfactory to the Secretary, that--

"(A) the recipient has shown reasonable diligence in seeking the most reasonable financing terms; and

"(B) a lease agreement for an eligible capital project under this chapter is more cost-effective than purchasing or construction of the capital project."

(b) CONFORMING AMENDMENT.--The item relating to section 5319 in the analysis of chapter 53 is amended to read as follows:

"5319. Debt financing instruments."

## **SEC. 2920. ALTERNATIVE TRANSPORTATION IN PARKS AND PUBLIC LANDS.**

Section 5320 is amended--

(1) in subsection (b)--

(A) by revising paragraph (1) to read as follows:

"(1) AUTHORIZATION.--The Secretary may award a grant or enter into a contract, cooperative agreement, interagency agreement, intra-agency agreement, or other agreement to carry out a qualified project under this section to enhance the protection of national parks and public lands and increase the enjoyment of those visiting the parks and public lands by--

"(A) ensuring access to all, including people with disabilities;

"(B) improving conservation and park and public land opportunities in urban areas through partnering with State and local governments; and

"(C) improving park and public land transportation infrastructure.";

(B) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4); and

(C) by inserting a new paragraph (2) after paragraph (1) to read as follows:

"(2) CONSULTATION WITH OTHER AGENCIES.--To the extent that projects are proposed or funded in eligible areas that are not within the jurisdiction of the Department of the Interior, the Secretary shall consult with the heads of the relevant Federal land management agencies in carrying out the responsibilities under subsections (d), (f) and (h) of this section.";

(2) in subsection (c)(5)--

(A) by striking "section" and inserting "sections"; and

(B) by striking "5305, or 5309(b)" and inserting "or 5305";

(3) in subsection (e)(1)--

(A) by striking ", in consultation with the Secretary of the Interior,";

(B) by striking "not more than" and inserting "up to";

(C) by striking "under section 5338(b)(2)(J)" and inserting "to carry out this section under section 5338";

(4) in subsection (e)(3), by striking "section 5338(b)(2)(J)" and inserting "section 5338";

(5) in subsection (g)(1), by striking ", in cooperation with the Secretary of the Interior,"

(6) in subsection (h)--

(A) by striking "The Secretary of the Interior, after consultation with and in cooperation with the Secretary," in paragraph (1) and inserting "The Secretary, after consultation with the Secretary of the Interior,"; and

(B) by striking "of the Interior" in paragraph (2) each place it appears;

(7) in subsection (i)(1), by striking ", in consultation with the Secretary of the Interior,";

(8) in subsection (j)--

(A) by redesignating paragraphs (2) and (3) as paragraph (3) and (4);

(B) by inserting a new paragraph (2) after paragraph (1) to read as follows:

"(2) EXEMPTION.--A qualified project under this section shall be exempt from the requirements of this title and section 138 of title 23."; and

(C) in redesignated paragraph (4)(A), by striking "5309(g)" and inserting "5309";

(9) in subsection (k), by striking ", in consultation with the Secretary of the Interior,";  
 (10) in subsection (l)(1), by striking ", in cooperation with the Secretary of the Interior,"; and  
 (11) by striking subsection (n).

**SEC. 2921. EFFICIENT ENVIRONMENTAL REVIEWS FOR PROJECT DECISIONMAKING.**

(a) IN GENERAL.--Section 5322 is amended to read as follows:

**"Sec. 5322. Efficient environmental reviews for project decisionmaking**

"(a) DEFINITIONS.--In this section:

"(1) AGENCY.--The term 'agency' means any agency, department, or other unit of Federal, State, local, or Indian tribal government.

"(2) ENVIRONMENTAL IMPACT STATEMENT.--The term 'environmental impact statement' means the detailed statement of environmental impacts required to be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(3) ENVIRONMENTAL REVIEW PROCESS.--

"(A) IN GENERAL.--The term 'environmental review process' means the process of preparing for a project an environmental impact statement, environmental assessment, categorical exclusion determination, or other document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(B) INCLUSIONS.--The term 'environmental review process' includes the process for and completion of any environmental permit, approval, review, or study required for a project under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(4) LEAD AGENCY.--The term 'lead agency' means the Department of Transportation and, if applicable, any State or local governmental entity serving as a joint lead agency under this section.

"(5) MULTIMODAL PROJECT.--The term 'multimodal project' means a project funded, in whole or in part, under this chapter and involving the participation of more than one Department of Transportation administration or agency.

"(6) PROJECT.--The term 'project' means any public transportation capital project or multimodal project that requires an approval of the Secretary of Transportation.

"(7) PROJECT SPONSOR.--The term 'project sponsor' means the agency or other entity, including any private or public-private entity, that seeks approval of the Secretary of Transportation for a project.

"(b) APPLICABILITY.--

"(1) IN GENERAL.--The project development procedures in this section are applicable to all projects for which an environmental impact statement is prepared under the National Environmental Policy Act of 1969 and may be applied, to the extent determined appropriate by the Secretary, to other projects for which an environmental document is prepared under the Act.

"(2) FLEXIBILITY.--Any authorities granted in this section may be exercised for a project, class of projects, or program of projects.

"(c) LEAD AGENCIES.--

"(1) FEDERAL LEAD AGENCY.--The Department of Transportation shall be the Federal lead agency in the environmental review process for a project.

"(2) JOINT LEAD AGENCIES.--Nothing in this section precludes another agency from being a joint lead agency in accordance with regulations under the National Environmental Policy Act of 1969.

"(3) PROJECT SPONSOR AS JOINT LEAD AGENCY.--A project sponsor that is a State or local governmental entity receiving funds under this chapter for the project shall serve as a joint lead agency with the Department for purposes of preparing any environmental document under the National Environmental Policy Act of 1969 and may prepare any such environmental document required in support of any action or approval by the Secretary if the Federal lead agency furnishes guidance in such preparation and independently evaluates such document and the document is approved and adopted by the Secretary prior to the Secretary taking any subsequent action or making any approval based on such document, whether or not the Secretary's action or approval results in Federal funding.

"(4) ENSURING COMPLIANCE.--The Secretary shall ensure that the project sponsor complies with all design and mitigation commitments made jointly by the Secretary and the project sponsor in any environmental document prepared by the project sponsor in accordance with this subsection and that such document is appropriately supplemented if project changes become necessary.

"(5) ADOPTION AND USE OF DOCUMENTS.--An environmental document prepared under this subsection may be adopted or used by any Federal agency making any approval to the same extent that such Federal agency could adopt or use a document prepared by another Federal agency.

"(6) ROLES AND RESPONSIBILITY OF LEAD AGENCY.--With respect to the environmental review process for a project, the lead agency shall have authority and responsibility--

"(A) to take such actions as are necessary and proper, within the authority of the lead agency, to facilitate the expeditious resolution of the environmental review process for the project; and



"(B) to prepare or ensure that any required environmental impact statement or other document required to be completed under the National Environmental Policy Act of 1969 is completed in accordance with this section and applicable Federal law.

"(d) PARTICIPATING AGENCIES.--

"(1) IN GENERAL.--The lead agency shall be responsible for inviting and designating participating agencies under this subsection.

"(2) INVITATION.--The lead agency shall identify, as early as practicable in the environmental review process for a project, any other Federal and non-Federal agencies that may have an interest in the project, and shall invite such agencies to become participating agencies in the environmental review process for the project. The invitation shall set a deadline for responses to be submitted. The deadline may be extended by the lead agency for good cause.

"(3) FEDERAL PARTICIPATING AGENCIES.--A Federal agency that is invited by the lead agency to participate in the environmental review process for a project shall be designated as a participating agency by the lead agency unless the invited agency informs the lead agency, in writing, by the deadline specified in the invitation that the invited agency--

"(A) has no jurisdiction or authority with respect to the project;

"(B) has no expertise or information relevant to the project; and

"(C) does not intend to submit comments on the project.

"(4) EFFECT OF DESIGNATION.--Designation as a participating agency under this subsection shall not imply that the participating agency-

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"(A) supports a proposed project; or

"(B) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

"(5) COOPERATING AGENCY.--A participating agency may also be designated by a lead agency as a 'cooperating agency' under the regulations contained in parts 1500-1508 of title 40, Code of Federal Regulations.

"(6) DESIGNATIONS FOR CATEGORIES OF PROJECTS.--The Secretary may exercise the authorities granted under this subsection for a project, class of projects, or program of projects.

"(7) CONCURRENT REVIEWS.--Each Federal agency shall, to the maximum extent practicable--

"(A) carry out obligations of the Federal agency under other applicable law concurrently, and in conjunction, with the review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), unless doing so would impair the ability of the Federal agency to carry out those obligations; and

"(B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

"(e) PROJECT INITIATION.--The project sponsor shall notify the Secretary of the type of work, termini, length and general location of the proposed project, together with a statement of any Federal approvals anticipated to be necessary for the proposed project, for the purpose of informing the Secretary that the environmental review process should be initiated.

"(f) PURPOSE AND NEED.--

"(1) PARTICIPATION.--As early as practicable during the environmental review process, the lead agency shall provide an opportunity for involvement by participating agencies and the public in defining the purpose and need for a project.

"(2) DEFINITION.--Following participation under paragraph (1), the lead agency shall define the project's purpose and need, for purposes of any document that the lead agency is responsible for preparing for the project.

"(3) OBJECTIVES.--The statement of purpose and need shall include a clear statement of the objectives that the proposed action is intended to achieve, which may include--

"(A) achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan;

"(B) supporting land use, economic development, or growth objectives established in applicable Federal, State, local, or tribal plans; and

"(C) serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies.

"(4) ANALYSIS OF ALTERNATIVES.--

"(A) PARTICIPATION.--As early as practicable during the environmental review process, the lead agency shall provide an opportunity for involvement by participating agencies and the public in determining the range of alternatives to be considered for a project.

"(B) RANGE OF ALTERNATIVES.--Following participation under paragraph (1), the lead agency shall determine the range of alternatives for consideration in any document which the lead agency is responsible for preparing for the project.

"(C) METHODOLOGIES.--The lead agency also shall determine, in collaboration with participating agencies at appropriate times during the study process, the methodologies to be used and the level of detail required in the analysis of each alternative for a project.

"(D) PREFERRED ALTERNATIVE.--At the discretion of the lead agency, the preferred alternative for a project, after being identified, may be developed to a higher level of detail than other alternatives in order to facilitate the development of mitigation measures or concurrent compliance with other applicable laws if the lead agency determines that the development of such higher level of detail will not prevent the lead agency from making an impartial decision as to whether to accept another alternative which is being considered in the environmental review process.

"(g) COORDINATION AND SCHEDULING.--

"(1) COORDINATION PLAN.--

"(A) IN GENERAL.--The lead agency shall establish a plan for coordinating public and agency participation in and comment on the environmental review process for a project or category of projects. The coordination plan may be incorporated into a memorandum of understanding.

"(B) SCHEDULE.--

" (i) The lead agency may establish as part of the coordination plan, after consultation with each participating agency for the project and with the project sponsor, a schedule for completion of the environmental review process for the project.

"(ii) In establishing the schedule, the lead agency shall consider factors such as--

"(I) the responsibilities of participating agencies under applicable laws;

"(II) resources available to the cooperating agencies;

"(III) overall size and complexity of the project;

"(IV) the overall schedule for and cost of the project; and

"(V) the sensitivity of the natural and historic resources that could be affected by the project.

"(C) CONSISTENCY WITH OTHER TIME PERIODS.-- A schedule under subparagraph (B) shall be consistent with any other relevant time periods established under Federal law.

"(D) MODIFICATION.--The lead agency may--

"(i) lengthen a schedule established under subparagraph (B) for good cause; and

"(ii) shorten a schedule only with the concurrence of the affected cooperating agencies.

"(E) DISSEMINATION.--A copy of a schedule under subparagraph (B), and of any modifications to the schedule, shall be--

"(i) provided to all participating agencies and to the project sponsor; and

"(ii) made available to the public.

"(2) COMMENT DEADLINES.--The lead agency shall establish the following deadlines for comment during the environmental review process for a project:

"(A) For comments by agencies and the public on a draft environmental impact statement, a period of not more than 60 days after publication in the Federal Register of notice of the date of public availability of such document, unless--

"(i) a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies; or

"(ii) the deadline is extended by the lead agency for good cause.

"(B) For all other comment periods established by the lead agency for agency or public comments in the environmental review process, a period of no more than 30 days from availability of the materials on which comment is requested, unless--

"(i) a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies; or

"(ii) the deadline is extended by the lead agency for good cause.

"(3) DEADLINES FOR DECISIONS UNDER OTHER LAWS.--In any case in which a decision under any Federal law relating to a project (including the issuance or denial of a permit or license) is required to be made by the later of the date that is 180 days after the date on which the Secretary made all final decisions of the lead agency with respect to the project, or 180 days after the date on which an application was submitted for the permit or license, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives--

"(A) as soon as practicable after the 180-day period, an initial notice of the failure of the Federal agency to make the decision; and

"(B) every 60 days thereafter until such date as all decisions of the Federal agency relating to the project have been made by the Federal agency, an additional notice that describes the number of decisions of the Federal agency that remain outstanding as of the date of the additional notice.

"(4) INVOLVEMENT OF THE PUBLIC.--Nothing in this subsection shall reduce any time period provided for public comment in

the environmental review process under existing Federal law, including a regulation.

"(h) PERFORMANCE MEASUREMENT.--The Secretary shall establish a program to measure and report on progress toward improving and expediting the environmental review process.

"(i) JUDICIAL REVIEW AND SAVINGS CLAUSE.--

"(1) JUDICIAL REVIEW.--Except as set forth under subsection (j), nothing in this section shall affect the reviewability of any final Federal agency action in a court of the United States or in the court of any State.

"(2) SAVINGS CLAUSE.--Nothing in this section shall be construed as superseding, amending, or modifying the National Environmental Policy Act of 1969 or any other Federal environmental statute or affect the responsibility of any Federal officer to comply with or enforce any such statute.

"(3) LIMITATIONS.--Nothing in this section shall preempt or interfere with--

"(A) any practice of seeking, considering, or responding to public comment; or

"(B) any power, jurisdiction, responsibility, or authority that a Federal, State, or local government agency, metropolitan planning organization, Indian tribe, or project sponsor has with respect to carrying out a project or any other provisions of law applicable to projects, plans, or programs.

"(k) LIMITATIONS ON CLAIMS.--

"(1) IN GENERAL.--Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of a permit, license, or approval issued by a Federal agency for a public transportation capital project shall be barred unless it is filed within 180 days after publication of a notice in the Federal Register announcing that the permit, license, or approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law pursuant to which judicial review is allowed. Nothing in this subsection shall create a right to judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval.

"(2) NEW INFORMATION.--The Secretary shall consider new information received after the close of a comment period if the information satisfies the requirements for a supplemental environmental impact statement under section 771.130 of title 23, Code of Federal Regulations. The preparation of a supplemental environmental impact statement when required shall be considered a separate final agency action and the deadline for filing a claim for judicial review of such action shall be 180 days after the date of publication of a notice in the Federal Register announcing such action."

(b) CONFORMING AMENDMENT.--The item relating to section 5322 in the analysis of chapter 53 is amended to read as follows:

"5322. Efficient environmental reviews for project decisionmaking."

**SEC. 2922. GENERAL PROVISIONS ON ASSISTANCE.**

Section 5323 is amended--

(1) in subsection (a)(1)(A), by striking "5303, 5304 and 5306" and inserting "5303 and 5304";

(2) in subsection (e), by striking paragraphs (3) and (4);

(3) in subsection (i), by striking paragraph (2) and inserting the following:

"(2) BICYCLE FACILITIES.--Except in section 5317 of this title, the Government's share for a bicycle facility or related equipment project as described under section 5302(a)(1)(N) of this title shall be 90 percent of the cost of the project, unless funds for the project are derived from those required to be expended under section 5307(d)(1)(k) of this title, in which case the Government share shall be 95 percent.";

(4) in subsection (j)--

(A) by striking "of Transportation" each place it appears;

(B) by revising paragraph (2)(C) to read as follows:

"(C) ROLLING STOCK PROCUREMENT.--When procuring rolling stock (including train control, communication, traction power equipment, and rolling stock prototypes) under this chapter--

"(i) the cost of components and subcomponents produced in the United States--

"(I) for fiscal year 2012 is more than 60 percent of the cost of all components of the rolling stock;

"(II) for fiscal year 2013 is more than 70 percent of the cost of all components of the rolling stock;

"(III) for fiscal year 2014 is more than 80 percent of the cost of all components of the rolling stock; and

"(IV) for fiscal year 2015 is more than 90 percent of the cost of all components of the rolling stock;" and

"(ii) final assembly of the rolling stock, including rolling stock prototypes, has occurred in the United States; or "

(C) by redesignating paragraphs (3), (4), (5), (6), (7), (8) and (9) as paragraphs (4), (5), (6), (7), (8), (9) and (10), respectively;

(D) by inserting a new paragraph (3) following paragraph (2), to read as follows:

"(3) ROLLING STOCK COST AND ASSEMBLY.--Beginning in fiscal year 2016, when procuring rolling stock, including rolling stock prototypes, the cost of the components and subcomponents produced in the United States shall be 100 percent and final assembly shall occur in the United States."; and

(E) in redesignated paragraph (7), by striking "the Federal Public Transportation Act of 2005" and inserting "this chapter or any other law providing Federal public transportation assistance"; (5) in subsection (m), by striking "of Transportation"; and (6) in subsection (o), by inserting "5306," after "sections".

### **SEC. 2923. SPECIAL PROVISIONS FOR CAPITAL PROJECTS.**

Section 5324(b) is amended--

(1) in paragraph (2), by inserting "comments received during public review periods and" after "review"; and

(2) in paragraph (3)(A), by revising clause (iii) to read as follows:

"(iii) due consideration has been given to adverse environmental effects (including those that cannot be avoided should the proposal be implemented) and to mitigation measures that may, in the discretion of the Secretary, be required to reduce the severity of adverse impacts.".

### **SEC. 2924. CONTRACT REQUIREMENTS.**

Section 5325 is amended--

(1) in subsection (h), by striking "the Federal Public Transportation Act of 2005" and inserting "any other Federal public transportation assistance statute"; and

(2) in subsection (j)(2)(C), by striking ", including the performance reported in the Contractor Performance Assessment Reports required under section 5309(1)(2) of this title".

### **SEC. 2925. OVERSIGHT.**

Section 5327 is amended--

(1) by striking the first sentence of subsection (a) and inserting the following:

"To receive Federal public transportation assistance for a major capital project under this chapter or any other Federal law, a recipient must prepare and carry out the project in accordance with a project management plan approved by the Secretary of Transportation.";

(2) by striking paragraphs (1), (2), and (3) of subsection (a) and inserting the following:

"(1) technical capacity and capacity reflecting organization structures, skills, adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job qualifications, and adequate internal and external controls;

"(2) a budget covering the project management organization, risk and contingency management, appropriate consultants, real estate acquisition, utility relocation, fleets, and equipment acquisition;

"(3) an integrated project schedule covering all phases of the project;"

(3) in subsection (c)--

(A) by striking paragraph (1) and inserting the following:

"(1) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.--Of the amounts made available to carry out this chapter for a fiscal year, the Secretary may use up to--

"(A) 2.5 percent of the amounts made available to carry out each of sections 5309 and 5329; and

"(B) one percent of amounts made available to carry out sections 5305 through 5308, 5310 through 5317, 5320, and 5340 of this title and section 601 of division B of Public Law 110-432 for the activities described in paragraph (2).";

(B) by striking paragraph (2)(A) and inserting the following:

"(A) Activities to oversee the design and construction of a capital project receiving Federal public transportation assistance under this chapter or any other Federal law that authorizes or makes funds available for public transportation purposes.";

(C) by striking paragraph (2)(B) and inserting the following:

"(B) Activities to review, audit, and evaluate the safety and security, procurement, management, technical capacity, and financial capacity of a recipient or subrecipient of Federal public transportation assistance under this chapter or any other Federal law that authorizes or makes funds available for public transportation purposes.";

(D) in paragraph (2)(C), by inserting "prevent deficiencies and" before "correct";

(E) in paragraph (2), by adding at the end the following:

"(D) Activities necessary to enforce safety and security, procurement, management, and financial compliance of a recipient or subrecipient of Federal public transportation assistance under this chapter or any other Federal law that authorizes or makes funds available for public transportation purposes should deficiencies remain unresolved for an unreasonable period of time as determined by the Secretary.";



(4) by striking subsection (d) and inserting the following:

"(d) ACCESS TO SITES AND RECORDS.--Each recipient or subrecipient of Federal public transportation assistance under this chapter or any other Federal law shall provide the Secretary and a contractor the Secretary may choose under subsection (c) of this section with access to the construction sites and records of the recipient when reasonably necessary.";

(5) by striking subsection (e) and redesignating subsection (f) and subsection (e); and

(6) in subsection (e) as redesignated--

(A) by striking "financial" and inserting "Federal public transportation"; and

(B) by inserting "or any other Federal law" after "chapter".

## **SEC. 2926. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.**

Section 5331 is amended--

(1) by striking "Secretary of Transportation" each time it appears and inserting "Secretary";

(2) by revising subsection (b) to read as follows:

"(b) TESTING PROGRAM FOR COVERED EMPLOYEES.--

"(1) IN GENERAL.--

"(A) ESTABLISHMENT OF PROGRAM.--In the interest of public transportation safety, the Secretary shall prescribe regulations that establish a program requiring public transportation operations that receive financial assistance under sections 5307, 5309, or 5311 of this title to--

"(i) conduct preemployment, reasonable suspicion, random, and post-accident, return to duty and follow-up testing of covered employees for the use of a controlled substance in violation of law or a United States Government regulation; and

"(ii) conduct reasonable suspicion, random, and post-accident, return to duty and follow-up testing of covered employees for the use of alcohol in violation of law or a United States Government regulation.

"(B) PREEMPLOYMENT TESTING.--The Secretary shall prescribe regulations that permit public transportation operations to conduct preemployment testing of covered employees for the use of alcohol.

"(2) CONSIDERATIONS IN RULEMAKING.--In prescribing regulations under this subsection, the Secretary--

"(A) shall establish and implement an enforcement program, including the imposition of penalties for failure to comply with this section;

"(B) shall require that post-accident testing of a covered employee be conducted when loss of human life occurs in an

accident involving public transportation, including comprehensive toxicological testing for prescription and over-the-counter medication;

"(C) shall require, in the case of a covered employee fatality in an accident involving public transportation, body fluid and/or tissue specimens be obtained from the remains of the covered employee for comprehensive toxicological testing, including testing for prescription and over-the counter medication;

"(D) may require that post-accident testing of a covered employee be conducted when bodily injury or significant property damage occurs in any other serious accident involving public transportation; and

"(E) shall require a covered employee provide notification to the public transportation operation of the use of a prescription or over-the-counter medication that may impair a covered employee's ability to perform in a safety-sensitive function.";

(3) in subsections (c)(2) and (e), by striking "public transportation employee" and inserting "covered employee"; and

(4) by revising subsection (d)(7) to read as follows:

"(7) provide for the confidentiality of a covered employee's test results and medical information, including notification required under subsection (b)(2)(E), (except information about alcohol or a controlled substance), provided that this paragraph--

"(A) shall not prevent the use of test results for the orderly imposition of appropriate sanctions under this section; or

"(B) shall not apply to a national drug and alcohol violations database established by the Federal government that lists employees covered by this section."

## **SEC. 2927. ADMINISTRATIVE PROVISIONS.**

Section 5334 is amended--

(1) by striking "Secretary of Transportation" each time it appears and inserting "Secretary";

(2) by revising subsection (a)(1) to read as follows:

"(1) prescribe terms and conditions for a project that receives Federal public transportation assistance under this chapter or any other Federal law that authorizes or makes funds available to the Federal Transit Administration for public transportation purposes (except terms the Secretary of Labor prescribes under section 5333(b) of this title);";

(3) in subsection (b)(1), by inserting "or for purposes of establishing and enforcing programs to improve the safety of the nation's public transportation systems, and reducing accidents on rail fixed guideway and bus systems for public transportation," after "emergency,";

(4) in subsection (c), by striking paragraph (4);

- (5) in subsection (h)(3), by striking "another" and inserting "any other";
- (6) in subsection (i), by striking "shall" and inserting "may";
- (7) by striking subsection (j); and
- (8) by redesignating subsections (k) and (l) as subsections (j) and (k), respectively.

#### **SEC. 2928. NATIONAL TRANSIT DATABASE.**

Section 5335 is amended--

- (1) in subsection (a), by striking "and operating information and using" and inserting ", operating, safety and asset management information, and use"; and
- (2) in subsection (b), by--
  - (A) striking "section 5307 or 5311: and inserting "sections 5306, 5307, 5309, 5310 and 5311 of this title"; and
  - (B) striking the comma each place it appears.

#### **SEC. 2929. APPORTIONMENT OF APPROPRIATIONS FOR FORMULA GRANTS.**

Section 5336 is amended--

- (1) in subsection (b)(1), by striking "and, beginning in fiscal year 2006, 60 percent of the directional route miles attributable to the Alaska Railroad passenger operations";
- (2) in subsection (d)(1), by striking "subsections (a)(1)(C)(vi) and (b)(2)(B) of";
- (3) in subsection (f)--
  - (A) by revising paragraph (1) to read as follows:
 

"(1) TRANSFER.--The chief executive officer of a State may transfer any part of the State's apportionment under subsection (a)(1) of this section to supplement--

    - "(A) amounts apportioned to the State under section 5311(c) of this title; and
    - "(B) amounts apportioned to urbanized areas under this section.";
  - (B) by revising paragraph (2) to read as follows:
 

"(2) CONSULTATION.--The chief executive officer may make a transfer under paragraph (1) only after consulting with responsible local officials and publicly owned operators of public transportation in each area for which the amount originally was apportioned under this section."; and
  - (C) in paragraph (3), by inserting at the end ", without the need for consultation required in paragraph (2)";
- (4) by striking subsection (h) and redesignating subsections (i) and (j) as subsections (h) and (i), respectively;
- (5) in redesignated subsection (h)--

- (A) by striking "subsections (a)(1)(C)(vi) and (b)(2)(B) of";
- (B) by striking ", in fiscal year 2006 and each fiscal year thereafter," and inserting "in each fiscal year"; and
- (C) by striking "(j)" and inserting "(i)";
- (6) in redesignated subsection (i)(2)(A), by striking "(i)(1)" and inserting "(h)(1)"; and
- (7) by striking subsection (k).

**SEC. 2930. AUTHORIZATIONS.**

Section 5338 is amended to read as follows:

**"Sec. 5338. Authorizations**

"(a) AUTHORIZATIONS.--There shall be available from the Mass Transit Account of the Transportation Trust Fund to carry out sections 5305 through 5318, 5320, 5329, 5335, and 5340 of this title--

- "(1) \$22,201,000,000 for fiscal year 2012;
- "(2) \$14,966,000,000 for fiscal year 2013;
- "(3) \$16,572,000,000 for fiscal year 2014;
- "(4) \$19,409,000,000 for fiscal year 2015;
- "(5) \$21,820,000,000for fiscal year 2016; and
- "(6) \$24,281,000,000for fiscal year 2017.

"(b) TRANSIT EXPANSION AND LIVABLE COMMUNITIES.--Of the amounts made available under subsection (a) in each fiscal year--

- "(1) \$1,665,000,000 for fiscal year 2013; \$1,799,000,000 for fiscal year 2014; \$3,011,000,000 for fiscal year 2015; \$3,746,000,000 for fiscal year 2016; \$4,494,000,000 shall be available to carry out section 5304(n) of this title;
- "(2) \$140,285,000 for fiscal year 2012; \$XXXXX for fiscal year 2013; \$ XXXXX for fiscal year 2014; \$ XXXXX for fiscal year 2015; \$ XXXXX for fiscal year 2016; and \$ XXXXX for fiscal year 2017 shall be available to carry out section 5305 of this title;
- "(3) \$2,235,556,000 for fiscal year 2012; \$ XXXXX for fiscal year 2013; \$ XXXXX for fiscal year 2014; \$ XXXXX for fiscal year 2015; \$ XXXXX for fiscal year 2016; and \$ XXXXX for fiscal year 2017 shall be available to carry out section 5309 of this title;
- "(4) \$15,300,000 for fiscal year 2012; \$ XXXXX for fiscal year 2013; \$ XXXXX for fiscal year 2014; \$ XXXXX for fiscal year 2015; \$ XXXXX for fiscal year 2016; and \$ XXXXX for fiscal year 2017 shall be available to carry out section 5315 of this title;
- "(5) \$50,000,000 for fiscal year 2012; \$ XXXXX for fiscal year 2013; \$ XXXXX for fiscal year 2014; \$ XXXXX for fiscal year 2015; \$ XXXXX for fiscal year 2016; and \$ XXXXX for fiscal year 2017 shall be available to carry out section 5317 of this title; and

"(6) \$27,929,000 for fiscal year 2012; \$ XXXXX for fiscal year 2013; \$ XXXXX for fiscal year 2014; \$ XXXXX for fiscal year 2015; \$ XXXXX for fiscal year 2016; and \$ XXXXX for fiscal year 2017 shall be available to carry out section 5320 of this title.

"(c) BUS AND RAIL STATE OF GOOD REPAIR.--Of the amounts made available under subsection (a) in each fiscal year, \$3,207,178,00 for fiscal year 2012; \$3,771,000,000 for fiscal year 2013; \$4,341,000,000 for fiscal year 2014; \$4,900,000,000 for fiscal year 2015; \$5,532,000,000 for fiscal year 2016; and \$6,247,000,000 for fiscal year 2017 shall be available to carry out section 5306 of this title.

"(d) TRANSIT FORMULA PROGRAM.--Of the amounts made available under subsection (a) for each fiscal year--

"(1) \$3,405,913,600 for fiscal year 2012; \$ XXXXX for fiscal year 2013; \$ XXXXX for fiscal year 2014; \$ XXXXX for fiscal year 2015; \$ XXXXX for fiscal year 2016; and \$ XXXXX for fiscal year 2017 shall be allocated in accordance with section 5336 of this title to provide financial assistance for urbanized areas under section 5307 of this title;

"(2) \$404,594,000 for fiscal year 2012; \$ XXXXX for fiscal year 2013; \$ XXXXX 000 for fiscal year 2014; \$ XXXXX for fiscal year 2015; \$ XXXXX for fiscal year 2016; and \$ XXXXX for fiscal year 2017 shall be made available to carry out section 5310 of this title;

"(3) \$424,739,200 for fiscal year 2012; \$ XXXXX for fiscal year 2013; \$ XXXXX for fiscal year 2014; \$ XXXXX for fiscal year 2015; \$ XXXXX for fiscal year 2016; and \$ XXXXX for fiscal year 2017 shall be made available to carry out section 5311 of this title;

"(4) \$25,000,000 in fiscal year 2012; and \$XXX in each fiscal year 2013 through 2017 shall be available to carry out section 5316 of this title;

"(5) \$5,000,000 for fiscal year 2012; \$ XXXXX for fiscal year 2013; \$ XXXXX for fiscal year 2014; \$ XXXXX for fiscal year 2015; \$ XXXXX for fiscal year 2016; and \$ XXXXX for fiscal year 2017 shall be made available to carry out section 5335 of this title; and

"(6) \$425,739,200 for fiscal year 2012; \$ XXXXX for fiscal year 2013; \$ XXXXX for fiscal year 2014; \$ XXXXX for fiscal year 2015; \$ XXXXX for fiscal year 2016; and \$ XXXXX for fiscal year 2017 shall be allocated in accordance with section 5340 of this title to provide assistance for urbanized areas under 5307 of this title and other than urbanized areas under section 5311 of this title.

"(e) RESEARCH AND TECHNOLOGY DEPLOYMENT--

(1) Allocations.--Of the amounts made available under subsection (a) in each fiscal year--

"(A) \$89,743,000 for fiscal year 2012; \$ XXXXX for fiscal year 2013; \$ XXXXX for fiscal year 2014; \$ XXXXX for fiscal year 2015; \$ XXXXX for fiscal year 2016; and \$ XXXXX for

fiscal year 2017 shall be available to carry out section 5308 of this title, of which--

"(i) \$14,743,000 for fiscal year 2012; \$ XXXXX for each fiscal year 2013, 2014 and 2015; \$ XXXXX for fiscal year 2016; and \$ XXXXX for fiscal year 2017 shall be available to carry out Clean and Energy Efficient Public Transportation Research under section 5308(a) of this title; and

"(ii) \$75,000,000 for fiscal year 2012; \$ XXXXX for fiscal year 2013; \$ XXXXX for fiscal year 2014; \$ XXXXX for fiscal year 2015; \$ XXXXX for fiscal year 2016; and \$ XXXXX for fiscal year 2017 to carry out the Greenhouse Gas and Energy Reduction Demonstration Program under section 5308(c) of this title;

"(B) \$20,000,000 for fiscal year 2012; \$ XXXXX for fiscal year 2013; \$ XXXXX for fiscal year 2014; \$ XXXXX for fiscal year 2015; \$ XXXXX for fiscal year 2016; and \$ XXXXX for fiscal year 2017 shall be available to carry out section 5312 of this title;

"(C) \$9,729,000 for fiscal year 2012; and \$ XXXXX for each fiscal year 2013 through 2017 shall be available to carry out section 5313 of this title;

"(D) \$34,000,000 for fiscal year 2012; \$ XXXXX for fiscal year 2013; \$ XXXXX for fiscal year 2014; \$ XXXXX for fiscal year 2015; \$ XXXXX for fiscal year 2016; and \$ XXXXX for fiscal year 2017 shall be available to carry out section 5314 of this title; and

"(E) \$8,000,000 for each of fiscal years 2012 through 2017 to carry out section 5505 of this title.

"(2) PUBLIC TRANSPORTATION TEST BEDS

DEMONSTRATION PROGRAM.--Of the amounts made available to carry out section 5308(c) of this title under paragraph (1)(A)(ii) of this subsection, \$10,000,000 for fiscal year 2012; \$ XXXXX for fiscal year 2013; \$ XXXXX for fiscal year 2014; \$ XXXXX for fiscal year 2015; \$ XXXXX for fiscal year 2016; and \$ XXXXX for fiscal year 2017 shall be available to carry out the Public Transportation Test Beds Demonstration Program under section 5308(b) of this title.

"(f) OPERATIONS AND SAFETY.--Of the amounts made available under subsection (a) in each fiscal year--

"(1) \$36,594,000 for fiscal year 2012; \$ XXXXX for fiscal year 2013; \$ XXXXX for fiscal year 2014; \$ XXXXX for fiscal year 2015; \$ XXXXX for fiscal year 2016; and \$43,000,000 for fiscal year 2017 shall be available to carry out section 5329 of this title; and

"(2) \$129,700,000 for fiscal year 2012; \$ XXXXX for fiscal year 2013; \$ XXXXX for fiscal year 2014; \$ XXXXX for fiscal year 2015; \$ XXXXX for

fiscal year 2016; and \$ XXXXX for fiscal year 2017 shall be available to carry out section 5334 of this title.

"(g) ADDITIONAL AMOUNTS.

"(1) ALLOCATION.—Of the amounts made available under subsection (a) in fiscal year 2012, an additional amount of—

"(A) \$1,000,000,000 shall be available to carry out the section 5309 of this title;

"(B) \$7,500,000,000 shall be available to carry out section 5306 of this title;

"(C) \$2,645,694,989 shall be available to carry out section 5307 of this title; and

"(D) \$177,152,505 shall be available to carry out section 5311 of this title; and

"(E) \$177,152,505 shall be available to carry out section 5340.

"(2) GOVERNMENT'S SHARE OF COST.—Except for the funds made available under paragraph (1)(A) of this subsection, a grant for a project obligating funds made available under this subsection shall be, at the option of the recipient, up to 100 percent.

"(h) CONTRACT AUTHORITY.--Amounts made available from the Mass Transit Account of the Transportation Trust Fund under this section may be obligated in advance of appropriations, and the obligation shall represent a contractual obligation of the Government to pay the Federal share of the cost of the project.

"(i) AVAILABILITY OF AMOUNTS.--Amounts made available under--

"(1) subsections (b), (c), (d) (e), and (f)(1) of this section shall remain available until expended;

"(2) subsection (f)(1) of this section shall expire at the end of the fiscal year in which the funds became available for obligation; and

"(3) subsection (g) of this section shall remain available through September 30, 2014.

"(j) OBLIGATION LIMITATION EXCEPTION.--The obligation limitation under section 2932 of this Act for each fiscal year 2012 through 2017 shall not apply to the obligation of funds previously made available in prior years and shall be in addition to the amount of any limitation imposed on obligations for future years."

## **SEC. 2931. APPORTIONMENTS BASED ON GROWING STATES AND HIGH DENSITY STATES FORMULA FACTORS.**

Section 5340(a) is amended by striking "section 5338(b)(2)(M)" and inserting "section 5338 of this title to carry out this section".

**SEC. 2932. OBLIGATION CEILING.**

Notwithstanding any other provision of law, the total of all obligations from amounts made available from the Mass Transit Account of the Transportation Trust Fund under subsections (a) through (k) of section 5338 of title 49, United States Code, shall not exceed--

- (1) \$22,201,000,000 for fiscal year 2012;
- (2) \$14,966,000,000 for fiscal year 2013;
- (3) \$16,572,000,000 for fiscal year 2014;
- (4) \$19,409,000,000 for fiscal year 2015;
- (5) \$21,820,000,000 for fiscal year 2016; and
- (6) \$24,281,000,000 for fiscal year 2017.

**SEC. 2933. REPEAL OF OBSOLETE PROVISIONS OF TITLE 49 AND OTHER LAWS.**

(a) REPEALS.--Sections 5321, 5328, 5337 and 5339 of title 49, United States Code, and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note) are repealed.

(b) CONFORMING AMENDMENT.--The items relating to sections 5321, 5328, 5337 and 5339 in the analysis of title 49, United States Code, are deleted.

**TITLE III--SURFACE TRANSPORTATION SAFETY****Subtitle A--Highway Safety****Part 1--Traffic Safety****SEC. 3001. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.--The following sums are authorized to be appropriated out of the Highway Account of the Transportation Trust Fund:

(1) HIGHWAY SAFETY PROGRAMS.--For carrying out section 402 of title 23, United States Code, \$235,000,000 for fiscal year 2012, \$370,010,000 for fiscal year 2013, \$406,417,000 for fiscal year 2014, \$452,210,000 for fiscal year 2015, \$497,631,000 for fiscal year 2016, and \$556,193,000 for fiscal year 2017.

(2) HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.--For carrying out section 403 of title 23, United States Code, \$128,367,632 for fiscal year 2012, \$146,054,000 for fiscal year 2013, \$160,659,000 for fiscal year 2014, \$176,725,000 for fiscal year 2015, \$194,398,000 for fiscal year 2016, and \$213,838,000 for fiscal year 2017.



(3) NATIONAL DRIVER REGISTER.--For the National Highway Traffic Safety Administration to carry out chapter 303 of title 49, United States Code, \$4,823,644 for fiscal year 2012, \$5,306,000 for fiscal year 2013, \$5,837,000 for fiscal year 2014, \$6,420,000 for fiscal year 2015, \$7,062,000 for fiscal year 2016, and \$7,769,000 for fiscal year 2017.

(4) COMBINED OCCUPANT PROTECTION GRANTS.--For carrying out section 405 of title 23, United States Code, \$35,000,000 for fiscal year 2012, \$44,000,000 for fiscal year 2013, \$48,400,000 for fiscal year 2014, \$53,240,000 for fiscal year 2015, \$58,564,000 for fiscal year 2016, and \$64,420,400 for fiscal year 2017.

(5) STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.--For carrying out section 408 of title 23, United States Code, \$34,500,000 for fiscal year 2012, \$37,950,000 for fiscal year 2013, \$41,745,000 for fiscal year 2014, \$45,920,000 for fiscal year 2015, \$51,011,000 for fiscal year 2016, and \$56,113,000 for fiscal year 2017.

(6) IMPAIRED DRIVING COUNTERMEASURES.--For carrying out section 410 of title 23, United States Code, \$139,000,000 for fiscal year 2012, \$152,900,000 for fiscal year 2013, \$168,190,000 for fiscal year 2014, \$185,009,000 for fiscal year 2015, \$203,510,000 for fiscal year 2016, and \$223,861,000 for fiscal year 2017.

(7) DISTRACTED DRIVING GRANTS.-- For carrying out section 411 of title 23, United States Code, \$50,000,000 for fiscal year 2012, \$50,000,000 for fiscal year 2013, \$55,000,000 for fiscal year 2014, \$55,000,000 for fiscal year 2015, \$60,000,000 for fiscal year 2016, and \$60,000,000 for fiscal year 2017.

(8) HIGH VISIBILITY ENFORCEMENT PROGRAM.--For carrying out section 3010 of this Part \$37,000,000 for fiscal year 2012, \$40,700,000 for fiscal year 2013, \$44,770,000 for fiscal year 2014, \$49,247,000 for fiscal year 2015, \$54,172,000 for fiscal year 2016, and \$59,589,000 for fiscal year 2017.

(9) MOTORCYCLIST SAFETY.--For carrying out section 3011 of this Part \$7,000,000 for fiscal year 2012, \$7,000,000 for fiscal year 2013, \$8,000,000 for fiscal year 2014, \$8,000,000 for fiscal year 2015, \$8,000,000 for fiscal year 2016, and \$8,000,000 for fiscal year 2017.

(10) ADMINISTRATIVE EXPENSES.--For administrative and related operating expenses of the National Highway Traffic Safety Administration in carrying out chapter 4 of title 23, United States Code, and this Part \$18,600,000 for fiscal year 2012, \$20,460,000 for fiscal year 2013, \$22,100,000 for fiscal year 2014, \$24,059,000 for fiscal year 2015, \$25,965,000 for fiscal year 2016, and \$26,561,000 for fiscal year 2017.

(b) PROHIBITION ON OTHER USES.--Except as otherwise provided in chapter 4 of title 23, United States Code, and this Part, (including the amendments made by this Part), the amounts made available from the Highway Account of the Transportation Trust Fund for a program under such chapter shall only be used to

carry out such program and may not be used by States or local governments for construction purposes.

(c) **APPLICABILITY OF TITLE 23.**--Except as otherwise provided in chapter 4 of title 23, United States Code, and this Part, amounts made available under subsection (a) for each of fiscal years 2012 through 2017 shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code.

(d) **REGULATORY AUTHORITY.**--Grants awarded under this Part shall be in accordance with regulations issued by the Secretary.

(e) **STATE MATCHING REQUIREMENTS.**--Where a grant awarded under this Part requires a State to share in the cost, the aggregate of all expenditures for highway safety activities made during any fiscal year by the State and its political subdivisions (exclusive of Federal funds) for carrying out the grant (other than planning and administration) shall be available for the purpose of crediting the State during such fiscal year for the non-Federal share of the cost of any project under this Part (other than planning or administration) without regard to whether such expenditures were actually made in connection with such project.

(f) **MAINTENANCE OF EFFORT.**--No grant may be made to a State under sections 3005, 3006, 3007, 3008, or 3010 of this Part in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all State and local sources for programs described in such sections at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of this Act.

(g) **TRANSFERS.**--In each fiscal year, the Secretary may transfer any amounts remaining available under paragraphs (4), (5), (6), or (9) of subsection (a) to the amounts made available under any other of such paragraphs in order to ensure, to the maximum extent possible, that all funds are obligated.

(h) **GRANT APPLICATION AND DEADLINE.**--To receive a grant under this Part, a State shall submit an application, and the Secretary may establish a single deadline for such applications to enable the award of grants early in the next fiscal year.

(i) **ALLOCATION TO SUPPORT STATE DISTRACTED DRIVING LAWS.**--Of the amounts available under subsection (a)(8) for distracted driving grants, the Secretary may expend, in each fiscal year, up to \$5 million for the development and placement of broadcast media to support the enforcement of State distracted driving laws.

**SEC. 3002. HIGHWAY SAFETY PROGRAMS.**

(a) PROGRAMS INCLUDED.--Section 402(a) of title 23, United States Code, is amended by striking all that follows clause (7) and inserting the following:

"Such uniform guidelines shall be promulgated by the Secretary to improve driver performance (including, but not limited to, driver education, driver testing to determine proficiency to operate motor vehicles, driver examinations (both physical and mental, and driver licensing) and to improve pedestrian performance and bicycle safety. In addition, such uniform guidelines shall include, but not be limited to, provisions for an effective record system of accidents (including injuries and deaths resulting therefrom), accident investigations to determine the probable causes of accidents, injuries, and deaths, vehicle registration, operation, and inspection, and emergency services. Such guidelines as are applicable to State highway safety programs shall, to the extent determined appropriate by the Secretary, be applicable to federally administered areas where a Federal department or agency controls the highways or supervises traffic operations."

(b) ADMINISTRATION OF STATE PROGRAMS.--Section 402(b)(1) of such title is amended by--

(1) redesignating clause (E) as clause (F) and inserting after clause (D) the following:

"(E) beginning in fiscal year 2013, provide for a robust data-driven traffic safety enforcement program to prevent traffic violations, crashes, crash fatalities and injuries, and reduce crimes in areas most at risk for such incidents, to the satisfaction of the Secretary;"

(2) revising subparagraph (F)(i) to read as follows:

"(i) national law enforcement mobilizations and high-visibility law enforcement mobilizations coordinated by the Secretary;" and

(3) inserting after subparagraph (F)(iv) the following:

"(v) ensuring that the State will coordinate its highway safety plan, data collection, and information systems with the State's strategic highway safety plan, defined in section 148(a) of this title."

(c) Approved Highway Safety Programs.--Section 402(c) of such title is amended by--

(1) striking "Such" at the beginning of the second sentence and inserting the following: "Except for amounts identified in subsection (n) of this section, and section 403(e), such";

(2) striking the seventh sentence;

(3) inserting after the eighth sentence the following:

"A State may use the funds apportioned under this section, in cooperation with neighboring States, for highway safety programs or related projects that may confer benefits on such neighboring States.";

(4) striking "50 per centum" in the ninth sentence and inserting "20 percent"; and

(5) amending the eleventh and twelfth sentences to read as follows:

"The Secretary shall promptly apportion to the State the funds withheld from its apportionment if the Secretary approves the State's highway safety program or determines that the State has begun implementing an approved program, as appropriate, by the tenth month of the fiscal year for which the funds were withheld. If the Secretary determines that the State did not correct its failure within such period, the Secretary shall reapportion the withheld funds to the other States in accordance with the formula specified in this subsection by the end of the fiscal year."

(d) **USE OF HIGHWAY SAFETY PROGRAM FUNDS.**--Section 402(g) of such title is amended to read as follows:

"(g) Nothing in this section authorizes the appropriation or expenditure of funds for (1) highway construction, maintenance, or design (other than design of safety features of highways to be incorporated into guidelines), or (2) any purpose for which funds are authorized by Section 403 of this title. A State may use funds under this section to assist in demonstration projects carried out by the Secretary under Section 403."

(e) **EXPENDITURES FOR LOCAL HIGHWAY PROGRAMS IN INDIAN COUNTRY.**--Section 402(i)(2) is amended to read as follows:

"(2) **EXPENDITURES FOR LOCAL HIGHWAY PROGRAMS.**--Notwithstanding subsection (b)(1)(C), 90 percent of the funds apportioned to the Secretary of the Interior under this section shall be expended by Indian tribes to carry out highway safety programs within their jurisdictions, except that the Secretary of the Interior may use any such funds, as specifically requested and agreed to by an Indian tribe, for the benefit of the Indian tribe."

(f) **REPEAL OF SECTION 402(k).**--Section 402(k) of such title is repealed.

(g) **COOPERATIVE RESEARCH AND EVALUATION.**--Section 402 of such title is amended by adding at the end the following:

"(n) **COOPERATIVE RESEARCH AND EVALUATION.**--Notwithstanding the apportionment formula under section 402(c), in each fiscal year \$2.5 million of the total annual apportionment to the States under section 402(c) for the highway safety programs shall be available for expenditure by the Secretary, acting through the Administrator of the National Highway Traffic Safety Administration, for a Cooperative Research and Evaluation Program to research and evaluate priority highway safety countermeasures. This program

shall be administered by the National Highway Traffic Safety Administration, and jointly managed by the Governors Highway Safety Association and the National Highway Traffic Safety Administration."

(h) **ACTIVITIES TO PROMOTE HIGHWAY AND MOTOR VEHICLE SAFETY.**--Section 402 of such title is amended by adding at the end the following:

"(o) **AVAILABILITY OF FUNDS.**--Notwithstanding any other law, funds appropriated to the Secretary for the National Highway Traffic Safety Administration shall be available for activities to promote highway safety and motor vehicle safety, including activities specifically designed to urge a State or local legislator or legislature to favor or oppose the adoption of any specific legislative proposal."

### **SEC. 3003. HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.**

Section 403 of title 23, United States Code, is amended to read as follows:

#### **"Sec. 403. Highway safety research and development**

"(a) **DEFINITION.**--In this section, the term 'Federal laboratory' includes a government-owned, government-operated laboratory and a government-owned, contractor-operated laboratory.

"(b) **GENERAL AUTHORITY.**--

"(1) **RESEARCH AND DEVELOPMENT ACTIVITIES.**--The Secretary may conduct research and development activities, including demonstration projects and the collection and analysis of highway and motor vehicle safety data and related information needed to carry out and support this section, with respect to--

"(A) all aspects of highway and traffic safety systems and conditions relating to vehicle, highway, driver, passenger, motorcyclist, bicyclist, and pedestrian characteristics, accident causation and investigations, communications, emergency medical services, and transportation of the injured;

"(B) human behavioral factors and their effect on highway and traffic safety, including but not limited to, driver education, distracted driving, and new technologies installed in or brought into vehicles;

"(C) countermeasures to increase highway and traffic safety to evaluate their effectiveness, including, but not limited to, occupant protection and alcohol- and drug-impaired driving technologies and initiatives; and

"(D) the effect of State laws on any aspects, activities or programs described in subparagraphs (A), (B) and (C).

"(2) COOPERATION, GRANTS, AND CONTRACTS.--The Secretary may carry out this section--

"(A) independently;

"(B) in cooperation with other Federal departments, agencies, and instrumentalities and Federal laboratories;

"(C) by entering into contracts, cooperative agreements, and other transactions with the National Academy of Sciences, or any Federal laboratory, State or local agency, authority, association, institution, foreign country, or person as defined by chapter 1 of title 1, United States Code; or

"(D) by making grants to the National Academy of Sciences, or any Federal laboratory, State or local agency, authority, association, institution, or person as defined by chapter 1 of title 1, United States Code.

"(c) COLLABORATIVE RESEARCH AND DEVELOPMENT.--

"(1) IN GENERAL.--To encourage innovative solutions to highway safety problems, stimulate voluntary improvements in highway safety, and stimulate the marketing of new highway safety-related technology by private industry, the Secretary is authorized to carry out, on a cost-shared basis, collaborative research and development with--

"(A) non-Federal entities, including State and local governments, foreign countries, colleges, universities, corporations, partnerships, sole proprietorships, organizations serving the interest of people with disabilities and older adults, and trade associations that are incorporated or established under the laws of any State or the United States; and

"(B) Federal laboratories.

"(2) AGREEMENTS.--In carrying out this subsection, the Secretary may enter into cooperative research and development agreements, as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) except that, in entering into such agreements, the Secretary may agree to provide not more than 50 percent of the cost of any research or development project under this subsection.

"(3) USE OF TECHNOLOGY.--The research, development, or use of any technology pursuant to an agreement under the provisions of this subsection, including the terms under which technology may be licensed and the resulting royalties may be distributed, shall be subject to the provisions of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

"(d) TITLE TO EQUIPMENT.--The Secretary may, in furtherance of the purposes of section 402 of this title, vest in State or local agencies, on such terms and conditions as the Secretary deems appropriate, title to equipment purchased for demonstration projects with funds authorized by this section.

"(e) TRAINING.--Notwithstanding the apportionment formula under section 402(c), in each fiscal year one percent of the total annual apportionment to the States under section 402(c) for the highway safety programs shall be available through the end of the succeeding fiscal year for expenditure by the Secretary, acting through the Administrator of the National Highway Traffic Safety Administration, for training of State, local and Federal highway safety personnel, including travel, administrative, and related expenses, conducted or developed by any Federal or non-Federal entity or personnel.

"(f) DRIVER LICENSING AND FITNESS TO DRIVE CLEARINGHOUSE.--In addition to the authority provided under this section, the Secretary, acting through the Administrator of the National Highway Traffic Safety Administration, is authorized to expend, out of the funds provided for this section, a total of \$3,200,000 over a five-year period, from fiscal years 2012 through 2016, to establish an electronic clearinghouse and technical assistance service to collect and disseminate research and analysis of medical and technical information and best practices concerning drivers with medical issues that may be used by State driver licensing agencies in making licensing qualification decisions.

"(g) INTERNATIONAL HIGHWAY SAFETY INFORMATION AND COOPERATION.--

"(1) ESTABLISHMENT.--The Secretary, acting through the Administrator of the National Highway Traffic Safety Administration, may establish an international highway safety information and cooperation program to--

"(A) inform the United States highway safety community of laws, projects, programs, data and technology in foreign countries that could be used to enhance highway safety in the United States;

"(B) permit the exchange of information with foreign countries about laws, projects, programs, data, and technology that could be used to enhance highway safety; and

"(C) allow the Secretary, represented by the Administrator, to participate and cooperate in international activities to enhance highway safety.

"(2) COOPERATION.--The Secretary may carry out this subsection in cooperation with any appropriate Federal agency, State or local agency or authority, foreign government, or multinational institution.

"(h) PUBLIC HEALTH AUTHORITY.--For purposes of collecting and analyzing medical data for transportation safety research purposes under this chapter or chapter 301 of title 49, United States Code, the term 'public health authority,' as defined in section 164.501 of title 45 of the Code of Federal Regulations, shall include the National Highway Traffic Safety Administration,

and any 'protected health information,' as defined in section 160.103 of title 45 of the Code of Federal Regulations, collected or received by the National Highway Traffic Safety Administration in its capacity as a public health authority may not be subject to discovery, admitted into evidence, or used in any administrative, civil, criminal or other judicial proceeding.

"(i) PROHIBITION ON CERTAIN DISCLOSURES.--Any report of the National Highway Traffic Safety Administration or of any officer, employee, or contractor of the National Highway Traffic Safety Administration, relating to any highway traffic accident or the investigation thereof conducted pursuant to this chapter or chapter 301 of title 49, United States Code, shall be made available to the public in a manner that does not identify individuals.

"(j) MODEL SPECIFICATIONS FOR DEVICES.--The Secretary, acting through the Administrator of the National Highway Traffic Safety Administration, may develop model specifications and testing procedures for devices, including but not limited to those designed to measure the concentration of alcohol in the body, conduct periodic tests of such devices, and publish a Conforming Products List of such devices that have met the model specifications and, further, as necessary, may require tests of such devices to be conducted by a Federal laboratory at cost to their manufacturers."

#### **SEC. 3004. NATIONAL DRIVER REGISTER.**

Section 30302(b) of title 49, United States Code, is amended by adding the following at the end:

"The Secretary shall make continual improvements to modernize the Register's data processing system."

#### **SEC. 3005. COMBINED OCCUPANT PROTECTION GRANTS.**

(a) IN GENERAL.--Section 405 of title 23, United States Code, is amended to read as follows:

##### **"Sec. 405. Combined occupant protection grants**

"(a) GENERAL AUTHORITY.--Subject to the requirements of this section, the Secretary of Transportation shall make grants to States that adopt and implement effective occupant protection programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles.

"(b) FEDERAL SHARE.--The Federal share of the costs of activities funded using amounts from grants under this section shall not exceed 80 percent for each fiscal year for which a State receives a grant.



"(c) ELIGIBILITY.--

"(1) A State with an observed seat belt use rate of 90 percent or higher, based on the most recent survey data from a survey that conforms with NHTSA's national criteria, shall be eligible for a grant in a fiscal year by--

"(A) submitting, during the first fiscal year, an occupant protection plan;

"(B) participating in the nationwide *Click It or Ticket* mobilization;

"(C) having an active network of child restraint inspection stations; and

"(D) having a plan to recruit, train, and maintain a sufficient number of child passenger safety (CPS) technicians.

"(2) A State with an observed seat belt use rate below 90 percent, based on the most recent survey data from a survey that conforms with NHTSA's national criteria, shall be eligible for a grant in a fiscal year by--

"(A) meeting all of the requirements of paragraph (1); and

"(B) to the satisfaction of the Secretary, meeting three of the following criteria:

"(i) Conduct sustained (on-going and periodic) seat belt enforcement at a defined level of participation during the year.

"(ii) Enact and enforce a Primary Enforcement Seat Belt Use Law.

"(iii) Implement countermeasure programs for high-risk populations, such as drivers on rural roadways, or unrestrained nighttime drivers, or teenage drivers.

"(iv) Enact and enforce occupant protection laws requiring front and rear occupant protection use by all occupants in an age-appropriate restraint.

"(v) Implement a comprehensive occupant protection program, including conducting a program assessment, developing a Statewide Strategic Plan, designating an occupant protection coordinator, and establishing a statewide occupant protection task force.

"(vi) Conduct, during the first year of the grant, an assessment of its occupant protection program, unless the State has completed such an assessment in the prior 3 years.

"(d) USE OF GRANT AMOUNTS.--Grant funds may be used for any of the following purposes:

"(1) A program to support high-visibility enforcement mobilizations, including paid media that emphasizes publicity for the program, and law enforcement.

"(2) A program to train occupant protection safety professionals, police officers, fire and emergency medical personnel, educators, and parents concerning all aspects of the use of child restraints and occupant protection.

"(3) A program to educate the public concerning the proper use and installation of child restraints, including related equipment and information systems.

"(4) A program to provide community child passenger safety services, including programs about proper seating positions for children and how to reduce the improper use of child restraints.

"(5) Purchase and distribution of child restraints to low-income families, provided that not more than 5 percent of the funds received in a fiscal year may be used for this purpose.

"(6) Information systems containing data concerning occupant protection, including the collection and administration of child passenger safety and occupant protection surveys.

"(e) GRANT AMOUNT.--The amount of a grant to a State for a fiscal year under this section shall be allocated in proportion to the State's apportionment under section 402 for fiscal year 2009.

"(f) REPORT.--A State that receives a grant under this section shall transmit a report to the Secretary documenting the manner in which the grant amounts were obligated and expended and identifying the specific programs carried out using the grant funds. The report shall be in a form prescribed by the Secretary and may be combined with other State grant reporting requirements under chapter 4 of title 23, United States Code.

"(g) DEFINITIONS.--In this section:

"(1) CHILD RESTRAINT.--The term 'child restraint' means any device (including child safety seat, booster seat, harness, and excepting seat belts) designed for use in a motor vehicle to restrain, seat, or position children who weigh 65 pounds (30 kilograms) or less, and certified to the Federal motor vehicle safety standard prescribed by the National Highway Traffic Safety Administration for child restraints.

"(2) SEAT BELT.--The term 'seat belt' means--

"(A) with respect to open-body motor vehicles, including convertibles, an occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt; and

"(B) with respect to other motor vehicles, an occupant restraint system consisting of integrated lap and shoulder belts."

(b) CONFORMING AMENDMENT.--The analysis for chapter 4 of such title is amended by striking the item relating to section 405 and inserting the following:

"405. Combined occupant protection grants."

**SEC. 3006. STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.**

Section 408 of title 23, United States Code, is amended to read as follows:  
**"Sec. 408. State traffic safety information system improvements**

"(a) GENERAL AUTHORITY.--Subject to the requirements of this section, the Secretary of Transportation shall make grants to States to support the development and implementation of effective programs by such States to--

"(1) improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of the safety data of the State that is needed to identify priorities for national, State, and local highway and traffic safety programs;

"(2) evaluate the effectiveness of efforts to make such improvements;

"(3) link the State data systems, including traffic records, with other data systems within the State, such as systems that contain medical, roadway, and economic data; and

"(4) improve the compatibility and interoperability of the data systems of the State with national data systems and data systems of other States and enhance the ability of the Secretary to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances.

"(b) FEDERAL SHARE.--The Federal share of the cost of adopting and implementing in a fiscal year a State program described in this section may not exceed 80 percent.

"(c) ELIGIBILITY.--To be eligible for a grant under this section in a fiscal year, a State shall demonstrate to the satisfaction of the Secretary that the State--

"(1) has a functioning traffic records coordinating committee ('TRCC') that meets at least three times a year;

"(2) designated a TRCC coordinator;

"(3) established a traffic record strategic plan approved by the State TRCC that describes specific quantifiable and measurable improvements anticipated in the State's core safety databases (crash; citation or adjudication; driver; emergency medical services or injury surveillance system; roadway and vehicle databases); and

"(4) demonstrates quantitative progress in relation to at least one of the following significant data program attributes: accuracy, completeness, timeliness, uniformity, accessibility, or integration of a core highway safety database, as determined by the Secretary.

"(d) USE OF GRANT AMOUNTS.--A State receiving a grant under this section in a fiscal year shall use the amount for making data program improvements to core highway safety databases related to quantifiable,

measurable progress in any of the six significant data program attributes specified in subsection (c)(4).

"(e) GRANT AMOUNT.--The amount of a grant to a State for a fiscal year under this section shall be allocated in proportion to the State's apportionment under section 402 of this title for fiscal year 2009."

### **SEC. 3007. IMPAIRED DRIVING COUNTERMEASURES.**

(a) In General.--Section 410 of title 23, United States Code, is amended to read as follows:

#### **"Sec. 410. Impaired driving countermeasures**

"(a) GENERAL AUTHORITY.--Subject to the requirements of this section, the Secretary of Transportation shall make grants to States that adopt and implement effective programs to reduce driving under the influence of alcohol, drugs, or the combination of alcohol and drugs, and for States that adopt and implement alcohol-ignition interlock laws.

"(b) FEDERAL SHARE.--The Federal share of the costs of activities funded using amounts from grants under this section shall not exceed 80 percent in any fiscal year in which the State receives a grant.

"(c) ELIGIBILITY.--

"(1) LOW-RANGE STATE.--A State that has an average impaired driving fatality rate (based on vehicle miles traveled (VMT)) of 0.30 or below, based on the most recently reported three calendar years of final Fatality Analysis Reporting System (FARS) data, shall be eligible for a grant in a fiscal year.

"(2) MID-RANGE STATE.--A State that has an average impaired driving fatality rate (based on VMT) that is greater than 0.30 but less than 0.60, based on the most recently reported three calendar years of final FARS data, shall be eligible for a grant in a fiscal year if the State convenes, during the first year of the grant, a statewide impaired driving task force to develop a statewide plan to address the problem of impaired driving and to oversee the plan's implementation, unless such a plan had been developed by a statewide task force during the prior three calendar years.

"(3) HIGH-RANGE STATE.--A State that has an average impaired driving fatality rate (based on VMT) that is greater than 0.60, based on the final FARS data for the most recent three calendar years shall be eligible for a grant in a fiscal year, by--

"(A) conducting, during the first year of the grant, an assessment of the State's impaired driving program (unless such an assessment had been performed during the 3 prior years);

"(B) convening, during the first year of the grant, a statewide impaired driving task force to develop a statewide plan to address the recommendations provided by the assessment under subparagraph (A), unless such plan has been completed during the 3 prior years, and to oversee the implementation of the statewide plan; and

"(C) submitting, during the first year of the grant, the statewide plan to the National Highway Traffic Safety Administration for the agency's review and comment, and updating and submitting, in each subsequent year of the grant, a revised statewide plan for the agency's review and comment.

"(d) USE OF GRANT AMOUNTS.--

"(1) LOW-RANGE STATE.--A grant amount received by a State that has an average impaired driving fatality rate (based on (VMT) of 0.30 or below, based on final FARS data from the most recently reported three calendar years, may be used by the State for any expenditure designed to reduce impaired driving based on problem identification.

"(2) MID-RANGE STATE.--A grant amount received by a State that has an average impaired driving fatality rate (based on (VMT) that is greater than 0.30 but less than 0.60, based on the most recently reported three calendar years, may be used by the State only for one or more of the following:

"(A) High visibility enforcement.

"(B) Paid and earned media in support of high visibility enforcement.

"(C) Court support of high visibility enforcement efforts.

"(D) Alcohol ignition interlock programs.

"(E) Improvement of blood-alcohol concentration (BAC) testing and reporting.

"(F) Establishment of driving while intoxicated (DWI) courts.

"(G) Standardized field sobriety training (SFST), advanced roadside impaired driving evaluation (ARIDE), or drug recognition expert (DRE) training for law enforcement.

"(H) Training and education of criminal justice professionals (including law enforcement, prosecutors, judges and probation officers) to assist such professionals in handling impaired driving cases.

"(I) Traffic safety resource prosecutors.

"(J) Judicial outreach liaisons.

"(K) Equipment and related expenditures used in connection with impaired driving enforcement, including speed measurement devices, in accordance with criteria established by the National Highway Traffic Safety Administration.

"(L) Training on the use of alcohol screening and brief intervention.

"(M) Other activities designed to reduce impaired driving in the State based on problem identification and included in the statewide plan addressing the problem of impaired driving.

"(3) HIGH-RANGE STATE.--A grant amount received by a State that has an average impaired driving fatality rate (based on (VMT) that is greater than 0.60, based on the most recently reported three calendar years, may be used by the State only for one or more of the following:

"(A) Conduct of one or more activities under subparagraphs (A) through (L) under paragraph (2).

"(B) Other activities designed to reduce impaired driving in the State based on problem identification and identified as high priority in the assessment report and included in the statewide plan addressing the problem of impaired driving.

"(e) GRANT AMOUNT.--Subject to subsection (i), the amount of a grant to a State for a fiscal year under this section shall be allocated in proportion to the State's apportionment under section 402(c) of this title for fiscal year 2009.

"(f) ALLOCATION OF ADDITIONAL HIGHWAY SAFETY FUNDS FOR IMPAIRED DRIVING INITIATIVES.--

"(1) If a State that has an average impaired driving fatality rate (based on VMT) that is greater than 0.60, based on final FARS data from the most recently reported three calendar years, receives an impaired driving grant for two consecutive fiscal years and does not show an improvement of at least 1 percent in its average impaired driving fatality rate from final FARS data over the most recently reported three calendar years in the most recently reported year, the State shall enter into such agreements with the Secretary as the Secretary may require ensuring that the State will allocate and expend at least 5 percent more for impaired driving initiatives than previously approved in the State's annual Highway Safety Plan for section 402 of this title.

"(2) If a State that has an average impaired driving fatality rate (based on VMT) that is greater than 0.60, based on final FARS data from the most recently reported three calendar years, receives an impaired driving grant for three or more consecutive fiscal years and does not show an improvement of at least 1 percent in its average impaired driving fatality rate from final FARS data over the most recently reported three calendar years in the most recently reported year, the State shall enter into such agreements with the Secretary as the Secretary may require ensuring that the State will allocate and expend at least 10 percent more for impaired driving initiatives than previously approved in the State's annual Highway Safety Plan for section 402 of this title.

"(g) CHANGES IN THE AVERAGE IMPAIRED DRIVING FATALITY RATE.--The Secretary, acting through the Administrator of the National Highway Traffic Safety Administration, may change the impaired driving fatality rate that establishes the Low-, Mid- and High-Range under this section every three years, based upon changing conditions across the nation.

"(h) IMPAIRED DRIVING FATALITY RATE.--For the purposes of this section, the term 'impaired driving fatality rate' means the rate of alcohol-impaired driving fatalities, as calculated in accordance with regulations which the Administrator of the National Highway Traffic Safety Administration shall prescribe.

"(i) GRANTS TO STATES THAT ADOPT AND ENFORCE MANDATORY ALCOHOL-IGNITION INTERLOCK LAWS.--

"(1) IN GENERAL.--The Secretary shall make a separate grant under this section to each State that adopts and is enforcing a mandatory alcohol-ignition interlock law for all individuals convicted of driving under the influence of alcohol or of driving while intoxicated.

"(2) USE OF FUNDS.--Such grants may be used by recipient States only for costs associated with the State's alcohol-ignition interlock program, including screening, assessment, and program and offender oversight.

"(3) ALLOCATION.--Funds made available under this subsection shall be allocated among States described in paragraph (1) on the basis of the apportionment formula under section 402(c) of this title.

"(4) FUNDING.--Not more than 15 percent of the amounts made available to carry out this section in a fiscal year shall be made available by the Secretary for making grants under this subsection in a fiscal year."

(b) CONFORMING AMENDMENT.--The analysis for chapter 4 of such title is amended by striking the item relating to section 410 and inserting the following:

"410. Impaired driving countermeasures."

## **SEC. 3008. DISTRACTED DRIVING GRANTS.**

(a) IN GENERAL.--Section 411 of title 23, United States Code, is amended to read as follows:

### **"Sec. 411. Distracted driving grants**

"(a) GENERAL AUTHORITY.--Subject to the provisions of this section, the Secretary of Transportation shall make grants to States that enact and enforce distracted driving laws that prohibit text messaging while driving.

"(b) FEDERAL SHARE.--The Federal share of the costs of activities funded using amounts from grants under this section shall be 80 percent.

"(c) ELIGIBILITY.--A State shall be eligible for a grant in a fiscal year if the State--

"(1) enacts and enforces a law that prohibits a driver of a motor vehicle, while driving, from texting or text messaging;

"(2) authorizes law enforcement officers to stop a motor vehicle and issue a traffic citation to a driver who is texting or text messaging while driving;

"(3) provides the following minimum penalties for a driver who violates the State law described in paragraph (1):

"(A) For the first offense, a minimum fine of \$50.00 and action or points against driving privileges.

"(B) For a second or subsequent offense, provides for minimum penalties as determined appropriate by the Secretary.

"(C) For any offense that results in a death or serious injury, provides for minimum penalties as determined appropriate by the Secretary; and

"(4) conducts education, awareness, and related activities to inform the public about the safety risks associated with texting or text messaging while driving.

"(d) USE OF GRANT AMOUNTS.--A State receiving a grant under this section in a fiscal year shall use the amount for any highway safety activity under this chapter, including law enforcement, collecting and analyzing data pertaining to distracted driving, and developing and conducting education and training programs targeting distracted driving.

"(e) GRANT AMOUNT.--The amount of a grant to a State for a fiscal year under this section shall be allocated in proportion to the State's apportionment under section 402 of this title for fiscal year 2009.

"(f) DEFINITIONS.--In this section:

"(1) DRIVING.--The term 'driving' means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise. It does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

"(2) TEXTING; TEXT MESSAGING.--The term 'texting' or 'text messaging' means to manually type or enter multiple letters, numbers, symbols or other text in a wireless communication device, or send or read data in the device, for the purpose of non-voice interpersonal communication, including texting, emailing and instant messaging."



(b) CONFORMING AMENDMENT.--The analysis for chapter 4 of such title is amended by striking the item relating to section 411 and inserting the following:

"411. Distracted driving grants."

### **SEC. 3009. HIGH VISIBILITY ENFORCEMENT PROGRAM.**

Section 2009 ("High Visibility Enforcement Program") of Public Law 109-59 (23 USC 402 note) is amended--

(1) by revising subsection (a) to read as follows:

"(a) IN GENERAL.--The Administrator of the National Highway Traffic Safety Administration shall establish and administer a program under which at least 2 high-visibility traffic safety law enforcement campaigns will be carried out for purposes specified in subsection (b) in each of years 2012 through 2017. The Administrator may also initiate and support additional campaigns in each of years 2012 through 2017 for the purposes specified in subsection (b).";

(2) by revising subsection (b) to insert "or related" before "objectives";

(3) by revising subsection (c) to insert "and Internet-based outreach" after "media";

(4) by striking, in subsection (e), "subsections (a), (c), and (f)" and inserting "subsection (c)"; and

(5) by striking subsection (f).

### **SEC. 3010. MOTORCYCLIST SAFETY.**

Section 2010 ("Motorcyclist Safety") of Public Law 109-59 (23 USC 402 note) is amended by striking all after subsection (b) and inserting the following:

"(c) ALLOCATION.--The amount of a grant made to a State for a fiscal year under this section may not be less than \$100,000 and may not exceed 25 percent of the amount apportioned to the State for fiscal year 2009 under section 402 of title 23, United States Code.

"(d) ELIGIBILITY.--

"(1) A State with a universal motorcycle helmet use law, a law requiring all motorcycle operators and passengers to wear helmets meeting Federal Motor Vehicle Safety Standard (FMVSS) 218, shall be eligible for a grant in a fiscal year by satisfying at least one of the following:

"(A) a reduction in the number of motorcycle fatalities or in the number of crashes involving motorcycles, compared to the prior year;

"(B) an impaired riding communication and enforcement program;

"(C) a reduction in the number of impaired motorcycle fatalities or in the number of reported crashes involving impaired motorcyclists, compared to the prior year;

"(D) a reduction in the number of fatalities involving improperly licensed motorcyclists or in the number of reported crashes involving improperly licensed motorcyclists, compared to the prior year; or

"(E) statewide motorcycle rider training courses.

"(2) A State without a universal motorcycle helmet use law shall be eligible for a grant in the first two fiscal years by satisfying at least two of the criteria under subparagraphs (A) through (E) of paragraph (1), and shall be eligible for a grant in each of the succeeding fiscal years by satisfying at least three of the criteria under subparagraphs (A) through (E) of paragraph (1).

"(e) USE OF GRANT AMOUNTS.--

"(1) ALLOCATIONS.--

"(A) Of the grant amount received by a State in a fiscal year, not more than 50 percent may be used to fund motorcycle rider training activities.

"(B) A State without a universal motorcycle helmet use law shall expend at least 50 percent of a grant amount received by the State in a fiscal year to promote the use of motorcycle helmets meeting Federal motor vehicle safety standard No. 218, which sets minimum performance requirements for helmets designed for use by motorcyclists and other motor vehicle users.

"(2) REMAINING AMOUNTS.--A grant amount received by a State in a fiscal year, other than an amount subject to paragraph (1), may only be used for the following activities:

"(A) Promote the increased use of motorcycle helmets meeting Federal motor vehicle safety standard No. 218.

"(B) Increase communication and enforcement efforts to reduce impaired riding.

"(C) Reduce the number of improperly licensed motorcyclists.

"(D) Link State motorcycle data, including data regarding licensing, registration, crashes, education or training, hospital data related to motorcycle traffic crash injuries or traffic citations.

"(E) Promote a State motorcycle rider training program, including course promotion, instructor development, mobile training units, training equipment, and efforts to update motorcycle safety training curricula.

"(F) Implement a graduated driver licensing system for novice motorcycle operators.

"(G) Implement communication and enforcement programs to reduce speeding and reckless riding.

"(f) DEFINITIONS.--In this section, the following definitions apply:

"(1) MOTORCYCLE RIDER TRAINING.--The term 'motorcycle rider training' means a formal program of instruction that is approved for use in a State by the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or a motorcycle advisory council appointed by the Governor of the State.

"(2) STATE.--The term 'State' has the same meaning such term has in section 101(a) of title 23, United States Code."

### **SEC. 3011. AGENCY ACCOUNTABILITY.**

Section 412 of title 23, United States Code, is amended--

(1) by revising subsection (a) to read as follows:

"(a) TRIENNIAL STATE MANAGEMENT REVIEWS.--At least once every 3 years, the Secretary of Transportation shall conduct a review of each State highway safety program except that, in the case of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, such review may be conducted as determined appropriate by the Secretary."; and

(2) by striking subsections (d) and (f), and redesignating subsection (e) as subsection (d).

### **SEC. 3012. EFFECTIVE DATE.**

Sections 3002 through 3013 of this Part (and the amendments and repeals made by such sections) shall take effect October 1, 2011.

### **SEC. 3013. EMERGENCY MEDICAL SERVICES.**

Section 10202 ("Emergency Medical Services") of Public Law 109-59 (42 U.S.C 300d-4) is amended by inserting after subsection (a) the following:

"(b) NATIONAL EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL.--

"(1) ESTABLISHMENT.--The Secretary of Transportation, the Secretary of Health and Human Services, and the Secretary of Homeland Security, acting through the Secretary of Transportation, shall establish a National Emergency Medical Services Advisory Council.

"(2) MEMBERSHIP.--The Advisory Council shall consist of 25 members, representative of all sectors of the emergency medical services community, appointed by the Secretary of Transportation.

"(3) PURPOSES.--The purposes of the Advisory Council are as follows:

"(A) To advise and consult with the Federal Interagency Committee on Emergency Medical Services on matters relating to emergency medical services issues.

"(B) To advise and consult with the Secretary of Transportation on matters relating to emergency medical services issues affecting the Department of Transportation.

"(4) ADMINISTRATION.--The Administrator of the National Highway Traffic Safety Administration shall provide administrative support to the Advisory Council, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

"(5) LEADERSHIP.--The members of the Advisory Council shall select a chairperson of the Council each year.

"(6) MEETINGS.--The Advisory Council shall meet as frequently as is determined necessary by the chairperson of the Council.

"(7) ANNUAL REPORTS.--The Advisory Council shall prepare an annual report to the Secretary of Transportation regarding the Council's actions and recommendations."

## **Part 2--Motor Vehicle Safety**

### **SEC. 3051. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.--The following sums are authorized to be appropriated out of the Highway Account of the Transportation Trust Fund to the Secretary of Transportation for the National Highway Traffic Safety Administration to carry out chapter 301 ("Motor Vehicle Safety") of title 49, United States Code, and part C of subtitle VI of title 49, United States Code:

- (1) \$170,708,723 for fiscal year 2012.
- (2) \$202,620,000 for fiscal year 2013.
- (3) \$222,882,000 for fiscal year 2014.
- (4) \$245,170,000 for fiscal year 2015.
- (5) \$269,687,000 for fiscal year 2016.
- (6) \$296,656,000 for fiscal year 2017.

(b) APPLICABILITY OF CHAPTER 1 OF TITLE 23.--Amounts made available under subsection (a) for each of fiscal years 2012 through 2017 shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share payable on account of any program, project, or activity carried out with such funds made available shall be 100 percent.

### **SEC. 3052. DEFINITIONS.**

Section 30102 of title 49, United States Code, is amended by--

- (1) striking "or" at the end of clause (B) of subsection (a)(7) ("motor vehicle equipment");
- (2) revising clause (C) of subsection (a)(7) to read as follows:
- "(C) any device or an article or apparel (including a motorcycle helmet, but not including medicine or eyeglasses prescribed by a licensed practitioner) that is not a system, part, or component of a motor vehicle but is manufactured, sold, delivered, or offered to be sold that is intended for use on public streets, roads, and highways primarily to safeguard motor vehicles and highway users against risk of accident, injury, or death; or"; and
- (3) adding the following clause at the end of subsection (a)(7):
- "(D) any device (electronic or otherwise), software, or system that is manufactured, sold, delivered, or offered to be sold that, when installed in or used in a motor vehicle, presents an unreasonable risk of a motor vehicle accident that could result in personal injury or death."

**SEC. 3053. ACTIVITIES TO PROMOTE MOTOR VEHICLE AND HIGHWAY SAFETY.**

(a) IN GENERAL.--Section 30105 of title 49, United States Code, is amended to read as follows:

**"Sec. 30105. Activities to promote motor vehicle and highway safety**

"Notwithstanding any other law, funds appropriated to the Secretary for the National Highway Traffic Safety Administration shall be available for activities to promote motor vehicle and highway safety, including activities specifically designed to urge a State or local legislator or legislature to favor or oppose the adoption of any specific legislative proposal."

(b) CONFORMING AMENDMENT.--The item relating to section 30105 in the analysis of chapter 301 is amended to read as follows:

"30105. Activities to promote motor vehicle and highway safety."

**SEC. 3054. SAFETY OF RECALLED RENTAL MOTOR VEHICLES.**

(a) IN GENERAL--Section 30106(a) of title 49, United States Code, is amended to read as follows:

"(a) LIMITATION ON RENTAL OR LEASE OF MOTOR VEHICLES.--

"(1) IN GENERAL.--An owner of a business that rents or leases motor vehicles to a person (or an affiliate of the owner) may not rent or lease a motor vehicle until any defect or noncompliance pursuant to section 30118(b) or section 30118(c) of this title with respect to the vehicle has been remedied.

**"(2) EXCEPTION IF ENFORCEMENT ORDER SET ASIDE.--**

Paragraph (1) shall not apply if notification of the defect or noncompliance with respect to the vehicle is required under section 30118(b) but enforcement of the order is set aside in a civil action to which 30121(d) of this title applies.

**"(3) EXCEPTION IF RECALL NOTIFICATION NOT PROVIDED PRIOR TO RENTAL OR LEASE.--**This subsection does not apply to an owner (or an affiliate of the owner) if notification of the recall regarding the motor vehicle was not provided to the owner prior to the time of rental or lease."

(b) **EFFECTIVE DATE.--**The amendment made by this section shall take effect 12 months after the date of enactment of this Act.

**SEC. 3055. AUTHORITY TO PRESCRIBE CERTAIN ELECTRONIC STANDARDS.**

Section 30111 of title 49, United States Code, is amended by adding at the end the following:

**"(f) AUTHORITY TO PRESCRIBE CERTAIN ELECTRONIC STANDARDS.--**The Secretary may prescribe motor vehicle safety standards regarding any device (electronic or otherwise), software, or system external to a motor vehicle that may be accessed electronically by a motor vehicle that is intended or designed for vehicle-to-vehicle or vehicle-to-infrastructure communications or information, including dedicated short-range radio communications (DSRC). The standards also may be applicable to any such device, software, or system subsequent to initial manufacture."

**SEC. 3056. EXTEND PROHIBITIONS ON IMPORTING NONCOMPLIANT VEHICLES AND EQUIPMENT TO INCLUDE DEFECTIVE VEHICLES AND EQUIPMENT.**

Section 30112 of title 49, United States Code, is amended by--

(1) revising subsection (a) to add after paragraph (2) the following:

**"(3) Except as provided in this section, sections 30114, 30120(i) and 30120(j) of this title, and subchapter III of this chapter, a person may not sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or motor vehicle equipment for which it is decided that the vehicle or equipment contains a defect related to motor vehicle safety about which notice was given under section 30118(c) of this title or an order was issued under section 30118(b) of this title.";** and

(2) revising subsection (b)(2) to insert "or" at the end of clause (B) and adding at the end the following:

"(C) having no reason to know, despite exercising reasonable care, that a motor vehicle or motor vehicle equipment contains a defect related to motor vehicle safety about which notice was given under section 30118(c) of this title or an order was issued under section 30118(b) of this title;"

#### **SEC. 3057. INFORMATION IN GENERAL.**

Section 30117(a) of title 49, United States Code, is amended by inserting at the end the following:

"(3) to the National Highway Traffic Safety Administration any other information the Secretary deems necessary."

#### **SEC. 3058. UPDATE OF MEANS OF PROVIDING NOTIFICATION; IMPROVING EFFICACY OF RECALLS.**

(a) UPDATE OF MEANS OF PROVIDING NOTIFICATION.--Section 30119(d) of title 49, United States Code, is amended--

(1) by striking, in paragraph (1), "by first class mail" and inserting "in the way the Secretary prescribes by regulation";

(2) by striking, in paragraph (2)--

(A) "(except a tire)";

(B) "by first class mail" and inserting "in the way the Secretary prescribes by regulation"; and

(C) the second sentence;

(3) in paragraph (3)--

(A) by striking the first sentence;

(B) by inserting, after "addition" the following: "to the notification required under paragraphs (1) and (2) of this subsection"; and

(C) by inserting after "given" the following: "by the manufacturer"; and

(4) by striking, in paragraph (4), "by certified mail or quicker means if available" and inserting "in the way the Secretary prescribes by regulation."

(b) IMPROVING EFFICACY OF RECALLS.--Section 30119(e) of title 49, United States Code, is amended by adding at the end the following:

"If, in the Secretary's judgment, depending on the severity of the defect or noncompliance, the second notification by a manufacturer does not result in an adequate number of motor vehicles or items of replacement equipment being returned for remedy, the Secretary may order the manufacturer to send additional notifications, in the way the Secretary prescribes by regulation, which require the manufacturer to take additional steps to locate and notify each person registered under State law as the owner or lessee or the most recent purchaser or lessee, as

appropriate, and which emphasize the magnitude of the safety risk caused by the defect or noncompliance.".

#### **SEC. 3059. EXPANDING CHOICES OF REMEDY AVAILABLE TO MANUFACTURERS OF REPLACEMENT EQUIPMENT.**

Section 30120 of title 49, United States Code, is amended--

(1) by revising subsection (a)(1)(B) to read as follows:

"(B) if replacement equipment, by repairing the equipment, replacing the equipment with identical or reasonably equivalent equipment, or by refunding the purchase price.";

(2) by revising the heading of subsection (i) to read as follows:

"LIMITATION ON SALE OR LEASE OF NEW VEHICLES OR EQUIPMENT.--"; and

(3) by revising the heading of subsection (j) to read as follows:

"PROHIBITION ON SALES OF REPLACEMENT EQUIPMENT.--".

#### **SEC. 3060. USED MOTOR VEHICLE CONSUMER PROTECTION.**

(a) IN GENERAL.--Section 30120 of title 49, United States Code, is amended by adding at the end the following:

"(k) LIMITATION ON SALE OR LEASE OF USED MOTOR VEHICLES.--

"(1) A dealer may not sell or lease a used motor vehicle until any defect or noncompliance pursuant to section 30118(b) or section 30118(c) of this title with respect to the vehicle has been remedied.

"(2) Paragraph (1) shall not apply if notification of the defect or noncompliance with respect to the vehicle is required under section 30118(b) but enforcement of the order is set aside in a civil action to which 30121(d) applies.

"(3) This subsection does not apply to a dealer if the recall information regarding a used motor vehicle was not accessible at the time of sale or lease using the means established by the Secretary in paragraph (6).

"(4) In this subsection, notwithstanding section 30102(a)(1) of this title,

"(A) the term 'dealer' means a person who sold at least 10 motor vehicles to consumers during the prior 12 months; and

"(B) the term 'used motor vehicle' means a motor vehicle that has previously been purchased other than for resale.

"(5) By rule, the Secretary may exempt the auctioning of used motor vehicles from the requirements of this subsection to the extent that the exemption does not harm public safety.

"(6) Not later than 18 months after the date of the enactment of the Transportation Opportunities Act, the Secretary shall require that motor vehicle safety recall information be made available to the public on the



Internet, searchable by vehicle make, model, and model year and searchable by a vehicle identification number, in a manner that preserves personal privacy and that provides information about each safety-related recall that has not been completed for that vehicle. The Secretary may initiate a rulemaking proceeding to require that manufacturers provide such information at no cost on publicly accessible Internet websites or through other reasonable means."

(b) EFFECTIVE DATE.-- Except for subsection (k)(6), the amendment made by this section shall take effect 2 years after the date of enactment of this Act.

### **SEC. 3061. RECALL OBLIGATIONS AND BANKRUPTCY OF MANUFACTURER.**

(a) IN GENERAL.--Chapter 301 of title 49, United States Code, is amended by inserting the following after section 30120:

#### **"Sec. 30120a. Recall obligations and bankruptcy of a manufacturer**

"A manufacturer's filing of a petition in bankruptcy does not negate the manufacturer's duty to comply with sections 30112, or 30115 through 30120 of this title. In any bankruptcy proceeding, the manufacturer's obligations under such sections shall be treated as a claim of the United States Government against such manufacturer, subject to subchapter II of chapter 37 of title 31, United States Code, and given priority, pursuant to section 3710 of such chapter and title, to ensure that consumers are adequately protected from any safety defect or noncompliance determined to exist in the manufacturer's products. This section applies equally to actions of a manufacturer taken before and after the filing of a petition in bankruptcy."

(b) CONFORMING AMENDMENT.--The analysis of chapter 301 of title 49, United States Code, is amended by inserting after the item for section 30120 the following:

"30120a. Recall obligations and bankruptcy of a manufacturer."

### **SEC. 3062. AMENDMENT TO RENDER INOPERATIVE PROHIBITION.**

Section 30122 of title 49, United States Code, is amended by revising subsection (b) to read as follows:

"(b) PROHIBITION.--(1) Except as provided in paragraph (2) of this subsection, a person may not knowingly make inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard prescribed under this chapter unless, in the case of the manufacturer, distributor, dealer, or repair business, the person reasonably believes the vehicle or equipment will not be used

(except for testing or a similar purpose during maintenance or repair) when the device or element is inoperative.

"(2) The prohibition in paragraph (1) does not apply to modifications made by a person to a motor vehicle or item of equipment owned or leased by that person."

**SEC. 3063. PERMIT REMINDER SIGNAL FOR NON-USE OF SAFETY BELT INTERLOCKS.**

(a) IN GENERAL.--Section 30124 of title 49, United States Code, is amended by striking the words "or a buzzer designed to indicate a safety belt is not in use, except a buzzer that operates only during the 8-second period after the ignition is turned to the 'start' or 'on' position" and by revising the section heading to read "Non-use of safety belt interlocks".

(b) CONFORMING AMENDMENT.--The analysis for chapter 301 of title 49, United States Code, is amended by revising the item for section 30124 to read as follows:

"30124. Non-use of safety belt interlocks."

**SEC. 3064. FINANCIAL RESPONSIBILITY REQUIREMENTS FOR IMPORTERS.**

(a) SUBCHAPTER HEADING.--Subchapter III of Chapter 301 of title 49, United States Code, and the analysis of Chapter 301, are each amended by revising the heading of the subchapter to read as follows:

" SUBCHAPTER III--IMPORTING MOTOR VEHICLES AND EQUIPMENT".

(b) Section 30147(b) of title 49, United States Code, is amended to read as follows:

"(b) FINANCIAL RESPONSIBILITY REQUIREMENT.--The Secretary shall require by regulation that each person that imports a motor vehicle or motor vehicle equipment into the customs territory of the United States, including a registered importer (or any successor in interest), provide and maintain evidence, satisfactory to the Secretary, of sufficient financial responsibility to meet its obligations under 30117(b), 30118-30121, and 30166(f) of this title. If it appears that the person has not provided and maintained evidence, satisfactory to the Secretary, of sufficient financial responsibility to meet its obligations under 30117(b), 30118-30121, and 30166(f) of this title, any motor vehicle or motor vehicle equipment imported by the person shall be refused admission into the customs territory of the United States."

**SEC. 3065. JUDICIAL REVIEW.**

Section 30161 of title 49, United States Code, is amended--

(1) by revising the heading of the section to read as follows:

**"Sec. 30161. Judicial review of orders and standards";**

(2) by revising the first sentence of subsection (a) to read as follows:

"Except for an order to issue provisional notification under section 30121 of this title, which may not be reviewed, a person adversely affected by an order issued under this chapter, a rule prescribing a motor vehicle safety standard under this chapter, or any other final agency action taken under this chapter may apply for review of the order, rule, or action by filing a petition for review in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business or the District of Columbia circuit."; and

(3) by amending the analysis of chapter 301 of title 49, United States Code, to revise the item relating to section 30161 to read as follows: "30161. Judicial review of orders and standards."

### **SEC. 3066. ACTIONS BY THE ATTORNEY GENERAL.**

Section 30163 of title 49, United States Code, is amended by adding the following at the end:

"(f) **ACTIONS TO ENFORCE RECALL ORDERS.**--In an action brought under subsection (a) of this section concerning an order issued under section 30118(b) of this title, the Attorney General need only prove that the Secretary provided appropriate notification to the manufacturer under section 30118 and need not establish the substantive validity of the order, which may only be challenged by the manufacturer through the timely filing of a petition under section 30161 of this title. If an action is brought under subsection (a) of this section prior to the expiration of the time available for the filing of a petition under section 30161, the manufacturer may seek a stay of the district court action until the resolution of any petition for review under section 30161.

"(g) **ACTIONS TO COLLECT A CIVIL PENALTY.**--The Attorney General may bring a civil action in a United States district court to collect a civil penalty or to collect an amount agreed upon in compromise by the Secretary under section 30165 of this title."

### **SEC. 3067. CONDITIONS ON IMPORTATION OF VEHICLES AND EQUIPMENT.**

Section 30164 of title 49, United States Code, is amended--

(1) by revising the heading of the section to read as follows:

**"Sec. 30164. Service of process; conditions on importation of vehicles and equipment";** and

(2) by inserting the following subsections at the end:

"(c) **IDENTIFYING INFORMATION.**--A manufacturer (including an importer) offering a motor vehicle or motor vehicle equipment for import shall identify (1) the product by name, the manufacturer's address, or such other

identifying information as the Secretary may, by rule, request, and (2) each retailer or distributor to which the manufacturer directly supplied a given motor vehicle or motor vehicle equipment over which the Secretary has jurisdiction under this chapter.

"(d) RULEMAKING AUTHORITY.--The Secretary may, by rule, condition the import of a motor vehicle or motor vehicle equipment on the manufacturer's compliance with the requirements of this section, any rules with respect to such requirements, or any other requirements of this chapter or rules issued under this chapter. In any such rule the Secretary shall include an opportunity for the manufacturer to present information on its behalf prior to the Secretary's determination as to whether the manufacturer's imports should be restricted and shall include a process by which a manufacturer may petition for reinstatement of its ability to import motor vehicles or motor vehicle equipment."; and

(3) by amending the analysis of chapter 301 of title 49, United States Code, to revise the item relating to section 30164 to read:  
"30164. Service of process; conditions on importation of vehicles and equipment."

#### **SEC. 3068. CIVIL PENALTIES.**

Section 30165(a) of title 49, United States Code, is amended--

- (1) in paragraph (1),
  - (A) by inserting "or causes the violation of" after "violates" in the first sentence;
  - (B) by striking "\$5,000" and inserting "\$25,000";
  - (C) by striking "\$15,000,000" and inserting "\$300,000,000"; and
  - (D) by inserting at the end of the paragraph the following:  
"An individual is liable under this section only for willfully causing or committing a violation. An individual who has been instructed to commit a violation by a person of greater authority in the entity in which the individual is employed has not acted willfully.";
- (2) in paragraph (2),
  - (A) by striking, in clause (A), "\$10,000" and inserting "\$100,000"; and
  - (B) by striking, in clause (B), "\$15,000,000" and inserting "\$300,000,000"; and
- (3) in paragraph (3),
  - (A) by striking "\$5,000" and inserting "\$25,000"; and
  - (B) by striking "\$15,000,000" and inserting "\$300,000,000".

#### **SEC. 3069. PORT INSPECTIONS; SAMPLES FOR EXAMINATION OR TESTING.**

Section 30166(c) of title 49, United States Code, is amended--

(1) by inserting "(including at United States ports of entry)" in paragraph (3)(A) after "held for introduction in interstate commerce"; and

(2) by inserting at the end of subsection (c) the following:

"(4) The Secretary of Homeland Security shall obtain without charge and deliver to the Secretary of Transportation, upon the latter's request, a reasonable number of samples of motor vehicle equipment being offered for import. If it appears from examination of such samples or otherwise (including the need for further examination or testing) that motor vehicle equipment must be refused admission into the customs territory of the United States due to noncompliance with this chapter or a regulation prescribed or order issued under this chapter, such motor vehicle equipment shall be refused admission."

## **SEC. 3070. MOTOR VEHICLE SAFETY RESEARCH AND DEVELOPMENT.**

(a) IN GENERAL.--Chapter 301 of title 49, United States Code, is amended by inserting the following at the end:

### **"SUBCHAPTER V--MOTOR VEHICLE SAFETY RESEARCH AND DEVELOPMENT**

#### **"Sec. 30171. Policy**

"The Secretary of Transportation shall conduct research, development and testing on any area or aspect of motor vehicle safety necessary to carry out this chapter.

#### **"Sec. 30172. Powers and duties**

"(a) IN GENERAL.--To carry out this subchapter, the Secretary of Transportation shall--

"(1) conduct motor vehicle safety research, development, and testing programs and activities, including, but not limited to, new and emerging technologies that impact or that may impact motor vehicle safety;

"(2) collect and analyze all types of motor vehicle and highway safety data and related information to determine the relationship between motor vehicle or motor vehicle equipment performance characteristics and--

"(A) accidents involving motor vehicles; and

"(B) the occurrence of death or personal injury resulting from those accidents;

"(3) promote, support and advance the education and training of motor vehicle safety staff, including the use of program funds for planning, implementing, conducting and presenting results of program activities and for travel and related expenses;

"(4) obtain experimental and other motor vehicles and motor vehicle equipment for research or testing;

"(5) use any test motor vehicles and motor vehicle equipment suitable for continued use, as determined by the Secretary, to assist in carrying out this chapter or any other chapter of this title, or sell or otherwise dispose of test motor vehicles and motor vehicle equipment and credit the proceeds to current appropriations available to carry out this chapter;

"(6) make grants to States and local governments, interstate authorities, and nonprofit institutions; and

"(7) enter into cooperative agreements, collaborative research, or contracts with, Federal agencies, interstate authorities, State and local governments, other public entities, and with private organizations and persons, nonprofit institutions, colleges and universities, consumer advocacy groups, corporations, partnerships, sole proprietorships, trade associations, Federal laboratories, foreign governments and research organizations. For the purpose of this paragraph, the term 'Federal laboratory' includes a government-owned, government-operated laboratory and a government-owned, contractor-operated laboratory.

"(b) USE OF PUBLIC AGENCIES.--In carrying out this subchapter, the Secretary shall use the services, research, and testing facilities of public agencies as appropriate to avoid duplication.

"(c) FACILITIES.--The Secretary may plan, design, and build a new facility or modify an existing facility to conduct research, development, and testing in traffic safety, highway safety, and motor vehicle safety. An expenditure of more than \$1,500,000 for planning, design, or construction may be made only if the planning, design, or construction is approved by substantially similar resolutions by the Committees on Energy and Commerce and Transportation and Infrastructure of the House of Representatives and the Committees on Commerce, Science, and Transportation and Environment and Public Works of the Senate. To obtain that approval, the Secretary shall submit to Congress a prospectus on the proposed facility. The prospectus shall include--

"(1) a brief description of the facility being planned, designed, or built;

"(2) the location of the facility;

"(3) an estimate of the maximum cost of the facility;

"(4) a statement identifying private and public agencies that will use the facility and the contribution each agency will make to the cost of the facility; and

"(5) a justification of the need for the facility.

"(d) INCREASING COSTS OF APPROVED FACILITIES.--The estimated maximum cost of a facility approved under subsection (c) of this section may be increased by an amount equal to the percentage increase in construction costs from the date the prospectus is submitted to congress. However, the increase in the cost of the facility may not be more than 10 percent of the estimated maximum cost included in the prospectus. The Secretary shall decide what increase in construction costs has occurred.

"(e) AVAILABILITY OF INFORMATION, PATENTS, AND DEVELOPMENTS.--When the United States Government makes more than a minimal contribution to a research or development activity under this chapter, the Secretary shall include in the arrangement for the activity a provision to ensure that all information, patents, and developments related to the activity are available to the public without charge. However, the owner of a background patent may not be deprived of a right under the patent.

**"Sec. 30173. Public health authority**

"For purposes of collecting and analyzing medical data for transportation safety research under this chapter or chapter 4 of title 23, United States Code, the term 'public health authority,' as defined in section 164.501 of title 45 of the Code of Federal Regulations, shall include the National Highway Traffic Safety Administration, and any 'protected health information,' as defined in section 160.103 of title 45 of the Code of Federal Regulations, collected or received by the National Highway Traffic Safety Administration in its capacity as a public health authority may not be subject to discovery, admitted into evidence, or used in any administrative, civil, criminal or other judicial proceeding.

**"Sec. 30174. Prohibition on certain disclosures**

"Any report of the National Highway Traffic Safety Administration or of any officer, employee, or contractor of the National Highway Traffic Safety Administration, relating to any highway traffic accident or the investigation thereof conducted pursuant to this chapter or to section 403 of title 23, United States Code, shall be made available to the public in a manner that does not identify individuals.

(b) CONFORMING AMENDMENTS.--

(1) AMENDMENT OF CHAPTER ANALYSIS.--The analysis of chapter 301 of title 49, United States Code, is amended by inserting the following at the end:

"SUBCHAPTER V--MOTOR VEHICLE SAFETY RESEARCH AND DEVELOPMENT

"Sec.

"30171. Policy.

"30172. Powers and duties.

"30173. Public health authority.

"30174. Prohibition on certain disclosures."

(2) DELETION OF REDUNDANT MATERIAL.--Section 30168 of title 49, United States Code, is repealed, and the analysis of chapter 301 of title 49 is amended by striking the item relating to section 30168.

#### **SEC. 3071. CONSUMER INFORMATION DEFINITION.**

Section 32301 of title 49, United States Code, is amended by adding the following at the end:

"(3) 'crash avoidance' means preventing a crash."

#### **SEC. 3072. PASSENGER MOTOR VEHICLE INFORMATION PROGRAM.**

Section 32302 ("Passenger motor vehicle information") of title 49, United States Code, is amended by--

(1) revising subsection (a)--

(A) in paragraph (2), by inserting after "crashworthiness" the following: "and crash avoidance, and any other areas the Secretary determines will improve the safety of passenger motor vehicles"; and

(B) by striking paragraph (4); and

(2) striking subsection (c) and inserting the following:

"(c) NEW CAR ASSESSMENT PROGRAM TESTING.--In carrying out the program for developing passenger motor vehicle information, known as the 'New Car Assessment Program,' all expenses in connection with the crash tests shall be paid by the manufacturer of the motor vehicle tested (the amount of such expenses to be determined in accordance with regulations of the Secretary of Transportation) and, in default of such payment within 30 days after it is due, the payment shall be treated as a claim of the United States Government against the manufacturer subject to subchapter II of chapter 37 of title 31, United States Code."

#### **SEC. 3073. REPEAL OF INSURANCE INFORMATION REQUIREMENT.**

Section 32303 of title 49, United States Code, is repealed, and the analysis of Chapter 323 of title 49, United States Code, is amended by striking the item relating to section 32303.

#### **SEC. 3074. ODOMETER REQUIREMENTS DEFINITION.**



Section 32702 of title 49, United States Code, is amended by inserting "or system of components" in paragraph (5) after "instrument".

**SEC. 3075. ELECTRONIC DISCLOSURES OF ODOMETER INFORMATION.**

Section 32705 of title 49, United States Code, is amended by inserting at the end the following:

"(g) ELECTRONIC DISCLOSURES.--In carrying out this section, the Secretary may prescribe regulations permitting any written disclosures or notices and related matters to be completed electronically."

**SEC. 3076. AUTHORITY FOR ODOMETER FRAUD AGENTS TO MAKE ARRESTS AND CARRY FIREARMS.**

Section 32706(a) of title 49, United States Code, is amended by inserting at the end the following:

"Agents employed by the Secretary for purposes of conducting investigations under this chapter are authorized to make arrests and carry firearms in the performance of their duties."

**SEC. 3077. INCREASED CIVIL PENALTIES FOR ODOMETER FRAUD.**

Section 32709(a)(1) of title 49, United States Code, is amended--  
(1) by striking "\$2,000" and inserting "\$10,000"; and  
(2) by striking "\$100,000" and inserting "\$1,000,000".

**SEC. 3078. INCREASED DAMAGES FOR VICTIMS OF ODOMETER FRAUD.**

Section 32710(a) of title 49, United States Code, is amended by striking "\$1,500" and inserting "\$10,000".

**SEC. 3079. INSPECTION AUTHORITY UNDER AUTOMOBILE FUEL ECONOMY STATUTE.**

Section 32910(a) of title 49, United States Code, is amended by inserting the following at the end:

"(3) The Secretary of Transportation may conduct an inspection or investigation that may be necessary to enforce this chapter or a regulation prescribed or order issued under this chapter."

**SEC. 3080. REPEAL OF INSURANCE REPORTS AND INFORMATION UNDER THE THEFT PREVENTION STATUTE.**

Section 33112 of title 49, United States Code, is repealed and the analysis of Chapter 331 of title 49, United States Code, is amended by striking the item relating to section 33112.

**SEC. 3081. MONRONEY LABEL AMENDMENT TO PERMIT  
ADDITIONAL  
SAFETY RATING CATEGORIES.**

Section 1232(g)(2) of title 15, United States Code, is amended by inserting "safety rating categories that may include" after "refers to".

**Subtitle B--Motor Carrier Safety Program**

**SEC. 3101. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED  
STATES  
CODE.**

(a) SHORT TITLE.--This Subtitle may be cited as the "Motor Carrier and Driver Safety Reauthorization Act of 2011".

(b) AMENDMENTS TO TITLE 49, UNITED STATES CODE.--Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

**Part 1--Commercial Motor Vehicle Safety**

**SEC. 3111. REINCARNATED CARRIERS.**

(a) EFFECTIVE PERIODS OF REGISTRATION.--Section 13905(d) is amended--

(1) by redesignating paragraph (2) as paragraph (5); and

(2) by striking paragraph (1) and inserting the following:

"(1) APPLICATIONS.--On application of the registrant, the Secretary may amend or revoke a registration.

"(2) COMPLAINTS AND ACTIONS ON SECRETARY'S OWN INITIATIVE.--On complaint or on the Secretary's own initiative and after notice and an opportunity for a proceeding, the Secretary may--

"(A) suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder for failure to comply with--

"(i) this part;

"(ii) an applicable regulation or order of the Secretary or the Board, including the accessibility requirements established by the Secretary under subpart H

of part 37 of title 49, Code of Federal Regulations (or a successor regulation) for transportation provided by an over-the-road bus; or

"(iii) a condition of its registration;

"(B) suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder--

"(i) for failure to pay a civil penalty imposed under chapter 5, 51, 149, or 311 of this title; or

"(ii) for failure to arrange and abide by an acceptable payment plan for such civil penalty, within 90 days of the time specified by order of the Secretary for the payment of such penalty; and

"(C) withhold, suspend, amend, or revoke any part of a registration of a motor carrier following a determination by the Secretary that the motor carrier failed to disclose in its application for registration a material fact relevant to its willingness and ability to comply with--

"(i) this part;

"(ii) an applicable regulation or order of the Secretary or the Board; or

"(iii) a condition of its registration; or

"(D) withhold, suspend, amend or revoke any part of a registration of a motor carrier if the Secretary finds that within a 5-year period prior to the motor carrier's filing of the application for registration, the carrier is or has been related through common ownership, common management, common control, or common familial relationship to any other motor carrier that the Secretary determines to be, or to have been, unwilling or unable to comply with the requirements listed in section 13902(a) of this title.

"(3) LIMITATION.--Paragraph (2) (B) shall not apply to a person who is unable to pay a civil penalty because the person is a debtor in a case under chapter 11 of title 11, United States Code.

"(4) REGULATIONS.--Not later than 18 months after the date of the enactment of this paragraph, the Secretary, after notice and opportunity for public comment, shall issue regulations to provide for the suspension, amendment, or revocation of a registration under this part for failure to pay a civil penalty as provided in paragraph (2)(B)."

(b) PROCEDURE.--Section 13905(e) is amended to read as follows:

"(e) PROCEDURE.--Except on application of the registrant, or if the Secretary determines that the registrant has failed to disclose a material fact in its application for registration in accordance with subsection (d)(2)(C), the Secretary may revoke a registration of a motor carrier, freight forwarder, or broker, only after--

"(1) The Secretary has issued an order to the registrant under section 14701 of this title requiring compliance with this part, a regulation of the Secretary, or a condition of the registration; and

"(2) The registrant does not comply with the order for a period of 30 days."

(c) DUTIES OF EMPLOYERS AND EMPLOYEES.--Section 31135 is amended--

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

"(d) AVOIDING COMPLIANCE.--Two or more employers shall not use common ownership, common management, common control, or common familial relationship to enable any or all such employers to avoid compliance, or mask or otherwise conceal non-compliance, or a history of non-compliance, with commercial motor vehicle safety regulations issued under this subchapter or an order of the Secretary issued under this subchapter or such regulations. If the Secretary determines that actions described in the preceding sentence have occurred, the Secretary shall deny, suspend, amend, or revoke all or part of any such employer's registration under section 13905 or 31134 of this title, and shall take into account such noncompliance for purposes of determining civil penalty amounts under section 521(b)(2)(D) of this title."

## **SEC. 3112. MOTORCOACH NEW ENTRANTS.**

(a) DEFINITIONS.--In this section:

(1) MOTORCOACH.--The term "motorcoach" has the meaning given the term "over-the-road bus" in section 3038(a)(3) of the Transportation Equity Act for the 21st Century (Public Law 105-178; 49 U.S.C. 5310 note), but does not include the following:

(A) Buses used in public transportation provided by a State or local government.

(B) School buses, including multifunction school activity buses.

(2) MOTORCOACH SERVICES.--The term "motorcoach services" means passenger transportation by motorcoach for compensation.

(b) REGISTRATION REQUIREMENTS.--Section 13902(b) is amended by redesignating paragraphs (1) through (8) as paragraphs (2) through (9), respectively, and inserting before paragraph (2), as redesignated, the following:

"(1) ADDITIONAL REGISTRATION REQUIREMENTS FOR PROVIDERS OF MOTORCOACH SERVICES--In addition to meeting the requirements of subsection (a)(1), the Secretary may register a person to provide motorcoach services only after that person--

"(A) undergoes a pre-authorization safety audit, including verification, in a manner sufficient to demonstrate the ability to comply with Federal rules and regulations, of--

"(i) a drug and alcohol testing program consistent with part 40 of title 49, Code of Federal Regulations;

"(ii) the carrier's system of compliance with hours-of-service rules, including hours-of-service records;

"(iii) the ability to obtain required insurance;

"(iv) driver qualifications, including the validity of the commercial driver's license of each driver who will be operating under such authority;

"(v) disclosure of common ownership, common control, common management, common familial relationship, or other corporate relationship with another motor carrier or applicant for motor carrier authority over the past 3 years;

"(vi) records of the State inspections, or of a Level I or V Commercial Vehicle Safety Alliance Inspection, for all vehicles that will be operated by the carrier;

"(vii) safety management programs, including vehicle maintenance and repair programs; and

"(viii) the ability to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and the Over-the-Road Bus Transportation Accessibility Act of 2007 (49 U.S.C. 10101 note; 122 Stat. 2915);

"(B) has been interviewed to review safety management controls and the carrier's written safety oversight policies and practices; and

"(C) has demonstrated, through the successful completion of a written examination developed by the Secretary, proficiency to comply with and carry out the requirements and regulations described in subsection (a)(1)."

(c) SAFETY REVIEWS OF NEW OPERATORS.--Section 31144(g)(1) is amended to read as follows:

"(1) SAFETY REVIEW.--

"(A) IN GENERAL.--The Secretary shall require, by regulation, each owner and each operator, except motorcoach service providers subject to the requirements of section (B), granted new registration under section 13902 or 31134 of this title to undergo a safety review within the first 18 months after the owner or operator, as the case may be, begins operations under such registration.

"(B) PROVIDERS OF MOTORCOACH SERVICES.--

The Secretary may register a person to provide motorcoach services under 13902 or 31134 of this title only after that person undergoes a pre-authorization safety audit, including verification, in a manner sufficient to demonstrate the ability to comply with Federal rules and regulations, as described in section 13902 of this

title. The Secretary shall continue to monitor the safety performance of each owner and each operator subject to this section for 18 months after the owner or operator is granted registration under 13902 or 31134 of this title. The registration of each owner and each operator subject to this section shall become permanent only after the motorcoach service provider is granted registration following a pre-authorization safety audit and the expiration of the 18 month monitoring period.

"(C) PRE-AUTHORIZATION SAFETY AUDIT.--The pre-authorization safety audit required by paragraph (1)(A) shall be completed on-site no later than 90 days following the submission of an application for operating authority."

(d) EFFECTIVE DATE.--The amendments made by this section shall take effect 1 year after the date of the enactment of this Act.

#### **SEC. 3113. AUTHORITY TO CONDUCT EN ROUTE PASSENGER CARRIER INSPECTIONS.**

Section 31102(b)(1)(X) is amended by striking "motor carrier may make a planned stop" and inserting "safety officials or a motor carrier can provide reasonable accommodations for passengers".

#### **SEC. 3114. COMMERCIAL MOTOR VEHICLE DEFINED.**

Section 31101(1) is amended to read as follows:

"(1) 'commercial motor vehicle' means (except in section 31106 of this title) a self-propelled or towed vehicle used on the highways in commerce to transport passengers or property, if the vehicle--

"(A) has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater;

"(B) is designed or used to transport more than 8 passengers (including the driver) for compensation; or

"(C) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation."

#### **SEC. 3115. DISQUALIFICATION FOR IMMINENT HAZARD.**

Section 31310(f)(2) is amended by inserting "section 521 or" before "section 5102".

#### **SEC. 3116. UNIFORM ELECTRONIC CLEARANCE FOR COMMERCIAL MOTOR VEHICLE INSPECTIONS.**

(a) IN GENERAL.--Chapter 311 is amended by inserting after section 31109 the following:

**"Sec. 31110. Withholding amounts for State noncompliance**

"(a) FIRST FISCAL YEAR.--Subject to criteria established by the Secretary of Transportation, the Secretary shall withhold up to 50 percent of the amount a State is otherwise eligible to receive under section 31102(b) of this title on the first day of the fiscal year after the first fiscal year following the date of enactment of this section in which the State uses for at least 180 days an electronic commercial motor vehicle inspection selection system that does not employ a selection methodology the Secretary has approved.

"(b) SECOND FISCAL YEAR.--The Secretary shall withhold up to 75 percent of the amount a State is otherwise eligible to receive under section 31102(b) of this title on the first day of the fiscal year after the second fiscal year following the date of enactment of this section in which the State uses for at least 180 days an electronic commercial motor vehicle inspection selection system that does not employ a selection methodology the Secretary has approved.

"(c) SUBSEQUENT AVAILABILITY OF WITHHELD FUNDS.--The Secretary may make available to a State amounts withheld in accordance with subsection (a) or subsection (b) if he determines that the State has substantially complied with the requirement stated therein within 180 days after the start of the fiscal year in which amounts were withheld .".

(b) CONFORMING AMENDMENT.--The analysis of chapter 311 is amended by inserting after the item relating to section 31109 the following: "31110. Withholding amounts for State noncompliance.".

**SEC. 3117. INSPECTION DEMAND AND DISPLAY OF CREDENTIALS.**

(a) SAFETY INVESTIGATIONS.--Section 504(c) is amended to read as follows:

"(c) The Secretary, or an employee (and, in the case of a motor carrier, a contractor) designated by the Secretary, may on demand and display of proper credentials (and, in the case of a motor **\*\*[something missing]**, in person or in writing)--

"(1) inspect the equipment of a carrier or lessor; and

"(2) inspect and copy any record of--

"(A) a carrier, lessor, or association;

"(B) a person controlling, controlled by, or under common control with a carrier, if the Secretary considers inspection relevant to that person's relation to, or transaction with, that carrier; and

"(C) a person furnishing cars or protective service against heat or cold to or for a rail carrier if the Secretary prescribed the form of that record.".

(b) HAZARDOUS MATERIALS INVESTIGATIONS.--Section 5121(c) is amended to read as follows:

"(c) INSPECTIONS AND INVESTIGATIONS.--

"(1) IN GENERAL.--A designated officer, employee, or agent of the Secretary--

"(A) may inspect and investigate, at a reasonable time and in a reasonable manner, records and property relating to a function described in section 5103(b)(1) of this title;

"(B) except in the case of packaging immediately adjacent to its hazardous material contents, may gain access to, open, and examine a package offered for, or in, transportation when the officer, employee, or agent has an objectively reasonable and articulable belief that the package may contain a hazardous material;

"(C) may remove from transportation a package or related packages in a shipment offered for or in transportation for which--

"(i) such officer, employee, or agent has an objectively reasonable and articulable belief that the package may pose an imminent hazard; and

"(ii) such officer, employee, or agent contemporaneously documents such belief in accordance with procedures set forth in guidance or regulations prescribed under subsection (e);

"(D) may gather information from the offeror, carrier, packaging manufacturer or tester, or other person responsible for the package, to ascertain the nature and hazards of the contents of the package;

"(E) as necessary, under terms and conditions specified by the Secretary, may order the offeror, carrier, packaging manufacturer or tester, or other person responsible for the package to have the package transported to, opened, and the contents examined and analyzed, at a facility appropriate for the conduct of such examination and analysis; and

"(F) when safety might otherwise be compromised, may authorize properly qualified personnel to assist in the activities conducted under this subsection.

"(2) DISPLAY OF CREDENTIALS.--An officer, employee, or agent acting under this subsection shall display proper credentials, in person or in writing, when requested.

"(3) SAFE RESUMPTION OF TRANSPORTATION.--In instances when, as a result of an inspection or investigation under this subsection, an imminent hazard is not found to exist, the Secretary, in accordance with procedures set forth in regulations prescribed under subsection (e), shall assist--



"(A) in the safe and prompt resumption of transportation of the package concerned; or

"(B) in any case in which the hazardous material being transported is perishable, in the safe and expeditious resumption of transportation of the perishable hazardous material."

(c) COMMERCIAL INVESTIGATIONS.--Section 14122(b) is amended to read as follows:

"(b) RIGHT OF INSPECTION.--The Secretary or Board, or an employee designated by the Secretary or Board, may on demand and display of proper credentials, in person or in writing--

"(1) inspect and examine the lands, buildings, and equipment of a carrier or broker; and

"(2) inspect and copy any record of--

"(A) a carrier, broker, or association; and

"(B) a person controlling, controlled by, or under common control with a carrier if the Secretary or Board, as applicable, considers inspection relevant to that person's relation to, or transaction with, that carrier."

(d) CIVIL PENALTY.--Section 521(b)(2)(E) is amended to read as follows:

"(E) COPYING OF RECORDS AND ACCESS TO EQUIPMENT, LANDS, AND BUILDINGS.--

"(i) A person subject to chapter 51 of this title or a motor carrier, broker, freight forwarder, or owner or operator of a commercial motor vehicle subject to part B of subtitle VI of this title who fails to allow promptly, upon demand, in person or in writing, the Secretary (or an employee designated by the Secretary) to inspect and copy any record or inspect and examine equipment, lands, buildings and other property in accordance with sections 504(c), 5121(c), and 14122(b) of this title shall be liable to the United States for a civil penalty not to exceed \$1,000 for each offense. Each day the Secretary is denied the right to inspect and copy any record or inspect and examine equipment, lands, buildings and other property shall constitute a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed \$10,000. It shall be a defense to such penalty that the records did not exist at the time of the Secretary's request or could not be timely produced without unreasonable expense or effort. Nothing in this subparagraph amends or supersedes any remedy available to the Secretary under section 502(d), section 507(c) of this title, or any other provision of this title.

"(ii) The Secretary may by regulation adopt procedures for placing out of service and all commercial motor vehicles of

foreign-domiciled motor carriers that fail to allow promptly the Secretary to inspect and copy any record or inspect and examine equipment, lands, buildings and other property."

### **SEC. 3118. INTRASTATE OPERATIONS OF INTERSTATE MOTOR CARRIERS.**

(a) PROHIBITED TRANSPORTATION.--Section 521(b)(5) is amended by inserting after paragraph (B) the following:

"(C) If an employee, vehicle, or all or part of an employer's commercial motor vehicle operations has been ordered out of service pursuant to paragraph (5)(A), the commercial motor vehicle operations of the employee, vehicle or employer that affect interstate commerce are also prohibited."

(b) PROHIBITION ON OPERATION IN INTERSTATE COMMERCE AFTER NONPAYMENT OF PENALTIES.--Section 521(b)(8) is amended --

(1) by redesignating subparagraph (B) as subparagraph (C); and  
(2) by inserting after subparagraph (A) the following:

"(B) An owner or operator prohibited from operating in interstate commerce pursuant to paragraph (8)(A) may not operate any commercial motor vehicle where such operation affects interstate commerce."

### **SEC. 3119. MOTOR CARRIER AND OFFICER PATTERNS OF SAFETY VIOLATIONS.**

Section 31135 is amended--

(1) by striking subsection (b) and inserting the following:

"(b) PATTERN OF NONCOMPLIANCE.--

"(1) MOTOR CARRIERS.--If the Secretary finds that within the preceding 60 months a motor carrier, employer or owner or operator has engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with regulations on commercial motor vehicle safety prescribed under this subchapter, the Secretary may suspend, amend, or revoke any part of the motor carrier's registration under section 13905 or 31134 of this title.

"(2) OFFICERS.--If the Secretary finds, after notice and opportunity for proceeding, that an officer of a motor carrier, employer or owner or operator has engaged in a pattern or practice of violating regulations on commercial motor vehicle safety prescribed under this subchapter, or has assisted a motor carrier, employer or owner in avoiding compliance or masking or otherwise concealing noncompliance, the Secretary may impose appropriate sanctions, subject to the limitations in paragraph (3), including--

"(A) Suspension or revocation of registration granted to the officer individually under 13902 or 31134 of this title;

"(B) Temporary or permanent suspension or bar from further association with any motor carrier, employer, or owner or operator registered under 13902 or 31134 of this title; or

"(C) Any other appropriate sanction approved by the Secretary.

"(3) LIMITATIONS.--The sanctions described in subparagraphs (A) through (C) of subsection (b)(2) shall apply only to--

"(A) intentional or knowing conduct, including reckless conduct, that results in violation of applicable statutory and regulatory requirements; or

"(B) repeated instances of negligent conduct, resulting in violation of applicable statutory and regulatory requirements.; and

(2) by striking subsection (c) and inserting the following:

"(c) AVOIDING COMPLIANCE.--For purposes of this section, 'avoiding compliance' or 'masking or otherwise concealing noncompliance' includes serving as an officer or otherwise exercising controlling influence over two or more motor carriers where--

"(1) one of the carriers has been placed out of service, or has received notice from the Secretary that it will be placed out of service, following--

(A) a determination of unfitness under section 31144(b);

(B) a suspension or revocation of registration under title 49, Code of Federal Regulations part 385;

(C) issuance of an imminent hazard out of service order under section 521(b)(5) or section 5121(d); or

(D) notice of failure to pay a civil penalty or abide by a penalty payment plan; and

"(2) one or more of the carriers is the 'successor,' as that term is used in section 31153 of this title, to the carrier that is the subject of the action in subsection (c)(1).".

## **SEC. 3120. ENFORCEMENT PERSONNEL.**

(a) INSPECTIONS.--Section 504(c) is amended--

(1) by inserting after "contractor" the following: "or an authorized representative of a recipient of grant funds issued under section 31102 of this title"; and

(2) by inserting after "credentials" the following: ", which, in the case of a motor carrier, may be in person or in writing".

(b) RIGHT OF INSPECTION.--Section 14122(b) is amended by inserting after "credentials" the following: ", which, in the case of a motor carrier, may be in person or in writing".

(c) DISPLAY OF CREDENTIALS.--Section 5121(c)(2) is amended by inserting after "credentials" the following: ", which, in the case of a motor carrier, may be in person or in writing,".

(d) COPYING OF RECORDS AND ACCESS TO EQUIPMENT, LANDS, AND BUILDINGS.--Section 521(b)(2)(E), as amended by section 3117(d) of this Act, is further amended by striking "and 14122(b)" and inserting "13301, 14122(b), and 31133".

### **SEC. 3121. BUS RENTALS AND DEFINITION OF EMPLOYER.**

Paragraph (3) of section 31132 is amended to read as follows:

"(3) 'employer'--

"(A) means a person engaged in a business affecting interstate commerce that--

"(i) owns or leases a commercial motor vehicle in connection with that business, or assigns and employee to operate it; or

"(ii) offers for rent or lease motor vehicles designed or used to transport more than 8 passengers, including the driver, and from the same location or as part of the same business provides names or contact information of drivers, or holds itself out to the public as a charter bus company; but

"(B) does not include the Government, a State, or a political subdivision of a State.".

### **SEC. 3122. HIGH RISK CARRIER REVIEWS.**

From the funds authorized by section 31104(i) of title 49, United States Code, the Secretary shall ensure that reviews are completed on motor carriers that have demonstrated through performance data that they pose the highest safety risk. At a minimum, a review shall be conducted whenever a motor carrier is among the highest risk carriers for 2 consecutive months.

### **SEC. 3123. ENFORCEMENT OF SAFETY LAWS AND REGULATIONS.**

(a) ENFORCEMENT OF SAFETY LAWS AND REGULATIONS.--Chapter 311 is amended by inserting after section 31153 (as added by section 3163 of this Act) the following:

#### **"Sec. 31154 Enforcement of safety laws and regulations**

"(a) IN GENERAL.--The Secretary may bring a civil action to enforce this **part**, or a regulation or order of the Secretary under this **part**, when violated by a motor carrier, employer or owner or operator providing transportation or service subject to jurisdiction under this **subchapter** or **subchapter I**.

"(b) VENUE.--In a civil action under subsection (a) of this section--

"(1) trial is in the judicial district in which the motor carrier, employer or owner or operator operates;

"(2) process may be served without regard to the territorial limits of the district or of the State in which the action is instituted; and

"(3) a person participating with a carrier or broker in a violation may be joined in the civil action without regard to the residence of the person."

(b) CONFORMING AMENDMENT--The analysis of chapter 311 is amended by inserting after the item relating to section 31153 (as added by section 3163 of this Act) the following:

"31154. Enforcement of safety laws and regulations."

**SEC. 3124. DISCLOSURE TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.**

Section 31106(e) is amended--

- (1) by redesignating subsection (e) as subsection (e)(1); and
- (2) by inserting at the end the following:

"(2) IN GENERAL.--Notwithstanding any prohibition on disclosure of information in sections 31105(h), 31143(b) or 40119(b) of this title or section 552a of title 5, the Secretary may disclose information maintained by the Secretary pursuant to chapters 51, 135, 311, or 313 of this title to appropriate personnel of a State agency or instrumentality authorized to carry out State commercial motor vehicle safety activities and commercial driver's license laws in accordance with standards, conditions, and procedures as determined by the Secretary. Disclosure under this section shall not operate as a waiver by the Secretary of any applicable privilege against disclosure under common law or as a basis for compelling disclosure under section 552 of title 5."

**SEC. 3125. CANADIAN SAFETY RATING RECIPROCITY.**

Section 31144 is amended--

- (1) by redesignating subsections (e) through (g) as subsections (f) through (h), respectively; and

- (2) by inserting after subsection (d) the following:

"(e) RECOGNITION OF CANADIAN MOTOR CARRIER SAFETY RATINGS AND 'UNFIT' SAFETY RATING DETERMINATIONS.--(1) If an authorized agency of the Canadian Federal government or a Canadian Territorial or Provincial government determines, by applying the procedure and standards prescribed by the Secretary under subsection (b) or pursuant to an agreement negotiated and executed as described in paragraph (2), that a motor carrier, owner,

or operator is unfit under such standards or agreement and prohibits the motor carrier, owner, or operator from operating a commercial motor vehicle in Canada or any Canadian Province, the Secretary shall prohibit the motor carrier, owner, or operator from operating such vehicle in interstate and foreign commerce until the authorized Canadian agency determines that the motor carrier, owner or operator is fit.

"(2) The Secretary may consult and participate in negotiations with authorized officials of the Canadian Federal government or a Canadian Territorial or Provincial government, as necessary, to provide reciprocal recognition of each country's motor carrier safety fitness determinations. The agreement shall provide, to the maximum extent practicable, that each country will follow the procedure and standards prescribed by the Secretary under subsection (b) in making motor carrier safety fitness determinations."

## **Part 2--Driver Safety Provisions**

### **SEC. 3131. COMMERCIAL DRIVER'S LICENSE REQUIREMENTS.**

(a) LICENSING STANDARDS.--Section 31305(a)(7) is amended by inserting "would not be subject to a disqualification under section 31310(g) of this title and" after "passing the tests".

(b) DISQUALIFICATIONS.--Section 31310(g)(1) is amended by deleting "who holds a commercial driver's license and".

### **SEC. 3132. COMMERCIAL MOTOR VEHICLE DRIVER INFORMATION SYSTEMS.**

Section 31106(c) is amended to read as follows:

"(c) COMMERCIAL MOTOR VEHICLE DRIVER SAFETY PROGRAM.--

"(1) IN GENERAL.--In coordination with the information system under section 31309 of this title, the Secretary is authorized to establish a program to improve commercial motor vehicle driver safety. The objectives of the program shall include--

"(A) enhancing the exchange of driver licensing information among the States, the Federal Government, and foreign countries;

"(B) providing information to the judicial system on commercial motor vehicle drivers;

"(C) evaluating any aspect of driver performance that the Secretary determines appropriate; and

"(D) developing appropriate strategies and countermeasures to improve driver safety.

"(2) ACCESS TO RECORDS.--In furtherance of this program, the Secretary is authorized to condition the award of grant money under this section upon a State's agreement to provide the Secretary access to all

State licensing status and driver history records via an electronic information system, and subject only to the limitations of section 2721 of title 18, United States Code."

**SEC. 3133. DISQUALIFICATIONS BASED ON NON-COMMERCIAL MOTOR VEHICLE OPERATIONS.**

(a) **FIRST OFFENSE.**--Section 31310(b)(1)(D) is amended by deleting "commercial" after "revoked, suspended, or canceled based on the individual's operation of a," and before "motor vehicle".

(b) **SECOND OFFENSE.**--Section 31310(c)(1)(D) is amended by deleting "commercial" after "revoked, suspended, or canceled based on the individual's operation of a," and before "motor vehicle".

**SEC. 3134. DRIVER SAFETY FITNESS RATINGS.**

Section 31144 is amended by adding at the end the following:

"(h) **COMMERCIAL MOTOR VEHICLE DRIVERS.**--The Secretary may maintain by regulation a procedure for determining the safety fitness of commercial motor vehicle drivers and for prohibiting such drivers from operating in interstate commerce. The procedure and prohibition shall include, at a minimum, the following elements:

"(1) Specific initial and continuing requirements with which a driver must comply to demonstrate safety fitness.

"(2) The methodology and continually updated safety performance data the Secretary will use to determine whether a driver is fit, including inspection results, serious traffic offenses, and crash involvement data.

"(3) Specific time frames within which the Secretary will determine whether a driver is fit.

"(4) A prohibition period or periods, not to exceed one year, during which a driver whom the Secretary has determined is not fit shall be prohibited from operating commercial motor vehicles in interstate commerce, beginning on the 46th day after the date of such fitness determination and continuing until the Secretary determines such driver is fit or the prohibition period expires.

"(5) Review by the Secretary, not later than 30 days after an unfit driver requests a review, of such driver's compliance with those requirements with which the driver failed to comply and which resulted in the Secretary determining that the driver was not fit, the burden of proof being on the driver to demonstrate fitness.

"(6) Eligibility criteria for reinstatement, including remedial measures the unfit driver must take."

**SEC. 3135. FEDERAL DRIVER DISQUALIFICATIONS.**

(a) **DISQUALIFICATION DEFINED.**--Section 31301 is amended--

(1) by redesignating paragraphs (6)-(14) as paragraphs (7)-(15) respectively; and

(2) by inserting after paragraph (5) the following:

"(6) 'Disqualification' means any of the following actions:

"(A) The suspension, revocation, or cancellation of a commercial driver's license by the State of issuance.

"(B) Any withdrawal of an individual's privileges to drive a commercial motor vehicle by a State or other jurisdiction as the result of a violation of State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations).

"(C) A determination by the Secretary that a person is not qualified to operate a commercial motor vehicle.

"(D) A determination by the Secretary that a commercial motor vehicle driver is 'unfit' under section 31144(h) of this title."

(b) **COMMERCIAL DRIVER'S LICENSE INFORMATION SYSTEM CONTENTS.**--Section 31309(b)(1)(F) is amended by inserting after "disqualified" the following: "by the State that issued the individual a commercial driver's license, or by the Secretary,".

(c) **STATE ACTION ON FEDERAL DISQUALIFICATION.**--Section 31310(h) is amended by inserting after the first sentence the following: "Where the State has not disqualified the individual from operating a commercial vehicle under subsections (b) through (g), the State must impose a disqualification if the Secretary has determined under section 31310(h) of this title that the person is disqualified from operating a commercial motor vehicle.".

## **SEC. 3136. FAILURE TO PAY CIVIL PENALTY AS A DISQUALIFYING OFFENSE.**

(a) **IN GENERAL.**--Chapter 311 is amended by inserting after section 31151 the following:

### **"Sec. 31152. Disqualification for failure to pay**

"An individual assessed a civil penalty under this chapter, or chapters 5, 51, or 149 of this title, or a regulation issued under any of those provisions, who fails to pay the penalty or fails to comply with the terms of a settlement with the Secretary, shall be disqualified from operating a commercial motor vehicle. The disqualification shall continue until the penalty has been paid, or the individual complies with the terms of the settlement, unless such nonpayment is because the individual is a debtor in a case under chapter 11 of title 11, United States Code.".

(b) **TECHNICAL AMENDMENTS.**--Section 31310 is amended--



(1) by redesignating subsections (h) through (j) as subsections (i) through (k), respectively; and

(2) by inserting after subsection (g) the following:

"(h) **DISQUALIFICATION FOR FAILURE TO PAY.**--The Secretary shall disqualify from operating a commercial motor vehicle any individual failing to pay a civil penalty within the prescribed period, or failing to conform to the terms of any settlement with the Secretary. The disqualification shall continue until the penalty has been paid, or the individual conforms to the terms of the settlement, unless the nonpayment is because the individual is a debtor in a case under chapter 11 of title 11, United States Code."; and

(3) in subsection (i) (as redesignated by paragraph (1) of this subsection) by striking "Notwithstanding subsections (b) through (g) and inserting "Notwithstanding subsections (b) through (h).".

(c) **CONFORMING AMENDMENT.**--The analysis of chapter 311 is amended by inserting after the item relating to section 31151 the following: "31152. Disqualification for failure to pay.".

### **SEC. 3137. STATE REPORTING OF FOREIGN DRIVER CONVICTIONS.**

(a) **DEFINITION OF FOREIGN COMMERCIAL DRIVER.**--Section 31301 is amended by redesignating subsections (10) through (14) as subsections (11) through (15) and by inserting after paragraph (9) the following:

"(10) 'foreign commercial driver' means an individual licensed to operate a commercial motor vehicle by an authority outside the United States, or a citizen of a foreign country who operates a commercial motor vehicle in the United States.".

(b) **STATE REPORTING OF CONVICTIONS.**--Section 31311(a) is amended by inserting after paragraph (21) the following:

"(22) The State shall report any conviction of a foreign commercial driver by that State to the Federal Convictions and Withdrawal Database, or another information system designated by the Secretary to record such convictions. Reports shall include, for drivers holding a foreign commercial driver's license, convictions relating to operation of both commercial and non-commercial motor vehicles. Reports shall include, for unlicensed drivers and drivers holding a foreign non-commercial driver's license, convictions for operating a commercial motor vehicle.".

### **SEC. 3138. ELECTRONIC NOTIFICATION OF COMMERCIAL DRIVER'S LICENSE VIOLATIONS.**

Section 31311(a), as amended in this Act, is further amended by adding at the end the following:

"(23) Not later than 1 year after the date of enactment of this paragraph, the State shall implement a system and practices for the exclusively electronic

exchange of driver history record information on the system the Secretary maintains under section 31309(a), including the posting of convictions, withdrawals, and disqualifications."

**SEC. 3139. NATIONAL CLEARINGHOUSE FOR POSITIVE ALCOHOL AND CONTROLLED SUBSTANCE TEST RESULTS OF COMMERCIAL MOTOR VEHICLE OPERATORS.**

(a) IN GENERAL.--Chapter 313 is amended--

(1) in section 31306(a), by inserting "and section 31306a of this title" after "this section"; and

(2) by inserting after section 31306 the following:

**"Sec. 31306a. National clearinghouse for alcohol and controlled substance test results of commercial motor vehicle operators**

"(a) ESTABLISHMENT.--

"(1) IN GENERAL.--Not later than 3 years after the date of the enactment of the Transportation Opportunities Act, the Secretary of Transportation shall establish and maintain a national clearinghouse for records relating to alcohol and controlled substances testing of commercial motor vehicle operators.

"(2) PURPOSES.--The purposes of the clearinghouse shall be--

"(A) to improve compliance with the Department of Transportation's alcohol and controlled substance testing program applicable to commercial motor vehicle operators;

"(B) to facilitate access to information about an individual before employing the individual as a commercial motor vehicle operator;

"(C) to enhance the safety of our Nation's roadways by reducing accidents and fatalities involving commercial motor vehicles; and

"(D) to reduce the demand for illegal drugs, and the number of impaired commercial motor vehicle operators.

"(3) CONTENTS.--The clearinghouse shall function as a repository for commercial motor vehicle operator records relating to violations of section 31306(b) of this title.

"(4) ELECTRONIC EXCHANGE OF RECORDS.--The Secretary shall ensure that records can be electronically submitted to, and requested from, the clearinghouse by authorized users.

"(b) DESIGN OF CLEARINGHOUSE.--

"(1) USE OF FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION RECOMMENDATIONS.--In establishing the clearinghouse, the Secretary shall consider--

"(A) the findings and recommendations contained in the Federal Motor Carrier Safety Administration's March 2004 report to Congress required under section 226 of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat, 1771-1772); and

"(B) the findings and recommendations contained in the Government Accountability Office's May 2008 report to Congress entitled 'Motor Carrier Safety: Improvements to Drug Testing Programs Could Better Identify Illegal Drug Users and Keep Them off the Road.'

"(2) DEVELOPMENT OF SECURE PROCESSES.--In establishing the clearinghouse, the Secretary shall develop a secure process for--

"(A) administering and managing the clearinghouse in compliance with all applicable Federal security standards;

"(B) registering and authenticating authorized users of the clearinghouse;

"(C) registering and authenticating individuals required to report to the clearinghouse under subsection (g);

"(D) preventing the unauthorized access of information from the clearinghouse;

"(E) storing and transmitting data;

"(F) timely and accurately submitted electronic data to the clearinghouse by individuals required to report to the clearinghouse under subsection (g);

"(G) generating timely and accurate reports from the clearinghouse in response to requests for information by authorized users; and

"(H) updating an individual's record upon completion of the return-to-duty process described in title 49, Code of Federal Regulations.

"(3) EMPLOYER ALERT OF POSITIVE TEST RESULT.--In establishing the clearinghouse, the Secretary shall consider developing a secure method for electronically notifying an employer of any additional positive test results, test refusals or other noncompliance for an individual that are entered into the clearinghouse during the 15-day period immediately following an employer's inquiry about the individual.

"(4) ARCHIVE CAPABILITY.--In establishing the clearinghouse, the Secretary shall develop a process for archiving all clearinghouse records, including the depositing of personal records, relating to each individual in the database, and access requests for personal records, for the purposes of--

"(A) auditing and evaluating the timeliness, accuracy, and completeness of data in the clearinghouse; and

"(B) auditing to monitor compliance and enforce penalties for noncompliance.

"(5) FUTURE NEEDS.--

"(A) INTEROPERABILITY WITH OTHER DATA SYSTEMS.--In establishing the clearinghouse, the Secretary shall consider--

"(i) the existing data systems containing regulatory and safety data for commercial motor vehicle operators;

"(ii) the efficacy of using or combining clearinghouse data with one or more of these systems; and

"(iii) the potential interoperability of the clearinghouse with these systems.

"(B) SPECIFIC CONSIDERATIONS.--In carrying out subparagraph (A), the Secretary shall determine--

"(i) the clearinghouse's capability for interoperability with--

"(I) the National Driver Register established under section 30302 of this title;

"(II) the Commercial Driver's License Information System established under section 31309 of this title; and

"(III) other data systems, as appropriate; and

"(ii) any changes to the administration of the current testing program, such as forms, that are necessary to collect data for the clearinghouse.

"(c) STANDARD FORMS.--The Secretary shall develop standard forms to be used--

"(1) by employers and other authorized users of the clearinghouse to--

"(A) request records from the clearinghouse; and

"(B) obtain the consent of each individual who is the subject of a request from the clearinghouse; and

"(2) to notify individuals that positive alcohol and controlled substances test results, refusals to test and other violations of section 31306(b) of this title will be reported to the clearinghouse.

"(d) PRIVACY.--Information may not be released from the clearinghouse unless such release complies with all applicable Federal privacy laws and regulations and fair information practices under the Privacy Act of 1974 (5 U.S.C. 552a).

"(e) FEES.--

"(1) AUTHORITY TO COLLECT FEES.--Except as provided under paragraph (3), the Secretary may collect reasonable, customary, and nominal fees from employers and other authorized users of the clearinghouse for requests for information from the clearinghouse.

"(2) USE OF FEES.--Fees collected under this subsection shall be used for the operation and maintenance of the clearinghouse.

"(3) LIMITATION.--The Secretary may not collect a fee from any individual requesting information from the clearinghouse that pertains to the record of the individual.

"(f) EMPLOYER REQUIREMENTS.--

"(1) DETERMINATION CONCERNING USE OF CLEARINGHOUSE.--The Secretary shall determine which commercial motor carrier employers are authorized to use the clearinghouse to meet the alcohol and controlled substances testing requirements under title 49, Code of Federal Regulations.

"(2) APPLICABILITY OF EXISTING REQUIREMENTS.--Each commercial motor carrier employer and each service agent shall comply with the alcohol and controlled substances testing requirements under title 49, Code of Federal Regulations.

"(3) EMPLOYMENT PROHIBITIONS.--A commercial motor carrier employer shall not hire an individual to operate a commercial motor vehicle unless the employer has determined that the individual, if subject to federally-mandated alcohol and controlled substances testing during the preceding 3-year period, either--

"(A) has not tested positive for the use of alcohol or controlled substances in violation of the regulations at title 49, Code of Federal Regulations; or

"(B) has tested positive for the use of alcohol or controlled substances or refused to take the alcohol or controlled substances test and has completed the required return-to-duty process described in title 49, Code of Federal Regulations.

"(g) REPORTING OF RECORDS.--

"(1) IN GENERAL.--Medical review officers, motor carrier employers, service agents, and other appropriate persons, as determined by the Secretary, shall promptly submit to the Secretary records in their possession of any individual who--

"(A) has refused to take an alcohol or controlled substance test required under title 49, Code of Federal Regulations; or

"(B) has tested positive for alcohol or a controlled substance in violation of such regulations.

"(2) INCLUSION OF RECORDS IN CLEARINGHOUSE.--The Secretary shall include all information received under paragraph (1).

"(3) MODIFICATIONS AND DELETIONS.--If the Secretary determines that a record contained in the clearinghouse is not accurate, the Secretary shall modify or delete the record, as appropriate.

"(4) NOTIFICATION.--The Secretary shall expeditiously notify, an individual when--

"(A) a record relating to the individual has been received by the clearinghouse;

"(B) any record in the clearinghouse relating to the individual is modified or deleted, and include in such notification the reason for such modification or deletion; or

"(C) any record in the clearinghouse relating to the individual is released to an employer and shall include in such notification the reason for such a release.

"(5) DATA QUALITY AND SECURITY STANDARDS FOR REPORTING AND RELEASING.--The Secretary may establish additional requirements, as appropriate, to ensure that--

"(A) the submission of records to the clearinghouse is timely and accurate;

"(B) the release of data from the clearinghouse is timely, accurate, and released to the appropriate individual, employer, appropriate U.S. Department of Transportation component, or State licensing official; and

"(C) the individuals with records in the clearinghouse have a cause of action for the inappropriate use of information included in the clearinghouse.

"(6) RETENTION OF RECORDS.--The Secretary shall--

"(A) retain all the records submitted to the clearinghouse during the 5-year period beginning on the date on which an individual was determined to have violated the alcohol and controlled substances testing required by 31306(b) of this title;

"(B) remove such records from the clearinghouse at the end of such 5-year period, unless the individual has not met required return-to-duty and follow-up testing requirements under title 49, Code of Federal Regulations; and

"(C) retain records beyond the end of such 5-year period in a separate location for archiving and auditing purposes.

"(h) ACCESS TO CLEARINGHOUSE BY EMPLOYERS.--

"(1) IN GENERAL.--The Secretary shall establish a process to require employers to request and review any records in the clearinghouse pertaining to an individual before employing the individual, and on an annual basis for all employed individuals.

"(2) CONSENT REQUIREMENT.--An employer may not be granted access to any records in the clearinghouse pertaining to an individual until after the employer--

"(A) obtains the prior written or electronic consent of the individual for access to such records; and

"(B) submits proof of such consent to the Secretary.

"(3) ACCESS TO RECORDS.--Upon receiving from an employer a request, in compliance with paragraph (2), for records in the

clearinghouse pertaining to an individual, the Secretary shall provide access to the records to the employer as expeditiously as practicable.

"(4) USE OF RECORDS.--

"(A) IN GENERAL.--An employer may use a record of an individual received from the clearinghouse only to assess and evaluate the qualifications of the individual to operate a commercial motor vehicle for such employer.

"(B) PROTECTION OR PRIVACY OF INDIVIDUALS.--An employer that receives a record from the clearinghouse pertaining to an individual shall--

"(i) protect the privacy of the individual and the confidentiality of the record; and

"(ii) ensure that information contained in the record is not divulged to any person or entity who is not directly involved in assessing and evaluating the qualifications of the individual to operate a commercial motor vehicle for the employer receiving the record.

"(i) ACCESS TO CLEARINGHOUSE BY INDIVIDUALS.--

"(1) IN GENERAL.--The Secretary shall establish a process by which any individual may request and receive information from the clearinghouse--

"(A) to determine whether the clearinghouse contains a record pertaining to the individual;

"(B) to verify the accuracy of such record;

"(C) to update an individual's record; and

"(D) to determine whether the clearinghouse has received requests for information regarding the individual.

"(2) DISPUTE PROCEDURE.--The Secretary shall establish a procedure, including an appeal process, for any individual to dispute and remedy administrative errors contained in a record in the clearinghouse that pertains to such individual.

"(j) ACCESS TO CLEARINGHOUSE BY STATE LICENSING AUTHORITIES.--

"(1) IN GENERAL.--The Secretary shall establish a process by which the chief commercial driver's licensing official of a State may request and receive records from the clearinghouse that pertain to an individual applying for a commercial driver's license from such State.

"(2) IMPLIED CONSENT.--The chief commercial driver licensing official of a State may be granted access to any records in the clearinghouse pertaining to an individual without obtaining the prior written or electronic consent of the individual and submitting proof of such consent. Any individual who holds a commercial driver's license shall be deemed to have consented to such access. Consent is implied by

obtaining a commercial driver's license from the State and by driving a commercial motor vehicle.

"(3) PROTECTION OF PRIVACY OF INDIVIDUALS.--If the chief commercial driver licensing official of a State receives a record from the clearinghouse pertaining to an individual, the official shall--

"(A) protect the privacy of the individual and the confidentiality of record; and

"(B) ensure that information contained in the record is not divulged to any person within or outside the State government who is not directly involved in assessing and evaluating the qualifications of the individual to operate a commercial motor vehicle.

"(k) PENALTIES.--An employer, employee, medical review officer, or service agent who violates any provision of this section or any violation of the alcohol and controlled testing program established pursuant to section 31306 of this title shall be subject to the civil and criminal penalties described in section 521(b) of this title, and other applicable civil and criminal penalties, as determined by the Secretary.

"(l) COMPATIBILITY OF STATE AND LOCAL LAWS.--

"(1) PREEMPTION.--Except as provided under paragraph (2), any law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe related to commercial driver's license holders subject to alcohol or controlled substance testing under title 49, Code of Federal Regulations, which is inconsistent with the requirements under this section or any regulation issued pursuant to the authority of this section is preempted.

"(2) APPLICABILITY.--The preemption under paragraph (1) shall apply to--

"(A) the reporting of valid positive results from alcohol screening tests or drug tests;

"(B) the refusal to provide a specimen for an alcohol screening test or drug test; and

"(C) other violations of section 31306(b) of this title.

"(3) EXCEPTION.--A law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe shall not be preempted under this subsection to the extent it relates to actions taken with respect to a commercial motor vehicle operator's commercial driver's license or driving record as a result of such driver's--

"(A) verified positive alcohol or drug test result; or

"(B) refusal to provide a specimen for the test.

"(m) DEFINITIONS.--In this section:



"(1) AUTHORIZED USERS.--The term 'authorized users' means employers, State licensing authorities, and other individuals granted access to the clearinghouse.

"(2) CHIEF COMMERCIAL DRIVER LICENSING OFFICIAL.--The term 'chief commercial driver's licensing official' means the official in a State who is authorized to--

"(A) maintain a record about commercial driver's licenses issued by the State; and

"(B) take action on commercial driver's licenses issued by the State.

"(3) CLEARINGHOUSE.--The term 'clearinghouse' means the clearinghouse established under subsection (a).

"(4) COMMERCIAL MOTOR VEHICLE OPERATOR.--The term 'commercial motor vehicle operator' means an individual who is--

"(A) in possession of a valid commercial driver's license issued in accordance with section 31308 of this title; and

"(B) subject to controlled substances and alcohol testing under title 49, Code of Federal Regulations.

"(5) EMPLOYER.--The term 'employer' means a person or entity employing, or seeking to employ, 1 or more employees (including an individual who is self-employed) to be commercial motor vehicle operators.

"(6) MEDICAL REVIEW OFFICER.--The term 'medical review officer' means a licensed physician who is responsible for--

"(A) receiving and reviewing laboratory results generated under the controlled substances testing program; and

"(B) evaluating medical explanations for controlled substances tests required under title 49, Code of Federal Regulations; and

"(C) deciding the outcome of controlled substances tests.

"(7) SERVICE AGENT.--The term 'service agent' means a person or entity, other than an employee of the employer, who provides services to employers or employees under the testing program.

"(8) TESTING PROGRAM.--The term 'testing program' means the alcohol and controlled substances testing program required under title 49, Code of Federal Regulations."

(b) SANCTIONS.--Chapter 313 is amended--

(1) by redesignating section 31306(f) as 31306(f)(1);

(2) by inserting the following after section 31306(f)(1) (as redesignated by subsection (a)(1)):

"(2) FURTHER SANCTIONS.--A State shall revoke, suspend or cancel the commercial driver's license of any commercial motor vehicle operator who is found, based on tests conducted and confirmed under this section, to have used alcohol or a controlled substance in violation of a

law or Government regulation until the driver completes the rehabilitation process under paragraph (e) of this part."; and

(3) by revising subsection (d) of section 31310 to read as follows:

"(o **\*\*[or (d)]? and see next section]**) CONTROLLED SUBSTANCE VIOLATIONS.--The Secretary shall disqualify from operating a commercial vehicle for life an individual--

"(1) who uses a commercial motor vehicle in committing a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance; or

"(2) who is found to have used alcohol or a controlled substance in violation of section 31306 of this title three or more times.

"(p **\*\*[or ( )]? and see above section]**) AUTHORIZATION OF APPROPRIATIONS.--

"(1) IN GENERAL.--There are authorized to be appropriated, in fiscal year 2013 and in each subsequent fiscal year, such sums as may be necessary to establish, operate, and maintain the national clearinghouse for positive alcohol and controlled substance test results of commercial motor vehicle operators in accordance with section 31306a of this title.

"(2) ADDITIONAL FUNDING AUTHORITY.--From the funds authorized to be appropriated under section 31104(i)(2) of this title, not more than \$5,000,000 is authorized to be appropriated from the Highway Account of the Transportation Trust Fund for the Secretary to develop, design, and implement the national clearinghouse, if the Secretary determines that the amounts appropriated by Congress are inadequate for such purposes."

(c) CONFORMING AMENDMENT.--The analysis of chapter 313 is amended by inserting after the item relating to section 31306 the following:

"31306a. National clearinghouse for positive controlled substance and alcohol test results of commercial motor vehicle operators."

#### **SEC. 3140. AUTHORITY TO DISQUALIFY FOREIGN DRIVERS.**

Section 31310 is amended by inserting at the end the following:

"(k) FOREIGN COMMERCIAL DRIVERS.--Foreign commercial drivers shall be subject to disqualification under this section."

### **Part 3--Penalties**

#### **SEC. 3151. INCREASED PENALTIES FOR OPERATING WITHOUT REGISTRATION.**

(a) PENALTIES.--Section 14901(a) is amended--

- (1) by striking "\$500" and inserting "\$1,000";
- (2) by striking "who is not registered under this part to provide transportation of passengers";
- (3) by striking "with respect to providing transportation of passengers," and inserting "or section 13902(c) of this title"; and
- (4) by striking "\$2,000 for each violation and each additional day the violation continues" and inserting "\$10,000 for each violation, or \$25,000 for each violation relating to providing transportation of passengers".

(b) TRANSPORTATION OF HAZARDOUS WASTES.--Section 14901(b) is amended by striking "less than \$20,000" and inserting "not less than \$25,000".

**SEC. 3152. OUT OF SERVICE PENALTY FOR DENIAL OF ACCESS TO RECORDS.**

Section 521(b)(2)(E) is amended--

- (1) by inserting after "\$10,000." the following: "In the case of a motor carrier, the Secretary may also place the person's motor carrier operations out of service." and
- (2) by striking "penalty" in the fourth sentence (as so redesignated in paragraph (1)) and inserting "penalties".

**SEC. 3153. PENALTIES FOR VIOLATION OF OPERATION OUT OF SERVICE ORDERS.**

Section 521(b)(2) is amended by inserting at the end the following new subparagraph:

"(F) PENALTY FOR MOTOR CARRIERS VIOLATING OUT OF SERVICE ORDERS.--A motor carrier that operates a commercial motor vehicle in commerce in violation of a prohibition on transportation in section 31144(c) of this title or an imminent hazard out of service order issued under subsection (b)(5) of this section or section 5121(d) of this title shall be liable for a penalty of not more than \$25,000."

**SEC. 3154. MINIMUM PROHIBITION ON OPERATION FOR UNFIT CARRIERS.**

(a) IN GENERAL.--Section 31144(c)(1) is amended by inserting ", but such period shall be for not less than 10 days" before "operator is fit".

(b) OWNERS OR OPERATORS TRANSPORTING PASSENGERS.--Section 31144(c)(2) is amended by inserting ", but such period shall be for not less than 10 days" before "operator is fit".

(c) OWNERS OR OPERATORS TRANSPORTING HAZARDOUS MATERIAL.--Section 31144(c)(3) is amended by inserting at the end of first sentence the following: ", but such period shall be for not less than 10 days".

**SEC. 3155. MINIMUM OUT OF SERVICE PENALTIES.**

Section 521(b)(7) is amended by adding at the end the following:  
"Such penalties may include a minimum duration for any out of service period, not to exceed 90 days."

**Sec. 3156. REVOCATION OF REGISTRATION FOR IMMINENT HAZARD.**

Section 13905(f)(2) is amended to read as follows:

"(2) IMMINENT HAZARD TO PUBLIC HEALTH.--Without regard to subchapter II of chapter 5 of title 5, the Secretary shall revoke the registration of a motor carrier if the Secretary finds that the carrier has been conducting unsafe operations that are an imminent hazard to public health or property."

**SEC. 3157. REVOCATION OF FOREIGN MOTOR CARRIER OPERATING AUTHORITY FOR FAILURE TO PAY CIVIL PENALTIES.**

Section 13905(d)(1) is amended by inserting "foreign motor carrier, foreign motor private carrier," after "registration of a motor carrier," each place it appears.

**SEC. 3158. REVOCATION OF REGISTRATION AND OTHER PENALTIES FOR FAILURE TO RESPOND TO SUBPOENA.**

(a) PENALTIES.--Section 525 is amended--

- (1) by striking "\$100" and inserting "\$1,000";
- (2) by striking "\$5,000" and inserting "\$10,000"; and
- (3) by inserting at the end the following:

"The Secretary may suspend, amend or revoke any part of the registration of a person required to register under chapter 139 of this title for failing to obey a subpoena or requirement of the Secretary under this chapter to appear and testify or produce records."

(b) FAILURE TO OBEY A SUBPOENA.--Section 13905(d)(1)(B) is amended--

- (1) by striking "or" before "(ii)"; and
- (2) by inserting after "of such penalty" the following:  
"; or (iii) for failure to obey a subpoena issued by the Secretary".

**SEC. 3159. IMPOUNDMENT AND IMMOBILIZATION OF  
COMMERCIAL MOTOR VEHICLES FOR IMMINENT  
HAZARD.**

Section 521(b) is amended by inserting at the end the following:

" (15) IMPOUNDMENT OF COMMERCIAL MOTOR  
VEHICLES.--

"(A) ENFORCEMENT OF IMMINENT HAZARD OUT  
OF SERVICE ORDERS.--

"(i) The Secretary, or an authorized State official carrying out motor carrier safety enforcement activities under section 31102 of this title, may enforce an imminent hazard out of service order issued under chapters 5, 51, 131-149, 311, 313 or 315 of this title, or a regulation promulgated thereunder, by towing and impounding or immobilizing a commercial motor vehicle, including through use of a mechanical or other locking device, until the order is rescinded.

"(ii) Such enforcement shall not unreasonably interfere with the ability of a shipper, carrier, broker, or other party to arrange for the alternative transportation of any cargo or passenger being transported at the time the vehicle is immobilized. In the case of a commercial motor vehicle transporting passengers, the Secretary or authorized State official shall provide reasonable, temporary and secure shelter and accommodations for passengers in transit.

"(iii) The Secretary's designee or an authorized State official carrying out motor carrier safety enforcement activities under section 31102 of this title, shall immediately notify the owner of the vehicle of its impoundment and the opportunity for review of the impoundment or immobilization. Such review shall be provided in accordance with section 554 of title 5, except that such review shall occur not later than 10 days after such impoundment.

"(B) ISSUANCE OF REGULATIONS.--The Secretary may promulgate regulations on the use of impoundment or immobilization of commercial motor vehicles as a means of enforcing additional out of service orders issued under chapters 5, 51, 131-149, 311, 313 or 315 of this title, or a regulation promulgated thereunder. Regulations promulgated under this subsection shall take into account, at a minimum, public safety, the protection of passengers and cargo, inconvenience to passengers, and the security of the vehicle.

"(C) DEFINITION.--In this paragraph, the term 'impoundment' or 'impounding' means the seizing and taking into custody of a commercial motor vehicle or the immobilization of a commercial motor vehicle through the attachment of a locking device or other mechanical or electronic means."

**SEC. 3160. INCREASED PENALTIES FOR EVASION OF REGULATIONS.**

- (a) PENALTIES.--Section 524 is amended--
- (1) by striking "knowingly and willfully";
  - (2) by inserting after "this chapter" the following: ", chapter 51, subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502 of this title, or a regulation issued under any of those provisions";
  - (3) by striking "\$200 but not more than \$500" and inserting "\$2,000 but not more than \$5,000"; and
  - (4) by striking "\$250 but not more than \$2,000" and inserting "\$2,500 but not more than \$7,500".
- (b) EVASION OF REGULATION.--Section 14906 is amended--
- (1) by striking "\$200" and inserting "at least \$2,000"; and
  - (2) by striking "\$250" and inserting "\$5,000".

**SEC. 3161. FLEETWIDE OUT OF SERVICE ORDE FOR OPERATING WITHOUT REQUIRED REGISTRATION.**

- Section 13902(e)(1) is amended--
- (1) by striking "motor vehicle" and inserting "motor carrier" after "the Secretary determines that a";
  - (2) by striking "order the vehicle" and inserting "order the motor carrier operations" after "the Secretary may".

**SEC. 3162. SETTLEMENT AUTHORITY.**

- (a) SETTLEMENT OF GENERAL CIVIL PENALTIES.--Section 14901 is amended by inserting at the end the following:
- "(h) SETTLEMENT OF HOUSEHOLD GOODS CIVIL PENALTIES.--Nothing in this section shall be construed to prohibit the Secretary from accepting partial payment of a civil penalty as part of a settlement agreement in the public interest, or from holding imposition of any part of a civil penalty in abeyance."
- (b) SETTLEMENT OF HOUSEHOLD GOODS CIVIL PENALTIES.--Section 14915(a) is amended by inserting after paragraph (3) the following:
- "(4) SETTLEMENT AUTHORITY.--Nothing in this section shall be construed as prohibiting the Secretary from accepting partial payment

of a civil penalty as part of a settlement agreement in the public interest, or from holding imposition of any part of a civil penalty in abeyance.".

### **SEC. 3163. FEDERAL SUCCESSOR STANDARD.**

(a) IN GENERAL.--Chapter 311 is amended by inserting after section 31152 (as added by section 3136 of this Act) the following:

#### **"Sec. 31153. Federal successor standard**

"(a) FEDERAL STANDARD.--Notwithstanding any other provision of Federal or State law, the Secretary of Transportation may take the actions authorized under chapters 5, 51, 131-149, subchapter III of chapter 311 (except sections 31138 and 31139) or sections 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502 of this title, or a regulation issued under any of those provisions, against the successor of (1) a motor carrier, as defined in section 13102 of this title; (2) an employer, as defined in section 31132 of this title; or (3) an owner or operator, as that term is used in subchapter III of chapter 311 of this title, to the same extent and on the same bases as the Secretary could take such actions against the former entity.

"(b) FACTORS TO CONSIDER.--For purposes of this section, a motor carrier, employer or owner or operator is a successor to another motor carrier, employer or owner or operator when the Secretary determines, after notice and an opportunity for a proceeding, that its officers, financial arrangements, equipment, drivers, and general operations correspond closely to those of a former motor carrier, employer or owner or operator. In determining whether one entity is the successor to another for purposes of this section the Secretary may consider: consideration paid for assets purchased or transferred; dates of corporate creation and dissolution or termination of operations; commonality of ownership between the current and former company; commonality of officers and management personnel and their functions; identity of physical or mailing addresses, telephone, fax numbers or email addresses; identity of motor vehicle equipment; continuity of liability insurance policies; commonality of drivers and other employees; continuation of carrier facilities and other physical assets; continuity of nature and scope of operations, including customers for whom transportation is provided; advertising, corporate name, or other acts through which the company holds itself out to the public; and history of safety violations and pending orders or enforcement actions of the Secretary.

"(c) FURTHER STANDARDS.--The Secretary may establish further standards for the determination of motor carrier successorship and may include, in addition to the factors in subsection (b), other factors the Secretary deems appropriate.

"(d) EFFECTIVE DATE.--Notwithstanding any other provision of law, this section shall apply with respect to any action commenced on or after the date

of the enactment of this section without regard to whether the violation that is the subject of the action, or the conduct that caused violation, occurred before the date of enactment.

"(e) RIGHTS NOT AFFECTED.--Nothing in this section shall be deemed to affect the rights, functions or responsibilities under law of any other department, agency, or instrumentality of the United States, the laws of any State, or any rights as between a private party and a motor carrier, employer or owner or operator."

(b) CONFORMING AMENDMENT.--The analysis of chapter 311 is amended by inserting after the item related to section 31152 (as added by section 4206 of this Act) the following:

"31153. Federal successor standard."

#### **Part 4--Grants**

### **SEC. 3171. COMPLIANCE, SAFETY AND ACCOUNTABILITY GRANTS.**

(a) MOTOR CARRIER SAFETY GRANTS.--Section 31102 is amended to read as follows:

#### **"Sec. 31102. Compliance, safety and accountability grants**

"(a) GENERAL AUTHORITY.-- Subject to this section, the Secretary of Transportation shall make and administer a compliance, safety and accountability grant program to assist States, local governments, and other entities and persons with motor carrier safety and enforcement on highways and other public roads, new entrant safety audits, border enforcement, hazardous materials safety and security, consumer protection and household goods enforcement, and other programs and activities required to improve the safety of motor carriers as determined by the Secretary. The Secretary shall allocate funding in accordance with section 31104 of this title.

#### **"(b) MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.--**

"(1) PROGRAM GOAL.--The goal of the Motor Carrier Safety Assistance Program is to ensure that the Secretary, States, local government agencies, and other political jurisdictions work in partnership to establish programs to improve motor carrier, commercial motor vehicle, and driver safety to support a safe and efficient surface transportation system by--

"(A) making targeted investments to promote safe commercial motor vehicle transportation, including transportation of passengers and hazardous materials;

"(B) investing in activities likely to generate maximum reductions in the number and severity of commercial motor vehicle crashes and fatalities resulting from such crashes;



"(C) adopting and enforcing effective motor carrier, commercial motor vehicle, and driver safety regulations and practices consistent with Federal requirements; and

"(D) assessing and improving statewide performance by setting program goals and meeting performance standards, measures, and benchmarks.

"(2) STATE PLAN PROCEDURES AND CONTENTS.--The Secretary shall prescribe procedures for a State to submit a plan under which the State agrees to assume responsibility for improving motor carrier safety; to adopt and enforce regulations, standards, and orders of the Government on commercial motor vehicle safety, hazardous materials transportation safety, and establishing and enforcing compatible State regulations, standards, and orders. The Secretary shall approve the plan if the Secretary decides the plan is adequate to promote the objectives of this section and the plan--

"(A) implements performance-based activities, including deployment of technology to enhance the efficiency and effectiveness of commercial motor vehicle safety programs;

"(B) designates the State motor vehicle safety agency responsible for administering the plan throughout the State;

"(C) contains satisfactory assurances that the agency has or will have the legal authority, resources, and qualified personnel necessary to enforce the regulations, standards, and orders;

"(D) contains satisfactory assurances that the State will devote adequate amounts to the administration of the plan and enforcement of the regulations, standards, and orders;

"(E) provides a right of entry and inspection to carry out the plan;

"(F) provides that all reports required under this section be submitted to the agency and that the agency will make the reports available to the Secretary on request;

"(G) provides that the agency will adopt the reporting requirements and use the forms for recordkeeping, inspections, and investigations that the Secretary prescribes;

"(H) requires registrants of commercial motor vehicles to make a declaration of knowledge of applicable safety regulations, standards, and orders of the Government and the State;

"(I) provides that the State will grant maximum reciprocity for inspections conducted under the North American Inspection Standards through the use of a nationally accepted system that allows ready identification of previously inspected commercial motor vehicles;

"(J) ensures that activities described in paragraph (5) of this subsection, if financed with grants under subsection (a) of this section, will not diminish the effectiveness of the development and

implementation of commercial motor vehicle safety programs described in subsection (a);

"(K) ensures that the State agency will coordinate the plan, data collection, and information systems with the State highway safety improvement program required by section 148(c) of title 23;

"(L) ensures that the State agency will coordinate the plan, data collection, and information systems with State commercial vehicle size and weight programs under title 23;

"(M) ensures participation in appropriate Federal Motor Carrier Safety Administration systems and other information systems by all appropriate jurisdictions receiving Motor Carrier Safety Assistance Program funding;

"(N) ensures that information is exchanged among the States in a timely manner;

"(O) provides satisfactory assurances that the State will undertake efforts that will emphasize and improve enforcement of State and local traffic safety laws and regulations related to commercial motor vehicle safety;

"(P) provides satisfactory assurances that the State will promote activities in support of national priorities and performance goals, including--

"(i) activities aimed at removing impaired commercial motor vehicle drivers from the highways of the United States through adequate enforcement of regulations on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment;

"(ii) activities aimed at providing an appropriate level of training to State motor carrier safety assistance program officers and employees on recognizing drivers impaired by alcohol or controlled substances; and

"(iii) interdiction activities affecting the transportation of controlled substances by commercial motor vehicle drivers and training on appropriate strategies for carrying out those interdiction activities;

"(Q) provides that the State has established a program to ensure that--

"(i) accurate, complete, and timely motor carrier safety data is collected and reported to the Secretary; and

"(ii) the State will participate in a national motor carrier safety data correction system prescribed by the Secretary;

"(R) ensures that the State will cooperate in the enforcement of registration requirements under section 13902 of this title and financial responsibility requirements under sections

13906, 31138, and 31139 of this title, and regulations issued thereunder;

"(S) ensures consistent, effective, and reasonable sanctions;

"(T) ensures that roadside inspections will be conducted at a location that is adequate to protect the safety of drivers and enforcement personnel;

"(U) provides that the State will include in the training manual for the licensing examination to drive a noncommercial motor vehicle and a commercial motor vehicle, information on best practices for driving safely in the vicinity of noncommercial and commercial motor vehicles;

"(V) provides that the State will enforce the registration requirements of section 13902 of this title by prohibiting the operation of any vehicle discovered to be operated by a motor carrier without a registration issued under such section or to operate beyond the scope of such registration;

"(W) provides that the State will conduct comprehensive and highly visible traffic enforcement and commercial motor vehicle safety inspection programs in high-risk locations and corridors;

"(X) except in the case of an imminent or obvious safety hazard, ensures that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location that has adequate food, shelter and sanitation facilities for passengers during the inspection and subsequent required repairs; and

"(Y) ensures that the State will transmit to its roadside inspectors the notice of each federal exemption granted pursuant to section 31315(b) of this title and provided to the State by the Secretary, including the name of the person granted the exemption and any terms and conditions that apply to the exemption.

"(3) EVALUATION OF PLAN.--If the Secretary disapproves a plan under this subsection, the Secretary shall give the State a written explanation and allow the State to modify and resubmit the plan for approval.

"(4) MAINTENANCE OF EFFORT.--

"(A) IN GENERAL.--A plan submitted by a State under paragraph (2) shall provide that the total expenditure of amounts of the lead State agency responsible for implementing commercial motor vehicle safety plan will be maintained at a level at least equal to the average level of that expenditure for Fiscal Years 2004 and 2005.

"(B) AVERAGE LEVEL OF STATE EXPENDITURES.--In estimating the average level of State expenditure under subparagraph (A), the Secretary--

"(i) may allow the State to exclude State expenditures for Government-sponsored demonstration or pilot programs; and

"(ii) shall require the State to exclude State matching amounts used to receive Government financing under subsection (b) of this section.

"(C) WAIVER.--Upon the request of a State, the Secretary may waive or modify the requirements of this paragraph for one fiscal year, if the Secretary determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a serious decline in the financial resources of the State motor carrier safety assistance program agency.

"(5) USE OF GRANTS TO ENFORCE OTHER LAWS.--A State may use amounts received under a grant under subsection (a)--

"(A) for the following activities if the activities are carried out in conjunction with an appropriate inspection of the commercial motor vehicle to enforce Government or State commercial motor vehicle safety regulations:

"(i) Enforcement of commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, such as at specific locations such as steep grades or mountainous terrains where the weight of a commercial motor vehicle can significantly affect the safe operation of the vehicle, or at ports where intermodal shipping containers enter and leave the United States.

"(ii) Detection of the unlawful presence of a controlled substance (as defined under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) and as changed, updated, and republished from time to time, as set forth in 21 CFR Part 1308) in a commercial motor vehicle or on the person of any occupant (including the operator) of the vehicle; and

"(B) for documented enforcement of State traffic laws and regulations designed to promote the safe operation of commercial motor vehicles, including documented enforcement of such laws and regulations relating to noncommercial motor vehicles when necessary to promote the safe operation of commercial motor vehicles if the number of motor carrier safety activities (including roadside safety inspections) conducted in the State is maintained at a level at least equal to the average level of such activities conducted in the State in fiscal years 2004 and 2005; except that the State may not use more than 5 percent of the basic amount the State receives under the grant under subsection (a) for enforcement activities relating to noncommercial motor vehicles described in this paragraph, unless the Secretary determines a higher percentage

will result in significant increases in commercial motor vehicle safety; and

"(6) CONTINUOUS EVALUATION OF PLANS.--On the basis of reports submitted by a State motor vehicle safety agency with a plan approved under subsection (b) and the Secretary's own investigations, the Secretary shall make a continuing evaluation of the way the State is carrying out the plan. If the Secretary finds, after notice and opportunity for comment, that the State plan previously approved is not being followed or has become inadequate to ensure enforcement of the regulations, standards, or orders, the Secretary shall withdraw approval of the plan and notify the State. The plan stops being effective when the notice is received. A State adversely affected by the withdrawal may seek judicial review under chapter 7 of title 5. Notwithstanding the withdrawal, the State may retain jurisdiction in administrative or judicial proceedings begun before the withdrawal, if the issues involved are not related directly to the reasons for the withdrawal.

"(7) FEDERAL SHARE.--The Secretary of Transportation shall reimburse a State, local government or otherwise eligible entity or person, from a grant made under this subsection, an amount that is at least 80 percent of the costs incurred by the State or other recipient in a fiscal year in developing and implementing programs to improve commercial motor vehicle safety and enforce commercial motor vehicle regulations, standards, or orders adopted under this subchapter or subchapter II of this chapter, to carry out the program goals of the motor carrier safety assistance program. The Secretary shall include in-kind contributions by the State or other recipient. Amounts required to be expended by the State under section 31102(b) of this title may not be included as part of the share not provided by the United States Government. Amounts generated under the unified carrier registration agreement under section 14504a of this title and received by a State and used for motor carrier safety purposes may be included as part of the State's share of the motor carrier safety assistance program not provided by the United States. The Secretary may allocate among the States whose applications for grants have been approved those amounts appropriated for grants to support those programs, under criteria that may be established. The Secretary may reimburse State agencies, local governments, or other eligible entities up to 100 percent for incentive motor carriers assistance programs.

"(8) BIENNIAL REPORT. --The Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a biennial report that--

"(A) analyzes commercial motor vehicle safety trends among the States and documents the most effective commercial motor vehicle safety programs implemented with grants under this section; and

"(B) describes the effect of activities carried out with grants made under this section on commercial motor vehicle safety.

"(c) NEW ENTRANT SAFETY ASSURANCE PROGRAM.--

"(1) PROGRAM GOAL.--The Secretary may make grants to States and local governments for pre-authorization safety audits and new entrant motor carrier audits as described in section 31144(g)(5) of this title.

"(2) RECIPIENTS.--Grants made in support of this program may be provided to States and local governments.

"(3) FEDERAL SHARE.--The Federal share of a grant made under this program is 100 percent.

"(4) ELIGIBLE ACTIVITIES.--Eligible activities will be in accordance with criteria developed by the Secretary and posted in the Federal Register in advance of the grant application period.

"(5) DETERMINATION.--If the Secretary determines that a State or local government is not able to conduct new entrant motor carrier audits, the Secretary may use the funds to conduct audits.

"(d) BORDER ENFORCEMENT.--

"(1) PROGRAM GOAL.--The Secretary of Transportation may make a grant for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects.

"(2) RECIPIENTS.--The Secretary of Transportation may make a grant to an entity or State and other persons for carrying out border commercial motor vehicle safety programs and enforcement activities and projects.

"(3) FEDERAL SHARE.--The Secretary shall reimburse a grantee an amount that is at least 80 percent of the costs incurred in a fiscal year for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects.

"(4) ELIGIBLE ACTIVITIES.--Eligible activities will be in accordance with criteria developed by the Secretary and posted in the Federal Register in advance of the grant application period.

"(e) HIGH PRIORITY INITIATIVES.--

"(1) PROGRAM GOAL.--The Secretary may make grants to carry out high priority activities and projects that improve commercial motor vehicle safety and compliance with commercial motor vehicle safety regulations, including activities and projects that are national in scope, increase public awareness and education, target unsafe driving of commercial motor vehicles and non-commercial motor vehicles in areas identified as high risk crash corridors, that improve consumer protection and enforcement of household goods regulations, that improve the movement of hazardous materials safely and securely, including activities related to the establishment of uniform forms and application procedures

that improve the accuracy, timeliness, and completeness of commercial motor vehicle safety data reported to the Secretary; or demonstrate new technologies to improve commercial motor vehicle safety.

"(2) RECIPIENTS.--The Secretary may allocate amounts to award grants to State agencies, local governments, and other persons for carrying out high priority activities and projects that improve commercial motor vehicle safety and compliance with commercial motor vehicle safety regulations in accordance with the program goals specified in paragraph (1).

"(3) FEDERAL SHARE.--The Secretary shall reimburse a grantee an amount that is at least 80 percent of the costs incurred in a fiscal year for carrying out the high priority activities or projects.

"(4) ELIGIBLE ACTIVITIES.--Eligible activities will be in accordance with criteria developed by the Secretary and posted in the Federal Register in advance of the grant application period."

(b) CONFORMING AMENDMENT--The analysis of chapter 311 of title 49, United States Code, is amended by striking the item relating to section 31102 and inserting the following:

"31102. Compliance, safety and accountability grants."

## **SEC. 3172. AUTHORIZATION OF APPROPRIATIONS.**

Section 31104 is amended to read as follows:

### **"Sec. 31104. Availability of amounts**

"(a) IN GENERAL.--There are authorized to be appropriated from the Highway Account of the Transportation Trust Fund for the following Federal Motor Carrier Safety Administration programs:

"(1) Compliance, safety and accountability grants under section 31102--

"(A) \$261,890,000 for fiscal year 2012, provided that the Secretary shall set aside no less than \$XXX,XXX,XXX to carry out the motor carrier assistance program under section 31102(b);

"(B) \$XXX,XXX,XXX for fiscal year 2013, provided that the Secretary shall set aside no less than \$XXX,XXX,XXX to carry out the motor carrier assistance program under section 31102(b);

"(C) \$XXX,XXX,XXX for fiscal year 2014, provided that the Secretary shall set aside no less than \$XXX,XXX,XXX to carry out the motor carrier assistance program under section 31102(b);

"(D) \$XXX,XXX,XXX for fiscal year 2015, provided that the Secretary shall set aside no less than \$186,270,000 to carry out the motor carrier assistance program under section 31102(b);

"(E) \$XXX,XXX,XXX for fiscal year 2016, provided that the Secretary shall set aside no less than \$XXX,XXX,XXX to

carry out the motor carrier assistance program under section 31102(b); and

"(F) \$XXX,XXX,XXX for fiscal year 2017, provided that the Secretary shall set aside no less than \$XXX,XXX,XXX to carry out the motor carrier assistance program under section 31102(b).

"(2) DATA AND TECHNOLOGY GRANTS UNDER SECTION 31109--

"(A) \$30,420,000 for fiscal year 2012, provided that the Secretary shall set aside no less than \$XXX,XXX,XXX to carry out the performance and registration information system management program under section 31109(b);

"(B) \$XXX,XXX,XXX for fiscal year 2013, provided that the Secretary shall set aside no less than \$5,000,000 to carry out the performance and registration information system management program under section 31109(b);

"(C) \$XXX,XXX,XXX for fiscal year 2014, provided that the Secretary shall set aside no less than \$XXX,XXX,XXX to carry out the performance and registration information system management program under section 31109(b);

"(D) \$XXX,XXX,XXX for fiscal year 2015, provided that the Secretary shall set aside no less than \$XXX,XXX,XXX to carry out the performance and registration information system management program under section 31109(b);

"(E) \$XXX,XXX,XXX for fiscal year 2016, provided that the Secretary shall set aside no less than \$XXX,XXX,XXX to carry out the performance and registration information system management program under section 31109(b); and

"(F) \$XXX,XXX,XXX for fiscal year 2017, provided that the Secretary shall set aside no less than \$XXX,XXX,XXX to carry out the performance and registration information system management program under section 31109(b).

"(3) DRIVER SAFETY GRANTS UNDER SECTION 31313--

"(A) \$37,690,000 for fiscal year 2012, provided that the Secretary shall set aside no less than \$XXX,XXX,XXX to carry out the Commercial Driver's License Program Improvement under section 31313(b);

"(B) \$XXX,XXX,XXX or fiscal year 2013, provided that the Secretary shall set aside no less than \$XXX,XXX,XXX to carry out the Commercial Driver's License Program Improvement under section 31313(b);

"(C) \$XXX,XXX,XXX or fiscal year 2014, provided that the Secretary shall set aside no less than \$XXX,XXX,XXX to carry out the Commercial Driver's License Program Improvement under section 31313(b);



"(D) \$XXX,XXX,XXX for fiscal year 2015, provided that the Secretary shall set aside no less than \$XXX,XXX,XXX to carry out the Commercial Driver's License Program Improvement under section 31313(b);

"(E) \$XXX,XXX,XXX for fiscal year 2016, provided that the Secretary shall set aside no less than \$XXX,XXX,XXX to carry out the Commercial Driver's License Program Improvement under section 31313(b); and

"(F) \$XXX,XXX,XXX for fiscal year 2017, provided that the Secretary shall set aside no less than \$XXX,XXX,XXX to carry out the Commercial Driver's License Program Improvement under section 31313(b).

"(4) The Secretary shall develop criteria to allocate the remaining funds in subsections (1)-(3) for Fiscal Year 2013 and for each fiscal year thereafter no later than April 1 of the prior fiscal year.

"(b) AVAILABILITY AND REALLOCATION OF AMOUNTS.--

"(1) ALLOCATIONS AND REALLOCATIONS.--Amounts made available under subsection (a)(1) of this section remain available until expended. Allocations to a State remain available for expenditure in the State for the fiscal year in which they are allocated and for the next fiscal year. Amounts not expended by a State during those 2 fiscal years are released to the Secretary for reallocation.

"(2) REDISTRIBUTION OF AMOUNTS.--The Secretary may, after August 1 of each of fiscal years 2013 through 2017, upon a determination that a State does not qualify under section 31102(b) of this title for funding or that the State will not expend all of its existing funding, reallocate that State's funding. In revising the allocation and redistributing the amounts, the Secretary shall give preference to those States that require additional funding to meet program goals under section 31102(b).

"(3) PERIOD OF AVAILABILITY FOR DATA AND TECHNOLOGY GRANTS.--Amounts made available under subsection (a)(2) of this section remain available for obligation for the fiscal year and the next two year years in which they are appropriated. Allocations remain available for expenditure in the State for the five fiscal years after they were obligated. Amounts not expended by a State during those three fiscal years are released to the Secretary for reallocation.

"(4) PERIOD OF AVAILABILITY FOR DRIVER SAFETY GRANTS.--Amounts made available under subsection (a)(3) of this section remain available for obligation for the fiscal year and the next fiscal year in which they are appropriated. Allocations to a State remain available for expenditure in the State for the fiscal year in which they are allocated and for the following two fiscal years. Amounts not expended by a State during those three fiscal years are released to the Secretary for reallocation.

"(5) REALLOCATION.--The Secretary, upon a request by a State, may reallocate grant funds previously awarded to the State under a grant program authorized by sections 31102, 31109, or 31313 of this title to another grant program authorized by those sections upon a showing by the State that it is unable to expend such funds within the 12 months prior to their expiration provided that the State agrees to expend these funds within the remaining period of expenditure.

"(c) GRANTS AS CONTRACTUAL OBLIGATIONS.--Approval by the Secretary of a grant under sections 31102, 31109 and 31313 of this title is a contractual obligation of the Government for payment of the Government's share of costs incurred in developing and implementing, programs to improve commercial motor vehicle safety and enforce commercial driver's license regulations, standards, and orders.

"(d) DEDUCTION FOR ADMINISTRATIVE EXPENSES.--

"(1) IN GENERAL.--On October 1 of each fiscal year or as soon after that as practicable, the Secretary may deduct, from amounts made available under --

"(A) subsection (a)(1) for that fiscal year, not more than 1.5 percent of those amounts for administrative expenses incurred in carrying out section 31102 of this title in that fiscal year;

"(B) subsection (a)(2) for that fiscal year, not more than 1.4 percent of those amounts for administrative expenses incurred in carrying out section 31109 of this title in that fiscal year; and

"(C) subsection (a)(3) for that fiscal year, not more than 1.4 percent of those amounts for administrative expenses incurred in carrying out section 31313 of this title in that fiscal year.

"(2) TRAINING.--The Secretary shall use at least 50 percent of the amounts deducted from the amounts made available under sections (a)(1) and (a)(3) to train non-Government employees and to develop related training materials in carrying out sections 31102, 31311, and 31313 of this title.

"(3) CONTRACTS.--The Secretary may use amounts deducted under subsection (d)(1) to enter into contracts and cooperative agreements with States, local governments, associations, institutions, corporations, and other persons, if the Secretary determines such contracts and cooperative agreements are cost-effective, benefit multiple jurisdictions of the United States, and enhance safety programs and related enforcement activities.

"(e) ALLOCATION CRITERIA AND ELIGIBILITY.--

"(1) On October 1 of each fiscal year or as soon as practicable after that date after making the deduction under subsection (d), the Secretary shall allocate amounts made available to carry out section 31102(b) of this title for such fiscal year among the States with plans approved under that

section. Allocation shall be made under such criteria as the Secretary prescribes.

"(2) On October 1 of each fiscal year or as soon as practicable after that date and after making the deduction under subsection (e), the Secretary shall allocate amounts made available to carry out sections 31109 (a) and 31313(b)(1) of this title.

"(f) INTRASTATE COMPATIBILITY.--The Secretary shall prescribe regulations specifying tolerance guidelines and standards for ensuring compatibility of intrastate commercial motor vehicle safety laws and regulations with Government motor carrier safety regulations to be enforced under section 31102(b) of this title. To the extent practicable, the guidelines and standards shall allow for maximum flexibility while ensuring the degree of uniformity that will not diminish transportation safety. In reviewing State plans and allocating amounts or making grants under section 153 of title 23, the Secretary shall ensure that the guidelines and standards are applied uniformly.

"(g) WITHHOLDING AMOUNTS FOR STATE NONCOMPLIANCE.--

"(1) IN GENERAL.--Subject to criteria established by the Secretary, the Secretary may withhold up to 100 percent of the amounts a State is otherwise eligible to receive under section 31102(b) of this title on October 1 of each fiscal year beginning after the date of the enactment of this section throughout which the State does not comply substantially with a requirement of section 31109(b) of this title.

"(2) SUBSEQUENT AVAILABILITY OF WITHHELD FUNDS.--The Secretary may make available to a State amounts withheld in accordance with paragraph (1) if the Secretary determines that the State has substantially complied with a requirement of section 31109(b) of this title within 180 days after the start of the fiscal year in which amounts were withheld.

"(h) CONTRACT AUTHORITY.--Approval by the Secretary of a grant with funds made available under this section imposes upon the United States a contractual obligation for payment of the Government's share of costs incurred in carrying out the objectives of the grant.

"(i) ADMINISTRATIVE EXPENSES.--

"(1) AUTHORIZATION OF APPROPRIATIONS.--There are authorized to be appropriated from the Highway Account of the Transportation Trust Fund for the Secretary of Transportation to pay administrative expenses of the Federal Motor Carrier Safety Administration--

"(A) \$276,000,000 for fiscal year 2012;

"(B) \$XXX,XXX,XXX for fiscal year 2013;

"(C) \$XXX,XXX,XXX for fiscal year 2014;

"(D) \$XXX,XXX,XXX for fiscal year 2015;

"(E) \$XXX,XXX,XXX for fiscal year 2016; and

"(F) \$XXX,XXX,XXX for fiscal year 2017.

"(2) USE OF FUNDS.--The funds authorized by this subsection shall be used for personnel costs; administrative infrastructure; rent; information technology; programs for research and technology, information management, regulatory development, the administration of the performance and registration information system management, and outreach and education; other operating expenses; and such other expenses as may from time to time become necessary to implement statutory mandates of the Administration not funded from other sources.

"(j) AVAILABILITY OF FUNDS.--

"(1) PERIOD OF AVAILABILITY.--The amounts made available under this section shall remain available until expended.

"(2) INITIAL DATE OF AVAILABILITY.--Authorizations from the Highway Account of the Transportation Trust Fund for this section shall be available for obligation on the date of their apportionment or allocation or on October 1 of the fiscal year for which they are authorized, whichever occurs first."

## **SEC. 3173. DATA AND TECHNOLOGY GRANTS.**

(a) IN GENERAL.--Section 31109 is amended to read as follows:

### **"Sec. 31109. Data and technology grants**

"(a) GENERAL AUTHORITY.--The Secretary of Transportation shall make and administer a data and technology grant program to assist the States with the implementation and maintenance of data systems. The Secretary shall allocate the funds in accordance with section 31104 of this title.

"(b) PERFORMANCE GOALS.--The Secretary may make a grant to a State to implement the performance and registration information system management (PRISM) requirements of section 31106(b) of this title, to develop, implement, and maintain commercial vehicle information systems and networks, and other innovative technologies that the Secretary determines improves commercial motor vehicle safety.

"(c) ELIGIBILITY.--

"(1) IN GENERAL.--To be eligible for a grant to implement the requirements of section 31106(b) of this title, the State must design a program that--

"(A) links Federal motor carrier safety information systems with the State's motor carrier information systems;

"(B) determines the safety fitness of a motor carrier or registrant when licensing or registering the registrant or motor carrier or while the license or registration is in effect; and

"(C) denies, suspends, or revokes the commercial motor vehicle registrations of a motor carrier or registrant that has been issued an operations out of service order by the Secretary.

"(2) ELECTRONIC SCREENING.--To be eligible for a grant under this section for the deployment of electronic screening a State must design a program that--

"(A) employs a uniform methodology, approved by the Secretary, for selecting a motor carrier for an inspection;

"(B) utilizes weigh-in-motion or equivalent systems as part of the screening process;

"(C) meets interoperability standards for transponders on commercial motor vehicles and data at electronic screening sites; and

"(D) allows inspection and screening data to be utilized for regulatory enforcement purposes.

"(d) REQUIRED PARTICIPATION--The Secretary shall require States to participate in the program under section 31106 of this title to--

"(1) comply with the uniform policies, procedures, and technical and operational standards prescribed by the Secretary under 31106(b);

"(2) possess or seek the authority to possess for a time period no longer than determined reasonable by the Secretary, to impose sanctions relating to commercial motor vehicle registration on the basis of a Federal safety fitness determination; and

"(3) establish and implement a process to cancel the motor vehicle registration and seize the registration plates of a vehicle when an employer is found liable under section 31310(i)(2)(C) of this title for knowingly allowing or requiring an employee to operate such a commercial motor vehicle in violation of an out of service order.

"(e) FEDERAL SHARE.--The total Federal share of the cost of a project payable from all eligible Federal sources shall be at least 80 percent.

"(f) BIENNIAL REPORT.--Not later than 2 years after the date of enactment of this Act, and biennially thereafter, the Secretary shall transmit to Congress a report on the activities and results of the program carried out under this section, together with any recommendations the Secretary determines appropriate."

(b) CONFORMING AMENDMENT.--The analysis of chapter 311 is amended by striking the item relating to section 31109 and inserting the following:

"31109. Data and technology grants."

## **SEC. 3174. DRIVER SAFETY GRANTS.**

(a) DRIVER FOCUSED GRANT PROGRAM. --Section 31313 is amended to read as follows:

**"Sec. 31313. Driver safety grants**

"(a) GENERAL AUTHORITY.--The Secretary shall make and administer a driver focused grant program to assist the States, local government, entities and other persons with commercial driver's license systems, programs, training, fraud detection, reporting of violations and other programs required to improve the safety of drivers as the Federal Motor Carrier Safety Administration deems critical. The Secretary shall allocate the funds for the program in accordance with section 31104 of this title.

**"(b) COMMERCIAL DRIVER'S LICENSE PROGRAM IMPROVEMENT GRANTS.--**

"(1) PROGRAM GOAL.--The Secretary of Transportation may make a grant to a State in a fiscal year--

"(A) to comply with the requirements of section 31311 of this title; and

"(B) in the case of a State that is making a good faith effort toward substantial compliance with the requirements of section 31311 and this section, to improve its implementation of its commercial driver's license program;

"(C) for research, development demonstration projects, public education, and other special activities and projects relating to commercial driver licensing and motor vehicle safety that are of benefit to all jurisdictions of the United States or are designed to address national safety concerns and circumstances;

"(D) for commercial driver's license program coordinators;

"(E) to implement or maintain a system to notify an employer of an operator of a commercial motor vehicle of a suspension or revocation of such operator's commercial driver's license;

"(F) to train operators as commercial motor vehicles as defined in section 31301 title 49, United States Code, and to train operators and future operators in the safe use of such vehicles. Funding priority for this discretionary grant program will be given to regional or multi-state educational or nonprofit associations serving economically distressed regions of the United States.

"(2) PRIORITY.--In making grants under paragraph (1)(B), the Secretary shall give priority to States that will use the grants to achieve compliance with the requirements of the Motor Carrier Safety Improvement Act of 1999, including the amendments made by the Act.

"(3) RECIPIENTS.--The Secretary may allocate grants to State agencies, local governments, and other persons for carrying out activities and projects that improve commercial driver's license safety and compliance with commercial driver's license and commercial motor

vehicle safety regulations in accordance with the program goals noted above and that train operators as commercial motor vehicles. The Secretary may make a grant to a State to comply with 31311 of this title for commercial driver's license program coordinators and for notification systems

"(4) FEDERAL SHARE.--The Federal share of a grant made under this program will be at least 80 percent except that the Federal share of grants for commercial driver license program coordinators and training commercial motor vehicle operators is 100 percent."

(b) CONFORMING AMENDMENT.--The analysis of chapter 313 is amended by striking the item relating to section 31313 and inserting the following:

"31313. Driver safety grants."

### **Part 5--Medical and Registration Provisions**

#### **SEC. 3181. EFFECT OF DRIVING ON COMMERCIAL MOTOR VEHICLE OPERATORS.**

Section 31136(a)(4) is amended to read as follows:

"(4) the operation of commercial motor vehicles does not have a significantly adverse effect on the physical condition of the operators."

#### **SEC. 3182. ELECTRONIC FILING OF MEDICAL EXAMINATION CERTIFICATES.**

(a) ELECTRONIC FILING OF MEDICAL EXAMINATION CERTIFICATES.--Section 31311(a) is amended by adding at the end the following:

"(22) The State shall create and maintain, as part of its driver information system, the capability to receive from certified medical examiners an electronic copy of the medical examiner's certificate prepared for each holder of a commercial driver's license issued by the State who operates or intends to operate in interstate commerce."

(b) EFFECTIVE DATE.--The effective date of paragraph (22) of section 31311(a) of this title shall be the date on which the national registry of certified medical examiners becomes operational, under section 31149(d) of this title.

(c) FUNDING.--

(1) AUTHORIZATION OF APPROPRIATIONS.--There are authorized to be appropriated from the Highway Account of the Transportation Trust Fund for the Secretary of Transportation to make grants to States or an organization representing agencies and officials of the States to support development costs of the information technology

needed to carry out 49 U.S.C. 31311(a)(22) \$1,000,000 for fiscal year 2013 and \$1,000,000 for fiscal year 2014.

(2) PERIOD OF AVAILABILITY.--The amounts made available under this subsection shall remain available until expended.

### **SEC. 3183. WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS.**

(a) WAIVER STANDARDS.--Section 31315(a) is amended by striking paragraph (3) and redesignating paragraph (4) as paragraph (3).

(b) EXEMPTION STANDARDS.--Section 31315(b)(4) is revised to read as follows:

"(4) NOTICE AND COMMENT.--

"(A) UPON RECEIPT OF A REQUEST.--Upon receipt of an exemption request, the Secretary shall publish in the Federal Register (or, in the case of a request for an exemption from the physical qualification standards for commercial motor vehicle drivers, post on a website established by the Secretary to implement the requirements of section 31149 of this title) a notice explaining the request that has been filed and shall give the public an opportunity to inspect the safety analysis and any other relevant information known to the Secretary and to comment on the request. This subparagraph does not require the release of information protected by law from public disclosure.

"(B) UPON GRANTING A REQUEST.--Upon granting a request and before the effective date of the exemption, the Secretary shall publish in the Federal Register (or, in the case of an exemption from the physical qualification standards for commercial motor vehicle drivers, post on a website established by the Secretary to implement the requirements of section 31149 of this title) the name of the person granted the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption.

"(C) AFTER DENYING A REQUEST.--After denying a request for exemption, the Secretary shall publish in the Federal Register (or, in the case of a request for an exemption from the physical qualification standards for commercial motor vehicle drivers, post on a website established by the Secretary to implement the requirements of section 31149 of this title) the name of the person denied the exemption and the reasons for such denial. The Secretary may meet the requirements of this subparagraph by periodically publishing the names of persons denied exemptions and the reasons for such denials."

(c) PROVIDING NOTICE OF EXEMPTIONS TO STATE PERSONNEL.--Section 31315(b)(7) is amended to read as follows:



"(7) NOTIFICATION OF STATE COMPLIANCE AND ENFORCEMENT PERSONNEL.--Before the effective date of an exemption, the Secretary shall notify State safety compliance and enforcement agencies, and require them pursuant to section 31102(b)(1)(Y) of this title to notify their roadside inspectors, that a person will be operating pursuant to an exemption and any terms and conditions that will apply to the exemption."

(d) PILOT PROGRAMS.--Section 31315(c)(1) is amended by inserting after "the Federal Register" the following: "or post on the agency's official website".

#### **SEC. 3184. USDOT NUMBER REGISTRATION REQUIREMENT.**

(a) Chapter 311 is amended by inserting after section 31133 the following:  
**"Sec. 31134. Requirement for registration and USDOT number**

"(a) IN GENERAL.--Upon application, and subject to subsections (b) and (c), the Secretary shall register an employer subject to safety jurisdiction under subchapter III of chapter 311 of this title. An employer may operate a commercial motor vehicle in interstate commerce only if the employer is registered by the Secretary under this section and receives a USDOT number. Nothing in this section shall preclude registration by the Secretary of a person not engaged in interstate commerce. An employer subject to jurisdiction under subchapter I of chapter 135 of this title must also apply for commercial registration under section 13902 of this title.

"(b) WITHHOLDING REGISTRATION.--The Secretary shall withhold registration made under subsection (a) if the Secretary determines that--

"(1) the employer seeking registration is unwilling or unable to comply with the requirements of this subchapter and the regulations prescribed thereunder and chapter 51 of this title and the regulations prescribed thereunder; or

"(2) within the 5-year period prior to the filing of the application for registration, the employer has been related through common ownership, common management, common control or common familial relationship to any other person subject to this subchapter who, within the same 5-year period, is or was, unfit or unwilling or unable to comply with the requirements listed in subsection (b)(1); or

"(3) the person is the successor, as defined in section 31153, to a person who, within the 5-year period prior to the filing of the application for registration is or was unfit, unwilling, or unable to comply with the requirements listed in subsection (b)(1).

"(c) REVOCATION OR SUSPENSION OF REGISTRATION.--The Secretary shall revoke the registration of an employer made under subsection (a)

after notice and an opportunity for a proceeding, or suspend such registration after giving notice of the suspension to the employer, if the Secretary determines that--

"(1) the employer's authority to operate pursuant to chapter 139 of this title would be subject to revocation or suspension under sections 13905(d)(1) or 13905(f) of this title;

"(2) the employer is related through common ownership, common management, common control or common familial relationship to any other person subject to this subchapter whom the Secretary determines to be, or, within the previous 5 years to have been, unfit or unwilling or unable to comply with the requirements listed in subsection (b)(1);

"(3) the person is the successor, as defined in section 31153, to a person the Secretary determines to be, or, within the previous 5 years to have been unfit, unwilling, or unable to comply with the requirements listed in subsection (b)(1); or

"(4) the employer failed or refused to submit to the safety review required by section 31144(g) of this title.

"(d) PERIODIC REGISTRATION UPDATE.--The Secretary may require an employer or motor carrier to update its registration under this section periodically or within 30 days of any change in the employer or motor carrier's address, other contact information, officers, process agent, or other essential information as determined by the Secretary and published in the Federal Register or on a Department of Transportation website."

(b) CONFORMING AMENDMENT.--The analysis of chapter 311 is amended by inserting after the item relating to section 31133 the following:

"31134. Requirement for registration and USDOT number."

### **SEC. 3185. REGISTRATION FEE SYSTEM.**

Section 13908(d) is amended--

(1) by inserting "by regulation," after "establish,"; and

(2) in paragraph (1), by striking "but shall not exceed \$300".

### **SEC. 3186. REGISTRATION UPDATE.**

(a) PERIODIC MOTOR CARRIER UPDATE.--Section 13902(a) is amended by inserting after paragraph (5) the following:

"(6) UPDATE OF REGISTRATION.--The Secretary may require a motor carrier to update its registration under this section periodically or within 30 days of any change in the motor carrier's address, other contact information, officers, process agent or other essential information as determined by the Secretary and published in the Federal Register or on a Department of Transportation website."

(b) PERIODIC FREIGHT FORWARDER UPDATE.--Section 13903 is amended by inserting after subsection (b) the following:

"(c) UPDATE OF REGISTRATION.--The Secretary may require a freight forwarder to update its registration under this section periodically or within 30 days of any change in the freight forwarder's address, other contact information, officers, process agent, or other essential information as determined by the Secretary and published in the Federal Register or on a Department of Transportation website."

(c) PERIODIC BROKER UPDATE.--Section 13904 is amended by inserting, following subsection (d), the following:

"(e) UPDATE OF REGISTRATION.--The Secretary may require a broker to update its registration under this section periodically or within 30 days of any change in the broker's address, other contact information, officers, process agent, or other essential information as determined by the Secretary and published in the Federal Register or on a Department of Transportation website."

#### **SEC. 3187. REPEAL OF COMMERCIAL JURISDICTION EXCEPTION FOR BROKERS OF MOTOR CARRIERS OF PASSENGERS.**

Section 13506(a) is amended by deleting paragraph (14) and redesignating paragraph (15) as paragraph (14).

#### **Part 6--Miscellaneous**

#### **SEC. 3191. FAILURE TO GIVE UP POSSESSION OF HOUSEHOLD GOODS.**

(a) INJUNCTIVE RELIEF.--Section 14704(a)(1) is amended by striking "and 14103" and inserting ", 14103, and 14915(c)".

(b) CIVIL PENALTIES.--Section 14915(a)(1) is revised by adding at the end the following: "In its discretion, the United States may assign all or a portion of the civil penalty to the aggrieved shipper(s). The Secretary may order, after notice and an opportunity for a proceeding, a person found holding a household goods shipment hostage to return the goods to the aggrieved shipper."

#### **SEC. 3192. MOTOR CARRIER SAFETY ADVISORY COMMITTEE.**

(a) MEMBERSHIP.--Section 4144(b)(1) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (49 U.S.C. 31100 note; 119 Stat. 1748) is amended by inserting "nonprofit employee labor organizations representing commercial vehicle drivers" after "industry,".

(b) TERMINATION DATE.--Section 4144(d) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (49 U.S.C.

31100 note; 119 Stat. 1748) is amended by striking "September 30, 2011" and inserting "September 30, 2017".

### **SEC. 3193. UNIFIED CARRIER REGISTRATION PLAN.**

Section 14504a is amended--

(1) in subsection (a)(2), by striking subparagraph (A) and inserting the following:

"(A) IN GENERAL.--Subject to subparagraph (B), the term 'base-State' means, with respect to a unified carrier registration agreement, a State in which the motor carrier, motor private carrier, broker, freight forwarder, or leasing company to which the agreement applies, maintains its principal place of business.";

(2) in subsection (a)(2), by striking subparagraph (B) and inserting the following:

"(B) DESIGNATION OF BASE-STATE.--A motor carrier, motor private carrier, broker, freight forwarder, or leasing company may designate another State in which it maintains an office or operating facility to be its base-State in the event that the motor carrier, motor private carrier, broker, freight forwarder, or leasing company does not have a principal place of business in the United States.";

(3) in subsection (a)(5)(A)(ii)(II), by striking "subsection (d)(4)(C)" and inserting "subsection (d)(5)(C)";

(4) by striking subsection (a)(6);

(5) by redesignating subsections (a)(7) through (10) as (a)(6) through (9), respectively;

(6) in subsection (d)(1)(A), by striking "Department of Transportation, participating", deleting the comma following "States", and striking the last sentence;

(7) in subsection (d)(1)(B), by striking "Secretary" and inserting "existing unified carrier registration plan board of directors";

(8) in subsection (d)(1)(B)(ii), by striking "Secretary" and inserting "board";

(9) in subsection (d)(1)(B)(iii), by striking "Five" and inserting "Six" and inserting the following before the last sentence: "At least one of the appointees under this clause shall be a representative of the passenger motorcoach industry.";

(10) in subsection (d)(1)(B), by striking clause (iv);

(11) in subsection (d)(1)(C), by striking "Secretary" and inserting "board";

(12) in subsection (d)(1)(D)--

(A) by striking clause (i) and redesignating clauses (ii) through (iv) as clauses (i) through (iii), respectively; and

(B) by amending clause (i), (as so redesignated) to read as follows:

- "(i) TERMS.--All directors shall be appointed for terms of 3 years.";
- (13) in subsection (d)(2)(A)(ii), by striking "participating";
- (14) in subsection (d)(2)(C), by striking "and";
- (15) in subsection (d)(2)(D), by inserting "; and" at the end;
- (16) in subsection (d)(2), by inserting after subparagraph (D) the following:
- "(E) require the board to conduct an audit of the UCR plan's use of administrative fees no less frequently than once every two years.";
- (17) in subsection (d)(3)(A)--
- (A) by striking "Except for the representative of the Department appointed under paragraph (1)(B)(iv), no"; and
- (B) by inserting "No" before "director shall receive";
- (18) in subsection (d)(4)(A), by inserting "or" before "a majority of the directors" and striking "or the Secretary";
- (19) in subsection (d)(5)(D), by striking "participating";
- (20) in subsection (d)(6), by inserting "or the United States Government" after "agency of a State";
- (21) by redesignating section 14504a(d)(7)(A) as section 14504a(d)(7) and amending paragraph (7) (as so redesignated) to read as follows:
- "(7) SETTING FEES.--The board shall set the initial annual fees to be assessed carriers, leasing companies, brokers, and freight forwarders under the unified carrier registration agreement. In setting the level of fees to be assessed in any agreement year, and in setting the fee level, the board and shall consider--
- "(A) the administrative costs associated with the unified carrier registration plan and the agreement;
- "(B) whether the revenues generated in the previous year and any surplus or shortage from that year or prior years enable the participating States to achieve the revenue levels set by the board; and
- "(C) the provisions governing fees under subsection (f)(1).";
- (22) by striking subsection (d)(7)(B);
- (23) by amending subsection (d)(9) to read as follows:
- "(9) INAPPLICABILITY.--Neither the Federal Advisory Committee Act (5 U.S.C. App.) nor the Administrative Procedure Act (5 U.S.C. 551 et seq.) shall apply to the unified carrier registration plan, the board, or its committees.";
- (24) by redesignating subsections (d)(1) through (10) as (d)(2) through (11), respectively;
- (25) by inserting a new subsection (d)(1) before subsection (d)(2) (as redesignated in paragraph 24) to read as follows:
- "(1) STATUS.--The unified carrier registration plan--

"(A) is an interstate agreement established under this section;

"(B) shall be operated as a not-for-profit corporation; and

"(C) is not a department, agency or instrumentality of the United States Government.";

(26) in subsection (e), by striking subparagraphs (2) through (5), redesignating subsection (e)(1) as subsection (e)(2); and inserting a new subsection (e)(1) before subsection (e)(2) to read as follows:

"(1) MANDATORY PARTICIPATION.--A State may not decline to participate or withdraw from the UCR agreement.";

(27) by amending subsection (e)(2) (as redesignated) to read as follows:

"(2) STATE PLAN.--A State not participating in the UCR agreement on the date of the enactment of the Transportation Opportunities Act shall, not later than 3 years after the date of enactment, submit a plan--

"(A) identifying the State agency that has or will have the legal authority, resources, and qualified personnel necessary to administer the agreement in accordance with the rules and regulations promulgated by the board of directors; and

"(B) demonstrating that an amount at least equal to the revenue derived by the State from the unified carrier registration agreement shall be used for motor carrier safety programs, enforcement, or the administration of the UCR plan and UCR agreement.";

(28) in subsection (f)(1)(E), by striking "ask the Secretary to";

(29) by striking subsection (f)(1)(B) and redesignating subsections (f)(1)(C) through (f)(1)(E) as subsections (f)(1)(B) through (f)(1)(D), respectively;

(30) in subsection (g), by striking "participating";

(31) in subsection (h)(2), by striking "participating" and by replacing "subsection (d)(2)(D)" with "subsection (d)(3)(D)" (as so redesignated by paragraph 24);

(32) in subsection (h)(3)(A), by striking "participating" each place it appears;

(33) by amending subsection (h)(3)(B) to read as follows:

"(B) To pay the administrative costs of the UCR plan and the UCR agreement. Payments for administrative costs may be made prior to making distributions under subparagraph (A).";

(34) in subsection (h)(4), by striking "Secretary" and inserting "board"; and

(35) by amending subsection (i) to read as follows:

"(i) ENFORCEMENT.--Nothing in this section--

"(1) prohibits a State from issuing citations and imposing reasonable fines and penalties pursuant to the applicable laws and

regulations of the State on any motor carrier, motor private carrier, freight forwarder, broker, or leasing company for failure to--

"(A) submit information documents as required under subsection (d)(3); or

"(B) pay the fees required under subsection (f); or

"(2) authorizes a State to require a motor carrier, motor private carrier, or freight forwarder to display as evidence of compliance any form of identification in excess of those permitted under section 14506 of this title on or in a commercial motor vehicle."

#### **SEC. 3194. SELF-INSURANCE FOR MOTOR CARRIERS REPEALED.**

Section 13906(d) is amended by striking the second, third and last sentences.

#### **SEC. 3195. STATUTORY RECODIFICATION STUDY.**

(a) **IN GENERAL.**--Not later than 180 days after the date of enactment of this Act, the Secretary shall enter into an arrangement with the Transportation Research Board of the National Academy of Sciences to conduct a study of the feasibility and merits of a comprehensive recodification, consolidation or repeal, as appropriate, of United States Code provisions relating to motor carriers, commercial motor vehicles, drivers, brokers and freight forwarders. The study shall address and make recommendations, at a minimum, on--

(1) the elimination of obsolete or vestigial statutory provisions, including provisions originally applicable to and under the administration of the former Interstate Commerce Commission;

(2) the elimination of separate jurisdictional grants and exemptions under title 49 U.S. Code, chapter 135, in favor of consolidated jurisdictional provisions under title 49 U.S. Code, chapter 311;

(3) the elimination of "operating authority" registration under 49 U.S.C. 13901 and 13902 and other non-essential distinctions between for-hire motor carriers and private motor carriers;

(4) the elimination of the distinction, for purposes of registration requirements, between motor carriers transporting exempt commodities and those transporting non-exempt commodities;

(5) the harmonization of civil penalties;

(6) the adoption of additional definitions; and

(7) the simplification and improved organization of motor carrier statutes and regulations.

(b) **REPORT TO CONGRESS.**--Not later than 1 year after the Secretary and the Transportation Research Board enter into the arrangement for the study, the Secretary shall transmit the results of the study conducted under subsection (a) to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of

the Senate. The report shall contain, as an appendix, proposed tables of contents and code provisions that, if adopted, would implement the principal recommendations in the report.

(c) FUNDING.--Amounts made available pursuant to section 31104(j) of title 49, United States Code (as so designated in section 4402 of this title), shall be used by the Secretary to carry out this section.

#### **SEC. 3196. PROFICIENCY EXAMINATION RULEMAKING.**

Section 210(b) of the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 31144 note; 113 Stat. 1765) is amended by inserting ", commercial regulations, and provisions of part 37, subpart H of title 49, Code of Federal Regulations, or successor regulations" after "applicable safety regulations".

#### **SEC. 3197. UPDATE OF OBSOLETE TEXT.**

The following provisions of law are amended as follows:

(1) Title 49, United States Code is amended--

(A) in section 31137(b), by striking "Not later than December 1, 1990, the" and inserting "The";

(B) in section 31151(a), by striking paragraphs (1) and (4) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively;

(C) in section 31307(b), by striking "No later than December 18, 1994, the" and inserting "The";

(D) in section 31309(e)(1), by striking "Not later than 120 days after the date of enactment of this subsection, the" and inserting "The"; and

(E) in section 31310(g)(1), by striking "Not later than 1 year after the date of enactment of this Act, the" and inserting "The".

(2) Section 4123(f) of Public Law 109-59 (119 Stat. 1736) is amended by striking "Not later than 1 year after the date of enactment of this Act, the" and inserting "The".

#### **SEC. 3198. CORRECTION OF INTERSTATE COMMERCE COMMISSION REFERENCES.**

(a) REPEAL OF SECTION 307.--Chapter 3 of title 49, United States Code, is amended as follows:

(1) Section 307 (Safety information and intervention in Interstate Commerce Commission proceedings) is repealed.

(2) The analysis of chapter 3 is amended by striking the item relating to section 307.



(b) SECTION 333.--Subsections (d)(1)(C) and (e) of section 333 (Responsibility for rail transportation unification and coordination projects) are amended by striking "Interstate Commerce Commission" and "Commission" each place the words appear and substituting "Surface Transportation Board" and "Board", respectively.

(c) SECTION 10903.--Section 10903(b)(2) is amended by striking "24706(c) of this title" and substituting "24706(c) of this title before May 31, 1998".

(d) SECTION 14704.--Section 14704 (Rights and remedies of persons injured by carriers or brokers) is amended--

(1) in subsection (a),

(A) by striking "IN GENERAL.--" and all that follows through "injured" and substituting "ENFORCEMENT OF ORDER.--A person injured"; and

(B) by redesignating paragraph (2) as subsection (b)(2); and

(2) in subsection (b),

(A) by striking "LIABILITY AND DAMAGES.--" and all that follows through "A carrier" and substituting "EXCEEDING TARIFF RATE.--(1) A carrier"; and

(B) by striking "DAMAGES FOR VIOLATIONS.--" in paragraph (2), as redesignated, and substituting "OTHER VIOLATIONS.--".

(e) SECTION 14705.--Section 14705(c) is amended by striking "14704(b)" and substituting "14704(b)(2)".

(f) TECHNICAL AMENDMENTS TO TITLE 49, UNITED STATES CODE, CHAPTER 243.--

(1) SECTION 24307.--Subsection (c)(3) of section 24307 (Special transportation) is amended by striking "Interstate Commerce Commission" and substituting "Surface Transportation Board".

(2) SECTION 24308.--Section 24308 (Use of facilities and providing services to Amtrak) is amended by striking "Interstate Commerce Commission" and "Commission" each place the words appear and substituting "Surface Transportation Board" and "Board", respectively.

(3) SECTION 24311.--Section 24311 (Acquiring interests in property by eminent domain) is amended by striking "Interstate Commerce Commission" and "Commission" each place the words appear and substituting "Surface Transportation Board" and "Board", respectively.

(4) SECTION 24902.--Section 24902 (Goals and requirements) is amended by striking "Interstate Commerce Commission" and "Commission" each place the words appear and substituting "Surface Transportation Board" and "Board", respectively.

(5) SECTION 24904.--Section 24904 (General authority) is amended by striking "Interstate Commerce Commission" and "Commission" each place the words appear and substituting "Surface Transportation Board" and "Board", respectively.

### **SEC. 3199. PROHIBITION OF COERCION.**

- (a) Section 31136(a) is amended by--
- (1) striking "and"." at the end of subsection (3);
  - (2) replacing the period at the end of subsection (4) with "; and";
- and
- (3) adding after subsection (4) the following:  
 "(5) operators of commercial motor vehicles are not coerced by motor carriers, shippers, receivers, or transportation intermediaries to operate a commercial motor vehicle in violation of a regulation promulgated under the authority of this section, or chapter 51 or chapter 313 of this title."
- (b) Section 31132 is amended by--
- (1) redesignating paragraphs (1) through (11) as (2) through (12), respectively, and
  - (2) inserting the following new paragraph (1) before paragraph (2), as redesignated, to read as follows:  
 "(1) 'coerce' or 'coercion' means a threat to inflict physical harm or withhold future business in order to induce an employee to operate a commercial motor vehicle in violation of a regulation promulgated on the authority of chapter 51, section 31136 or chapter 313 of this title."

### **SEC. 3199a. ACCESS TO THE NATIONAL DIRECTORY OF NEW HIRES.**

Section 453 of the Social Security Act, as amended by section 316(f) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, Pub. L. 104-193, 42 U.S.C. 653(j), 110 Stat. 2217, is further amended by adding at the end the following:

- "(11) INFORMATION COMPARISONS AND DISCLOSURE TO ASSIST IN MOTOR CARRIER SAFETY PROGRAMS.--
- "(A) FURNISHING OF INFORMATION BY DOT.--The Secretary of Transportation may furnish to the Secretary, on such periodic basis as is mutually determined, information in the custody of the Secretary of Transportation for comparison with information in the National Directory of New Hires, in order to obtain the information in such directory with respect to individuals who--

"(i) are listed in the directory established by section 31306(a) of title 49, United States Code; or

"(ii) were employed by an employer recently ordered to cease commercial vehicle operations pursuant to section 521(b)(5)(A) of title 49, United States Code.

"(B) REQUIREMENT TO SEEK MINIMUM INFORMATION NECESSARY.--The Secretary of Transportation shall seek information under this section only to the extent essential to learning the current location of the individuals specified in subparagraph (A)(i), or the current employer of the individuals specified in subparagraph (A)(ii).

"(C) DUTIES OF THE SECRETARY OF HEALTH AND HUMAN SERVICES.--

"(i) The Secretary, in cooperation with the Secretary of Transportation, shall compare information in the National Directory of New Hires with information in the custody of the Secretary of Transportation, and disclose information in that Directory to the Secretary of Transportation, in accordance with this paragraph, for the purposes specified in this paragraph.

"(ii) The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part.

"(D) USE OF INFORMATION BY THE SECRETARY OF TRANSPORTATION.--The Secretary of Transportation may use information resulting from a data match pursuant to this paragraph only--

"(i) to locate an individual previously disqualified from operating a commercial motor vehicle under section 31310 of title 49, United States Code; or

"(ii) to determine whether a motor carrier applying for registration under section 31134 of title 49, United States Code, is the alter ego of a motor carrier previously disqualified from operation under section 521(b)(5)(A) of title 49, United States Code.

"(E) DISCLOSURE OF INFORMATION BY THE SECRETARY OF TRANSPORTATION.--

"(i) The Secretary of Transportation may disclose information resulting from a data match pursuant to this paragraph only to--

"(I) a contractor or agent of the Secretary;

"(II) a State agency responsible for administering a grant made under section 31102 of title 49, United States Code; or

"(III) the Attorney General.

"(ii) The Secretary of Transportation may make a disclosure under clause (i) only for the purpose of enforcing the disqualification of a driver of a commercial motor vehicle, or ascertaining whether a motor carrier's application for registration under section 31134 of title 49, United States Code, should be granted.

"(iii) An entity to which information is disclosed under clause (i) may use or disclose such information only as needed to undertake the tasks listed in clause (ii).

"(F) REIMBURSEMENT OF HHS COSTS.--The Secretary of Transportation shall reimburse the Secretary, in accordance with subsection (k)(3) of this section, for the additional costs incurred by the Secretary in furnishing the information requested under this paragraph."

### **Subtitle C--Hazardous Material Transportation Safety**

#### **SEC. 3201. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED STATES CODE.**

(a) SHORT TITLE.--This subtitle may be cited as the "Hazardous Material Transportation Safety Act of 2012".

(b) AMENDMENT OF TITLE 49, UNITED STATES CODE.--Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

#### **SEC. 3202. DEFINITION.**

Section 5102(13) is amended to read as follows:

"(13) 'transports' or 'transportation' means the movement of property and loading, unloading, handling, or storage incidental to the movement, including--

"(A) all activities related to--

"(i) loading packaged or containerized hazardous materials, such as portable tanks, cylinders, and intermediate bulk containers, onto a transport vehicle, rail car, aircraft, or vessel; or

"(ii) loading a hazardous material into a bulk packaging, such as a portable tank, cargo tank, or rail tank car, with a capacity greater than 3,000 L;

"(B) storage of a hazardous material from the time it is loaded for purposes of movement until it is unloaded at its destination; and

"(C) all activities related to--

"(i) unloading packaged or containerized hazardous materials, such as portable tanks, cylinders, and intermediate bulk containers, from a transport vehicle, rail car, aircraft, or vessel during en route movement or at its destination; or

"(ii) unloading a hazardous material from a bulk packaging, such as a portable tank, cargo tank, or rail tank car, with a capacity greater than 3,000 L during en route movement or at its destination."

**SEC. 3203. GENERAL REGULATORY AUTHORITY.**

Section 5103(b)(1)(A) is amended by--

- (1) striking "or" at the end of clause (vi);
- (2) striking "(vi)" in clause (vii) and inserting "(vii)";
- (3) redesignating clause (vii) as clause (viii); and
- (4) inserting a new clause after clause (vi), to read as follows:  
 "(vii) loads, unloads, or handles hazardous materials in transportation in commerce; or".

**SEC. 3204. HAZARDOUS MATERIAL ENFORCEMENT TRAINING PROGRAM.**

(a) IN GENERAL.--Chapter 51 is amended by inserting the following after Section 5128:

**"Sec. 5129. Hazardous material enforcement training program**

"(a) IN GENERAL.--The Secretary of Transportation shall carry out a multimodal hazardous material enforcement training program--

"(1) to develop uniform performance standards for training hazardous material inspectors and investigators, building upon current training programs;

"(2) to train hazardous material inspectors and investigators on how to collect, analyze, and publish findings from inspections and investigations of accidents or incidents involving the transportation of hazardous material; and

"(3) to train hazardous material inspectors and investigators on how to identify noncompliance with regulations issued under this chapter and take appropriate enforcement action.

"(b) STANDARDS AND GUIDELINES.--Under the program, the Secretary may develop--

"(1) guidelines for hazardous material inspector and investigator qualifications;

"(2) best practices and standards for hazardous material inspector and investigator training programs; and

"(3) standard protocols to coordinate investigation efforts among Federal, State, and local jurisdictions on accidents or incidents involving the transportation of hazardous material.

"(c) AVAILABILITY.--The Secretary may make the standards, protocols, and findings of the program described in this section--

"(1) mandatory for the Department's multimodal personnel conducting hazardous material enforcement inspections or investigations;

"(2) mandatory for State employees who conduct federally funded compliance reviews, inspections, or investigations; and

"(3) available to Federal, State, and local hazardous material safety enforcement personnel."

(b) CONFORMING AMENDMENT.--The analysis of Chapter 51 is amended by inserting after the item relating to Section 5128 the following: "5129. Hazardous material enforcement training program."

#### **SEC. 3205. PAPERLESS HAZARD COMMUNICATIONS PROGRAM.**

(a) IN GENERAL.--Chapter 51 is amended by inserting the following after Section 5110:

##### **"Sec. 5111. Paperless hazard communications program**

"(a) IN GENERAL.--The Secretary of Transportation may conduct pilot projects to evaluate the feasibility and effectiveness of using paperless hazard communications systems.

"(b) ENHANCED INCIDENT COMMUNICATIONS.--The Secretary, upon developing a thorough understanding of the technology and capability available, and in consultation with modal agencies as appropriate, shall institute a paperless hazard communications program to enhance the effectiveness of communications during incidents involving hazardous materials.

"(c) PAPERLESS HAZARD COMMUNICATIONS SYSTEM DEFINED.--In this section, the term 'paperless hazard communications system' means the use of advanced communications methods, including wireless communications devices, to convey hazard information among all parties in the transportation chain, including emergency responders and law enforcement personnel."

(b) CONFORMING AMENDMENT.--The analysis for chapter 51 is amended by striking the item relating to section 5111 and inserting the following: "5111. Paperless hazard communications program."

**SEC. 3206. PLANNING AND TRAINING GRANTS, MONITORING, AND REVIEW.**

Section 5116 is amended--

- (1) in subsection (i)(4), by striking "2" and inserting "4"; and
- (2) in subsection (k), by striking "annually" and inserting "biennially".

**SEC. 3207. SPECIAL PERMITS, APPROVALS, AND EXCLUSIONS.**

(a) IN GENERAL.--Section 5117 is amended to read as follows:

**"Sec. 5117. Special permits, approvals, and exclusions**

"(a) AUTHORITY TO ISSUE SPECIAL PERMITS.--

"(1) CONDITIONS.--As provided under procedures prescribed by regulation, the Secretary of Transportation may issue, modify, or terminate a special permit authorizing a variance from this chapter or a regulation prescribed under section 5103(b), 5104, 5110, or 5112 of this title to a person performing a function regulated by the Secretary under section 5103(b)(1) of this title in a way that achieves a safety level--

"(A) at least equal to the safety level required under this chapter; or

"(B) consistent with the public interest and this chapter, if a required safety level does not exist.

"(2) FINDINGS REQUIRED--

"(A) IN GENERAL.--Prior to issuing, renewing, or modifying a special permit or granting party status to a special permit, the Secretary shall determine that the person is fit, willing, and able to conduct the activity authorized by such permit in a manner that achieves the level of safety required under paragraph (1).

"(B) CONSIDERATIONS.--In making the determination under subparagraph (A), the Secretary shall consider the person's safety history (including prior compliance history), accident and incident history, and any other information the Secretary considers appropriate to make such a determination.

"(3) EFFECTIVE PERIOD.--A special permit issued under this section shall be for an initial period of not more than 2 years and may be renewed by the Secretary upon application for successive periods of not more than 4 years each or, in the case of a special permit relating to section 5112 of this title, for an additional period of not more than 2 years.

"(b) APPLICATIONS--

"(1) REQUIRED DOCUMENTATION.--When applying for a special permit or renewal or modification of a special permit or requesting

party status to a special permit under this section, the Secretary shall require the person to submit an application that contains, at a minimum, a detailed description of the person's request, a listing of the person's current facilities and addresses where the special permit will be utilized, a safety analysis prescribed by the Secretary that justifies the special permit, documentation to support the safety analysis, a certification of safety fitness, and, if applicable, verification of registration as required by section 5108 of this title.

"(2) PUBLIC NOTICE.--The Secretary shall publish in the Federal Register notice that an application for a special permit has been filed and shall provide the public an opportunity to inspect and comment on the application.

"(3) SAVINGS CLAUSE.--This subsection does not require the release of information protected by law from public disclosure.

"(c) COORDINATE AND COMMUNICATE WITH MODAL CONTACT OFFICIALS.--

"(1) IN GENERAL.--In evaluating applications under subsection (b) and making the findings and determinations under subsections (a), (e), and (h), the Administrator of the Pipeline and Hazardous Materials Safety Administration shall consult, coordinate, or notify the modal contact official responsible for the specified mode of transportation that will be utilized under a special permit or approval prior to issuing, modifying, or renewing the special permit, granting party status to the special permit, or issuing or renewing the special permit or approval.

"(2) MODAL CONTACT OFFICIAL DEFINED.--In this section, the term 'modal contact official' means--

"(A) the Administrator of the Federal Aviation Administration;

"(B) the Administrator of the Federal Motor Carrier Safety;

"(C) the Administrator of the Federal Railroad Administration; and

"(D) the Commandant of the Coast Guard.

"(d) APPLICATIONS TO BE DEALT WITH PROMPTLY.--The Secretary shall issue, modify, renew, or grant party status to a special permit for which a request was filed under this section, or deny the issuance, modification, renewal, or grant, on or before the last day of the 180-day period beginning on the first day of the month following the date of the filing of the request, or the Secretary shall publish a statement in the Federal Register of the reason why the Secretary's decision on the special permit is delayed, along with an estimate of the additional time necessary before the decision is made.

"(e) EMERGENCY PROCESSING OF SPECIAL PERMITS.--

"(1) FINDINGS REQUIRED.--The Secretary may grant a request for emergency processing of a special permit only if the Secretary finds--

"(A) it is necessary for national security purposes;



"(B) that processing on a routine basis under this section would result in significant injury to persons or property; or

"(C) it is necessary to prevent significant economic loss or damage to the environment that could not be prevented if the application were processed on a routine basis.

"(2) WAIVER OF FITNESS TEST.--The Secretary may waive the requirement under subsection (a)(2) for a request for which the Secretary makes a finding under paragraph (1)(A) or (1)(B).

"(3) NOTIFICATION.--Not later than 90 days after the date of issuance of a special permit under this subsection, the Secretary shall publish in the Federal Register a notice of issuance with a statement of the basis for the finding of emergency and the scope and duration of the special permit.

"(4) EFFECTIVE PERIOD.--A special permit issued under this subsection shall be effective for a period of not to exceed 180 days.

"(f) EXCLUSIONS--

"(1) IN GENERAL.--The Secretary shall exclude, in any part, from this chapter and regulations prescribed under this chapter--

"(A) a public vessel (as defined in section 2101 of title 46);

"(B) a vessel exempted under section 3702 of title 46 or from chapter 37 of title 46; and

"(C) a vessel to the extent it is regulated under the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221, et seq.).

"(2) FIREARMS.--This chapter and regulations prescribed under this chapter do not prohibit--

"(A) or regulate transportation of a firearm (as defined in section 232 of title 18), or ammunition for a firearm, by an individual for personal use; or

"(B) transportation of a firearm or ammunition in commerce.

"(g) LIMITATION ON AUTHORITY.--Unless the Secretary decides that an emergency exists, a special permit or renewal granted under this section is the only way a person subject to this chapter may be granted a variance from this chapter.

"(h) APPROVALS.--

"(1) FINDINGS REQUIRED.--

"(A) IN GENERAL.--Prior to issuing an approval or granting renewal of an approval pursuant to part 107 of title 49, Code of Federal Regulations, the Secretary shall determine that the person is fit, willing, and able to conduct the activity authorized by the approval in a manner that achieves the level of safety required under subsection (a)(1).

"(B) CONSIDERATIONS.--In making the determination under subparagraph (A), the Secretary shall consider the person's safety history (including prior compliance history), accident and incident history, and any other information the Secretary considers appropriate to make such a determination.

"(2) REQUIRED DOCUMENTATION.--When applying for an approval or renewal or modification of an approval under this section, the Secretary shall require the person to submit an application that contains, at a minimum, a detailed description of the person's request, a listing of the person's current facilities and addresses where the approval will be utilized, a safety analysis prescribed by the Secretary that justifies the approval, documentation to support the safety analysis, a certification of safety fitness, and, if applicable, verification of registration as required by section 5108 of this title.

"(3) SAVINGS CLAUSE.--This subsection does not require the release of information protected by law from public disclosure.

"(i) NONCOMPLIANCE.--The Secretary may modify, suspend, or terminate a special permit or approval if the Secretary finds that the person who was granted the special permit or approval has violated the special permit or approval or the regulations issued under this chapter in a manner demonstrating that the person is not fit to conduct the activity authorized by the special permit or approval.

"(j) CRITERIA AND PROCEDURES.--Not later than 120 days after the date of the enactment of this subsection, the Secretary shall--

"(1) develop and implement written standard operating procedures to support administration of the special permit and approval programs;

"(2) update the procedures periodically; and

"(3) make the procedures available to the public on the Department of Transportation Internet Web site.

"(k) FEES.--

"(1) AUTHORIZATION.--The Secretary is authorized to collect a reasonable fee for the administration of the special permits and approvals programs. The fees shall be deposited into a Hazardous Materials Approvals and Permits Fund, which shall remain available until expended.

"(2) ESTABLISHMENT AND USE OF FEES.--There is established a Hazardous Materials Approvals and Permits Fund in the Department of Treasury of the United States. Amounts collected from fees under paragraph (1) shall be available for administration of the special permits and approvals programs.

"(3) FEES CREDITED AS OFFSETTING RECEIPTS.--Notwithstanding section 3302 of title 31, any fee authorized to be collected under this subsection shall be credited as offsetting receipts, and remain available until expended.

"(4) REGULATIONS.--The Secretary, after providing notice and an opportunity for public comment, shall issue regulations to implement this subsection."

(b) CONFORMING AMENDMENT.--The analysis for chapter 51 is amended by striking the item relating to section 5117 and inserting the following: "5117. Special permits, approvals, and exclusions."

**SEC. 3208. HAZARDOUS MATERIAL TECHNICAL ASSESSMENT, RESEARCH AND DEVELOPMENT, AND ANALYSIS PROGRAM.**

(a) IN GENERAL.--Chapter 51 is amended by inserting the following after section 5117:

**"Sec. 5118. Hazardous material technical assessment, research and development, and analysis program**

"(a) RISK REDUCTION.--The Secretary of Transportation shall develop and implement a hazardous material technical assessment, research and development, and analysis program aimed at reducing risks associated with the transportation of hazardous material and identifying and evaluating new technologies to facilitate the safe, secure, and efficient transportation of hazardous material.

"(b) COOPERATION.--In carrying out subsection (a), the Secretary may work cooperatively with regulated and other entities (including shippers, carriers, emergency responders, state and local officials, and academic institutions)."

(b) CONFORMING AMENDMENT.--The analysis of Chapter 51 is amended by inserting after the item relating to Section 5117 the following: "5118. Hazardous material technical assessment, research and development, and analysis program."

**SEC. 3209. ADMINISTRATIVE.**

Section 5121(c)(1) is amended by--

- (1) striking "and" at the end of subparagraph (E);
  - (2) striking "." at the end of subparagraph (F) and inserting "; and";
- and
- (3) inserting after subparagraph (F) the following:
    - "(G) may take actions as related to activities that are not in conformance with the regulations for safe transportation described in sections 5103(b)(1) of this title."

**SEC. 3210. CIVIL PENALTY.**

Section 5123 is amended--

(1) in subsection (a)(1), by striking "50,000" and inserting "100,000";

(2) in subsection (a)(2), by striking "100,000" and inserting "250,000"; and

(3) by adding at the end the following:

"(h) PENALTY FOR OBSTRUCTION OF INSPECTIONS AND INVESTIGATIONS.--The Secretary may impose a penalty on a person who obstructs or prevents the Secretary from carrying out inspections or investigations under section 5121(c) or 5121(i) of this title.

"(i) PROHIBITION ON HAZARDOUS MATERIAL OPERATIONS AFTER NONPAYMENT OF PENALTIES.--A person subject to the jurisdiction of the Secretary under this chapter for whom a civil penalty is assessed under this chapter and who does not pay the penalty or fails to arrange and abide by an acceptable payment plan for the penalty may not conduct any activity regulated under this chapter beginning on the 91st day after the date specified by order of the Secretary for payment of the penalty."

#### **SEC. 3211. REPORTING OF FEES.**

Section 5125(f)(2) is amended by striking ", upon the Secretary's request," and inserting "biennially"

#### **SEC. 3212. AUTHORIZATION OF APPROPRIATIONS.**

Section 5128 is amended to read as follows:

##### **"Sec. 5128. Authorization of appropriations**

"(a) IN GENERAL.--In order to carry out this chapter (except sections 5107(e), 5108(g)(2), 5113, 5115, 5116, and 5119), the following amounts are authorized to be appropriated to the Secretary:

"(1) For fiscal year 2012, \$50,089,000.

"(2) For fiscal year 2013, such sums as necessary.

"(3) For fiscal year 2014, such sums as necessary.

"(4) For fiscal year 2015, such sums as necessary.

"(5) For fiscal year 2016, such sums as necessary.

"(6) For fiscal year 2017, such sums as necessary.

"(b) HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS FUND.--There shall be available to the Secretary, from the account established under section 5116(i) of this title, for each of fiscal years 2012 through 2017 the following:

"(1) To carry out section 5115 of this title, \$188,000.

"(2) To carry out sections 5116(a) and 5116(b) of this title, \$21,800,000, except that no less than \$13,650,000 shall be available to carry out section 5116(b).

"(3) To carry out section 5116(f), \$150,000.

"(4) To publish and distribute the Emergency Response Guidebook under section 5116(i)(3), \$625,000.

"(5) To carry out section 5116(j), \$1,000,000.

"(c) HAZMAT TRAINING GRANTS.--There shall be available to the Secretary, from the account established pursuant to section 5116(i) of this title, to carry out section 5107(e) of this title \$4,000,000 for each of fiscal years 2012 through 2017.

"(d) CREDITS TO APPROPRIATIONS.--

"(1) EXPENSES.--The Secretary may credit to any appropriation to carry out this chapter an amount received from a State, Indian tribe, or other public authority or private entity for expenses the Secretary incurs in providing training to the State, authority, or entity.

"(2) AVAILABILITY OF AMOUNTS.--Amounts made available by or under this section shall remain available until expended."

#### **Subtitle D--Pipeline Safety Program**

### **SEC. 3301. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED STATES CODE.**

(a) SHORT TITLE.--This subtitle may be cited as the "Strengthening Pipeline Safety and Enforcement Act of 2012".

(b) AMENDMENT OF TITLE 49, UNITED STATES CODE.--Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

### **SEC. 3302. CIVIL PENALTIES.**

(a) PENALTIES FOR MAJOR CONSEQUENCE VIOLATIONS.--Section 60122 is amended by redesignating subsections (c) through (f) as subsections (d) through (g), respectively, and inserting the following after subsection (b):

"(c) PENALTIES FOR MAJOR CONSEQUENCE VIOLATIONS.--

"(1) IN GENERAL.--A person that the Secretary of Transportation decides, after written notice and an opportunity for a hearing, has committed a major consequence violation of section 60114(b), 60114(d), or 60118(a) of this title or a regulation prescribed or order issued under

this chapter is liable to the United States Government for a civil penalty of not more than \$250,000 for each violation. A separate violation occurs for each day the violation continues. The maximum civil penalty under this paragraph for a related series of major consequence violations is \$2,500,000.

"(2) PENALTY CONSIDERATIONS.--In determining the amount of a civil penalty for a major consequence violation under this subsection, the Secretary shall consider the same factors as prescribed in subsection (b).

"(3) DEFINITION.--For purposes of this subsection, the term 'major consequence violation' means a violation that contributed to an incident resulting in any of the following:

"(A) One or more deaths.

"(B) One or more injuries or illnesses requiring hospitalization.

"(C) Environmental harm exceeding \$250,000 in estimated damage to the environment including property loss.

"(D) A release of gas or hazardous liquids that ignites or otherwise presents a safety threat to the public or presents a threat to the environment in an area identified under section 60109(a) of this title and defined in parts 192 and 195 of title 49, Code of Federal Regulations."

(b) PENALTY FOR OBSTRUCTION OF INSPECTIONS AND INVESTIGATIONS.--Section 60118(e) is amended by adding at the end the following: "The Secretary may impose a civil penalty under section 60122 of this title on a person who obstructs or prevents the Secretary from carrying out inspections or investigations under this chapter."

(c) NON-APPLICABILITY OF ADMINISTRATIVE PENALTY CAPS.--Section 60120(a)(1) is amended by adding at the end the following: "The maximum amount of civil penalties for administrative enforcement actions under section 60122 of this title shall not apply to enforcement actions under this section."

(d) JUDICIAL REVIEW OF ADMINISTRATIVE ENFORCEMENT ORDERS.--Section 60119(a) is amended by--

(1) striking the catchline and substituting the following: "REVIEW OF REGULATIONS, ORDERS, AND OTHER FINAL AGENCY ACTIONS.--"; and

(2) striking the words "about an application for a waiver under section 60118(c) or (d) of" and inserting in their place the word "under".

### **SEC. 3303. CLARIFICATIONS.**

(a) AMENDMENT OF PROCEDURES CLARIFICATION.--Section 60108(a)(1) is amended by striking the words "an intrastate" and inserting in their place the word "a".

(b) OWNER OPERATOR CLARIFICATION.--Section 60102(a)(2)(A) is amended by striking the words "owners and operators" and inserting in their place the words "any or all of the owners or operators".

(c) ONE CALL ENFORCEMENT CLARIFICATION.--Section 60114(f) is amended by adding at the end the following: "This limitation shall not apply to proceedings against persons who are pipeline operators."

#### **SEC. 3304. PIPELINE INFRASTRUCTURE DATA COLLECTION.**

Section 60132(a) is amended by adding at the end the following:

"(4) Any other geospatial, technical, or other pipeline data, including design and material specifications, that the Secretary determines is necessary to carry out the purposes of this chapter, including pre-construction design reviews and compliance inspection prioritization. The Secretary shall give reasonable notice to operators that the data are being requested."

#### **SEC. 3305. INTERNATIONAL COOPERATION AND CONSULTATION.**

Section 60117 is amended by adding at the end a new subsection (o) to read as follows:

"(o) INTERNATIONAL COOPERATION AND CONSULTATION.--

"(1) INFORMATION EXCHANGE AND TECHNICAL ASSISTANCE.-- If the Secretary of Transportation determines that it would benefit the United States, subject to guidance from the Secretary of State, the Secretary may engage in activities supporting cooperative international efforts to share information about the risks to the public and the environment from pipelines and means of protecting against those risks. Cooperation may include the exchange of information with domestic and appropriate international organizations to facilitate efforts to develop and improve safety standards and requirements for pipeline transportation in or affecting interstate or foreign commerce.

"(2) CONSULTATION.--To the extent practicable, subject to guidance from the Secretary of State, the Secretary may consult with interested authorities in Canada, Mexico, and other interested authorities to ensure that the respective pipeline safety standards and requirements prescribed by the Secretary and those prescribed by such authorities are consistent with the safe and reliable operation of cross-border pipelines.

"(3) DIFFERENCES IN INTERNATIONAL STANDARDS AND REQUIREMENTS.--Nothing in this section requires that a standard or

requirement prescribed by the Secretary under this chapter be identical to a standard or requirement adopted by an international authority."

### **SEC. 3306. GAS AND HAZARDOUS LIQUID GATHERING LINES.**

(a) REMOVAL OF STATUTORY EXCLUSION FOR GAS GATHERING LINES.--Section 60101(a)(21) is revised to read as follows:

"(21) 'transporting gas' means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas in interstate or foreign commerce."

(b) REMOVAL OF THE STATUTORY EXCLUSION FOR HAZARDOUS LIQUID GATHERING LINES.--Section 60101(a)(22)(B) is amended by striking subparagraph (i) and redesignating subparagraphs (ii) and (iii) as (i) and (ii), respectively.

(c) REGULATORY EXEMPTIONS.--Section 60101(b) is revised to read as follows:

"(b) REGULATORY TREATMENT OF GATHERING LINES.--

"(1) IN GENERAL.--Not later than October 1, 2012, the Secretary shall complete a review of all existing regulatory exemptions for gas and hazardous liquid gathering lines. Based on this review and consistent with the purposes of this chapter, the Secretary shall eliminate exemptions as the Secretary determines appropriate.

"(2) DATA COLLECTION.--The Secretary may collect geospatial, technical, or other pipeline data on any gathering line, including unregulated gathering lines.

"(3) LIMITATION.--Nothing in this section authorizes the Secretary to regulate pipelines located on the grounds of a production facility."

### **SEC. 3307. TRANSPORTATION-RELATED OIL FLOW LINES.**

Section 60102 is amended by adding at the end the following:

"(n) TRANSPORTATION-RELATED OIL FLOW LINES.--

"(1) DATA COLLECTION.--The Secretary may collect geospatial, technical, or other pipeline data on transportation-related oil flow lines, including unregulated transportation-related oil flow lines.

"(2) DEFINITION.--For purposes of this subsection, the term 'transportation-related oil flow line' means a pipeline transporting oil off of the grounds of the production facility where it originated across areas not owned by the producer regardless of the extent to which the oil has been processed, if at all.

"(3) LIMITATION.--Nothing in this subsection authorizes the Secretary to prescribe standards for the movement of oil through



production, refining, or manufacturing facilities, or through oil production flow lines located on the grounds of production facilities.".

**SEC. 3308. ALASKA PROJECT COORDINATION AND COST RECOVERY.**

(a) IN GENERAL.--Chapter 601 is amended by adding at the end the following:

**"Sec. 60138. Alaska project coordination and cost recovery**

"(a) IN GENERAL.--The Secretary may provide technical assistance to the State of Alaska for the purpose of achieving coordinated and effective oversight of the construction, expansion, or operation of pipeline systems in Alaska. Assistance may include--

"(1) conducting coordinated inspections of pipeline systems subject to the respective authorities of the Department of Transportation and the State of Alaska;

"(2) consulting on the development and implementation of programs designed to manage the integrity risks associated with operating pipeline systems in the unique conditions of Alaska;

"(3) training inspection and enforcement personnel and consulting on the development and implementation of inspection protocols and training programs; and

"(4) entering into cooperative agreements, grants, or other transactions with the State of Alaska, the Joint Pipeline Office, other agencies of the United States Government, and other public and private agencies to carry out the objectives of this section.

**"(b) COST RECOVERY FOR DESIGN AND CONSTRUCTION REVIEWS.--**

"(1) IN GENERAL.--If the Secretary conducts facility design safety reviews, consulting, or field work in connection with a proposal to construct, expand, or operate a gas or hazardous liquid pipeline system in Alaska, including construction inspection and oversight, the Secretary may require the person or entity proposing the project to pay the costs incurred by the Secretary. If the Secretary exercises the cost recovery authority described in this section, the Secretary shall prescribe a fee structure and assessment methodology that is based on the costs of providing these reviews and shall prescribe procedures to collect fees under this section. This authority is in addition to the authority provided in section 60301 of this title.

"(2) NOTIFICATION.--For any new pipeline construction project in which the Secretary will conduct design reviews, the person or entity proposing the project shall notify the Secretary and provide the design

specifications, construction plans and procedures, and related materials at least 120 days prior to the commencement of construction.

"(3) ESTABLISHMENT AND USE.--There is established a Pipeline Safety Design Review Fund in the Department of Treasury of the United States. Funds deposited under this section are authorized to be appropriated for the purposes set forth in this chapter. Fees authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations acts."

(b) CONFORMING AMENDMENT.--The analysis of Chapter 601 is amended by inserting the following at the end:

"60138. Alaska project coordination and cost recovery."

### **SEC. 3309. COST RECOVERY FOR DESIGN REVIEWS.**

Section 60117(n) is amended to read as follows:

"(n) COST RECOVERY FOR DESIGN REVIEWS.--

"(1) IN GENERAL.--If the Secretary conducts facility design safety reviews in connection with a proposal to construct, expand, or operate a gas or hazardous liquid pipeline or liquefied natural gas pipeline facility, including construction inspections and oversight, the Secretary may require the person or entity proposing the project to pay the costs incurred by the Secretary relating to such reviews. If the Secretary exercises the cost recovery authority described in this section, the Secretary shall prescribe a fee structure and assessment methodology that is based on the costs of providing these reviews and shall prescribe procedures to collect fees under this section. The Secretary shall not assess or collect costs for such reviews in Alaska under this subsection if the costs are assessed and collected under section 60138(b) of this title. This authority is in addition to the authority provided in section 60301 of this title.

"(2) NOTIFICATION.--For any new pipeline construction project in which the Secretary will conduct design reviews, the person or entity proposing the project shall notify the Secretary and provide the design specifications, construction plans and procedures, and related materials at least 120 days prior to the commencement of construction.

"(3) DEPOSIT AND USE.--The Secretary shall deposit funds paid under this subsection into the Pipeline Safety Design Review Fund. Funds deposited under this section are authorized to be appropriated for the purposes set forth in this chapter. Fees authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations acts."

### **SEC. 3310. SPECIAL PERMITS.**

(a) IN GENERAL.--Section 60118(c)(1) is amended to read as follows:

"(1) ISSUANCE OF WAIVERS.--

"(A) IN GENERAL.--On application of an owner or operator of a pipeline facility, the Secretary by order may waive compliance with any part of an applicable standard prescribed under this chapter with respect to the facility on terms the Secretary considers appropriate, if the Secretary determines that the waiver is not inconsistent with pipeline safety.

"(B) CONSIDERATIONS.--In determining whether to grant a waiver, the Secretary shall consider--

"(i) the fitness of the applicant to conduct the activity authorized by the waiver in a manner that is consistent with pipeline safety;

"(ii) the applicant's compliance history;

"(iii) the applicant's accident history; and

"(iv) any other information the Secretary considers relevant to making the determination.

"(C) EFFECTIVE PERIOD.--A waiver of one or more pipeline operating requirements shall be effective for an initial period of not more than 5 years and may be renewed by the Secretary upon application for successive periods of not more than 5 years each. If the Secretary determines that a waiver of a design or materials requirement is warranted under this section, the Secretary may grant the waiver for any period deemed appropriate by the Secretary.

"(D) PUBLIC NOTICE AND HEARING.--The Secretary may act on a waiver under this section only after public notice and hearing, which may consist of publication of notice in the Federal Register that an application for a waiver has been filed and providing the public with the opportunity to review and comment on the application. If a waiver is granted, the Secretary shall state in the order and associated analysis the reasons for granting it.

"(E) NONCOMPLIANCE AND MODIFICATION, SUSPENSION OR REVOCATION.--After notice to a holder of a waiver and opportunity to show cause, the Secretary may modify, suspend, or revoke a waiver issued under this section for failure to comply with its terms or conditions, intervening changes in federal law, a material change in circumstances affecting safety, including erroneous information in the application, or any other reason. If necessary to avoid a significant risk of harm to persons, property, or the environment, the Secretary may waive the show cause procedure and make the action immediately effective."

(b) FEES.--Section 60118(c)(3) is amended to read as follows:

"(3) FEES.--

"(A) IN GENERAL.--The Secretary shall establish reasonable fees for processing waiver applications that are based

on the costs of providing these activities. The fees may include a basic filing fee, as well as fees to recover the costs of technical studies or environmental analysis for special permit applications. The Secretary shall prescribe procedures to collect fees under this section. This authority is in addition to the authority provided in section 60301 of this title.

"(B) ESTABLISHMENT AND USE.--There is established a Pipeline Safety Special Permit Fund in the Department of Treasury of the United States. Funds deposited under this section are authorized to be appropriated for the purposes set forth in this Chapter. Fees authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations acts."

### **SEC. 3311. CLASS LOCATION AND INTEGRITY MANAGEMENT.**

The Secretary shall review the effectiveness of the existing regulatory requirements for class location of gas pipelines to determine whether class location requirements should be modified or superseded by risk management regulations that allow full use of the latest technologies. In connection with this review, the Secretary shall evaluate whether the integrity management program requirements that apply to gas and hazardous liquid pipeline facilities located in areas identified under section 60109(a) of title 49, United States Code, and defined in parts 192 and 195 of title 49, Code of Federal Regulations, should apply to additional areas or entire pipelines. With respect to gas pipeline facilities, the Secretary shall evaluate whether applying the integrity management program requirements to additional areas would mitigate the need for class location requirements. Not later than October 31, 2012, the Secretary shall transmit the results of this review to the Committee on Commerce, Science, and Transportation of the Senate and the Committees on Transportation and Infrastructure and Energy and Commerce of the House of Representatives.

### **SEC. 3312. BIOFUEL PIPELINES.**

Section 60101(a)(4) is amended by--

- (1) striking the word "and" at the end of subparagraph (A);
- (2) redesignating subparagraph (B) as subparagraph (C); and
- (3) inserting a new subparagraph (B) after subparagraph (A) to

read as follows:

"(B) non-petroleum fuels, including biofuels that are flammable, toxic, corrosive or would be harmful to the environment if released in significant quantities; and"

### **SEC. 3313. CARBON DIOXIDE PIPELINES.**

Section 60102(i) is amended to read as follows:

"(i) PIPELINES TRANSPORTING CARBON DIOXIDE.--The Secretary shall prescribe minimum safety standards for the transportation of carbon dioxide by pipeline in either a liquid or gaseous state."

**SEC. 3314. STUDY OF NON-PETROLEUM HAZARDOUS LIQUIDS TRANSPORTED BY PIPELINE.**

The Secretary may conduct an analysis of the transportation of non-petroleum hazardous liquids by pipeline for the purpose of identifying the extent to which pipelines are currently being used to transport non-petroleum hazardous liquids, such as chlorine, from chemical production facilities across land areas not owned by the producer that are accessible to the public. The analysis should identify the extent to which the safety of the lines is unregulated by the States and evaluate whether the transportation of such chemicals by pipeline across areas accessible to the public would present significant risks to public safety, property, or the environment in the absence of regulation. The results of the analysis shall be made available to Congress.

**SEC. 3315. AUTHORIZATION OF APPROPRIATIONS.**

(a) GAS AND HAZARDOUS LIQUID.--Section 60125(a)(1) is amended by striking subparagraphs (A)-(D) and inserting in their place the following:

"(A) for fiscal year 2012, \$89,706,000, of which \$5,743,000 is for carrying out section 12 of the Pipeline Safety Improvement Act of 2002 (P.L. 107-355) (49 U.S.C. 60101 note) and \$36,958,000 is for making grants;

"(B) for fiscal year 2013, such sums as may be necessary;

"(C) for fiscal year 2014, such sums as may be necessary;

"(D) for fiscal year 2015, such sums as may be necessary;

"(E) for fiscal year 2016, such sums as may be necessary;

and

"(F) for fiscal year 2017, such sums as may be necessary."

(b) TRUST FUND AMOUNTS.--Section 60125(a)(2) is amended by striking subparagraphs (A)-(D) and inserting in their place the following:

"(A) for fiscal year 2012, \$18,905,000 of which \$1,176,000 is for carrying out section 12 of the Pipeline Safety Improvement Act of 2002 (P.L. 107-355) (49 U.S.C. 60101 note) and \$7,570,000 is for making grants;

"(B) for fiscal year 2013, such sums as may be necessary;

"(C) for fiscal year 2014, such sums as may be necessary;

"(D) for fiscal year 2015, such sums as may be necessary;

"(E) for fiscal year 2016, such sums as may be necessary;

and

"(F) for fiscal year 2017, such sums as may be necessary."

(c) EMERGENCY RESPONSE GRANTS.--Section 60125(b)(2) is amended by striking "2007 through 2010" and inserting "2012 through 2017".

(d) ONE-CALL GRANTS.--Section 6107 is amended as follows:

(1) Subsection (a) is amended by striking "fiscal years 2007 through 2010" and inserting "fiscal years 2012 through 2017".

(2) Subsection (b) is amended by striking "for fiscal years 2007 through 2010" and inserting "for fiscal years 2012 through 2017".

(3) Subsection (c) is deleted.

(e) STATE DAMAGE-PREVENTION PROGRAM.--Section 60134 is amended by adding the following at the end:

"(i) AUTHORIZATION OF APPROPRIATIONS.--There are authorized to be appropriated to the Secretary to provide grants under this section \$2,000,000 for each of fiscal years 2012 through 2017. The funds shall remain available until expended."

(f) TECHNICAL ASSISTANCE GRANTS.--Section 60130(d) is amended by striking the words "2003 through 2010" and inserting in their place "2012 through 2017".

(g) PIPELINE INTEGRITY, SAFETY, AND RELIABILITY RESEARCH AND DEVELOPMENT.--Section 12(f) of the Pipeline Safety Improvement Act of 2002 (49 U.S.C. 60101 note; Public Law 107-355), is amended by striking the words "fiscal years 2003 through 2006" and inserting in their place "fiscal years 2007-2017".

### **Subtitle E--Public Transportation Safety Program**

#### **SEC. 3401. PUBLIC TRANSPORTATION SAFETY PROGRAM.**

(a) IN GENERAL.--Section 5329 is amended to read as follows:

**"Sec. 5329. Public transportation safety program**

"(a) RAIL FIXED GUIDEWAY SAFETY.--

"(1) PROGRAM.--The Secretary shall, as soon as practicable, establish and implement a public transportation safety program to improve the safety of, and reduce the number and severity of accidents involving, the design, construction, and revenue service operation of rail fixed guideway public transportation systems that receive financial assistance under this chapter.

"(2) EXCLUSION.--This section shall not apply to rail fixed guideway public transportation systems subject to regulation by the

Federal Railroad Administration under subtitle V of this title and the Rail Safety Improvement Act of 2008.

"(3) NATIONAL TRANSPORTATION SAFETY BOARD.--

When promulgating public safety transportation regulations, the Secretary shall, to the extent practicable, take into consideration relevant recommendations of the National Transportation Safety Board.

"(b) BUS SAFETY.--The Secretary may establish and implement a public transportation safety program to improve the safety of, and reduce the number and severity of accidents involving, public transportation bus systems that receive financial assistance under this chapter in accordance with the provisions of this section.

"(c) REGULATIONS AND ORDERS.--

"(1) IN GENERAL.--The Secretary shall promulgate regulations and issue orders for the safe operation of rail fixed guideway public transportation systems, after appropriate consideration of costs and benefits. The Secretary shall ensure that the regulations establish a Federal certification program for employees and contractors who carry out a State public transportation safety program in compliance with this section and oversee the performance of employees or contractors responsible for performing safety activities identified in such program.

"(2) CONSULTATION BY DHS SECRETARY.--Before prescribing a security regulation or issuing a security order that affects the safety of public transportation design, construction or operations, the Secretary of Homeland Security shall consult with the Secretary.

"(3) WAIVERS.--The Secretary may waive compliance with any part of a regulation promulgated or order issued under this section if the waiver is in the public interest, or a regulation or order issued under this section. The Secretary shall not issue a waiver and shall immediately revoke a waiver if the waiver would not be consistent with the goals and objectives of this section. The Secretary shall make public the reasons for granting or revoking the waiver.

"(d) PREEMPTION.--

"(1) IN GENERAL.--A State may adopt or continue in force a law, regulation, or order related to public transportation safety until the Secretary promulgates a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to public transportation safety only if the law, regulation, or order--

"(A) has a safety benefit;

"(B) is not incompatible with a law, regulation, or order of the United States Government; and

"(C) does not unreasonably burden interstate commerce.

"(2) DAMAGES.--Nothing in this section shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party--

"(A) has failed to comply with the Federal standard of care established by a regulation or order issued by the Secretary under this section;

"(B) has failed to comply with its own program, rule, or standard that it created under a regulation or order issued by the Secretary; or

"(C) has failed to comply with a State law, regulation, or order that is not incompatible with paragraph (1) of this subsection.

"(3) EFFECTIVE DATE.--This subsection shall apply to all State law causes of action arising from events or activities occurring on or after the enactment of this section.

"(4) FEDERAL JURISDICTION.--Nothing in this section creates a Federal cause of action on behalf of an injured party or confers Federal question jurisdiction for State law causes of action.

"(e) SAFETY PROGRAM ACTIVITIES.--

"(1) IN GENERAL.--In carrying out this section, the Secretary may take actions the Secretary considers necessary, including--

"(A) conducting inspections, investigations, audits, examinations, and testing of a public transportation system's equipment, facilities, rolling stock, operations, and persons engaged in the business of a public transportation system;

"(B) delegating to a public entity or other qualified person the conduct of inspections, investigations, audits, examinations, and testing of a public transportation system's equipment, facilities, rolling stock, operations, and persons engaged in the business of a public transportation system;

"(C) making reports, issuing subpoenas, requiring the production of documents, taking depositions, and prescribing recordkeeping and reporting requirements; and

"(D) making grants or entering into agreements--

"(i) for research, development, testing and training of every area of public transportation safety; and

"(ii) to assist a public entity or qualified person in carrying out the delegated activities set forth in subparagraph (B) of this paragraph.

"(2) ACCIDENTS AND INCIDENTS.--Activities authorized under this subsection may be engaged in for safety purposes, including accident and incident prevention and investigation.

"(3) COST SHARING.--The Federal share of a grant awarded or an agreement entered into under paragraph (1)(D) of this section may be up to 100 percent.

"(4) ENTRY.--In carrying out this subsection, an officer or employee of the Secretary, or agent designated by the Secretary under paragraph (1)(B) of this



subsection, at reasonable times and in a reasonable way, may enter and inspect public transportation equipment, facilities, rolling stock, operations, and relevant records. When requested, the officer, employee, or the designated agent shall display proper credentials. During an inspection, the officer, employee, or designated agent of the Secretary qualifies as an employee of the United States Government under chapter 171 of title 28.

"(f) STATE PARTICIPATION.--

"(1) SAFETY PROGRAM.--A State may establish and implement a State public transportation safety program through statute and regulation that requires, at a minimum, compliance with the regulations and policies issued by the Secretary under this section and complies with subsection (d) of this section.

"(2) GRANTS.--The Secretary may make grants or enter into agreements under this subsection to carry out a State public transportation safety program, including to train employees necessary to administer and manage the program, data reporting and analysis, and to enforce Federal and State public transportation safety laws, regulations and orders, provided that--

"(A) employees responsible for carrying out the safety oversight functions of a State public transportation safety program meet the safety certification criteria established through regulations issued under subsection (c)(1) of this section;

"(B) a State submits its public transportation safety program, which shall provide a right of entry and inspection to carry out the program, to the Secretary for review and written approval prior to implementing the program; and

"(C) a State submits each amendment to its public transportation safety program to the Secretary for review and written decision at least 60 days before the amendment becomes effective. If a State does not receive a written response from the Secretary by the end of the 60-day period, the amendment shall be deemed to be approved.

"(3) MULTI-STATE REQUIREMENTS.--When a single public transportation authority operates in more than one State, the affected States, if establishing and implementing a public transportation safety program as authorized under this subsection, shall--

"(A) establish and implement the program jointly to ensure uniform safety standards and enforcement procedures that shall be, at a minimum, in compliance with this section and the regulations and policies issued by the Secretary under this section; or

"(B) designate an entity (other than the public transportation authority) to carry out the activities and requirements specified by subparagraph (A) of this paragraph.

"(4) CONFLICT OF INTEREST.--A State may not--

"(A) allocate grant funds awarded under paragraph (1) of this subsection to a State agency or local entity that operates a public transportation system that receives Federal transit assistance;

"(B) allow a State agency or local entity that operates a public transportation system to provide funds to a State agency or an entity designated by the State that is responsible for establishing, implementing, or maintaining a State public transportation safety program; or

"(C) allow a State agency or local entity that operates a public transportation system to participate in the oversight of establishing, implementing, or maintaining a State public transportation safety program.

"(5) COST SHARING.--In the case of a State that implements a safety program under this section, the following applies:

"(A) The Secretary shall reimburse the State from a grant made or agreement entered into under this section, an amount that is up to 100 percent of the costs incurred by the State in a fiscal year for developing, implementing and enforcing a State public transportation safety program.

"(B) The Secretary, through regulations promulgated under this section, shall establish a schedule of reimbursable costs that the Secretary shall use to assist the State in defraying the State's costs of developing, implementing and enforcing a State public transportation safety program.

"(C) To help defray the costs of developing, implementing and enforcing a State public transportation safety program, the State may submit to the Secretary a voucher that does not exceed the amount identified on the schedule of reimbursable costs for an eligible activity.

"(D) The Secretary shall pay the State an amount not more than the Federal Government's share of costs incurred as of the date of the voucher.

"(6) NOTICE OF WITHDRAWAL.--The Secretary shall ensure that the State is carrying out the State public transportation safety program, as follows:

"(A) If the Secretary finds, after notice and opportunity to comment, that the State transportation safety program previously approved is not being followed or has become inadequate to ensure enforcement of the regulations or orders, the Secretary shall withdraw approval of the program and notify the State.

"(B) A State public transportation safety program shall no longer be in effect upon the State's receipt of the Secretary's notice of withdrawal of approval.

"(C) A State receiving notice under subparagraph (A) of this paragraph may seek judicial review of the Secretary's decision under chapter 7 of title 5, United States Code.

"(D) Notwithstanding the withdrawal, a State may retain jurisdiction in administrative and judicial proceedings begun before the withdrawal if the issues involved are not related directly to the reasons for the withdrawal.

"(g) ENFORCEMENT.--

"(1) IN GENERAL.--The Secretary has the authority--

"(A) to establish, impose and compromise a civil penalty for a violation of a public transportation safety regulation promulgated or order issued under this section;

"(B) to establish, impose and compromise a civil penalty for violation of the alcohol and controlled substances testing provisions under section 5331 of this chapter;

"(C) to request an injunction for a violation of a public transportation safety regulation promulgated or order issued under this section; and

"(D) to notify the Attorney General when the Secretary receives evidence of a possible criminal violation under paragraph (5).

"(2) DEPOSIT OF CIVIL PENALTIES.--An amount collected by the Secretary under this section shall be deposited into the General Fund of the United States Treasury.

"(3) ENFORCEMENT BY THE ATTORNEY GENERAL.--At the request of the Secretary, the Attorney General shall bring a civil action--

"(A) for appropriate injunctive relief to ensure compliance with this section;

"(B) to collect a civil penalty imposed or an amount agreed upon in a compromise under paragraph (1) of this subsection; or

"(C) to enforce a subpoena, request for admissions, request for production of documents or other tangible things, or request for testimony by deposition issued by the Secretary under this section.

"(4) JURISDICTION.--An action under paragraph (3) of this subsection may be brought in a district court of the United States in any State in which the relief is required. On a proper showing, the court shall issue a temporary restraining order or preliminary or permanent injunction. An injunction under this section may order a public transportation agency receiving assistance under this chapter to comply with this section, or a regulation promulgated under this section.

"(5) CRIMINAL PENALTY.--A person who knowingly violates this section or a public transportation safety regulation or order issued under this section shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both; except that the maximum amount of imprisonment shall be 10 years in any case in which the violation results in death or bodily injury to any person. For purposes of this paragraph--

"(A) a person acts knowingly when--

"(i) the person has actual knowledge of the facts giving rise to the violation; or

"(ii) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge; and

"(B) actual knowledge of the existence of a statutory provision, or a regulation or a requirement required by the Secretary is not an element of an offense under this paragraph.

"(h) EMERGENCY AUTHORITY.--

**"(1) ORDERING RESTRICTIONS AND PROHIBITIONS.--**If, through testing, inspection, investigation, or research carried out under this section, the Secretary decides that an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death, personal injury, or significant harm to the environment, the Secretary immediately may order restrictions and prohibitions, without regard to section 553 and section 554 of title 5, United States Code, that may be necessary to abate the emergency situation.

**"(2) EMERGENCY CONDITION OR PRACTICE.--**The order shall describe the condition or practice, or a combination of conditions and practices, that causes the emergency situation and promulgate standards and procedures for obtaining relief from the order. This paragraph does not affect the Secretary's discretion under this subsection to maintain the order in effect for as long as the emergency situation exists.

**"(3) REVIEW OF ORDERS.--**After issuing an order under this subsection, the Secretary shall provide an opportunity for review of the order under section 554 of title 5, United States Code. If a petition for review is filed and the review is not completed by the end of the 30-day period beginning on the date the order was issued, the order stops being effective at the end of that period unless the Secretary decides in writing that the emergency situation still exists.

**"(4) CIVIL ACTIONS TO COMPEL ISSUANCE OF ORDERS.--**An employee of a rail fixed guideway public transportation system provider who may be exposed to imminent physical injury during that employment because of the Secretary's failure, without any reasonable basis, to issue an order under paragraph (1) of this subsection, or the employee's authorized representative, may bring a civil action against the Secretary in a district court of the United States to compel the Secretary to issue an order. The action shall be brought in the judicial district in which the emergency situation is alleged to exist, in which the employing provider has its principal executive office, or in the District of Columbia. The Secretary's failure to issue an order under paragraph (1) of this subsection may be reviewed only under section 706 of title 5, United States Code.

**"(i) EFFECT ON EMPLOYEE QUALIFICATIONS AND COLLECTIVE BARGAINING.--**This section does not--

"(1) authorize the Secretary to promulgate regulations and issue orders related to qualifications of employees, except qualifications specifically related to safety; or

"(2) prohibit collective bargaining agreements between public transportation agencies and public transportation employees or their representatives, including agreements related to qualifications of the employees that are not inconsistent with regulations and orders promulgated under this section.

**"(j) PUBLIC TRANSPORTATION EMPLOYEE PROTECTIONS.--**Applicable provisions of the public transportation employee protection provisions under section 1413 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (6 U.S.C.

1142) apply to direct and indirect recipients of Federal transit assistance under this chapter.

"(k) JUDICIAL REVIEW.--A person adversely affected or aggrieved by a final action of the Secretary under this section or under section 5331 of this title may petition for review of the final action in the United States Court of Appeals for the District of Columbia or in the court of appeals for the United States for the circuit in which the person resides and has its principal place of business. Judicial procedures require--

"(1) the petition be filed not more than 60 days after the Secretary's action becomes final;

"(2) the clerk of the court immediately send a copy of the petition filed under paragraph (3) of this section to the Secretary;

"(3) the Secretary file with the court a record of any proceeding in which the final action was issued as provided in section 2112 of title 28; and

"(4) the court to consider an objection to a final action of the Secretary only if the objection was made in the course of the proceeding or review conducted by the Secretary or if there was a reasonable ground for not making the objection in the proceeding."

(b) CONFORMING AMENDMENT; REPEAL.--

(1) CHAPTER ANALYSIS.--The analysis for chapter 53 of title 49, United States

Code, is amended by striking the item relating to section 5329 and inserting the following:

"5329. Public transportation safety program."

(2) REPEAL.--Section 5330 of title 49, United States Code, is repealed three years after the effective date of final regulations issued by the Secretary under section 5329 of title 49, as amended by this section.

### **Subtitle F--Other Safety Authorities**

#### **SEC. 3501. PROTECTION OF VOLUNTARILY SUBMITTED INFORMATION.**

(a) IN GENERAL.--Chapter 3 of title 49, United States Code, is amended by inserting the following after section 333:

#### **"Sec. 334. Protection of voluntarily submitted safety information**

"(a) IN GENERAL.--Notwithstanding any other provision of law, including section 552(b)(3) of title 5, and subject to subsection (c) of this section, neither the Secretary of Transportation, nor any agency receiving information from the Secretary, shall disclose voluntarily provided safety or security related information if the Secretary finds that--

"(1) the disclosure of the information would inhibit the voluntary provision of that type of information and that the receipt of that type of information aids in fulfilling the Secretary's safety responsibilities; and

"(2) withholding such information from disclosure would be consistent with the Secretary's safety responsibilities.

"(b) REGULATIONS.--The Secretary shall issue regulations to carry out this section.

"(c) RELATIONSHIP TO OTHER LAWS.--The authority of this section does not affect the authority of the Secretary under chapter 301 of this title or of the Federal Aviation Administrator under section 40123 of this title."

(b) CONFORMING AMENDMENT.--The analysis of chapter 3 of title 49, United States Code, is amended by inserting the following after the item relating to section 333:

"334. Protection of voluntarily submitted safety information."

## **SEC. 3502. INTEGRATED ROADWAY SAFETY PROGRAMS.**

(a) IN GENERAL.--Chapter 3 of title 49, United States Code, is amended by inserting after section 310, as added by this Act, the following:

### **"Sec. 311. Integrated roadway safety programs.**

"(a) IN GENERAL.--In carrying out roadway safety programs under this title or title 23, the Secretary of Transportation, working with a broad array of committed stakeholders, shall move the Nation towards the vision of zero roadway fatalities by implementing a collaborative national roadway safety strategy and related goals to achieve this vision.

"(b) PURPOSES.--The purposes of this section shall be to--

"(1) continue to address the over 33,000 fatalities occurring on the Nation's roadways each year, motor vehicle and highway traffic safety remains one of the most challenging issues facing the Nation;

"(2) ensure continued success of Federal, State, and local efforts undertaken by public entities, the private sector, private organizations, and jointly to reduce motor vehicle and highway traffic crashes, fatalities, and injuries; and

"(3) encourage cooperation of Federal, State, and local governments, carriers, labor, and other interested parties to achieve transportation objectives, including roadway safety, in accordance with section 301(8) of this chapter.

"(c) COORDINATION.--An important element in moving towards a vision of zero deaths on the Nation's roadways is expanded cross-modal collaboration and coordination of the key motor vehicle and highway traffic safety initiatives of the Federal Highway Administration, the Federal Motor Carrier Safety Administration, the National Highway Traffic Safety Administration, and the Research and Innovative Technology Administration. In

order to achieve continued roadway safety gains and a heightened level of cross-modal collaboration and coordination within the Department of Transportation, the Secretary should--

"(1) ensure a coordinated outcome-based focus to develop and achieve national roadway safety performance goals, consistent with the established national target;

"(2) encourage development and implementation of coordinated roadway safety plans, including the Highway Safety Plan, the Commercial Vehicle Safety Plan, Intelligent Transportation Systems Plan, and the annual activities of the Highway Safety Improvement Program;

"(3) coordinate cross-modal safety data collection and analysis for improved decision making, with a goal of standardizing terminology and report formats to facilitate data collection, comparison and analysis;

"(4) develop a process to achieve a single annual roadway safety report; and

"(5) continue efforts to provide flexibility and simplification in the administration of Department of Transportation motor vehicle and highway traffic safety programs, including streamlining the application and award processes for obtaining financial assistance and periodic reporting requirements.

"(d) INTEGRATED ROADWAY SAFETY PROGRAMS SUMMARY.-- Through the Department's Performance Management processes, the Secretary shall make available to the public a summary of the Department of Transportation's activities in developing and implementing integrated motor vehicle and highway traffic safety programs and moving towards the national roadway safety vision of zero deaths."

(b) CONFORMING AMENDMENT.--The analysis of chapter 3, United States Code, is amended by inserting the following after the item relating to section 310, as added by this Act:

"311. Integrated Roadway Safety Programs."

## **TITLE IV-- AMENDMENTS TO THE INTERNAL REVENUE CODE**

### **SEC. 4001. AMENDMENT OF 1986 CODE.**

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

#### **Subtitle A--Trust Fund Reauthorization**

### **SEC. 4101. EXTENSION OF HIGHWAY-RELATED TAXES.**

## (a) EXTENSION OF TAXES.--

(1) IN GENERAL.--The following provisions are each amended by striking "2011" each place it appears and inserting "2019":

- (A) Section 4041(a)(1)(C)(iii)(I) (relating to rate of tax on certain buses).
- (B) Section 4041(m)(1) (relating to certain alcohol fuels).
- (C) Section 4051(c) (relating to termination of tax on heavy trucks and trailers).
- (D) Section 4071(d) (relating to termination of tax on tires).
- (E) Section 4081(d)(1) (relating to termination of tax on gasoline, diesel fuel, and kerosene).
- (F) Section 4081(d)(3) (relating to the Leaking Underground Storage Tank Financing rate).

(2) EXTENSION OF TAX, ETC., ON USE OF CERTAIN HEAVY VEHICLES.--The following provisions are each amended by striking "2011" each place it appears and inserting "2019":

- (A) Section 4481(f) (relating to period tax in effect).
- (B) Section 4482(c)(4) (relating to taxable period).
- (C) Section 4482(d) (relating to special rule for taxable period in which termination date occurs).

(3) FLOOR STOCKS REFUNDS.--Section 6412(a)(1) (relating to floor stocks refunds) is amended--

- (A) by striking "2011" each place it appears and inserting "2019"; and
- (B) by striking "2012" each place it appears and inserting "2020".

## (b) EXTENSION OF CERTAIN EXEMPTIONS.--

(1) CERTAIN TAX-FREE SALES.--Section 4221(a) (relating to certain tax-free sales) is amended by striking "2011" and inserting "2019".

(2) TERMINATION OF EXEMPTIONS FOR HIGHWAY USE TAX.--Section 4483(h) (relating to termination of exemptions for highway use tax) is amended by striking "2011" and inserting "2019".

**SEC. 4102. EXTENSION OF PROVISIONS RELATED TO THE SPORT FISH RESTORATION AND BOATING TRUST FUND.**

## (a) EXTENSION OF EXPENDITURES FROM THE TRUST FUND.--

Subparagraphs (A) through (C) of paragraph (2) of section 9504(b) of such Code are amended to read as follows:

“(A) to carry out the purposes of the Dingell-Johnson Sport Fish Restoration Act (as in effect on the date of the enactment of the Transportation Opportunities Act),

“(B) to carry out the purposes of section 7404(d) of the Transportation Equity Act for the 21<sup>st</sup> Century (as in effect on the date of the enactment of the Transportation Opportunities Act), and



“(C) to carry out the purposes of the Coastal Wetlands Planning, Protection and Restoration Act (as in effect on the date of the enactment of the Transportation Opportunities Act).”.

(b) EXCEPTION TO LIMITATION ON TRANSFERS.--Paragraph (2) of section 9504(d) is amended by striking "January 1, 2011" and inserting "October 1, 2019".

### **SEC. 4103. TRANSPORTATION TRUST FUND.**

(a) CREATION OF TRANSPORTATION TRUST FUND.--Section 9503 is amended to read as follows:

#### **"Sec. 9503. Transportation Trust Fund**

"(a) CREATION OF TRUST FUND.--There is established in the Treasury of the United States a trust fund to be known as the 'Transportation Trust Fund', consisting of such amounts as may be appropriated or credited to the Transportation Trust Fund as provided in this section or section 9602(b). The Transportation Trust Fund is a successor to the Highway Trust Fund established under this section as in effect prior to the enactment of the Transportation Opportunities Act. All references to the Mass Transit Account of the Highway Trust Fund are deemed to be references to the Mass Transit Account of the Transportation Trust Fund under subsection (e). All references to the Highway Trust Fund (other than the Mass Transit Account) or to the Highway Account of the Highway Trust Fund are deemed to be references to the Highway Account of the Transportation Trust Fund under subsection (f).

"(b) APPROPRIATION TO THE TRANSPORTATION TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN TAXES AND PENALTIES.--

"(1) CERTAIN TAXES.--There are hereby appropriated to the Transportation Trust Fund amounts equivalent to the taxes received in the Treasury before October 1, 2019, under the following provisions--

"(A) section 4041 (relating to taxes on diesel fuels and special motor fuels),

"(B) section 4051 (relating to retail tax on heavy trucks and trailers),

"(C) section 4071 (relating to tax on tires),

"(D) section 4081 (relating to tax on gasoline, diesel fuel, and kerosene),

"(E) section 4481 (relating to tax on use of certain vehicles), and

"(F) section XXXX (relating to the [new energy tax]).

"For purposes of this paragraph, taxes received under sections 4041 and 4081 shall be determined without reduction for credits under section 6426.

"(2) LIABILITIES INCURRED BEFORE OCTOBER 1, 2019.--There are hereby appropriated to the Transportation Trust Fund amounts

equivalent to the taxes which are received in the Treasury after September 30, 2019, and before July 1, 2020, and which are attributable to liability for tax incurred before October 1, 2019, under the provisions described in paragraph (1).

"(3) CERTAIN TAXES NOT TRANSFERRED TO TRANSPORTATION TRUST FUND.--For purposes of paragraphs (1) and (2), there shall not be taken into account the taxes imposed by--

"(A) section 4041(d),

"(B) section 4081 to the extent attributable to the rate specified in section 4081(a)(2)(B),

"(C) section 4041 or 4081 to the extent attributable to fuel used in a train, or

"(D) in the case of gasoline and special motor fuels used as described in paragraph (3)(D) or (4)(B) of subsection (c), section 4041 or 4081 with respect to so much of the rate of tax as exceeds--

"(i) 11.5 cents per gallon with respect to taxes imposed before October 1, 2001,

"(ii) 13 cents per gallon with respect to taxes imposed after September 30, 2001, and before October 1, 2003, and

"(iii) 13.5 cents per gallon with respect to taxes imposed after September 30, 2003, and before October 1, 2005; and

"(E) [placeholder for any exceptions needed for the new energy tax].

"(5) CERTAIN PENALTIES.--There are hereby appropriated to the Transportation Trust Fund amounts equivalent to the penalties paid under sections 6715, 6715A, 6717, 6718, 6719, 6720A, 6725, 7232, and 7272 (but only with regard to penalties under such section related to failure to register under section 4101).

"(c) FLOOR STOCKS REFUNDS.--The Secretary shall pay from time to time from the Transportation Trust Fund into the general fund of the Treasury amounts equivalent to the floor stocks refunds made before July 1, 2020, under section 6412(a) [and similar reference, if any, for the new energy tax]. The amounts payable from the each account in the Transportation Trust Fund under the preceding sentence shall be determined by taking into account only the portion of the taxes which are deposited into the Transportation Trust Fund and into each account of such Fund.

"(d) TRANSFERS FROM THE TRUST FUND FOR TAXES ON CERTAIN USES OF FUEL.--

"(1) MOTORBOAT FUEL TAXES.--

"(A) TRANSFER TO LAND AND WATER CONSERVATION FUND.--

"(i) IN GENERAL.--The Secretary shall pay from time to time from the Transportation Trust Fund into the land and water conservation fund provided for in title I of the Land and Water Conservation Fund Act of 1965 amounts (as determined by the Secretary) equivalent to the motorboat fuel taxes received on or after October 1, 2011, and before October 1, 2017.

"(ii) LIMITATION.--The aggregate amount transferred under this subparagraph during any fiscal year shall not exceed \$1,000,000.

"(2) EXCESS FUNDS TRANSFERRED TO SPORT FISH RESTORATION AND BOATING TRUST FUND.--Any amounts in the Transportation Trust Fund--

"(A) which are attributable to motorboat fuel taxes, and

"(B) which are not transferred from the Transportation

Trust Fund under paragraph (1)(A),

"shall be transferred by the Secretary from the Transportation Trust Fund into the Sport Fish Restoration and Boating Trust Fund.

"(C) MOTORBOAT FUEL TAXES.--For purposes of this paragraph, the term "motorboat fuel taxes" means the taxes under section 4041(a)(2) with respect to special motor fuels used as fuel in motorboats and under section 4081 with respect to gasoline used as fuel in motorboats, but only to the extent such taxes are deposited into the Transportation Trust Fund.

"(D) DETERMINATION.--The amount of transfers made under this paragraph after October 1, 1986 shall be determined by the Secretary in accordance with the methodology described in the Treasury Department's Report to Congress of June 1986 entitled "Gasoline Excise Tax Revenues Attributable to Fuel Used in Recreational Motorboats."

"(2) TRANSFERS FROM THE TRUST FUND FOR SMALL-ENGINE FUEL TAXES.--

"(A) IN GENERAL.--The Secretary shall pay from time to time from the Transportation Trust Fund into the Sport Fish Restoration and Boating Trust Fund amounts (as determined by him) equivalent to the small-engine fuel taxes received on or after December 1, 1990, and before October 1, 2017.

"(B) SMALL-ENGINE FUEL TAXES.--For purposes of this paragraph, the term "small-engine fuel taxes" means the taxes under section 4081 with respect to gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment, but only to the extent such taxes are deposited into the Transportation Trust Fund and into each account of such Fund.

"(3) TRANSFERS FROM THE TRUST FUND FOR CERTAIN AVIATION FUEL TAXES.--The Secretary shall pay at least monthly from the Transportation Trust Fund into the Airport and Airway Trust

Fund amounts (as determined by the Secretary) equivalent to the taxes received on or after October 1, 2005, and before October 1, 2017, under section 4081 with respect to so much of the rate of tax as does not exceed.

"(i) 4.3 cents per gallon of kerosene subject to section 6427(l)(4)(A) with respect to which a payment has been made by the Secretary under section 6427(l), and

"(ii) 21.8 cents per gallon of kerosene subject to section 6427(l)(4)(B) with respect to which a payment has been made by the Secretary under section 6427(l).

"Transfers under the preceding sentence shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred. Any amount allowed as a credit under section 34 by reason of paragraph (4) of section 6427(l) shall be treated for purposes of subparagraphs (A) and (B) as a payment made by the Secretary under such paragraph.

"(e) ESTABLISHMENT OF MASS TRANSIT ACCOUNT.--

"(1) CREATION OF ACCOUNT.--There is established in the Transportation Trust Fund a separate account to be known as the "Mass Transit Account" consisting of such amounts as may be transferred or credited to the Mass Transit Account as provided in this section or section 9602(b).

"(2) TRANSFERS TO MASS TRANSIT ACCOUNT.--The Secretary of the Treasury shall transfer to the Mass Transit Account the mass transit portion of the amounts appropriated to the Transportation Trust Fund under subsection (b) which are attributable to taxes under sections 4041 and 4081 imposed after March 31, 1983. For purposes of the preceding sentence, the term "mass transit portion" means, for any fuel with respect to which tax was imposed under section 4041 or 4081 and otherwise deposited into the Transportation Trust Fund, the amount determined at the rate of--

"(A) except as otherwise provided in this sentence, 2.86 cents per gallon,

"(B) 1.43 cents per gallon in the case of any partially exempt methanol or ethanol fuel (as defined in section 4041(m)) none of the alcohol in which consists of ethanol,

"(C) 1.86 cents per gallon in the case of liquefied natural gas,

"(D) 2.13 cents per gallon in the case of liquefied petroleum gas, and

"(E) 9.71 cents per MCF (determined at standard temperature and pressure) in the case of compressed natural gas, and

with respect to amounts appropriated to the Transportation Trust Fund by subsection (b)(F), [indication of rate, amount percentage of proceeds of new energy tax].

"(3) LIMITATION ON TRANSFERS TO THE ACCOUNT.--

"(A) IN GENERAL.--Except as provided in subparagraph (B), no amount may be transferred to the Mass Transit Account on and after the date of any expenditure from the Mass Transit Account which is not permitted by this subsection. The determination of whether an expenditure is so permitted shall be made without regard to--

"(i) any provision of law which is not contained or referenced in this title or in a revenue Act, and

"(ii) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this paragraph.

"(B) EXCEPTION FOR PRIOR OBLIGATIONS.--

Subparagraph (A) shall not apply to any expenditure to liquidate any contract entered into (or for any amount otherwise obligated) before October 1, 2017, in accordance with the provisions of this section.

"(4) EXPENDITURES FROM ACCOUNT.--Amounts in the Mass Transit Account shall be available, as provided by appropriation Acts, for making capital or capital related expenditures (including capital expenditures for new projects) before October 1, 2017, in accordance with the Transportation Opportunities Act or any other provision of law which was referred to in this paragraph before the date of the enactment of such Act (as such Act and provisions of law are in effect on the date of the enactment of such Act).

"(f) ESTABLISHMENT OF HIGHWAY ACCOUNT.--

"(1) CREATION OF ACCOUNT--.There is established in the Transportation Trust Fund a separate account to be known as the "Highway Account" consisting of such amounts as may be transferred or credited to the Highway Account as provided in this section or section 9602(b).

"(2) TRANSFERS TO THE HIGHWAY ACCOUNT.--The Secretary of the Treasury shall transfer to the Highway Account

"(A) the portion of the taxes appropriated to the Transportation Trust Fund by--

"(i) subparagraphs (B), (C), and (E) of subsection (b)(1),

"(ii) subparagraphs (A) and (D) of subsection (b)(1), but only to the extent that such taxes are not required to be transferred to the Mass Transit Account under subsection (e), and

"(ii) subparagraph (F) [ specify amount, percentage, rate for new energy tax]; and

"(B) fines and penalties appropriated to the Transportation Trust Fund by subsection (b)(5) and by section 521(b)(10) of title 49, United States Code.

"(3) LIMITATION ON TRANSFERS TO THE ACCOUNT.--

"(A) IN GENERAL.--Except as provided in subparagraph (B), no amount may be transferred to the Highway Account on and after the date of any expenditure from the Highway Account which is not permitted by this subsection. The determination of whether an expenditure is so permitted shall be made without regard to--

"(i) any provision of law which is not contained or referenced in this title or in a revenue Act, and

"(ii) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this paragraph.

"(B) EXCEPTION FOR PRIOR OBLIGATIONS.--

Subparagraph (A) shall not apply to any expenditure to liquidate any contract entered into (or for any amount otherwise obligated) before October 1, 2017, in accordance with the provisions of this section.

"(4) EXPENDITURES FROM ACCOUNT.--Amounts in the Highway Account of the Transportation Trust Fund shall be available, as provided by appropriation acts, for making expenditures before October 1, 2017, to meet those obligations of the United States heretofore or hereafter incurred which are authorized to be paid out of the Highway Account under the Transportation Opportunities Act or any other provision of law which was referred to in paragraph (c)(1) (as in effect on the day before enactment of such Act) before the date of the enactment of such Act (as such Act and provisions of law are in effect on the date of the enactment of such Act).

"(g) ESTABLISHMENT OF PASSENGER RAIL ACCOUNT.--

"(1) CREATION OF ACCOUNT--.There is established in the Transportation Trust Fund a separate account to be known as the "Passenger Rail Account" consisting of such amounts as may be transferred or credited to the Passenger Rail Account as provided in this section or section 9602(b).

"(2) TRANSFERS TO THE PASSENGER RAIL ACCOUNT--The Secretary of the Treasury shall transfer to the Passenger Rail Account [indication of the percentage, rate or amount] of the taxes as appropriated to the Transportation Trust Fund by subsection (b)(F).

"(3) LIMITATION ON TRANSFERS TO THE ACCOUNT.--

"(A) IN GENERAL.--Except as provided in subparagraph (B), no amount may be transferred to the Passenger Rail Account on and after the date of any expenditure from the Passenger Rail

Account which is not permitted by this subsection. The determination of whether an expenditure is so permitted shall be made without regard to--

"(i) any provision of law which is not contained or referenced in this title or in a revenue Act, and

"(ii) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this paragraph.

"(B) EXCEPTION FOR PRIOR OBLIGATIONS.--

Subparagraph (A) shall not apply to any expenditure to liquidate any contract entered into (or for any amount otherwise obligated) before October 1, 2017, in accordance with the provisions of this section.

"(4) EXPENDITURES FROM ACCOUNT.—Amounts in the Passenger Rail Account of the Transportation Trust Fund shall be available, as provided by appropriation acts, for making expenditures before October 1, 2017, to meet those obligations of the United States heretofore or hereafter incurred which are authorized to be paid out of the Passenger Rail Account under the Transportation Opportunities Act.

"(h) ESTABLISHMENT OF INFRASTRUCTURE BANK ACCOUNT.--

"(1) CREATION OF ACCOUNT--.There is established in the Transportation Trust Fund a separate account to be known as the "Infrastructure Bank Account" consisting of such amounts as may be transferred or credited to the Infrastructure Bank Account as provided in this section or section 9602(b).

"(2) TRANSFERS TO THE INFRASTRUCTURE BANK ACCOUNT—The Secretary of the Treasury shall transfer to the Infrastructure Bank Account [indication of the percentage, rate or amount] of the taxes as appropriated to the Transportation Trust Fund by subsection (b)(F).

"(3) LIMITATION ON TRANSFERS TO THE ACCOUNT.--

"(A) IN GENERAL.--Except as provided in subparagraph (B), no amount may be transferred to the Infrastructure Bank Account on and after the date of any expenditure from the Infrastructure Bank Account which is not permitted by this subsection. The determination of whether an expenditure is so permitted shall be made without regard to--

"(i) any provision of law which is not contained or referenced in this title or in a revenue Act, and

"(ii) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this paragraph.

"(B) EXCEPTION FOR PRIOR OBLIGATIONS.--

Subparagraph (A) shall not apply to any expenditure to liquidate any contract entered into (or for any amount otherwise obligated)

before October 1, 2017, in accordance with the provisions of this section.

"(4) EXPENDITURES FROM ACCOUNT.--Amounts in the Infrastructure Bank Account of the Transportation Trust Fund shall be available, as provided by appropriation acts, for making expenditures before October 1, 2017, to meet those obligations of the United States heretofore or hereafter incurred which are authorized to be paid out of the Infrastructure Bank Account under the Transportation Opportunities Act.

"(i) DETERMINATION OF TRUST FUND BALANCES AFTER SEPTEMBER 30, 1998.--

"(1) IN GENERAL.--For purposes of determining the balances of the Highway Trust Fund and the Mass Transit Account after September 30, 1998, the opening balance of the Highway Trust Fund (other than the Mass Transit Account) on October 1, 1998, shall be \$8,000,000,000. The Secretary shall cancel obligations held by the Highway Trust Fund to reflect the reduction in the balance under this paragraph.

"(2) RESTORATION OF FOREGONE INTEREST.--Out of money in the Treasury not otherwise appropriated, there is hereby appropriated--

"(A) \$14,700,000,000 to the Highway Account (as defined in subsection (e)(5)(B)) in the Transportation Trust Fund; and

"(B) \$4,800,000,000 to the Mass Transit Account in the Transportation Trust Fund.

"(4) TREATMENT OF APPROPRIATED AMOUNTS.--Any amount appropriated under this subsection to the Transportation Trust Fund shall remain available without fiscal year limitation.

"(j) ADJUSTMENTS OF APPORTIONMENTS FOR HIGHWAY AND MASS TRANSIT ACCOUNT PROGRAMS.--The Secretary of the Treasury and where so indicated, the Secretary of Transportation, shall take the following actions for the Highway Account and separately for the Mass Transit Account--

"(1) ESTIMATES OF UNFUNDED AUTHORIZATIONS AND NET.--The Secretary of the Treasury, not less frequently than once in each calendar quarter, after consultation with the Secretary of Transportation, shall estimate for the Account--

"(A) the amount which would (but for this subsection) be the unfunded authorizations at the close of the next fiscal year, and

"(B) the net receipts for the 24-month period beginning at the close of such fiscal year.

"(2) PROCEDURE WHERE THERE ARE EXCESS UNFUNDED AUTHORIZATIONS.--If the Secretary of the Treasury determines for any fiscal year that the amount described in paragraph (1)(A) for the Account exceeds the amount described in paragraph (1)(B) for such Account--

"(A) he shall so advise the Secretary of Transportation, and



"(B) he shall further advise the Secretary of Transportation as to the amount of such excess.

"(3) ADJUSTMENT OF APPORTIONMENTS WHERE UNFUNDED AUTHORIZATIONS EXCEED 2 YEARS' RECEIPTS.--

"(A) DETERMINATION OF PERCENTAGE.--If, before any apportionment to the States is made of funds authorized to be appropriated from the Account in the most recent estimate made by the Secretary of the Treasury there is an excess referred to in paragraph (2)(B) for the Account, the Secretary of Transportation shall determine the percentage which--

"(i) the excess referred to in paragraph (2)(B) for the Account, is of

"(ii) the amount authorized to be appropriated from that Account of the Trust Fund for the fiscal year for apportionment to the States.

"If, but for this sentence, the most recent estimate would be one which was made on a date which will be more than 3 months before the date of the apportionment, the Secretary of the Treasury shall make a new estimate under paragraph (1) for the appropriate fiscal year.

"(B) ADJUSTMENT OF APPORTIONMENTS.--If the Secretary of Transportation determines a percentage for the Account under subparagraph (A) for purposes of any apportionment, notwithstanding any other provision of law, the Secretary of Transportation shall apportion to the States (in lieu of the amount which, but for the provisions of this subsection, would be so apportioned) the amount obtained by reducing the amount authorized to be so apportioned by such percentage.

"(4) APPORTIONMENT OF AMOUNTS PREVIOUSLY WITHHELD FROM APPORTIONMENT.--If, after funds have been withheld from apportionment under paragraph (3)(B), the Secretary of the Treasury determines that the amount described in paragraph (1)(A) does not exceed the amount described in paragraph (1)(B) or that the excess described in paragraph (1)(B) is less than the amount previously determined, he shall so advise the Secretary of Transportation. The Secretary of Transportation shall apportion to the States such portion of the funds so withheld from apportionment as the Secretary of the Treasury has advised him may be so apportioned without causing the amount described in paragraph (1)(A) to exceed the amount described in paragraph (1)(B). Any funds apportioned pursuant to the preceding sentence shall remain available for the period for which they would be available if such apportionment took effect with the fiscal year in which they are apportioned pursuant to the preceding sentence.

"(5) DEFINITIONS.--For purposes of this subsection--

"(A) UNFUNDED AUTHORIZATIONS.--The term "unfunded authorizations" means, at any time, the excess (if any) of--

"(i) the total potential unpaid commitments at such time as a result of the apportionment to the States of the amounts authorized to be appropriated from the Account, over

"(ii) the amount available in the that Account at such time to defray such commitments (after all other unpaid commitments at such time which are payable from that Account have been defrayed).

"(B) NET RECEIPTS.--The term "net receipts" means, with respect to any period, the excess of--

"(i) the receipts (including interest) of the Account during such period, over

"(ii) the amounts to be transferred during such period from such Account under subsection (d).

"(6) MEASUREMENT OF NET RECEIPTS.--For purposes of making any estimate under paragraph (1) of net receipts for periods ending after the date specified in subsection (b)(1), the Secretary shall treat--

"(A) each expiring provision of subsection (b) which is related to appropriations or transfers to the Highway Account or the Mass Transit Account of the Transportation Trust Fund to have been extended through the end of the 24-month period referred to in paragraph (1)(B), and

"(B) with respect to each tax imposed under the sections referred to in subsection (b)(1), the rate of such tax during the 24-month period referred to in paragraph (1)(B) to be the same as the rate of such tax as in effect on the date of such estimate.

"(7) REPORTS.--Any estimate under paragraph (1) and any determination under paragraph (2) shall be reported by the Secretary of the Treasury to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, the Committees on the Budget of both Houses, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Environment and Public Works of the Senate."

(b) CONFORMING AMENDMENTS.--

(1) The item relating to section 9503 in the analysis of chapter 98 of the Internal Revenue Code of 1986 is amended by striking "Highway" and inserting "Transportation".

(2) Section 201(b) of the Lands and Water Conservation Fund Act of 1965 (16 U.S.C. 46011-11(b)) is amended--

(A) by striking "2011" and inserting "2019", and

(B) by striking "2012" each place it appears and inserting "2020"

(3) Section 510(b)(10) of title 49, United States Code, is amended by striking "Highway Trust Fund (other than the Mass Transit Account)" and inserting "Highway Account of the Transportation Trust Fund".

#### **SEC. 4104. EFFECTIVE DATE.**

The amendments made by this section shall take effect on the date of the enactment of this Act.

#### **Subtitle B--Other Revenue Provisions**

#### **SEC. 4201. QUALIFICATION OF GRANTS UNDER SECTION \_\_\_\_ AS CONTRIBUTIONS TO CAPITAL.**

(a) [To be conformed to forthcoming IRS guidance.]

#### **SEC. 4202. EXPANSION OF PRIVATE ACTIVITY BOND PROGRAM.**

(a) EXEMPT FACILITY BONDS FOR SURFACE TRANSPORTATION/HIGH-PERFORMANCE PASSENGER RAIL/MARINE HIGHWAY PROJECTS.--Section 142(m)(1)(A) of the Internal Revenue Code of 1986 (26 U.S.C. 142(m)(1)(A)) is amended to read as follows:

"(A) any surface transportation project that receives Federal assistance under title 23, United States Code, any high-performance passenger rail project that receives Federal assistance under chapters 241, 244, [246] or 261 of title 49, United States Code as of the date of enactment of this subsection, or any short sea shipping or marine highway project ".

(b) INCREASING THE VOLUME CAP.--Section 142(m)(2) is amended to read as follows:

"(2) NATIONAL LIMITATION ON AMOUNT OF TAX-EXEMPT FINANCING FOR FACILITIES.--

"(A) NATIONAL LIMITATION.--The aggregate amount allocated by the Secretary of Transportation under subparagraph (C) shall not exceed \$30,000,000,000.

"(B) ENFORCEMENT OF NATIONAL LIMITATION.--An issue shall not be treated as an issue described in subsection (a)(15) if the aggregate face amount of bonds issued pursuant to such issue (when added to the aggregate face amount of bonds previously issued pursuant to such issue) exceeds the amount allocated to such facility under subparagraph (C).

"(C) ALLOCATION BY SECRETARY OF TRANSPORTATION.--The Secretary of Transportation shall allocate the amount described in subparagraph (A) among qualified surface

transportation projects, high-performance passenger rail projects, and marine highway projects."

(c) ACQUISITION OF EXISTING ASSETS.--Section 147(h) of the Internal Revenue Code of 1986 (26 U.S.C. 147(h))(relating to exceptions from certain requirements) is amended by inserting at the end the following:

"(4) EXEMPT FACILITY BONDS FOR QUALIFIED HIGHWAY OR FREIGHT TRANSFER FACILITIES.--Subsections (c) and (d) shall not apply to any exempt facility bond issued as part of an issue described in section 142(a)(15) (relating to qualified highway or freight transfer facilities)."

(d) IMPUTED PROCEEDS REGULATIONS.--The Secretary of Treasury or his delegate shall modify the Treasury Regulations sections (26 CFR §§ 1.103-8(a)(6) and (7)) relating to the treatment of deeply discounted bonds for purposes of section 142 of the Internal Revenue Code to generally provide that the regulations shall not apply to obligations issued under section 142(a)(15) of title 26.

(e) CONFORMING AMENDMENT.--Section 146(g)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 146(g)(3))(relating to exception for certain bonds) is amended by striking "(14)," and all that follows through the end of the paragraph and inserting "or (14) of section 142(a), and".

(f) EFFECTIVE DATE.--The amendments made by this section apply to bonds, including refunding bonds, issued after the date of the enactment of this Act.

### **SECTION 4203. PROMOTION OF AMERICA'S MARINE HIGHWAYS.**

(a) IN GENERAL.--Section 4462 is amended by re-designating subsection (i) as subsection (j) and by inserting after subsection (h) the following:

"(i) EXEMPTION FOR CERTAIN SHORT SEA SHIPPING CARGO.--

"(1) IN GENERAL- No tax shall be imposed under section 4461(a) with respect to commercial cargo (other than bulk cargo) that is loaded at--

"(A) a port in the United States mainland and unloaded at another port in the United States mainland after transport solely by coastal route or river or unloaded at a port in Canada located in the Great Lakes Saint Lawrence Seaway System, or

"(B) a port in Canada located in the Great Lakes Saint Lawrence Seaway System and unloaded at a port in the United States mainland.

"(2) DEFINITIONS.--In this subsection:

"(A) BULK CARGO.--The term 'bulk cargo' has the meaning given that term by section 53101(1) of title 46, United States Code.

"(B) GREAT LAKES SAINT LAWRENCE SEAWAY SYSTEM.--The term 'Great Lakes Saint Lawrence Seaway System' means the waterway between Duluth, Minnesota, and Sept Iles, Quebec, encompassing the 5 Great Lakes, their connecting channels, and the Saint Lawrence River.

"(C) UNITED STATES MAINLAND.--The term 'United States mainland' has the meaning given such term in subsection (b)(3)."

(b) EFFECTIVE DATE.--The amendments made by this section shall take effect on the date of enactment of this Act.

**TITLE V--RESEARCH AND EDUCATION**

**Subtitle A--Funding**

**SEC. 5101. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.--The following sums are authorized to be appropriated out of the Highway Account of the Transportation Trust Fund:

(1) HIGHWAY RESEARCH AND DEVELOPMENT PROGRAM.--To carry out section 503(b) of title 23, United States Code, and sections \*\*XXXX, XXXX, and XXXX of this title--

- (A) \$200,000,000 for fiscal year 2012;
- (B) \$214,716,000 for fiscal year 2013;
- (C) \$223,429,000 for fiscal year 2014;
- (D) \$233,107,000 for fiscal year 2015;
- (E) \$243,361,000 for fiscal year 2016; and
- (F) \$254,122,000 for fiscal year 2017.

(2) TECHNOLOGY AND INNOVATION DEPLOYMENT PROGRAM.--To carry out section 503(c) of title 23, United States Code, and section XXXX of this title--

- (A) \$144,000,000 for fiscal year 2012;
- (B) \$161,044,000 for fiscal year 2013;
- (C) \$167,584,000 for fiscal year 2014;
- (D) \$174,831,000 for fiscal year 2015;
- (E) \$182,532,000 for fiscal year 2016; and
- (F) \$190,596,000 for fiscal year 2017.

(3) TRAINING AND EDUCATION.--To carry out section 504 of title 23, United States Code, and section XXXX of this title--

- (A) \$40,000,000 for fiscal year 2012;
- (B) \$42,948,000 for fiscal year 2013;
- (C) \$44,695,000 for fiscal year 2014;
- (D) \$46,630,000 for fiscal year 2015;
- (E) \$48,681,000 for fiscal year 2016; and
- (F) \$50,828,000 for fiscal year 2017.

(4) INTELLIGENT TRANSPORTATION SYSTEMS

RESEARCH.--To carry out section XXX of title 23, United States Code--

- (A) \$110,000,000 for fiscal year 2012;
- (B) \$110,000,000 for fiscal year 2013;
- (C) \$110,000,000 for fiscal year 2014;
- (D) \$110,000,000 for fiscal year 2015;
- (E) \$110,000,000 for fiscal year 2016; and
- (F) \$110,000,000 for fiscal year 2017.

(5) COMPETITIVE UNIVERSITY TRANSPORTATION

CENTER CONSORTIA.--To carry out section XXX of title 49, United States Code--

- (A) \$72,000,000 for fiscal year 2012;
- (B) \$72,000,000 for fiscal year 2013;
- (C) \$72,000,000 for fiscal year 2014;
- (D) \$72,000,000 for fiscal year 2015;
- (E) \$72,000,000 for fiscal year 2016; and
- (F) \$72,000,000 for fiscal year 2017.

(6) BUREAU OF TRANSPORTATION STATISTICS.--To carry

out chapter 65 of title 49, United States Code--

- (A) \$35,000,000 for fiscal year 2012;
- (B) \$35,292,000 for fiscal year 2013;
- (C) \$35,432,000 for fiscal year 2014;
- (D) \$35,087,000 for fiscal year 2015;
- (E) \$37,426,000 for fiscal year 2016; and
- (F) \$41,454,000 for fiscal year 2017.

(7) MULTIMODAL INNOVATIVE RESEARCH PROGRAM.--

To carry out section XXX of title 49, United States Code--

- (A) \$20,000,000 for fiscal year 2012;
- (B) \$21,000,000 for fiscal year 2013;
- (C) \$22,000,000 for fiscal year 2014;
- (D) \$23,000,000 for fiscal year 2015;
- (E) \$24,000,000 for fiscal year 2016; and
- (F) \$25,000,000 for fiscal year 2017.

(8) UNIVERSITY TRANSPORTATION CENTER

MULTIMODAL COMPETITIVE RESEARCH GRANTS.--To carry out section XXX of title 49, United States Code --

- (A) \$20,000,000 for fiscal year 2012;
- (B) \$21,000,000 for fiscal year 2013;
- (C) \$22,000,000 for fiscal year 2014;
- (D) \$23,000,000 for fiscal year 2015;
- (E) \$24,000,000 for fiscal year 2016; and
- (F) \$25,000,000 for fiscal year 2017.

(b) APPLICABILITY OF TITLE 23, UNITED STATES CODE.--Funds authorized to be appropriated by subsection (a) shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23,

United States Code; except that the Federal share of the cost of a project or activity carried out using such funds shall be 80 percent, unless otherwise expressly provided by this Act (including the amendments by this Act) or otherwise determined by the Secretary, and such funds shall remain available until expended and shall not be transferable.

### **Subtitle B--Research, Technology, and Education**

#### **SEC. 5201. RESEARCH, TECHNOLOGY, AND EDUCATION.**

Section 501(a) of title 23, United States Code, is amended by--

- (1) redesignating paragraph (2) as paragraph (3); and
- (2) inserting after paragraph (1) the following:

"(2) INNOVATION LIFECYCLE.--The term 'innovation lifecycle' includes identification of needs and research scope, agenda setting, conduct of research, development, deployment, testing of technologies and innovations, and impact evaluations."

#### **SEC. 5202. SURFACE TRANSPORTATION RESEARCH, DEVELOPMENT, AND TECHNOLOGY.**

(a) SURFACE TRANSPORTATION RESEARCH, DEVELOPMENT, AND TECHNOLOGY.--Section 502 of title 23, United States Code, is amended--

(1) in the section heading, by inserting ", DEVELOPMENT, AND TECHNOLOGY" after "SURFACE TRANSPORTATION RESEARCH";

(2) in subsection (a)--

(A) by redesignating paragraphs (1) through (8) as paragraphs (2) through (9), respectively;

(B) by inserting a new paragraph (1) before paragraph (2), as redesignated, as follows:

"(1) APPLICATION.--The principles governing research, development, and technology set forth in this section shall apply throughout this chapter.";

(C) in paragraph (2)--

(i) by inserting "within the innovation lifecycle" after "activities"; and

(ii) by inserting "marketing and communications, impact analysis," after "training,";

(D) in paragraph (3)--

(i) by redesignating subparagraphs (B) through (D) as (C) through (E), respectively;

(ii) by inserting a new subparagraph (B) after subparagraph (A) as follows:

"(B) meets and addresses current or emerging needs;"

(iii) in subparagraph (C), as redesignated, by--

(I) striking "supports research in which there is" and inserting "delivers"; and

(II) inserting "where" before "private";

(iv) in subparagraph (D), as redesignated, by striking "and" in the second place it appears; and

(v) by adding at the end the following:

"(F) presents the best means to align resources with multi-year plans and priorities;

"(G) ensures the coordination of highway research and technology transfer activities, including those performed by University Transportation Centers; or

"(H) educates current and future transportation professionals.";

(E) in paragraph (4)(B)--

(i) by striking "support and" and inserting "partner with State highway agencies and other stakeholders as appropriate, including international entities, to"; and

(ii) by striking "by State highway agencies";

(F) in paragraph (4)(C)--

(i) by striking "share" and inserting "communicate";

(ii) by inserting "both on-going and" before "completed"; and

(iii) by striking "and" after the semicolon;

(G) in paragraph (4)(D)--

(i) by striking "support and facilitate technology" and inserting "lead efforts to coordinate national emphasis areas of highway research, technology,"; and

(ii) by striking the period at the end and inserting a semicolon;

(H) by adding at the end of paragraph (4) the following:

"(E) leverage partnerships with industry, academia, and international entities; and

"(F) conduct, facilitate, and support training and education of current and future transportation professionals.";

(I) in paragraph (5)(C), by striking "policy and planning" and inserting "all highway objectives seeking to improve the performance of the transportation system";

(J) in paragraph (6), by inserting "tribal governments," after "governments"; and

(K) in paragraph (8), by inserting "Projects pursued in a particular program area should be part of a data driven, outcome oriented program plan." before "All evaluations shall";

(3) in subsection (b)--

(A) in paragraph (4), by striking "surface transportation research and technology development strategic plan developed



under section 508" and inserting "Secretary's Transportation Research and Development Strategic Plan";

(B) in paragraph (5), by striking "section" each place it appears and inserting "chapter";

(C) in paragraph (6), by adding at the end the following:

"(C) TRANSFER OF FUNDS AMONG STATES OR TO FEDERAL HIGHWAY ADMINISTRATION.--The Secretary may, at the request of a State, transfer funds apportioned or allocated under this chapter to the State to another State, or to the Federal Highway Administration, for the purpose of funding research, development, and technology transfer activities of mutual interest on a pooled funds basis.

"(D) TRANSFER OF OBLIGATION AUTHORITY.--Obligation authority for funds transferred under this subsection shall be transferred in the same manner and amount as the funds for projects that are transferred under this subsection."; and

(D) by adding at the end the following:

"(8) PRIZE COMPETITIONS.--

"(A) IN GENERAL.--The Secretary may carry out prize competitions to award competitive prizes for innovations in the area of surface transportation with the potential for application to the Federal Highway Administration's research and technology objectives and activities to improve system performance.

"(B) REQUIREMENTS.--The Secretary shall use a competitive process for the selection of prize recipients and shall widely advertise and solicit participation in prize competitions. No individual or entity shall participate in a prize competition unless the individual or entity has registered with the Department in accordance with requirements established by the Secretary. At a minimum such requirements shall--

"(i) limit participation in Program competitions to--

"(I) individuals who are citizens of the United States;

"(II) entities organized or existing under the laws of the United States or of a State; and

"(III) entities organized or existing under the laws of a foreign country if the controlling interest (as defined by the Secretary) is held by an individual or entity described in subclause (I) or (II);

"(ii) require any individual or entity that registers for a prize competition to assume any and all risks arising from participation in the competition, and to waive any and all claims against the United States Government for damages arising from participation in the competition, including any and all claims for injury, death, damage, or

loss of property, or loss of revenue or profits, whether direct, indirect, or consequential, whether through negligence or otherwise, except in the case of willful misconduct; and

"(iii) require any individual or entity that registers for a prize competition to waive claims against any non-Federal entity involved with the prize competition (such as a private contractor managing competition activities) to the extent the Secretary believes is necessary to protect the interests of the United States Government.

"(C) RELATIONSHIP TO OTHER AUTHORITY.--The Secretary may exercise the authority in this section in conjunction with or in addition to any other authority of the Secretary to acquire, support, or stimulate innovations with the potential for application to the Federal Highway Research Technology and Education Program.";

(4) in subsection (c)--

(A) in paragraph (3)(A)--

(i) by striking "subsection" and inserting "chapter";

and

(ii) by striking "50" and inserting "80"; and

(B) in paragraph (4), by striking "subsection" and inserting "chapter"; and

(5) by striking subsections (d) through (j).

(b) CONFORMING AMENDMENT.--[ \*\* ]

**SEC. 5203. RESEARCH AND TECHNOLOGY DEVELOPMENT AND DEPLOYMENT.**

(a) IN GENERAL.--Section 503 of title 23, United States Code, is amended to read as follows:

**"Sec. 503. Research and technology development and deployment**

"(a) IN GENERAL.--The Secretary of Transportation shall carry out research, development, and deployment activities that encompass the entire innovation lifecycle. All research conducted under this section shall align with the Secretary's Transportation Research and Development Strategic Plan.

"(b) HIGHWAY RESEARCH AND DEVELOPMENT PROGRAM.--

"(1) OBJECTIVES.--In carrying out the highway research and development program, the Secretary shall identify research topics, coordinate domestic and international research and development activities, conduct research, testing and evaluation activities, and provide technology transfer and technical assistance, to address current and emerging highway

transportation needs.

"(2) CONTENT.--Research and development activities carried out under this section may include the following:

"(A) IMPROVING HIGHWAY SAFETY.--

"(i) IN GENERAL.--The Secretary shall conduct research from an integrated perspective, including all road users, all vehicles, and all public roads, and create systematic measures to improve highway safety.

"(ii) OBJECTIVES.--In carrying out this subparagraph the Secretary shall conduct research and development activities to--

"(I) achieve greater long-term safety gains;

"(II) reduce the number of fatalities and serious injuries on all public roads;

"(III) fill knowledge gaps that currently limit the effectiveness of research;

"(IV) support the development and implementation of State Strategic Highway Safety Plans;

"(V) advance improvements in and use of performance prediction analysis for decision making; and

"(VI) expand technology transfer to partners and stakeholders.

"(iii) CONTENTS.--Research and technology activities carried out under this subparagraph may include--

"(I) safety assessments and decision-making tools;

"(II) data collection and analysis;

"(III) crash reduction projections;

"(V) low-cost safety countermeasures;

"(VI) innovative operational improvements and designs of roadway and roadside features;

"(VII) evaluation of countermeasure costs and benefits;

"(VIII) development of tools for projecting impacts of safety countermeasures;

"(IX) safety contributions to livable communities;

"(X) rural road safety;

"(XI) vulnerable road users, including bicyclists and pedestrians;

"(XII) safety policy studies;

"(XIII) human factors studies and methods;

"(XIV) safety technology deployment;

"(XV) safety workforce professional capacity building initiatives;

"(XVI) safety program and process improvements; and

"(XVII) tools and methods to enhance safety performance including achievement of statewide safety performance targets.

"(B) IMPROVING INFRASTRUCTURE INTEGRITY.--

"(i) IN GENERAL.--The Secretary shall conduct and facilitate research and development activities to improve the ability to maintain infrastructure integrity, to meet user needs, and to link Federal transportation investments to improvements in system performance.

"(ii) RESEARCH ACTIVITIES.--In carrying out this subparagraph, the Secretary shall conduct research and development activities to--

"(I) reduce the number of fatalities attributable to infrastructure design characteristics and work zones;

"(II) improve the safety and security of highway infrastructure;

"(III) increase the reliability of life cycle performance predictions used in infrastructure design, construction, and management;

"(IV) improve the ability of transportation agencies to deliver projects that meet expectations for timeliness, quality, and cost;

"(V) reduce user delay attributable to infrastructure system performance, maintenance, rehabilitation, and construction;

"(VI) improve highway condition and performance through increased use of design, materials, construction, and maintenance innovations; and

"(VII) reduce the life-cycle environmental impacts of highway infrastructure (design, construction, operation, preservation, and maintenance).

"(iii) CONTENTS.--Research and technology activities carried out under this subparagraph may include--

"(I) long-term infrastructure performance programs addressing pavements, bridges, tunnels, and other structures;

"(II) short-term and accelerated studies of infrastructure performance;

- "(III) research to develop more durable infrastructure materials and systems;
- "(IV) advanced infrastructure design methods;
- "(V) accelerated highway construction;
- "(VI) performance-based specifications;
- "(VII) construction and materials quality assurance;
- "(VIII) comprehensive and integrated infrastructure asset management;
- "(IX) infrastructure safety assurance;
- "(X) highway infrastructure security;
- "(XI) sustainable infrastructure design and construction;
- "(XII) infrastructure rehabilitation and preservation techniques, including those techniques to address historic infrastructure;
- "(XIII) hydraulic, geotechnical, and aerodynamic aspects of infrastructure;
- "(XIV) improved highway construction technologies and practices;
- "(XV) improved tools, technologies, and models for infrastructure management, including assessment and monitoring of infrastructure condition;
- "(XVI) studies to improve flexibility and resiliency of infrastructure systems to withstand climate variability; and
- "(XVII) studies of infrastructure resilience and other adaptation measures.

"(C) STRENGTHENING TRANSPORTATION PLANNING AND ENVIRONMENTAL LINKAGES.--

"(i) IN GENERAL.--The Secretary shall conduct research to improve the transportation planning and environmental decision making processes and to minimize the impact of surface transportation on the environment and quality of life.

"(ii) OBJECTIVES.--In carrying out this subparagraph the Secretary shall conduct research and development activities to--

- "(I) reduce the impact of highway infrastructure and operations on the natural and human environment;
- "(II) advance improvements in environmental analysis and process, and context sensitive solutions for transportation decision

making;

"(III) improve construction techniques;

"(IV) accelerate construction to reduce congestion and related emissions;

"(V) reduce the impact of highway runoff on the environment;

"(VI) maintain sustainability of biological communities and ecosystems adjacent to highway corridors;

"(VII) improve understanding and modeling of the factors that contribute to the demand for transportation; and

"(VIII) improve transportation planning decision-making and coordination.

"(iii) CONTENTS.--Research and technology activities carried out under this subparagraph may include--

"(I) climate change mitigation, adaptation, and livability strategies;

"(II) models and tools for evaluating transportation measures and transportation system designs;

"(III) congestion reduction efforts;

"(IV) transportation planning in rural areas and small communities;

"(V) State, local, and tribal capabilities regarding surface transportation planning and the environment;

"(VI) environmental stewardship and sustainability;

"(VII) streamlining of project delivery process;

"(VIII) short and long-term livability initiatives to improve project delivery and enhance communities impacted by surface transportation projects;

"(IX) development of effective strategies and techniques to analyze and minimize impacts to the natural and human environment and to provide environmentally beneficial mitigation;

"(X) comprehensive multinational planning;

"(XI) multi-State transportation corridor planning;

"(XII) improvement of transportation choices, including walking, bicycling, and linkages to public transportation;

"(XIII) ecosystem sustainability;

"(XIV) wildlife and plant population connectivity and interaction across and along highway corridors;

"(XV) analysis, measurement, and reduction of air pollution from transportation sources;

"(XVI) development of sustainable transportation systems;

"(XVII) advancement in the understanding of health impact analysis in planning and project development;

"(XVIII) transportation planning professional development; and

"(XIX) research on improving the cooperation and integration of transportation planning with other regional plans including land use, energy, water infrastructure, and housing.

**"(D) REDUCING CONGESTION, IMPROVING HIGHWAY OPERATIONS, AND ENHANCING FREIGHT PRODUCTIVITY.--**

"(i) IN GENERAL.--The Secretary shall examine approaches to solve congestion problems, reduce the costs of congestion, improve freight movement, increase productivity, and improve the nation's economic competitiveness.

"(ii) OBJECTIVES.--In carrying out this subparagraph, the Secretary shall conduct research and development activities to identify, develop, and assess innovations that have the potential to--

"(I) reduce traffic congestion;

"(II) improve freight movement; and

"(III) reduce freight-related congestion throughout the transportation network.

"(iii) CONTENTS.--Research and technology activities carried out under this subparagraph may include--

"(I) active traffic and demand management;

"(II) accelerating implementation of ITS Technology;

"(III) advanced transportation concepts and analysis;

"(IV) arterial management and traffic signal operation;

"(V) congestion pricing;

"(VI) corridor management;

"(VII) emergency operations;

"(VIII) enabling technologies and applications;

"(IX) freeway management;

- "(X) evaluation of enabling technologies;
- "(XI) freight professional development;
- "(XII) impacts of vehicle size and weight;
- "(XIII) freight operations and technology;
- "(XIV) operations and freight performance measurement and management;
- "(XV) organizing and planning for operations;
- "(XVI) planned special events management;
- "(XVII) real-time transportation information;
- "(XVIII) road weather management;
- "(XIX) traffic and freight data and analysis tools;
- "(XX) traffic control devices;
- "(XXI) traffic incident management;
- "(XXII) work zone management;
- "(XXIII) communicating travel, roadway, and emergency information to persons with disabilities; and
- "(XXIII) research on enhanced mode choice and intermodal connectivity.

**"(E) ASSESSING POLICY AND SYSTEM FINANCING ALTERNATIVES.--**

**"(i) IN GENERAL.--**The Secretary shall conduct analysis on emerging issues in the domestic and international transportation community from a policy perspective.

**"(ii) OBJECTIVES.--**Research and technology activities carried out under this subparagraph shall provide information to policy and decision-makers on current and emerging transportation issues.

**"(iii) CONTENTS.--**Research and technology activities carried out under this subparagraph may include--

- "(I) highway needs and investment analysis;
- "(II) legislative development and implementation;
- "(III) highway policy analysis;
- "(IV) highways and the economy;
- "(V) advanced research in emerging policy areas;
- "(VI) motor fuel tax evasion program;
- "(VII) advancing innovations in revenue generation, financing, and procurement for project delivery;
- "(VIII) improving project financial and cost analysis;
- "(IX) highway performance measurement;



- "(X) travel demand performance measurement;
- "(XI) highway finance performance measurement;
- "(XII) policy program delivery support initiatives;
- "(XIII) international technology exchange initiatives;
- "(XIV) international scanning program;
- "(XV) infrastructure investment needs report;
- "(XVI) promotion of United States' technologies, products, and best practices;
- "(XVII) partnerships among the United States, foreign agencies, and experts; and
- "(XVIII) research to satisfy those provisions included under section 506 of this title.

"(iv) INFRASTRUCTURE INVESTMENT NEEDS REPORT.--

"(I) Not later than July 31, 2006, and July 31 of every second year thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes estimates of the future highway and bridge needs of the United States, and the backlog of current highway and bridge needs.

"(II) Each report under subclause (I) shall provide the means, including all necessary information, to relate and compare the conditions and service measures used in the previous biennial reports.

"(F) EXPLORING NEXT GENERATION SOLUTIONS, CAPITALIZING ON THE HIGHWAY RESEARCH CENTER, ALIGNING NATIONAL CHALLENGES, AND DISSEMINATING INFORMATION.--

"(i) IN GENERAL.--The Secretary shall conduct exploratory advanced research to find next generation solutions, invest in the targeted capabilities of the Turner-Fairbank Highway Research Center, establish a process to align national research challenges, and disseminate research and technology information to assist in the conduct of research and the delivery of innovation.

"(ii) OBJECTIVES.--In carrying out this subparagraph, the Secretary shall conduct research and development activities to--

"(I) determine potentially transformational solutions to improve the durability, efficiency, environmental impact, productivity, and safety aspects of highway and intermodal transportation systems;

"(II) conduct research and development of technologies and innovations of national importance at the Turner-Fairbank Highway Research Center;

"(III) establish a nationally-coordinated highway research agenda that focuses on topics of national significance, addresses current gaps in research, encourages collaboration, reduces unnecessary duplication of effort, and accelerates innovation delivery; and

"(IV) provide relevant information to researchers and to highway and transportation practitioners to improve the performance of the transportation system.

"(iii) CONTENTS.--Research and technology activities carried out under this subparagraph may include--

"(I) longer term, higher-risk research to improve the characterization of materials used in highway infrastructure;

"(II) exploratory research to assess the effects of transportation decisions on human health;

"(III) advanced development of surrogate measures for highway safety;

"(IV) transformational research to affect complex environmental and highway system relationships;

"(V) future solutions to complex technical problems through the development of economical and environmentally sensitive designs, efficient and quality-controlled construction practices, and durable materials;

"(VI) advanced data acquisition techniques for system condition and performance monitoring;

"(VII) inclusive research for hour-to-hour operational decision-making and simulation forecasting;

"(VIII) understanding current and emerging phenomena to inform next generation transportation policy decision making;

"(IX) continued improvement and advancement of the Turner-Fairbank Highway Research Center;

"(X) coordination, development, and implementation of a national highway research agenda;

"(XI) collaboration on national emphasis areas of highway research and coordinate across international, federal, state, and university research programs;

"(XII) development and delivery of research reports and innovation delivery messages;

"(XIII) identification of market-ready technologies and innovations; and

"(XIV) provision of transparent web-access to researchers, stakeholders, and customers.

"(c) TECHNOLOGY AND INNOVATION DEPLOYMENT PROGRAM.--

"(1) IN GENERAL.--The Secretary shall carry out a technology and innovation deployment program on all aspects of highway transportation, including planning, financing, operation, structures, materials, pavements, environmental, construction, and shortening project delivery.

"(2) OBJECTIVES.--The Secretary shall seek to advance the following objectives:

"(A) Significantly accelerate the adoption of innovative technologies by the surface transportation community,

"(B) Provide leadership and incentives to demonstrate and promote state-of-the-art technologies, elevated performance standards, and new business practices in highway construction processes that result in improved safety, faster construction, reduced congestion from construction, and improved quality and user satisfaction.

"(C) Advance longer-lasting highways using innovative technologies and practices to accomplish more rapid construction of efficient and safe highways and bridges.

"(D) Improve highway efficiency, safety, mobility, reliability, service life, environmental protection, livability, and sustainability.

"(E) Develop and deploy new tools, techniques and practices to accelerate the adoption of innovation in all aspects of highway transportation.

"(3) CONTENTS.--Activities under this section shall include the following:

"(A) TECHNOLOGY AND INNOVATION DELIVERY.-

-The Secretary shall promote, facilitate, and conduct a technology and innovation deployment program that delivers the products, technologies, tools, methods, or other findings resulting from highway research and development. This program may include activities conducted under section 503(b) of this title and other technologies and innovations requiring additional development and testing not performed under section 503(b) but necessary to bring about successful deployment and innovation delivery. This program may include developing and improving innovative technologies and practices and exploring new technologies to accelerate innovation adaption.

**"(B) ACCELERATED INNOVATION DEPLOYMENT.--**

The Secretary shall carry out a technology and innovation deployment program that consists of demonstration programs, technical assistance, media, and training; and provide incentives, develop improved tools and methods to accelerate the adoption of proven innovative practices and technologies as standard practices.

**"(C) IMPLEMENTATION OF FUTURE STRATEGIC HIGHWAY RESEARCH PROGRAM FINDINGS AND RESULTS.--**

"(i) The Secretary, in consultation with the American Association of State Highway and Transportation Officials and the National Academy of Sciences, shall carry out the implementation of findings and results achieved under the Future Strategic Highway Research Program, as established in section 510 of this chapter.

"(ii) Implementation and delivery of the Future Strategic Highway Research Program findings and results shall be based on the National Academy of Sciences report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives, submitted on February 1, 2009.

"(iii) The Secretary may use funds appropriated under this section to hire temporary or term appointments to carry out this section. Such term appointments may be made in addition to the Department's allotted full-time equivalency level.

"(iv) The Secretary may impose and collect fees to recover costs associated with special data or analysis requests related to safety naturalistic driving databases developed under the Future of Strategic Highway Research Program. The Secretary shall, by rule, impose and collect fees to recover costs associated with special data or analysis requests related to safety naturalistic driving databases developed under the Future of Strategic Highway

Research Program. The fees collected under this provision shall be credited to and are in addition to current appropriations available to carry out this section and shall be available for expenditure for such purposes until expended."

(b) CONFORMING AMENDMENT.--The analysis of chapter 5 of title 23, United States Code, is amended by striking the item relating to section 503 and inserting the following:

"503. Research and technology development and deployment."

## **SEC. 5204. TRAINING AND EDUCATION.**

Section 504 of title 23, United States Code, is amended--

(1) in subsection (a)--

(A) in paragraph (2)(A)--

(i) by striking "and"; and

(ii) by inserting ", and Federal agency partners"

before the semicolon;

(B) in paragraph (3)(A)(ii)(V), by striking "expediting" and inserting "shortening";

(C) by striking paragraph (4);

(D) by redesignating paragraphs (5) through (8) as paragraphs (4) through (7); and

(E) in paragraph (7), as redesignated, by striking "7" and inserting "6";

(2) by amending subsection (b)(3) to read as follows:

"(3) FEDERAL SHARE.--

"(A) LOCAL TECHNICAL ASSISTANCE CENTERS.--

The Federal share of the cost of activities carried out by the local technical assistance centers under subsections (b)(1) and (b)(2) shall be 50 percent of such costs. The remaining share may include funds provided to a recipient under subsection (e) or section 505 of this title at 100 percent.

"(B) TRIBAL TECHNICAL ASSISTANCE CENTERS.--

The Federal share of the cost of activities carried out by the tribal technical assistance centers under paragraph (2)(D)(ii) shall be 100 percent.";

(3) in subsection (c)(2), by adding at the end the following new sentence:

"Funds provided to institutions of higher education to carry out this section shall be used in direct support of student expenses associated with their transportation studies.";

(4) in subsection (e)(1)--

(A) by striking ", and 144(e)" and inserting "and" before "104(b)(4)";

- (B) in subparagraph (D) by striking "and";
- (C) in subparagraph (E) by striking the period and inserting a semicolon; and
- (D) by adding at the end the following:
  - "(F) meetings of transportation professionals that include education and professional development as determined by the Secretary;
  - "(G) activities delivered by the National Highway Institute as set forth in subsection (a); and
  - "(H) Local Technical Assistance Programs as set forth in subsection (b).";
- (5) in the heading of subsection (f), by striking "PILOT";
- (6) in subsection (g)(4)(F), by striking "excellence" and inserting "stewardship"; and
- (7) by adding at the end the following:

**"(h) REGIONAL SURFACE WORKFORCE DEVELOPMENT CENTERS.--**

"(1) IN GENERAL.--The Secretary of Transportation shall make grants under this section to non-profit institutions of higher learning to establish and operate five Regional Workforce Development Centers.

"(2) OBJECTIVES.--Grants made under this section shall be used by non-profit institutions of higher learning to identify, promote, and advance programs and activities to provide for a skilled, technically competent surface transportation workforce at all levels of education, including elementary and secondary, community college, or technical training and apprenticeship programs in coordination with labor organizations, employers and other relevant stakeholders. Grants can also support professional development for in-service transportation workers.

"(3) CONSULTATION.--The Regional Centers shall consult with a variety of stakeholders in the education and transportation communities, including organizations representing the interests of elementary and secondary schools, community colleges, universities, and in-service transportation workers, in addition to organizations representing transportation professionals."

**SEC. 5205. STATE PLANNING AND RESEARCH.**

Section 505(a) of title 23, United States Code, is amended--

(1) in the first sentence, by striking "section 104 (other than sections 104(f) and 104(h)) and under section 144" and inserting "sections 104(b)(1), (2), (3), (4), and (5) of this title"; and

(2) in paragraph (3), by striking "under section 303" and inserting ", plans, and processes".

**SEC. 5206. INTERNATIONAL HIGHWAY TRANSPORTATION PROGRAM.**

(a) IN GENERAL.--Section 506 of title 23, United States Code, is amended--

(1) in the section heading, by striking "outreach";

(2) in subsection (a)--

(A) in the heading--

(i) by striking "may" and inserting "shall"; and

(ii) by striking "outreach";

(B) in paragraph (2), by striking "and" the second place it appears;

(C) in paragraph (3), by striking the period and inserting a semicolon; and

(D) by adding at the end the following:

"(4) to foster implementation in the United States of technological and other innovations identified in foreign countries; and

"(5) to enable the United States to assess foreign highway research and development programs related to the content areas named in 503(b)(2) of this title of high interest and to facilitate collaborative efforts with foreign countries and institutions.";

(3) in subsection (b)--

(A) in paragraph (1)--

(i) by inserting "and research programs" after "innovations"; and

(ii) by inserting ", including specifically, an International Highway Technology Scanning Program" after "United States";

(B) in paragraph (5), by striking "and";

(C) in paragraph (6), by striking the period and inserting "; and"; and

(D) by adding at the end the following:

"(7) the coordination of activities to implement recommendations resulting from the assessment of innovations research programs in foreign countries.";

(4) in subsection (c)--

(A) by redesignating paragraphs (2) through (6) and paragraphs (3) through (7); and

(B) by inserting after paragraph (1) the following:

"(2) tribal government;"; and

(5) by striking subsection (e).

(b) CONFORMING AMENDMENT.--The analysis of chapter 5 of title 23, United States Code, is amended by striking the item relating to section 506 and inserting the following:

"505. International highway transportation program."

**SEC. 5207. SURFACE TRANSPORTATION ENVIRONMENTAL COOPERATIVE RESEARCH PROGRAM**

Section 507 of title 23, United States Code, is repealed.

**SEC. 5208. NATIONAL COOPERATIVE FREIGHT RESEARCH PROGRAM**

Section 509 of title 23, United States Code, is amended by inserting after subsection (d)(5) the following:

"(6) COORDINATION OF COOPERATIVE RESEARCH.--The National Academy of Sciences shall coordinate research agendas, research project selections and competitions across all transportation-related cooperative research programs conducted by the National Academy of Sciences to ensure program efficiency, effectiveness, and sharing of research findings."

**SEC. 5209. UNIVERSITY TRANSPORTATION CENTERS PROGRAM.**

(a) IN GENERAL.--Section 5505 of title 49, United States Code, is amended to read as follows:

**"Sec. 5505. University transportation centers program**

"(a) IN GENERAL.--

"(1) ESTABLISHMENT AND OPERATION.--The Secretary of Transportation shall make grants under this section to eligible nonprofit institutions of higher learning to establish and operate university transportation center consortia.

"(2) ROLE OF EACH CONSORTIA.--The role of each consortia shall be the following:

"(A) Advance transportation expertise and technology in the many disciplines that comprise transportation through education, research and technology transfer.

"(B) Provide a critical transportation knowledge base outside of the Department and addresses critical workforce needs for the next generation of transportation leaders.

"(b) GRANTS.--The Secretary shall make a grant under this section to each eligible consortium in an amount of \$4,000,000 in each of fiscal years 2012 through 2017 to carry out this section. No more than 20 consortia may be selected and at least two of the consortia selected shall focus on public transportation issues.



"(c) FUNDING.--Of the amounts made available by section 5101 of the Transportation Opportunities Act, \$80,000,000 for each of fiscal years 2012 through 2017 shall be available to carry out this section.

"(d) COMPETITIVE SELECTION PROCESS.--

"(1) APPLICATIONS.--In order to be eligible to receive a grant under subsection (b), a consortium of nonprofit institutions of higher learning shall submit to the Secretary an application that is in such form and contains such information as the Secretary may require. Each consortium will include at least two nonprofit institutions of higher learning.

"(2) GENERAL SELECTION CRITERIA.--Except as otherwise provided by this section, the Secretary shall establish nonexclusive candidate topic areas that address Departmental priorities. The Secretary shall select each recipient of a grant under subsection (b) through a competitive process on the basis of the following:

"(A) The demonstrated ability of each consortia to address each specific topic area in the consortia's research and strategic plans.

"(B) The demonstrated research, technology transfer and education resources available to the recipient to carry out this section.

"(C) The capability of the recipient to provide leadership in making national and regional contributions to the solution of immediate and long-range transportation problems.

"(D) The capability of the recipient to conduct research, education and technology transfer activities that are multi-modal and multi-disciplinary in scope.

"(E) The recipient's demonstrated commitment to transportation workforce development programs through degree-granting programs, training seminars for practicing professionals, outreach activities to attract new entrants into the transportation field, and primary and secondary school transportation workforce outreach.

"(F) The recipient's demonstrated ability to disseminate results and spur the implementation of transportation research and education programs through a statewide or national continuing education program.

"(G) The recipient's demonstrated commitment to the use of peer review principles and other research best practices in the selection, management and dissemination of research projects.

"(H) The strategic plan the recipient proposes to carry out under the grant. The strategic plan shall include performance metrics to assess grant performance in research, technology transfer, education and outreach.

"(I) The ability of the consortium to implement its program in a cost efficient manner as demonstrated through lower overhead/facilities and administrative (F&A) shares and overall reduced administrative costs.

"(3) COMPETITION DEADLINE.--Not later than one year following the enactment of the Transportation Opportunities Act, the Secretary shall complete a competition among nonprofit institutions of higher learning for grants to establish and operate the university transportation center consortia referred to in this subsection.

"(e) NON-FEDERAL SHARE.--A grantee shall provide a 100 percent match for allowable costs of the grant activities carried out under this section. The non-Federal share may include funds provided to a recipient under section 504(b) or 505 of title 23 and transportation-related grants from the National Science Foundation, subject to prior approval by the Secretary.

"(f) PROGRAM COORDINATION.--

"(1) COORDINATION.--The Secretary shall coordinate the research, education, and technology transfer activities that grant recipients carry out under this section and disseminate the results of the research.

"(2) ANNUAL REVIEW AND EVALUATION.--At least annually, and consistent with the plan developed under section 508 of title 23, the Secretary shall review and evaluate programs of grant recipients.

"(3) PROGRAM EVALUATION AND OVERSIGHT.--The Secretary shall expend not more than 1.5 percent for each of fiscal years 2012 through 2017 from amounts made available to carry out this section to carry out coordination, evaluation and oversight of the consortia receiving assistance under this section and section 5506 of this title.

"(4) PROGRAM ADMINISTRATION.--The Secretary shall carry out this section acting through the Administrator of the Research and Innovative Technology Administration.

"(5) JOINT SELECTIONS.--For the purposes of making selections and grants for consortia focused on public transportation issues under subsection (b) of this section, as well as the selection of research topics to be addressed by the consortia, the selections shall be made jointly by the Administrators of the Federal Transit Administration and the Research and Innovative Technology Administration.

"(g) INFORMATION COLLECTION.--Any survey, questionnaire, or interview that the Administrator of the Research and Innovative Technology Administration considers necessary and reasonable to carry out the reporting of any program assessment or evaluation activity, including customer satisfaction assessments, for the University Transportation Centers program shall not be subject to chapter 35 of title 44, United States Code."

(b) CONFORMING AMENDMENT.--The analysis of chapter 55 of title 49, United States Code, is amended by amending the item relating to section 5505 to read as follows:

"5505. University transportation centers program."

**SEC. 5210. UNIVERSITY TRANSPORTATION MULTIMODAL RESEARCH GRANTS.**

(a) IN GENERAL.--Section 5506 of title 49, United States Code, is amended to read as follows:

**"Sec. 5506. University transportation multimodal research grants**

"(a) IN GENERAL.--

"(1) ESTABLISHMENT AND OPERATION.--The Secretary of Transportation shall make grants under this section to those nonprofit institutions of higher learning that are selected to operate or participate in an university transportation center consortia under section 5505 of this title.

"(2) OBJECTIVES.--Grants received under this section shall address specific cross-modal research priorities in the areas of transportation safety, state of good repair, economic competitiveness, livable communities and environmental sustainability, or other priorities and topics determined by the Secretary.

"(b) GRANTS.--The Secretary shall make competitive grants under this section to selected nonprofit institutions of higher learning in an amount to be determined by the Secretary in each of fiscal years 2012 through 2017 to carry out this section.

"(c) FUNDING.--Of the amounts made available by section 5101 of the Transportation Opportunities Act, \$20,000,000 for fiscal years 2012 through 2017 shall be available to carry out this section.

"(d) FEDERAL SHARE.--The federal share of the costs of activities carried out using a grant made under this section is 100 percent.

"(e) COMPETITION DEADLINE.--Not later than 180 days following the completion of the competition among nonprofit institutions of higher learning for grants to establish and operate the university transportation center consortia referred to in section 5505 of this title, the Secretary shall initiate a competition for multimodal research grants under this section.

"(f) PROGRAM COORDINATION.--

"(1) COORDINATION.--The Secretary shall coordinate the research, education, and technology transfer activities that grant recipients carry out under this section and disseminate the results of the research.

"(2) ANNUAL REVIEW AND EVALUATION.--At least annually, and consistent with the plan developed under section 508 of title 23, the Secretary shall review and evaluate programs of grant recipients.

"(3) MANAGEMENT AND OVERSIGHT.--The Secretary shall expend not more than 1.5 percent for each of fiscal years 2012 through 2017 from amounts made available to carry out this section to carry out management and oversight of the consortia receiving assistance under this section and section 5505.

"(4) PROGRAM ADMINISTRATION.--The Secretary shall carry out this section acting through the Administrator of the Research and Innovative Technology Administration."

(b) CONFORMING AMENDMENT.--The analysis of chapter 55 of title 49, United States Code, is amended by amending the item relating to section 5506 to read as follows:

"5506. University transportation multimodal research grants."

## **SEC. 5211. MULTIMODAL INNOVATIVE RESEARCH PROGRAM.**

(a) ESTABLISHMENT.--The Secretary shall establish in the Research and Innovative Technology Administration a Multimodal Innovative Research Program.

(b) PURPOSE.--The program supports the following:

- (1) Departmental goals by applying state-of-the-art advanced technology solutions to multimodal transportation issues; and
- (2) key partnerships across the Department and with other Federal agencies to fully leverage their investments in transportation research and technology developments to address transportation problems at modal interfaces or that affect more than one transportation mode.

(c) CONTENT.--The program shall--

- (1) address issues affecting policy, cross-modal concerns such as efficient and intermodal goods and passenger movements, development of advanced vehicle technologies, and application of existing technologies;
- (2) competitively award contracts or cooperative agreements for advanced multimodal transportation research to facilitate practical innovative approaches to solve transportation problems related to attainment of Departmental strategic goals and multimodal elements of the Transportation Research and Development Strategic Plan;
- (3) demonstrate transportation system applications of advanced transportation technologies, methodologies, policies and decisions.

(4) disseminate best practices in planning, operations, design and maintenance of transportation and related systems; and

(5) provide technology identification, modification and dissemination through outreach to other federal agencies, state and local transportation agencies and other public, private and academic stakeholders in the industry.

(d) MANAGEMENT AND OVERSIGHT.--The Secretary shall expend not more than 1.5 percent for each of fiscal years 2012 through 2017 from amounts made available to carry out this section to carry out management and oversight of the Multimodal Innovative Research Program.

(e) FUNDING.--The Secretary shall make available, from the amounts made available under section 5101 of the Transportation Opportunities Act, \$20,000,000 for each of fiscal years 2012 through 2017 to establish and maintain the Multimodal Innovative Research Program.

## **SEC. 5212. BUREAU OF TRANSPORTATION STATISTICS.**

(a) IN GENERAL.--Subtitle III of title 49, United States Code, is amended by inserting the following after Chapter 63, as added by this Act:

### **"CHAPTER 65--BUREAU OF TRANSPORTATION STATISTICS**

"Sec.

"6501. Establishment.

"6502. Director.

"6503. Responsibilities.

"6504. National Transportation Library.

"6505. Advisory Council on Transportation Statistics.

"6506. Transportation statistical collection, analysis, and dissemination.

"6507. Furnishing of information, data, or reports by Federal agencies.

"6508. Prohibition on certain disclosures.

"6509. Data access.

"6510. Proceeds of data product sales.

"6511. Information collection.

"6512. National Transportation Atlas Database.

"6513. Limitations on statutory construction.

"6514. Research and development grants.

"6515. Transportation Statistics Annual Report.

"6516. Mandatory response authority for data collections.

#### **"Sec. 6501. Establishment**

There is established in the Research and Innovative Technology Administration a Bureau of Transportation Statistics.

**"Sec. 6502. Director**

"(a) APPOINTMENT.--The Bureau shall be headed by a Director, who shall be appointed in the competitive service by the Secretary of Transportation.

"(b) QUALIFICATIONS.--The Director shall be appointed from among individuals who are qualified to serve as the Director by virtue of their training and experience in the collection, analysis, and use of transportation statistics.

**"Sec. 6503. Responsibilities**

"(a) DUTIES OF THE DIRECTOR.--The Director of the Bureau shall serve as the Secretary's senior advisor on data and statistics and shall be responsible for carrying out the following duties:

"(1) Ensuring that the statistics compiled under paragraph (6) are designed to support transportation decisionmaking by the Federal Government, State and local governments, metropolitan planning organizations, transportation-related associations, the private sector (including the freight community), and the public.

"(2) Establishing on behalf of the Secretary a program to effectively integrate safety data across modes and to address gaps in existing Department safety data programs.

"(3) Working with the operating administrations of the Department of Transportation to establish and implement the Bureau's data programs and to improve the coordination of information collection efforts with other Federal agencies.

"(4) Continually improving surveys and data collection methods to improve the accuracy and utility of transportation statistics.

"(5) Encouraging the standardization of data, data collection methods, and data management and storage technologies for data collected by the Bureau, the operating administrations of the Department, States, local governments, metropolitan planning organizations, and private sector entities.

"(6) Collecting, compiling, analyzing, and publishing a comprehensive set of transportation statistics on the performance and impacts of the national transportation system, including statistics on--

"(A) transportation safety across all modes and intermodally;

"(B) the state of good repair of U.S. transportation infrastructure.

"(C) the extent, connectivity, and condition of the transportation system, building on the national transportation atlas database developed under section 6513 of this title;

"(D) economic efficiency across the entire transportation sector;

"(E) the effects of the transportation system on global and domestic economic competitiveness;

"(F) demographic, economic, and other variables influencing travel behavior, including choice of transportation mode and goods movement;

"(G) transportation-related variables that influence the domestic economy and global competitiveness;

"(H) economic costs and impacts for passenger travel and freight movement;

"(I) intermodal and multimodal passenger movement;

"(J) intermodal and multimodal freight movement; and

"(K) consequences of transportation for the human and natural environment, sustainable transportation and livable communities.

"(7) Building and disseminating the transportation layer of the National Spatial Data Infrastructure developed under Executive Order No. 12906, including coordinating the development of transportation geospatial data standards, compiling intermodal geospatial data and collecting geospatial data that is not being collected by others.

"(8) Issuing guidelines for the collection of information by the Department that is required for transportation statistics, modeling, economic assessment, and program assessment in order to ensure that such information is accurate, reliable, relevant, uniform and in a form that permits systematic analysis by the Department.

"(9) Reviewing and reporting to the Secretary on the sources and reliability of the statistics proposed by the heads of the operating administrations of the Department to measure outputs and outcomes as required by the Government Performance and Results Act of 1993 (Public Law 103–62; 107 Stat. 285), and carrying out other reviews of the sources and reliability of other data collected or statistical information published by the heads of the operating administrations of the Department requested by the Secretary.

"(10) Making the statistics published under this subsection readily accessible to the public.

"(b) ACCESS TO FEDERAL DATA.--In carrying out subsection (a)(2), the Director shall be provided access to all safety data held by any agency of the Department of Transportation, or any other Federal Government agency, that is germane to carrying out subsection (a).

"(c) INTERMODAL TRANSPORTATION DATABASE.--

"(1) IN GENERAL.--In consultation with the Under Secretary for Policy, the Assistant Secretaries, and the heads of the operating administrations of the Department, the Director shall establish and maintain a transportation database for all modes of transportation.

"(2) USE.--The database shall be suitable for analyses carried out by the Federal Government, the States, and metropolitan planning organizations.

"(3) CONTENTS.--The database shall include--

"(A) information on the volumes and patterns of movement of goods, including local, interregional, and international movement, by all modes of transportation and intermodal combinations and by relevant classification;

"(B) information on the volumes and patterns of movement of people, including local, interregional, and international movements, by all modes of transportation (including bicycle and pedestrian modes) and intermodal combinations and by relevant classification;

"(C) information on the location and connectivity of transportation facilities and services; and

"(D) a national accounting of expenditures and capital stocks on each mode of transportation and intermodal combination.

#### **"Sec. 6504. National Transportation Library**

"(a) PURPOSE AND ESTABLISHMENT.--In order to support the information management and decision making needs of transportation at Federal, State, and local levels there is established in the Bureau of Transportation Statistics a National Transportation Library (hereafter referred to as 'Library') that shall--

"(1) be headed by an individual who is highly qualified in library and information science;

"(2) acquire, preserve, and manage transportation information and information products and services for use of the Department, other Federal agencies and the general public;

"(3) provide reference and research assistance;

"(4) serve as a central depository for USDOT research results and technical publications;

"(5) provide a central clearinghouse for transportation data and information in the Federal Government;

"(6) serve as coordinator and policy lead for transportation information access;

"(7) provide transportation information and information products and services to agencies of the Department of Transportation and the federal Government, public and private organizations, and individuals, within the United States and internationally;

"(8) coordinate efforts among and cooperate with transportation libraries, information providers, and technical assistance centers, in conjunction with private industry and other transportation library and information centers, toward the development of a comprehensive



transportation information and knowledge network supporting activities in sections 6503(a)(6)(A) through (K) of this title; and

"(9) engage in such other activities as the Director determines appropriate and as the Library's resources permit.

"(b) ACCESS.--The Director shall publicize, facilitate and promote access to the information products and services as described in subsection (a), with the goal of improving the ability of the transportation community to share information and the ability of the Director to make statistics and other information readily accessible under section 6503(a)(10) of this title.

"(c) AGREEMENTS.--

"(1) IN GENERAL.--The Director may enter into agreements with, provide grants to, and receive funds from any State, and other political subdivision, organization, business, or individual for the purpose of conducting activities under this section.

"(2) CONTRACTS, GRANTS, AND AGREEMENTS.--The Library is authorized to initiate and support specific information and data management, access, and exchange activities in connection with matters relating to Department of Transportation strategic goals, knowledge networking, national and international cooperation, by making contracts or grants for the conduct of such activities.

"(3) FUNDS.--Funds received under this subsection for payments for library products and services or other activities shall be deposited in the BTS allocation account and remain available to the Library until expended.

### **"Sec. 6505. Advisory Council on Transportation Statistics**

"(a) IN GENERAL.--The Director shall maintain an advisory council on transportation statistics.

"(b) FUNCTION.--The function of the advisory council established under this subsection is to--

"(1) advise the Director on the quality, reliability, consistency, objectivity, and relevance of transportation statistics and analyses collected, supported, or disseminated by the Bureau and the Department; and

"(2) advise the Director on methods to encourage cooperation and interoperability of transportation data collected by the Bureau, the operating administrations of the Department, States, local governments, metropolitan planning organizations, and private sector entities.

"(c) MEMBERSHIP.--The advisory council under this subsection shall be composed of not fewer than 9 and not more than 11 members appointed by the Director, who are not officers or employees of the United States.

"(d) TERMS OF APPOINTMENT.--

"(1) IN GENERAL.--Except as provided in paragraph (2), members of the advisory council shall be appointed to staggered terms not to exceed 3 years. A member may be renominated for one additional 3-year term.

"(2) CURRENT MEMBERS.--Members serving on the Advisory Council on Transportation Statistics as of the date of the enactment of the Transportation Opportunities Act shall serve until the end of their appointed terms.

"(e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.-

-The Federal Advisory Committee Act shall apply to the advisory council established under this section, except that section 14 of the Act shall not apply.

**"Sec. 6506. Transportation statistical collection, analysis, and dissemination**

"To ensure that all transportation statistical collection, analysis, and dissemination is carried out in a coordinated manner, the Director is authorized to

--

"(1) utilize, with their consent, the services, equipment, records, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefore, and to enter into agreements with such agencies and instrumentalities for purposes of data collection and analysis;

"(2) confer and cooperate with foreign governments, International Organizations, State, municipal, and other local agencies;

"(3) request such information, data, and reports from any Federal agency as may be required to carry out the purposes of this section;

"(4) encourage replication, coordination and sharing among transportation agencies regarding information systems, information policy, and data; and

"(5) confer and cooperate with Federal statistical agencies as needed to carry out the purposes of this section, including by entering into cooperative data sharing agreements in conformity with all laws and regulations applicable to the disclosure and use of data.

**"Sec. 6507. Furnishing of information, data, or reports by Federal agencies**

"Federal agencies requested to furnish information, data, or reports under section 6503(b) of this title shall provide such information to the Bureau as is required to carry out the purposes of this section.

**"Sec. 6508. Prohibition on certain disclosures**

"(a) IN GENERAL.--An officer, employee, or contractor of the Bureau may not--

"(1) make any disclosure in which the data provided by an individual or organization under section 6503 of this title can be identified;

"(2) use the information provided under section 6503 of this title for a nonstatistical purpose; or

"(3) permit anyone other than an individual authorized by the Director to examine any individual report provided under section 6503 of this title.

"(b) COPIES OF REPORTS.--

"(1) IN GENERAL.--No department, bureau, agency, officer, or employee of the United States (except the Director in carrying out this section) may require, for any reason, a copy of any report that has been filed under section 6503 of this title with the Bureau or retained by an individual respondent.

"(2) LIMITATION ON JUDICIAL PROCEEDINGS.--A copy of a report described in subparagraph (A) that has been retained by an individual respondent or filed with the Bureau or any of its employees, contractors, or agents--

"(A) shall be immune from legal process; and

"(B) shall not, without the consent of the individual concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceedings.

"(3) APPLICABILITY.--This paragraph shall apply only to reports that permit information concerning an individual or organization to be reasonably determined by direct or indirect means.

"(c) INFORMING RESPONDENT OF USE OF DATA.--In a case in which the Bureau is authorized by statute to collect data or information for a non-statistical purpose, the Director shall clearly distinguish the collection of the data or information, by rule and on the collection instrument, so as to inform a respondent who is requested or required to supply the data or information of the non-statistical purpose.

#### **"Sec. 6509. Data access**

"The Director shall have access to transportation and transportation-related information in the possession of any Federal agency, except where the disclosure of such information to another Federal agency is expressly prohibited by law.

#### **"Sec. 6510. Proceeds of data product sales**

"Notwithstanding section 3302 of title 31, funds received by the Bureau from the sale of data products, for necessary expenses incurred, may be credited to the Highway Account of the Transportation Trust Fund for the purpose of reimbursing the Bureau for the expenses.

**"Sec. 6511. Information collection**

"As the head of an independent Federal statistical agency, the Director may consult directly with the Office of Management and Budget concerning any survey, questionnaire, or interview that the Director considers necessary to carry out the statistical responsibilities of this chapter.

**"Sec. 6512. National Transportation Atlas Database**

"(a) IN GENERAL.--The Director shall develop and maintain a national transportation atlas database that is comprised of geospatial databases that depict--

"(1) transportation networks;

"(2) flows of people, goods, vehicles, and craft over the networks;

and

"(3) social, economic, and environmental conditions that affect or are affected by the networks.

"(b) INTERMODAL NETWORK ANALYSIS.--The databases shall be capable of supporting intermodal network analysis.

**"Sec. 6513. Limitations on statutory construction**

"Nothing in this chapter shall be construed--

"(1) to authorize the Bureau to require any other department or agency to collect data; or

"(2) to reduce the authority of any other officer of the Department to collect and disseminate data independently.

**"Sec. 6514. Research and development grants**

"The Secretary may make grants to, or enter into cooperative agreements or contracts with, public and nonprofit private entities (including State transportation departments, metropolitan planning organizations, and institutions of higher education) for--

"(1) investigation of the subjects specified in section 6503 of this title and research and development of new methods of data collection, standardization, management, integration, dissemination, interpretation, and analysis;

"(2) demonstration programs by States, local governments, and metropolitan planning organizations to coordinate data collection, reporting, management, storage, and archiving to simplify data comparisons across jurisdictions;

"(3) development of electronic clearinghouses of transportation data and related information, as part of the National Transportation Library under section 6504 of this title and

"(4) development and improvement of methods for sharing geographic data, in support of the database under section 6513 of this title and the National Spatial Data Infrastructure.

### **"Sec. 6515. Transportation Statistics Annual Report**

"The Director shall submit to the President and Congress a transportation statistics annual report, which shall include information on items referred to in section 6503(a)(6) of this title, documentation of methods used to obtain and ensure the quality of the statistics presented in the report, and recommendations for improving transportation statistical information.

### **"Sec. 6516. Mandatory response authority for data collections**

"Whoever, being the owner, official, agent, person in charge, or assistant to the person in charge of any corporation, company, business, institution, establishment, organization of any nature whatsoever or the member of a household, neglects or refuses, when requested by the Director or other authorized officer, employee, or contractor of the Bureau, to answer completely and correctly to the best of the individual's knowledge all questions relating to the corporation, company, business, institution, establishment, or other organization or household, or to make available records or statistics in the individual's official custody, contained in a data collection request prepared and submitted under the authority of section 6503(a) of this title, shall be fined not more than \$500, except that, if the individual willfully gives a false answer to such a question, the individual shall be fined not more than \$10,000."

(b) RULES OF CONSTRUCTION.--In the case of the transfer of provisions of section 111 of title 49, United States Code, under subsection (a) of this section, to chapter 65 of title 49, the following rules of construction apply:

(1) For purposes of determining whether one provision of law supersedes another based on enactment later in time, a chapter 65 provision is deemed to have been enacted on the date of enactment of the corresponding section 111 provision.

(2) A reference to a chapter 65 provision is deemed to refer to the corresponding section 111 provision.

(3) A reference to a section 111 provision, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding chapter 65 provision.

(4) A regulation, order, or other administrative action in effect under a section 111 provision continues in effect under the corresponding chapter 65 provision.

(5) An action taken or an offense committed under a section 111 provision is deemed to have been taken or committed under the corresponding chapter 65 provision.

(c) CONFORMING AMENDMENTS.--

(1) REPEAL.--Section 111 of title 49, United States Code, is repealed, and the item relating to section 111 in the analysis of chapter 1 of title 49 is deleted.

(2) ANALYSIS OF SUBTITLE III.--The analysis for subtitle III of title 49, United States Code, is amended by inserting the following after the item for chapter 63, as added by this Act:

"65. Bureau of Transportation Statistics. . . . .  
.6501".

**SEC. 5213. 5.9 GHz VEHICLE-TO-VEHICLE AND VEHICLE-TO-INFRASTRUCTURE COMMUNICATIONS SYSTEMS DEPLOYMENT.**

(a) IN GENERAL.--Chapter 5 of title 23, United States Code, is amended by inserting after section 513 the following:

**"Sec. 514. 5.9 GHz vehicle-to-vehicle and vehicle-to-infrastructure communications systems deployment**

"(a) IN GENERAL.--Within three years of the enactment of this section, the Secretary shall submit to appropriate committees of Congress a report, defining a recommended implementation path for Dedicated Short Range Communications (DSRC) technology and applications. The report shall include guidance concerning the relationship of the proposed DSRC deployment to ITS National Architecture and Standards.

"(b) NATIONAL RESEARCH COUNCIL REVIEW.--The Secretary shall enter into an agreement for the review of this report by the National Research Council."

(b) CONFORMING AMENDMENT.--The analysis of chapter 5 of title 23, United States Code, is amended by inserting after the item relating to section 513 the following:

"514. 5.9 GHz vehicle-to-vehicle and vehicle-to-infrastructure communications systems deployment."

**SEC. 5214. ADMINISTRATIVE AUTHORITY.**

Section 112 of title 49, United States Code, is amended by inserting after subsection (e) the following:

"(f) PROMOTIONAL AUTHORITY.--Funds authorized to be appropriated for necessary expenses for administration and operations of the Research and Innovative Technology Administration shall be available to purchase promotional items of nominal value for use in the recruitment of individuals and to promote the programs of the Research and Innovative Technology Administration.

"(g) PROGRAM EVALUATION AND OVERSIGHT.--For the fiscal years 2012 through 2017, the Administrator is authorized to expend not more than 1.5 percent of the funds authorized to be appropriated for necessary expenses for administration and operations of the Research and Innovative Technology Administration for coordination, evaluation and oversight of the programs administered by the Administration.

"(h) COLLABORATIVE RESEARCH AND DEVELOPMENT.--

"(1) IN GENERAL.--To encourage innovative solutions to multimodal transportation problems and stimulate the deployment of new technology, the Administrator may carry out, on a cost-shared basis, collaborative research and development with--

"(A) non-Federal entities, including State and local governments, foreign governments, colleges and universities, corporations, institutions, partnerships, sole proprietorships, and trade associations that are incorporated or established under the laws of any State;

"(B) Federal laboratories; and

"(C) other Federal agencies.

"(2) COOPERATION, GRANTS, CONTRACTS, AND AGREEMENTS.--Notwithstanding any other provision of law, the Administrator may directly initiate contracts, grants, other transactions and cooperative research and development agreements (as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)) to fund, and accept funds from, the Transportation Research Board of the National Research Council of the National Academy of Sciences, State departments of transportation, cities, counties, universities, associations and their agents to conduct joint transportation research and technology efforts.

"(3) FEDERAL SHARE.--

"(A) IN GENERAL.--The Federal share of the cost of activities carried out under a cooperative research and development agreement entered into under this subsection shall not exceed 50 percent except that, if there is substantial public interest or benefit, the Secretary may approve a greater Federal share.

"(B) NON-FEDERAL SHARE.--All costs directly incurred by the non-Federal partners, including personnel, travel, facility and hardware development costs, shall be credited toward the non-

Federal share of the cost of the activities described in subparagraph (A).

"(4) USE OF TECHNOLOGY.--The research, development, or use of a technology under a cooperative research and development agreement entered into under this subsection, including the terms under which the technology may be licensed and the resulting royalties may be distributed, shall be subject to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

"(5) WAIVER OF ADVERTISING REQUIREMENTS.--Section 3709 of the Revised Statutes (41 U.S.C. 5) shall not apply to a contract, grant or other agreement entered into under this chapter."

### **SEC. 5215. PRIZE AUTHORITY.**

(a) IN GENERAL.--Chapter 3 of title 49, United States Code, is amended by inserting the following before section 336:

#### **"Sec. 335. Prize authority**

"(a) PRIZE AUTHORITY.--The Secretary of Transportation may carry out a program to competitively award cash prizes to stimulate innovation in basic and applied research, technology development, and prototype demonstration that have the potential for application to the national transportation system. The Secretary shall carry out the program to award prizes in conformity with this section.

"(b) TOPICS.--In selecting topics for prize competitions, the Secretary shall consult widely both within and outside the Federal Government. The Secretary shall give consideration to prize goals that demonstrate innovative approaches and strategies to improve the safety, efficiency and sustainability of the transportation system.

"(c) ADVERTISING.--The Secretary shall widely advertise prize competitions to encourage participation.

"(d) REQUIREMENTS AND REGISTRATION.--For each prize competition, the Secretary shall publish notice on a public website announcing the subject of the competition, the rules for being eligible to participate in the competition, the amount of the prize, and the basis on which a winner will be selected.

"(e) ELIGIBILITY.--To be eligible to win a prize under this section, an individual or entity--



"(1) shall have registered to participate in the competition pursuant to any rules promulgated by the Secretary under this section;

"(2) shall have complied with all the requirements under this section;

"(3) in the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

"(4) shall not be a Federal entity or Federal employee acting within the scope of his or her employment.

"(f) LIABILITY.--

"(1) ASSUMPTION OF RISK.--A registered participant shall agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in a competition, whether such injury, death, damage, or loss arises through negligence or otherwise. For the purposes of this paragraph, the term 'related entity' means a contractor or subcontractor at any tier, and a supplier, user, customer, cooperating party, grantee, investigator, or detailee.

"(2) FINANCIAL RESPONSIBILITY.--A participant shall obtain liability insurance or demonstrate financial responsibility, in amounts determined by the Secretary, for claims by--

"(A) a third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in a competition, with the Federal Government named as an additional insured under the registered participant's insurance policy and registered participants agreeing to indemnify the Federal Government against third party claims for damages arising from or related to competition activities; and

"(B) the Federal Government for damage or loss to Government property resulting from such an activity.

"(g) JUDGES.--For each competition, the Department, either directly or through an agreement under subsection (h) of this section, shall assemble a panel of qualified judges to select the winner or winners of the prize competition on the basis described in subsection (d) of this section. Judges for each competition shall include individuals from outside the Administration, including from the private sector. A judge may not--

"(1) have personal or financial interests in, or be an employee, officer, director, or agent of any entity that is a registered participant in a competition; or

"(2) have a familial or financial relationship with an individual who is a registered participant.

"(h) ADMINISTERING THE COMPETITION.--The Secretary may enter into an agreement with a private, nonprofit entity to administer the prize competition, subject to the provisions of this section.

"(i) FUNDING.--

"(1) PRIVATE SECTOR FUNDING.--A prize under this section may consist of Federal appropriated funds and funds provided by the private sector for cash prizes. The Secretary may accept funds from other Federal agencies, state and local governments, and metropolitan planning organizations for the cash prizes. The Secretary may not give any special consideration to any private sector entity in return for a donation.

"(2) AVAILABILITY OF FUNDS.--Notwithstanding any other provision of law, funds appropriated for prize awards under this section shall remain available until expended, and may be transferred, reprogrammed, or expended for other purposes only after the expiration of 10 fiscal years after the fiscal year for which the funds were originally appropriated. No provision in this section permits obligation or payment of funds in violation of the Anti-Deficiency Act (31 USC 1341).

"(3) PRIZE ANNOUNCEMENT.--A prize may not be announced under this subsection until all the funds needed to pay out the announced amount of the prize have been appropriated or committed in writing by a private source. The Secretary may increase the amount of a prize after an initial announcement is made under this subsection if--

"(A) notice of the increase is provided in the same manner as the initial notice of the prize; and

"(B) the funds needed to pay out the announced amount of the increase have been appropriated or committed in writing by a private source.

"(4) CONGRESSIONAL NOTIFICATION.--A prize competition under this section may offer a prize in an amount greater than \$1,000,000 only after 30 days have elapsed after written notice has been transmitted to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

"(5) AWARD LIMIT.--A prize competition under this section may not result in the award of more than \$25,000 in cash prizes without the approval of the Secretary.

"(j) USE OF DEPARTMENT NAME AND INSIGNIA.--A registered participant in a competition under this section may use the Department's name, initials, or insignia only after prior review and written approval by the Department.

"(k) COMPLIANCE WITH EXISTING LAW.--The Federal Government shall not, by virtue of offering or providing a prize under this section, be responsible for compliance by registered participants in a prize competition with

Federal law, including licensing, export control, and non-proliferation laws, and related regulations.".

(b) CONFORMING AMENDMENT.--The analysis of Chapter 3 of title 49, United States Code, is amended by inserting before the item relating to section 336 the following:

"335. Prize authority."

**SEC. 5216. TRANSPORTATION RESEARCH AND DEVELOPMENT STRATEGIC PLANNING.**

Section 508(a)(2)(A) of title 23, United States Code, is amended to read as follows:

"(A) describe the primary purposes of the transportation research and development program, which shall include, at a minimum--

"(i) promoting safety;

"(ii) reducing congestion and improving mobility;

"(iii) protecting and enhancing the environment;

"(iv) preserving the existing transportation system;

and

"(v) improving the sustainability and livability impacts of transportation infrastructure;".

**SEC. 5217. USE OF FUNDS FOR ITS ACTIVITIES.**

Section 513 of title 23, United States Code, is amended to read as follows:

**"Sec. 513. Use of funds for ITS activities**

"(a) IN GENERAL.--The Secretary is authorized, for each fiscal year, to use funds made available to carry out the Intelligent Transportation Systems (ITS) program on intelligent transportation system outreach, websites, public relations, displays, tours, and brochures.

"(b) PURPOSE.--The funds authorized by this section are intended to develop, administer, communicate, and promote the use of products of research, technology, and technology transfer programs under this section.

**"(c) ITS DEPLOYMENT INCENTIVES.--**

"(1) IN GENERAL.--The Secretary is authorized to develop and implement incentives to accelerate deployment of ITS technologies and services within all funding programs authorized by the Transportation Opportunities Act.

"(2) COMPREHENSIVE PLAN.--To carry out the authority of this subsection, the Secretary shall develop a detailed and comprehensive plan that addresses how incentives may be adopted, where appropriate, through the existing deployment activities carried out by surface transportation modal administrations."

## **TITLE VI-- MISCELLANEOUS**

### **SEC. 6001. AMENDMENTS TO THE MARINE HIGHWAYS INITIATIVE.**

(a) PROGRAM PURPOSE.--Section 55601(a) of title 46, United States Code, is amended by striking "landside congestion." and inserting "landside congestion and to make more efficient use of the Nation's waterways."

(b) DESIGNATION OF ROUTES.--Section 55601(c) of title 46, United States Code, is amended by striking "use the waterways to relieve landside congestion along coastal corridors" and inserting "make more efficient use of the nation's waterways."

(c) PROJECT DESIGNATION.--Section 55601(d) of title 46, United States Code, is amended to read as follows:

"(d) PROJECT DESIGNATION.--The Secretary may designate a project as a short sea transportation project if the Secretary determines that the project will provide transportation services for passengers or freight (or both) that may reduce congestion on landside infrastructure or lead to other public benefits, as determined by the Secretary, using documented vessels."

(d) MULTISTATE, STATE AND REGIONAL TRANSPORTATION PLANNING.--Section 55601(f)(3) of title 46, United States Code, is amended to read as follows:

"(3) encourage groups of States and multi-State transportation entities to determine how short sea transportation can address public benefits, such as congestion, bottlenecks, environmental concerns, or other transportation challenges."

(e) DOCUMENTATION.--Section 55605 of title 46, United States Code, is amended--

(1) by striking "means the carriage by vessel of cargo" and inserting "means the carriage of freight or passengers by documented vessel"; and

(2) by inserting "or its territories or its commonwealths" after "United States" each place it appears.

### **SEC. 6002. GOVERNMENT-WIDE REGULATIONS FOR PROGRAMS ESTABLISHED UNDER 5 U.S.C. 7905 FOR TRANSIT PASSES AND TRANSIT BENEFITS.**

(a) ESTABLISHMENT OF AUTHORITY FOR GOVERNMENT-WIDE REGULATION.--Chapter 3 of title 49, United States Code, is amended by inserting the following after section 337:

**"Sec. 338. Establishment of Government-wide regulations for transit passes and transit benefits authorized under 5 U.S.C. 7905**

"(a) IN GENERAL.--Notwithstanding section 7905(d) of title 5, the Secretary of Transportation is authorized to carry out a program that establishes uniform standards for developing and supporting agency transit pass and transit benefits authorized under section 7905 of title 5. The program shall include, at a minimum, the requirements and specifications of this section.

"(b) ISSUANCE OF IMPLEMENTING REGULATIONS.--The Secretary shall implement the requirements of subsection (a) through the promulgation of regulations subject to notice and public comment that address, at a minimum, the following:

"(1) Overall policy and guidance for agencies offering transit pass and transit benefits programs under section 7905 of title 5, with Secretarial authority to provide agency-specific exemptions in the interests of flexible application of program specifications.

"(2) Necessary internal control requirements related to the use, payment, accounting, and reimbursement of transit benefits.

"(3) Availability of benefits to an employee only if the following requirements are met:

"(A) As part of an application for transit benefits, an employee provides, at a minimum, the employee's home and work addresses, a listing of the employee's commuting costs, and a certification of the employee's eligibility for benefits under the program.

"(B) The application contains a warning against making false statements.

"(C) The employer undertakes periodic independent verification of application information to ensure that--

"(i) the eligibility of an employee for benefits from an agency under the program is verified by an approving agency official;

"(ii) employee commuting costs are verified by an approving agency official;

"(iii) applicants are checked against parking-benefit agency records to ensure that the employee is not receiving parking or parking related benefits from the agency;

"(iv) benefits provided by an agency under the program are adjusted in cases of employee travel, leave, or change of address; and

"(v) removal from the program is included in the agency procedures upon an employee separating from employment with the agency.

"(4) The capability to distribute transit benefits by various paper and electronic media with a view to supporting an open architecture for a 'universal' electronic medium in the future.

"(c) **BENEFITS MANAGEMENT.**--The management of transit benefits shall be--

"(1) in conformity with the requirements of subsection (3); and

"(2) issued by the Department of Transportation or another Federal agency or instrumentality.

"(d) **ELECTRONIC FARE MEDIA EXCLUDED FROM EMPLOYEE INCOME.**--Transit benefits made available to an employee under section 7905 of title 5 shall be excluded from the employee's gross income if they--

"(1) are dispensed by an electronic fare media approved by the Secretary; or

"(2) otherwise qualify for exclusion under section 132 of the Internal Revenue Code of 1986 (26 U.S.C. 132).

"(e) **REPORTING REQUIREMENTS.**--Not later than September 30th of the first fiscal year beginning after the date of the enactment of this section, and annually thereafter, an agency that provides transit benefits shall submit to the Department of Transportation a report on implementation of the transit benefits program for its employees. The report submitted shall contain at a minimum the following:

"(1) An assessment of each agency's implementation of program guidance and regulations.

"(2) Information on the total number of Federal employees enrolled in the program at the agency.

"(3) Recommendations to increase program participation and thereby reduce single occupancy vehicle use by all Federal employees nationwide.

"(f) **EXISTING PROGRAMS.**--Until the Secretary determines otherwise, program, policies, and procedures to encourage commuting alternatives in effect on the date of the enactment of this section, including programs under section 3049(a) of Public Law 109-59 (Aug. 10, 2005) (5 U.S.C. 7905 note), are authorized to remain in effect.

"(g) **DEFINITIONS.**--In this section:

"(1) **AGENCY.**--the term 'Agency' has the meaning the term has in section 7905(a)(2) of title 5.

"(2) ELECTRONIC MEDIA.--The term 'Electronic Media' means a reloadable debit card or other electronic means that improves funds control and management of the transit benefit."

(b) EXPLICIT AUTHORITY TO ACCEPT INTER-AGENCY REIMBURSEMENT PAYMENTS.--Section 327 of title 49, United States Code, is amended by inserting the following at the end:

"(e)(1) In addition to the authorities of subsections (a)-(d) of this subsection, the fund is available to implement Federal transit benefit activities authorized by section 338 of this title and 5 U.S.C. 7905, including accepting reimbursements from agencies other than the Department of Transportation for transit-benefit distribution services.

"(2) In using amounts from the Department of Transportation's working capital fund as a transit benefit service provider, the Department of Transportation is authorized to enter into agreements and to procure services on behalf of other agencies for the government-wide provision of transit benefits."

(c) CONFORMING AMENDMENT.--The analysis of Chapter 3 of title 49, United States Code, is amended by inserting the following after the item relating to section 337:

"338. Establishment of Government-wide regulations for transit passes and transit benefits authorized under 5 U.S.C. 7905."

### **SEC. 6003. APPLICATION OF SEP-15 PROGRAM DEPARTMENT-WIDE.**

(a) IN GENERAL.--Chapter 3 of title 49, United States Code, is amended by inserting the following after section 311, as added by this Act:

#### **"Sec. 312. Special experimental authority for infrastructure projects**

"(a) IN GENERAL.--The Secretary of Transportation may, upon application or the Secretary's initiative and on a project-by-project basis, exercise the exemption authority under this section to encourage tests and experimentation by recipients of grants and related credit assistance under this title and title 23 of innovations in infrastructure project conceptualization, development and management, and timely delivery. An exemption may be granted only in a case where it is consistent with the overall objectives of national transportation policy and can serve as a necessary and cost-effective solution to an identified problem in meeting transportation infrastructure objectives.

"(b) EXEMPTION AUTHORITY.--

"(1) IN GENERAL.--Notwithstanding the provisions of this title and title 23, the Secretary may exempt a project from a statutory

requirement of those titles (except as provided in paragraph (2) of this subsection), or a regulation based on those titles, when the exemption will allow testing of a significant innovation in infrastructure project conceptualization, development, and delivery that would otherwise be prohibited. The authority of this section does not permit the exemption of any other requirement of law or associated regulation, including the National Environmental Policy Act.

"(2) LIMITATION.--The Secretary may not exempt a project under the authority of this section from the following provisions of law:

"(A) sections 113 and 313 of title 23;

"(B) sections 5323(j), 5333(a); 24305; 24405, 47102, 47105, 47106, 47107, 47112(b), and 50101 of title 49;

"(3) WRITTEN JUSTIFICATION.--In the case of each project for which the Secretary issues an exemption, the Secretary shall issue a written explanation--

"(A) of the basis for the exemption and its justification as encouraging one or more innovations in infrastructure project conceptualization, development and management, or timely delivery; and

"(B) how the exemption is consistent with the overall objectives of national transportation policy and can serve as a necessary and cost-effective solution to an identified problem in meeting transportation infrastructure objectives.

"(c) PROJECT ELIGIBILITY.--An exemption under the authority of this section shall be available only in the case of a project that is otherwise eligible for funding under this title or title 23.

"(d) APPLICATION PROCESS.--The Secretary shall establish an application process under which a potential grant recipient may submit a special experimental innovation and exemption proposal, which process provides at a minimum for the following:

"(1) The applicant identifies the statutory or regulatory requirement identified for exemption and provides a justification for the exemption.

"(2) The applicant certifies that any statutory or regulatory requirement not identified for exemption will be met in the project undertaken.

"(3) The applicant proposes a plan for analyzing and reporting on the effect the exemption has on project implementation.

"(4) The Secretary publishes notice of the application in the Federal Register and requests public comment on the proposed exemption.

"(e) REPORT.--At the end of each fiscal year in which the Secretary receives an application under the authority of this section or employs the Secretary's authority to initiate and exemption, the Secretary shall transmit a



report to the following committees of Congress that details the disposition of each application: Committee on Transportation and Infrastructure; Committee on Commerce, Science, and Transportation; Committee on Environment and Public Works; Committee on Banking, Housing, and Urban Affairs."

(b) CONFORMING AMENDMENT.--The analysis of chapter 3 of title 49, United States Code, is amended by inserting the following after the item relating to section 311, as added by this Act:

"312. Special experimental authority for infrastructure projects."

#### **SEC. 6004. FISCAL YEAR 2012 AVIATION INFRASTRUCTURE FUNDING.**

(a) AIRPORT DEVELOPMENT.--

(1) IN GENERAL.--There is made available to the Secretary of Transportation \$3,100,000,000 for fiscal year 2012 to carry out airport improvement under subchapter I of chapter 471 of title 49, United States Code.

(2) AVAILABILITY.--The amounts made available under this subsection shall be available for obligation on October 1, 2011 and shall remain available for obligation until September 30, 2014.

(3) ADMINISTRATIVE EXPENSES.--Of the funds made available under this subsection ~~\*\*[x %]~~ shall be available to the Secretary for administration expenses.

(b) AIR NAVIGATION FACILITIES AND EQUIPMENT.—

(1) IN GENERAL.--There is made available to the Secretary of Transportation \$250,000,000 for fiscal year 2012 to carry out 44502(a)(1)(A) of title 49, United States Code

(2) AVAILABILITY.--The amounts made available under this subsection shall be available for obligation on October 1, 2011 and shall remain available for obligation until September 30, 2014.

#### **SEC. 6005. NATIONAL INFRASTRUCTURE INVESTMENTS.**

(a) NATIONAL INFRASTRUCTURE INVESTMENTS.--There shall be available to the Secretary of Transportation \$2,000,000,000 for fiscal year 2012 for capital investments in surface transportation infrastructure.

(b) AVAILABILITY.--Such funds shall remain available for three years following the enactment of this section for the liquidation of obligations.

(c) EXPIRATION.--This authority under this section shall expire within one year of the enactment of this section.

(d) **PURPOSE.**--Funds provided under this section shall be available for discretionary grants to be provided on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area, or a region.

(e) **ELIGIBLE APPLICANTS.**--Applicants eligible for funding under this section include state, local governments and transit agencies.

(f) **ELIGIBLE PROJECTS.**--Projects eligible for funding under this section include the following:

- (1) Highway or bridge projects eligible under title 23, United States Code.
- (2) Public transportation projects eligible under chapter 53 of title 49, United States Code.
- (3) Passenger and freight rail transportation projects.
- (4) Port infrastructure investments.
- (5) Planning activities for any of the above projects, as specified in subsection (i).

(g) **GEOGRAPHIC DISTRIBUTION.**---

(1) **EQUITABLE DISTRIBUTION.**--In awarding funds under this section, the Secretary shall take measures to ensure an equitable geographic distribution of funds and an appropriate balance in addressing the needs of urban and rural communities and the investment in a variety of transportation modes;

(2) **RURAL PROJECTS.**--Not less than \$300,000,000 of the funds provided under this section shall be for projects located in rural areas;

(3) **LIMITATION BY STATE.**--Not more than 25 percent of the funds made available under this section may be awarded to projects in a single State.

(h) **GRANT PROGRAM CRITERIA, SOLICITATION AND AWARD.**--In administering the grant program under this section, the Secretary shall, within 90 days of the enactment of this section, publish grant program criteria on which to base the competition for any grants awarded under this section, require applications for funding under this section to be received within 120 days of publication of such criteria, and announce all projects selected to be funded from funds provided under this section within one year following enactment of this section.

(i) **PLANNING GRANTS.**--Of the funding made available under this section, up to \$200,000,000 is available to fund the planning, preparation or design of surface transportation projects that would be eligible for funding under this section.

(j) **FEDERAL SHARE.**--The Federal share of the costs for which an expenditure is made under this section shall be, at the option of the recipient, up

to 80 percent, but in establishing grant program criteria pursuant to subsection (h), the Secretary shall include priority for projects that request a smaller Federal share.

(k) OTHER REQUIREMENTS.--Projects conducted using funds provided under this heading must comply with the requirements of the Davis-Bacon Act, subchapter IV of chapter 31 of title 40, United States Code.

(l) ADMINISTRATIVE EXPENSES.--

(1) IN GENERAL.--Of the funds provided under this section, \$up to \$30,000,000 shall be used by the Secretary for administration.

(2) PURPOSES.--The funds authorized by this section for administration shall be used to administer the grant program authorized herein in addition to the Supplemental Discretionary Grants for a National Surface Transportation System provided for in Pub. L. 111-5, and the National Infrastructure Grant Program provided for in Pub. L. 111-117;

(3) AVAILABILITY.--The funds made available under paragraph (12)(A) shall remain available until expended.

(m) TIFIA CREDIT SUBSIDY AND ADMINISTRATIVE COSTS.-- Of the amount made available by this section, the Secretary may use up to \$250,000,000 for the purpose of paying the subsidy and administrative costs of projects eligible for federal credit assistance under chapter 6 of title 23, United States Code, if the Secretary finds that such use of the funds would advance the purposes of this section.

(n) TRANSFER AUTHORITY.--Funds provided under subsections (a)(1) and (a) (12) of this section may be transferred within the Department if the Secretary finds that such transfer would advance the purposes of this section.

(o) INTERAGENCY COORDINATION AND COOPERATION.--

(1) IN GENERAL.--The Secretary shall coordinate and cooperate with other Federal agencies in carrying out the grant program authorized under this section if the Secretary finds that such coordination and cooperation would advance the purposes of this section.

(2) INTERAGENCY AUTHORITY.--The Secretary may accept and provide services from other Federal agencies with or without reimbursement in order to further the purposes of this section.

(3) INTERAGENCY DELEGATION OF AUTHORITY.--The Secretary may delegate the authority to issue or administer grants pursuant to this section to other Federal agencies in the interest of administrative or programmatic efficiency if the Secretary finds that such delegation would advance the purposes of this section.