

**NOTE: This undated draft section-by-section summary of the Obama Administration’s draft surface transportation reauthorization bill appears to be a bit older than the draft bill itself. In particular, section 2211 of the section-by-section summary talks about a new proposed “Bicycling and Walking Transportation Grant Program.” In the draft bill and in the FY 2012 budget request, this has been changed to a “Livable Communities Demonstration Grant Program,” and the most likely explanation is that the bill was changed after the November elections as a result of House Democrats, and chairman Oberstar in particular, being defeated, but that this particular version of the summary had not yet been changed.**

**So read this with a caveat that the bill may have had more changes that are not fully reflected in this section-by-section summary of an earlier version of the draft bill.**

## **THE "TRANSPORTATION OPPORTUNITIES ACT"**

### **SECTION-BY-SECTION ANALYSIS**

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

This section provides that the bill may be cited as the Transportation Opportunities Act, and provides a table of contents.

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

This section defines terms that are used in the bill.

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

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

This section provides that the bill may be cited as the Invest in America Act of 2011, and provides a table of contents.

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

This section defines terms that are used in the bill.

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

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

Section 1101 provides that the purpose of title 1 is to promote and facilitate the development of a comprehensive national network of integrated passenger and freight rail services, the National High Performance Rail System, and to authorize funds for the planning, development, construction, and implementation of rail corridors. This section also outlines the objectives of the National High Performance Rail System: mobility, environmental sustainability, energy efficiency, livable communities, maintenance and enhancement of the existing passenger rail network, and optimization of the freight rail network.

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

Section 1102 codifies Chapter 246—Passenger Rail System, which establishes a framework for a national high performance passenger rail system, consisting of the following provisions:

Section 24601 Definitions—defines key terms used in Chapter 246—Passenger Rail System.

Section 24602 Authorizations—authorizes funds to be appropriated from the Rail account of the Transportation Trust Fund for the Secretary’s use in carrying out the activities in Chapter 246 in fiscal years 2012 through 2017.

Section 24603 National high performance passenger rail system—requires the Secretary to facilitate the establishment of the National High Performance Passenger Rail System consisting of a network development program (section 24604) and a system preservation and renewal program (section 24605).

Section 24604 Network development program— provides for the establishment of the network development program and details requirements for that program.

Subsection 24604(a) In General—requires the Secretary to establish the network development program, which will consist of four subprograms: High-Speed Corridor Development (subsection 24604(b)), Station Development (subsection 24604(c)), U.S. Rail Equipment Development (subsection 24604(d)), and Capacity-Building and Transition Assistance (subsection 24604(e)).

Subsection 24604(b) High-Speed Corridor Development—authorizes the Secretary to provide financial assistance for high-speed and intercity corridor development. The intent of this subsection is to provide financial assistance to plan and construct the infrastructure necessary to develop a three-tiered national passenger rail system consisting of Core Express, Regional, and Emerging Corridors. States, interstate compacts, public agencies, Amtrak, Regional Rail Development Authorities (section 24607), private entities, and others will be eligible to apply for and receive funding for a variety of projects related to planning, constructing, and improving high-speed and intercity passenger rail corridors. Projects will be prioritized for funding according to their inclusion in national, regional, and state planning documents, and the level of public benefits provided, among other factors. The Federal share of project costs will range from 80 to 90 percent based on the type of service proposed and the project’s inclusion in planning documents.

Subsection 24604(c) Station Development—authorizes the Secretary to provide financial assistance to plan, construct, and rehabilitate stations on Core Express, Regional, and Emerging Corridors. The intent of this subsection is to strengthen community connectivity to the national passenger rail system by developing intermodal stations that integrate access to passenger rail service with other transportation options. To achieve this goal, projects that provide direct and convenient connections to multiple other modes of transportation and that promote livable communities objectives in the area proximate to the station will be given priority for financial assistance. The share of total project costs provided under this subsection may not exceed 80 percent, but the total Federal share may be up to 100 percent to encourage coordination with other Federal agencies’ objectives.

Subsection 24604(d) U.S. Rail Equipment Development—authorizes the Secretary to establish a long-term strategy and to provide financial assistance for designing and procuring passenger rail rolling stock.

Paragraph 24604(d)(1) Objective—provides that the objective of the framework and the financial assistance is to promote interoperability of passenger rail rolling stock and to develop a domestic equipment manufacturing industry by creating economies of scale.

Paragraph 24604(d)(2) Establishment—authorizes the Secretary to develop and implement a long-term strategy to facilitate the standardization, procurement, and transfer of passenger rail rolling stock. This strategy may consist of an organizational and financial framework that will lower the costs of procuring and maintaining passenger rail rolling stock, encourage the development of the domestic rail manufacturing industry, and encourage design standardization to promote interoperability, among other objectives. *Note: the existing Next Generation Equipment Pool Committee, established pursuant to section 305 of the Passenger Rail Investment and Improvement Act of 2008, is amended with a sunset provision in Section 1106 of this Act, Miscellaneous Corrections, Revisions and Repeals.*

Paragraph 24604(d)(3) Functions—Identifies the functions that a corporation or other organizational and financial framework that the Secretary may establish (paragraph 24604(d)(2)) may undertake. These functions include the development of standardized and interoperation designs and specifications, acquisition and maintenance of passenger rail rolling stock, and selling or leasing rolling stock for use in passenger rail service.

Paragraph 24604(d)(4) Financial Assistance—authorizes the Secretary to provide financial assistance to develop, procure, and maintain passenger rail rolling stock. Financial assistance under this paragraph can be provided to States, Amtrak, Regional Rail Development Authorities (section 24607), or the organizational framework established pursuant to paragraph 24604(d)(2) to develop standardized designs, procure rolling stock, and maintain, overhaul and finance rolling stock, among other activities. The Federal share of total project costs provided under this subsection may be up to 100 percent of the total cost.

Subsection 24604(e) Capacity-Building and Transition Assistance—authorizes financial assistance to develop professional expertise and institutional capacity in rail transportation (paragraph 24604(e)(1)), authorizes financial assistance to support new and State-supported passenger rail services on a temporary basis, and requires a study investigating the best strategy for developing passenger rail services operating in shared-use corridors.

Paragraph 24604(e)(1) Capacity-Building—authorizes the Secretary to provide financial assistance for technical assistance and training activities that advance the development of professional expertise and institutional capacity in the field of rail transportation. To build institutional capacity across both the public and private sectors, States, Amtrak, Regional Rail Development Authorities (section 24607), universities, the Transportation

Research Board, and rail carriers, among others, are eligible to receive funding under this paragraph. The Federal share of costs under this paragraph may be up to 100 percent of the total cost.

Paragraph 24604(e)(2) Transition Assistance—supports the successful launch of new passenger rail services and improves the transparency and competitive structure of State-supported passenger rail services, by authorizing the Secretary to:

1. Provide financial assistance 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.
2. Provide financial assistance to support the operating costs of States and passenger rail service operators during the start-up phase of new passenger rail operations, helping to reduce initial ridership demand risk on these corridors as additional corridors begin service in a national or regional system.
3. Develop a framework for the implementation of the two transition assistance activities described above within one year of enactment of the Act.

The expectation is that the need for financial assistance provided under this paragraph (items 1 and 2) will diminish and be phased out within a time frame specified in the transition assistance framework (item 3). *Note: this paragraph supports States in the transition to implementing the requirement for States to provide sufficient funding to pay for fully allocated operating costs for State-supported services in accordance with the methodology developed under Section 209 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), and provides for greater transparency in the provision of Federal funds for State-supported passenger rail operations. Section 1106 of this Act, Miscellaneous Corrections, Revisions and Repeals amends some of the provisions in Section 209 of PRIIA.*

Paragraph 24604(e)(3) Review of Framework for Passenger Rail on Shared-Use Corridors—requires the Secretary to conduct a study to evaluate operational, institutional, and legal structures that would best support high-speed and intercity passenger rail on shared-use corridors in the United States. The study must include an evaluation of the roles of Federal, State, and local governments, infrastructure owners, and service providers. The goal of the study is to consider how the United States can advance passenger rail goals while also preserving and enhancing the country’s freight rail transportation networks. The Secretary must make the findings, conclusions, and recommendations of that study public no later than 3 years after the enactment of the Act.

Section 24605 System Preservation and Renewal Program—provides for the establishment of the system preservation and renewal program and details requirements for that program.

Subsection 24605(a) In General—requires the Secretary to establish the system preservation and renewal program, which will consist of three subprograms: Public-Asset Backlog Retirement (subsection 24605(b)), National Network Service (subsection 24605(c)), and State of Good Repair and Recapitalization (subsection 24605(d)).

Subsection 24605(b) Public-Asset Backlog Retirement—authorizes the Secretary to provide financial assistance for the purpose of eliminating the existing maintenance backlog on the Northeast Corridor and other publicly-owned passenger rail assets, eliminating Amtrak’s legacy debt, and ensuring all passenger rail stations meet the requirements of the Americans with Disabilities Act (ADA). Amtrak, States, political subdivisions of States, Regional Rail Development Authorities, local governmental infrastructure-owning entities, and the Federal Railroad Administration are eligible to receive funds under this subsection for a variety of projects, including station upgrades for ADA compliance, debt servicing and buyouts, capital investments in infrastructure and equipment, and FRA-led planning, management, and oversight projects necessary to implement this subsection. This financial assistance opportunity will be phased out as the maintenance backlog is eliminated; once in a state of good repair, the on-going maintenance and end-of-life replacement of these assets will be supported under State of Good Repair and Recapitalization (subsection 24605(d)).

Subsection 24605(c) National Network Service—authorizes the Secretary to provide financial assistance to Amtrak in the form of operating support for long-distance passenger services and capital support for long-distance infrastructure improvement and maintenance projects. Amtrak may undertake capital projects to maintain national backbone systems, such as reservations, security, and mechanical facilities, and for projects to enhance mobility on non-Amtrak-owned infrastructure to improve the reliability of long-distance or State-supported corridor services. *Note: the authorization of appropriations for the existing Congestion Grant program (at 49 U.S.C. 24105) for fiscal years 2012 and 2013 is repealed in Section 1106 of this Act, Miscellaneous Corrections, Revisions and Repeals.*

Subsection 24605(d) State of Good Repair and Recapitalization—authorizes the Secretary to provide financial assistance for the annualized repair and recapitalization of publicly-owned infrastructure and fleet. Financial assistance provided under this subsection is intended to provide support for maintaining publicly-owned infrastructure and fleet in a continual state of good repair and to support the maintenance of sufficient reserves for replacement. Eligible recipients for funding under this subprogram are States, political subdivisions of a State, local governmental infrastructure-owning entities, Amtrak, and Regional Development Authorities, among others. The Federal share of project costs under this subsection may not exceed 80 percent of the total project cost.

Section 24606 Passenger rail planning—defines and provides requirements for a National Passenger Rail Development Plan and Regional Passenger Rail Development Plans.

Subsection 24606(a) National Passenger Rail Development Plan—requires the Secretary to complete a National Passenger Rail Development Plan within one year of the date of enactment. The Plan is intended to set national policy regarding high-speed and intercity passenger rail, including identifying investment strategies and priorities. The Plan, once completed, will also serve as the foundation for Regional Passenger Rail Development Plans (section 24606(b)).

Subsection 24606(b) Regional Passenger Rail Development Plans—defines and describes the requirements for Regional Passenger Rail Development Plans. Two or more States, or a Regional Rail Development Authority (section 24607), are encouraged to develop a plan for a comprehensive and integrated passenger rail network in their region. Among other requirements, a plan must include a map of proposed or existing alignments, a phasing plan for implementing segments, projects that share benefits with freight operators, cost estimates, and potential non-Federal funding sources, including private sector participation. A plan must be developed with stakeholder involvement and formally adopted by each participating State. Additionally, to incentivize regional planning and coordination, High-Speed Corridor Development projects (section 24604(b)) that are identified through and consistent with an adopted Regional Passenger Rail Development Plan will be eligible to receive a higher Federal match.

Section 24607 Regional rail development authorities—authorizes the Secretary to establish Regional Rail Development Authorities in consultation with State governors. A Regional Rail Development Authority established pursuant to this section has the power to undertake development activities for Core Express, Regional, and Emerging Corridors, such as planning, engineering, environmental analyses, coordinating financing, and managing construction contracting, and will be an eligible recipient for financial assistance under the network development program (section 24604) and portions of the system preservation and renewal program (section 24605). Each Regional Rail Development Authority will be led by an Executive Director appointed by the Secretary and will include a deliberative body with members representing all applicable States, Amtrak, freight railroads, and other stakeholders.

Section 24608 Oversight—authorizes the Secretary to expend funds to conduct oversight on projects awarded under Chapter 246. The Secretary is required to develop and implement oversight procedures to identify, mitigate, and monitor risks to successful delivery of projects. This section requires that an applicant for financial assistance provide project delivery documentation, which may include project management plans, financial plans, system safety plans, agreements with project sponsors, infrastructure owners, and service operators, and project risk management plans.

Section 24609 Financial assistance provisions—includes provisions that apply to financial assistance provided under Chapter 246, including all the conditions imposed on grants made under Chapter 244—Intercity Passenger Rail Service Corridor Capital Assistance. In addition, States must have an entity with the powers to discharge the requirements of Chapter 246 before receiving financial assistance under this chapter.

**SEC. 1103. OBLIGATION CEILING.**

Section 1103 makes clear that the total of all obligations from the Passenger Rail Account of the Transportation Trust Fund is not to exceed certain specified levels for each of fiscal years 2012 through 2017.

## **SEC. 1104. BUY AMERICA.**

Subsection 1104(a) codifies Chapter 287—Buy America Preferences, which establishes the Buy America provisions applicable to all funds authorized to be appropriated under subtitle V, title 49, United States Code, and administered by the Department of Transportation, as well as direct loans or loan guarantees under section 822 of title 45, United States Code, consisting of the following provisions:

Section 28701 Buying goods produced in the United States—prevents the Secretary from obligating any funds authorized under Subtitle V, title 49, or providing direct loans or loan guarantees under 45 U.S.C. 822 under contracts in excess of \$100,000, unless the steel, iron, and manufactured products used are produced in the United States. This section identifies circumstances in which the Secretary may waive this requirement, such as when applying it would be inconsistent with the public interest or would excessively inflate the cost of a project, and identifies other circumstances in which the Secretary may not waive the requirement. In the event that the Secretary issues a waiver, the waiver request and justification must be published on the Department of Transportation’s public Web site and in the Federal Register, and an opportunity for public comment on the finding must be provided. This section preserves a State’s ability to also impose more stringent requirements than this article provides. It also provides processes for a manufacturer to correct after bid opening any certification of noncompliance or failure to properly complete the certification, and for a party adversely affected by an agency action to seek review.

Section 28702 Fraudulent use of “Made in America” label—provides that person may not receive a contract or subcontract made with funds authorized under subtitle V of title 49 or under 45 U.S.C. 822 where that person is found to have intentionally falsely represented that goods were produced in the United States.

Subsection 1104(b) Conforming Amendment—amends the analysis for subtitle V to include an item for Chapter 287.

Subsection 1104(c) Related Amendment—repeals Amtrak’s existing Domestic Buying Preferences (49 U.S.C. 24305(f)), as Chapter 287 applies to Amtrak.

## **SEC. 1105. MISCELLANEOUS RAIL PROVISIONS.**

Section 1105 includes the following various rail-related provisions:

Subsection 1105(a) Authorizations—authorizes appropriations for research and development and for safety and operations in fiscal years 2012 through 2017. Section 20117 of title 49 is amended to authorize appropriations to implement the railroad safety laws at 49 U.S.C. chapters 201-213 and carry out the responsibilities under the hazardous materials transportation laws at 49 U.S.C. chapter 51 through fiscal year 2017.



Subsection 1105(b) Application, Award and Oversight Charge—amends 45 U.S.C. 823 to allow the Secretary to charge applicants for expenses related to award and project management oversight for Railroad Rehabilitation and Improvement Financing program awards. These fees are in addition to fees the Secretary is currently authorized to charge for application evaluations and loan appraisals. Fees to cover costs of award and project management oversight may not exceed more than one-half of 1 percent of the principal amount of the obligation and are credited to the Federal Railroad Administration’s Safety and Operations.

Subsection 1105(c) Early Acquisition of Real Property Interests for Rail—amends 49 U.S.C. chapter 241 by adding Section 24106, which allows a project sponsor to acquire real property interests for a rail improvement project, consisting of the following provisions:

Section 24106 Early acquisition of real property interests for rail—provides conditions under which the Secretary may make funds available to project sponsors to acquire real property interests for a rail transportation improvement program authorized under subtitle V of title 49, United States Code. The Secretary may reimburse project sponsors for the cost of early acquisition of real property for a project subject to several conditions, including that actual construction of the project will occur within 20 years, that acquisition will not interfere with unbiased completion of National Environmental Policy Act review, and that development of the property will not occur until after all environmental reviews have been completed. If the property acquired early is not incorporated into an eligible project within the time allowed, the Secretary shall offset the amount reimbursed for acquisition against funds allocated to the project sponsor.

Section 24107 Limitations on claims—provides that 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 the Federal Register announcing that the permit, license, or approval is final, with limited exceptions.

Subsection 1105(d) Railroad User Fees—amends 49 U.S.C. 20115 to provide new guidelines on the imposition of railroad safety fees on railroad carriers. The revised section limits the amount of fees that may be required of railroad carriers subject to Part A of Subtitle V of title 49, United States Code, to a maximum of \$80,000,000 per year for fiscal years 2012-2017. The fees are to be deposited in the Federal Railroad Administration’s Safety and Operations account, rather than the Treasury’s general fund, and may be used to carry out eligible activities of that account. The revision also removes the requirements for reports to Congress on fees collected and the September 30, 1995, expiration date.

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

Section 1106 makes technical corrections, revisions, and repeals in title 49 of the United States Code and in Public Law 110-432, the Rail Safety Improvement Act of 2008 and the Passenger Rail Investment and Improvement Act of 2008.

Subsections 1106(a)-(c) make minor corrections for technical reasons to provisions of title 49 of the United States Code that were enacted in or amended by Public Law 110-432, the Rail Safety Improvement Act of 2008, and to provisions of Division A of Public Law 110-432 that are not amendments to the United States Code. These changes are made to clarify the meaning of the provisions, such as by substituting defined statutory terms for undefined terms; to replace colloquial language with more formal language; to correct an error of spelling, capitalization, punctuation, or diction; or to eliminate an ambiguity or internal inconsistency.

Three of the technical amendments in subsection 1106(b) of the Act require more explanation: the amendments in paragraphs (b)(9), (b)(12), and (b)(14). Paragraph 1106(b)(9) revises 49 U.S.C. 20160, the provision requiring railroad carriers to report information about highway-rail crossings to the U.S. Department of Transportation's National Crossing Inventory. By way of factual background, it should be noted that some highway-rail crossings have more than one track, and that at a crossing that has more than one track, sometimes one railroad carrier operates on one track and a different railroad carrier operates on another track. Currently, the literal language of 49 U.S.C. 20160 requires a railroad carrier to report to the National Crossing Inventory current information specified by the Secretary (which by the Secretary's instruction includes information on the amount and type of train traffic through a crossing) on a track that the railroad may not in fact use, simply because the railroad carrier happens to operate on a different track through the same crossing. Paragraph 1106(b)(9) of the Act revises 49 U.S.C. 20160 to clarify that a railroad carrier must report on each crossing that it operates through, but only with respect to the track or tracks on which it operates. A railroad carrier should not be required to report on matters at the same crossing but regarding a track on which it does not operate because that carrier is not the best source of this information.

Paragraphs (b)(12) and (b)(14) of subsection 1106(b) of the Act clarify interrelated provisions of the hours of service laws at 49 U.S.C. ch. 211. Paragraph 1106(b)(12) of the Act amends 49 U.S.C. 21102(c) to clarify that, like train employees of intercity and commuter railroads, the train employees of tourist, historic, scenic, or excursion railroads (tourist railroads) are subject to "old section 21103," i.e., 49 U.S.C. 21103 as it existed on the day before the enactment of the Rail Safety Improvement Act of 2008. In turn, paragraph 1106(b)(14) of the Act clarifies the scope of the Secretary's authority to prescribe hours of service regulations and orders for train employees under 49 U.S.C. 21109(b) that may differ from the requirements of 49 U.S.C. 21103, as amended by the Rail Safety Improvement Act of 2008. Currently, 49 U.S.C. 21109(b) authorizes such regulations and orders "for train employees engaged in commuter rail passenger transportation and intercity rail passenger transportation (as defined in section 24102 of this title)..." The Secretary of Transportation believes that Congress intended that these authorized substantive hours of service regulations and orders apply to the train employees of all railroads that provide rail passenger transportation and that Congress did not intend to apply the statutory provision applicable to freight service (49 U.S.C. 21103 as amended in 2008) to the train employees of tourist railroads, because tourist railroad operations are more similar to other passenger service than they are to freight service. For example, passenger operations tend to be scheduled, as do tourist railroad operations,

whereas freight operations tend to be unscheduled. The provisions of the hours of service laws that apply to train employees on freight railroads are, therefore, not as appropriate for train employees on tourist railroads. Accordingly, the technical amendment would make it clear that train employees who provide rail passenger transportation on tourist, historic, scenic, or excursion railroads may also be covered by these regulations and orders.

Subsection 1106(d) Revisions to Division B of Public Law 110-432, the Passenger Rail Investment and Improvement Act of 2008—makes revisions to two provisions of the Passenger Rail Investment and Improvement Act of 2008 that are not amendments to the United States Code. Section 209, State-Supported Routes, is amended to permit the Secretary to revise or amend, in consultation with Amtrak, the methodology for allocating operating and capital costs along select passenger rail routes. Additionally, Section 305, Next Generation Corridor Train Equipment Pool, is amended to provide a sunset on the committee established pursuant to that section. The Committee will have completed its duties upon completion of specifications for all Tier I passenger equipment categories. The other functions available to the Committee will henceforth be functions of the organizational and financial framework to be established by the Secretary according to Section 1102 of this Act (paragraph 24604(d)(2)).

Subsection 1106(e) Miscellaneous Repeals—strikes various provisions in title 49 of the United States Code and in Division B of Public Law 110-432, the Passenger Rail Investment and Improvement Act of 2008. Several of the repeals strike authorizations of appropriations for fiscal years beginning in 2012 for programs that have been integrated or restructured into the network development or system preservation and renewal programs, such as 24406 (Intercity Passenger Rail Service Corridor Capital Assistance), 24105 (Congestion grants), and section 101(a) of Division B of Public Law 110-432 (Amtrak Operating Grants). This subsection also includes the repeal of section 20154, Capital grants for rail line relocation projects, which has been integrated into chapter 226—Freight Network Development (section 22605). Finally, this subsection repeals the requirement for State-initiated updates to State Rail Plans to be “reapproved” by the Secretary of the U.S. Department of Transportation (section 22702).

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

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

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

**\*\*[NEED ANALYSIS]**

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

The construction manager/general contractor (CMGC) method of contracting, also referred to as construction manager at-risk, has traditionally been widely used in the

vertical building industry, but has been used only sparingly in the highway construction industry. Over the past decade, some State and local governments have broadened the use of CMGC to highway construction and used such method on Federal-aid highway projects under Special Experimental Project No. 14 (SEP-14). CMGC has also been the subject of evaluation under the National Cooperative Highway Research Program (NCHRP) of the Transportation Research Board in *NCHRP Synthesis 402*. After gaining experience and analysis of the CMGC contracting method, the use of CMGC has proven to be a useful and beneficial contract delivery method with the major benefit being derived from contractor input into the preconstruction design phase of a project. While the use of CMGC may not be appropriate for every project, it has the potential to significantly improve the cost and efficiency in the delivery of highway projects. As such, this section amends 23 U.S.C. 112 to allow for the use of CMGC in the Federal-aid highway program.

**SEC. 2003. APPLICATION OF CATEGORICAL EXCLUSIONS FOR MULTI-MODAL PROJECTS.**

The ability for one mode to consult another mode on the use of a categorical exclusion on a component of a multi-modal project has been identified as valuable tool in project delivery. Through the two rounds of TIGER and as a result of the emphasis on modal choice and a fully integrated transportation system, more and more projects are multi-modal. This section provides clarification of the authority of any modal administration with funding authority to consult with a cooperating modal administration and use an appropriate categorical exclusion for those components of the project that qualify for a categorical exclusion under the cooperating modal administration’s regulations. This clarification will help accelerate project delivery by reducing the amount of unnecessary environmental analysis and increasing coordination and partnership within the Department.

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

This section creates a new provision in Subchapter 1 of Chapter 1 of title 23 to provide authority and procedures for the integration of planning and the environmental review processes.

The purpose of this section is to describe how to complete certain activities in the planning process and achieve certainty that products from these activities can be used during project development. This certainty is achieved by encouraging planning and environmental staff in transportation and regulatory and review agencies to share data and analysis tools and improve coordination. When successfully implemented, this approach makes the entire life cycle of a transportation project a more seamless process. It minimizes duplication of effort, reduces delays in transportation improvements, and results in a more environmentally sensitive project.

Specifically, this section would amend definitions of the NEPA, planning products, project, and project sponsor to provide clarity based on existing guidance. This section would integrate statewide and metropolitan transportation planning with the NEPA process to streamline project delivery and ensure continuity of public involvement. It would allow regulatory and review agencies to better understand and agree to purpose and need, define the range of alternatives and eliminate some of them, and begin the public involvement and documentation needed in the NEPA process during the planning stage. This approach provides a broader and strategic perspective on environmental and cultural resource compliance that includes consultation with tribes and other agencies about mitigation, consultation of conservation plans, regional habitat mappings, and more.

This section does not make the NEPA applicable to the transportation planning process conducted under title 23.

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

This section amends section 139 of title 23 to further efficient transportation project delivery and reduce lengthy delays in the delivery process.

First, this section would amend section 139 to require a project sponsor to provide the Secretary with reasonable assurance of its ability to fund the entire project prior to the issuance of the Notice of Intent. The project sponsor would also have to demonstrate to the Secretary that its project selection procedures included consideration of a full range of revenue generating options.

This section would create a new subsection to provide a "scoping" provision to focus lead agency attention on relevant and important issues to be analyzed under NEPA. Reconsideration of this initial scoping decision by the Secretary could only occur if significant new circumstances or information arise that affect the proposal or its impacts. This section would also allow for the preferred alternative to be identified at any time after the initiation of the scoping process.

This section would amend an existing paragraph regarding issue resolution. This amendment would allow relevant participants to meet--at the request of a Federal agency of jurisdiction, project sponsor, or the Governor of a State in which the project is located--to resolve issues that could cause delay in the completion of the environmental review process, or could result in a denial of any approvals required for the project. If no resolution can be made within the 30-day period following the initial meeting, the Secretary may convene an issue resolution meeting within 30 days after the end of the previous 30-day period. If this occurs, the Secretary must 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 issue resolution process.

This section would also create a new paragraph to require that any decision relating to a transportation project, such as a project permit, license or other approval be made by the Federal agency with jurisdiction no later than 180 days after the date that a NEPA decision for a project has been issued, or 180 days after the date that an application is submitted for the permit, license or approval. Under this paragraph the 180 day period may be extended by the Secretary for just cause. This new subsection is intended to keep the project delivery process moving forward and prevent long delays caused by failure to obtain needed permits, approvals, or disapprovals from other Federal agencies.

Finally, this section would allow the Secretary to combine the Final Environmental Impact Statement and the Record of Decision into a single document once the preferred alternative is identified in the draft environmental impact statement. The purpose of this combined document is to eliminate lengthy time periods between the Final Environmental Impact Statement and the Record of Decision, and to further support timely project development.

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

This section would amend section 108 of title 23 to expand early acquisition authority and enable States to utilize Federal funds to participate in costs of early acquisition (in advance of the completion of environmental reviews) of real property interests potentially needed for future transportation purposes as a permitted “preconstruction activity”. This section would provide the opportunity to reserve future alignment alternatives by allowing early acquisition of property interests. This section would permit Federal funds to be used for the acquisition of property interests needed for future projects if the acquired property is used on the final project and other conditions are met. Any acquisition carried out under this authority would be done on a voluntary acquisition basis.

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

This section would provide authority for up to five States to establish a demonstration program to streamline the relocation process by permitting a lump-sum payment for acquisition and relocation where elected by the displaced occupant. The payment would be based upon just compensation for property acquired and estimated eligible relocation benefits calculated in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The goal of establishing and carrying out the demonstration program is to determine if the proposed measures will reduce administrative burden and costs to States and to displaced occupants by streamlining the process to establish and administer relocation benefits.

**Sec. 2008. SURFACE TRANSPORTATION PROJECT DELIVERY PROGRAM.**

This section would amend 23 U.S.C. 327 to make permanent the NEPA delegation program included in Section 6005 of SAFETEA-LU. Specifically, this section would amend section 327 by striking the word "pilot"; striking the 6-year automatic termination date; and eliminating the current 5-State participation limitation, thus making all States eligible for participation. This section also would allow the Secretary to evaluate and reevaluate States for permanent participation in the program. This section includes a provision for a State to elect to terminate its participation in the program by providing at least 90 days notice to the Secretary.

This section would further amend section 327 of title 23, United States Code, to clarify that by signing an agreement with the Secretary, the States waive their sovereign immunity. This would include both 11<sup>th</sup> amendment immunity to suit in Federal court and immunity to liability.

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

This section would amend section 326 of title 23, United States Code, to clarify that by signing assignment memoranda of understanding, the States waive their sovereign immunity. This would include both 11<sup>th</sup> amendment immunity to suit in Federal court, and immunity to liability.

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

This section would accelerate project delivery to large metropolitan areas by establishing a pilot program for local governments with a population of 2,500,000 or more and meeting certain conditions to become direct recipients of Federal-aid highway funding.

Subsection (a) would direct the Secretary to carry out a pilot program under this section. Upon a written agreement between the Secretary, a local government, and the respective State in which the local government is located, a local government could assume the responsibilities of a State with respect to highway projects selected for Federal-aid funding through the existing planning process. Subsection (a) also would specify that a local government selected for participation under this program would assume responsibility for the same procedural and substantive requirements as would apply to 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.

Subsection (b) would specify that the Secretary could allow up to 3 local governments for participation in the pilot program. A local government meeting the population threshold and demonstrating the organizational and financial capacity necessary for participation would be eligible for participation. Subsection (b) would direct the Secretary to establish an application process and selection criteria.

Subsection (c) would provide for the transfer of funds apportioned to a State to a participating local government for the projects for which local oversight has been approved.

Subsection (d) would direct the Secretary to set aside funds to cover the additional costs that will be incurred by the Federal Highway Administration in providing oversight to additional entities.

Subsection (e) would specify the conditions under which the Secretary could terminate the participation of a local government in the pilot program.

## **Subtitle B – National Infrastructure Innovation and Finance Fund**

### **Part 1--National Infrastructure Innovation and Finance Fund**

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

The bill would insert a new chapter 9 in title 49, United States Code (Transportation), and establish the National Infrastructure Innovation and Finance Fund (NIIFF or Fund) as an operating unit of the Department of Transportation. The Fund is designed as an innovative infrastructure financing mechanism that would seek out and invest in infrastructure projects of regional and national significance that would otherwise be difficult to fund. Funding would be provided in the form of grants, loans and lines of credit, and loan guarantees and would support transportation and transportation-affiliated projects. The new chapter 9 is contained in section 1 of the bill and consists of three sections.

**Section 901 of title 49:** Section 901 comprises the overall structure and objectives of the Fund. In section 901(a), the definition of "transportation related project" establishes the reach of the new authority, that is to "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 rail facilities and vehicles; or freight rail assets."

Section 901(a) specifies that an "eligible project" is "a capital project that advances the objectives of chapter 9 and (1) is comprised of activities included in a regional plan; (2) 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 (3) is a transportation-related project; a project that is a component of a non-transportation project and that is by itself a transportation-related project; or an additional non-transportation component to a transportation project that satisfies the criteria and strategy of the new chapter . "Eligible project cost" is defined as including "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."

The Fund objectives are set forth in new sections 901(c) and (d). They make clear that the Fund is intended to serve broader objectives in the National economy than typical transportation infrastructure projects. Specifically, the overarching objective of the Fund is "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."

Secondary objectives are as follows:

- To provide 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.
- 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.
- Improvement to the safety of transportation facilities and systems, as measured by reduction in risk of transportation-related incidents, injuries, or deaths.
- 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.
- 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 efficiency of existing infrastructure.

Section 901(e) establishes as the Fund strategy to especially target projects or programs of related projects with a demonstrated difficulty 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. To the extent practical, the Fund would also use its resources for transformational transportation investments that promotes the distribution of benefits to economically distressed areas; promotes geographic diversity in the distribution of benefits; promotes cross-jurisdictional infrastructure planning and co-investment among a broad range of participants, including States, tribal governments, municipalities, and private investors; integrates multiple transportation modes in the movement of passengers or freight; and integrates transportation infrastructure investment planning, such as regional plans, with land-use, economic development, and other infrastructure investment plans.

Sections 901(e)(2) and (3) provide for publication of the Fund strategy and Operating Guidance (a detailed description of its operating policies and procedures) within six

month of enactment, and after offering the opportunity for public comment on the proposed publications.

Section 901(f) sets forth the governance of the Fund, with three primary parts. The first is an Executive Director, appointed by the President and with Senate confirmation. The Executive Director reports to the Secretary of Transportation and is responsible for the day-to-day operations of the Fund. The Executive Director must have demonstrated expertise in transportation infrastructure planning within at least two of the following three areas: two or more distinct transportation modes; economic analysis; and project, public, or corporate finance.

Section 901(f)(2) provides for an Investment Council, which is responsible for establishing and approving the Investment Prospectus, in consultation with a Fund Advisory Committee; updating the Investment Prospectus on each biennial anniversary of its original publication; reviewing Investment Plans and related application materials and other analyses provided to the Investment Council by the Executive Director; determining by majority vote whether or not to recommend Investment Plans submitted by the Executive Director to the Secretary for funding; and certifying reports to Congress and other publications of the Fund. The nine-member Council consists of four Department of Transportation senior officials and five cabinet members (Secretaries of Treasury, Commerce, Housing and Urban Development, and Energy and the Administrator of the Environmental Protection Agency). Among its duties, the Council would report to relevant committees of Congress biennially on Fund status and would 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.

Section 901(f)(3) provides for a Fund Advisory Committee, to be appointed by the President within six months of enactment and established to advise the Investment Council and the Secretary with respect to the following:

- 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.
- Alignment of the framework and methodology used to determine qualification scores and variance estimates with the primary objective, secondary objectives, and the Fund strategy.
- Consistency of the calculation of qualification scores and variance estimates with academic standards for analytical rigor and data quality typically applied to peer-reviewed social science research.
- Alignment of investment decision mechanics and outcomes with the Investment Prospectus and the requirements of this chapter.

- 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.
- Fund progress in financing projects with a demonstrated difficulty 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.
- 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.

Within 90 days of each Investment Council decision on an Investment Plan, the Fund Advisory Committee would issue a report that includes an assessment of the adherence of each funding decision, including applications funded and not funded, to the requirements of the Investment Prospectus, Operating Guidance, and chapter 9; the consistency of each funding decision for applications funded with the primary objective, the secondary objectives, the Fund strategy and the requirements of the chapter; the validity of the qualification certification of each funded application; the return on Federal investment likely to result from each funded Investment Plan; and the return on total investment likely to result from each funded Investment Plan. The Committee would also publish a biennial report on the execution of the Fund strategy that includes an independent assessment of the Fund's performance in terms of the elements specified above; and an independent analysis of the 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.

The Fund Advisory Committee would be subject to the Federal Advisory Committee Act, and would consist of five members with expertise in one or more of the following areas: economics and economic analysis; project finance.; portfolio or fund management; organized labor interests; environmental interests; American business and trade interests; rural community development; State Department of Transportation policies and priorities; Metropolitan Planning Organization policies and priorities; other infrastructure planning, redevelopment, and development-related codes and policies. Committee members would be declared to not be Federal employees for any purpose, but would be entitled to compensation for days during which the member is engaged in the performance of duties of the Committee.

**Section 902 of title 49:** Section 902 specifies the three types of financial assistance available from the Fund and its other authorities. Among them is the authority to charge administrative and other fees for such things as the costs of loan servicing, hiring expert firms, including counsel in the field of municipal and project finance, and financial advisors to assist in the underwriting, credit analysis, or other independent review.

Planning and Feasibility Grants: In each of the five years authorized for the Fund, up to \$150 million would be made available to a recipient for a specific project covering costs associated with planning and formulating optimal project design; assessing project technical feasibility; assessing potential project performance; and incorporating the project proposal into a regional plan. The Fund could pay up to 100 percent of eligible planning and feasibility costs, as follows: 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.

National Infrastructure Innovation Grants: The Fund would be authorized to make grants to fund capital investments in transportation infrastructure that meets the definition of "eligible project" under chapter 9. The grants could only fund project costs covered under an Investment Plan approved by the Secretary and would be subject to the terms and conditions of the relevant approved Investment Plan. Grants made by the Fund could not exceed 50 percent of the eligible project costs of an eligible project.

Direct Loans And Other Credit Assistance: The Fund would be authorized to make available direct loans and lines of credit, as well as loan guarantees under section 902(e)(1) and (2). As a general matter, in the case of direct loans and lines of credit, a loan could not be subordinated to another debt contracted by the borrower (unless subordination is necessary to achieve Federal objectives), or to any other claims against the borrowers in the case of default; the interest rate would be 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; the Executive Director must find that there is a reasonable assurance of repayment before extending credit assistance; a loan may not be obligated (and a 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; and the total principal amount of the direct loan shall not exceed 70 percent of total eligible project costs less the percentage of those eligible project costs that are otherwise funded by the Fund. The Fund would allow credit 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.

As a general matter in the case of a loan guarantee, the same strictures would apply as apply to direct loans, plus the following: a loan could be guaranteed if the income from the loan is excluded from gross income for the purposes of Chapter 1 of the Internal Revenue Code of 1986, or if the guarantee provides significant collateral or security for other obligations (the income from which is so excluded); fees or premiums for loan guarantee or insurance coverage will be set at levels that minimize the cost to the Government of such coverage, while supporting achievement of the program's objectives; the minimum guarantee fee or insurance premium will be (at) (no more than \_\_\_\_\_ percent below) the level sufficient to cover the agency's costs for paying all of the estimated costs to the Government of the expected default claims and other obligations;

loan guarantee fees will be reviewed every \_\_\_\_ month(s) to ensure that the fees assessed on new loan guarantees are at a level sufficient to cover the referenced percentage of the agency's most recent estimates of its costs. Further, 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 **Administrator??** may require, the **Administrator** determines that the holder has suffered a loss, the **Administrator** will pay to such holder \_\_\_\_ percent of such loss, as specified in the guarantee contract. Upon making any such payment, the **Administrator** will be subrogated to all the rights of the recipient of the payment. The **Administrator** will be entitled to recover from the borrower the amount of any payments made pursuant to any guarantee entered into under this chapter.

Section 902(f) addresses the evaluation and processing on individual financial assistance applications. In addition to qualifying as an "eligible project" (elsewhere defined), (1) 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 an area classified as rural by the United States Census Bureau (in that case costs must exceed \$1,000,000); (2) 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; and (3) a majority of project benefits identified in the application must accrue beyond a highly localized area, including commercial or residential real estate development, a shopping or amusement complex, or a recreational area.

Also under subsection (f) the Fund would 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 net present value of benefits to the net present value of costs reasonably expected to result from the funding of the project or projects as proposed in the application. The methodology used to calculate the qualification score would (1) primarily measure the significance of a project to the economic competitiveness of the United States or a region thereof; (2) weigh the net present value of benefits attributable to economic competitiveness at least twice as heavily as all other benefits combined but in a manner that does not undermine the validity of the calculated ratio of benefits to costs; (3) apply equal weighting to all measures of the net present value of costs; and (4) include standardized measures of the expected variance in both total and specific benefits and costs associated with the project.

In order to certify an application as qualified, the Executive Director would, at a minimum, find that the application's qualification score is greater than the larger of either 1.0 or some other factor published in the Investment Prospectus as a threshold for qualification; and 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: (1) forwards the primary objective of the Fund; (2) addresses a special infrastructure investment challenge due to cost, complexity, cross-jurisdictional scope, multimodal

features, or use of innovative technologies; (3) 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 variance of measures of costs and benefits associated with the project; (4) combines Fund funds with other sources of funds; (5) 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; (6) encourages use of innovative procurement, asset management, or financing to optimize the all-in-life-cycle cost-effectiveness of a project; (7) promotes a distribution of project benefits that is geographically diverse; and (8) is ready to commence construction upon receiving a commitment of assistance from the Fund.

Section 902(g) establishes a Investment Plan process that is the exclusive means by which favorable funding decisions are made by the Fund. Specifically, the Fund would 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 priority of the Fund in the investment planning process would be to establish a mutually agreeable financing package adequate to fund the qualified application, while maximizing expected project benefits relative to Fund investment. When considering the appropriate level and form of Fund resources to include in an Investment Plan, the Fund would consider the qualification score achieved by the application relative to other current applications and previously funded applications and the competitiveness of the application at fulfilling the strategy of the Fund as outlined in the Investment Prospectus, and would strive to make efficient and effective use of Federal resources by considering (1) the amount of Fund budgetary resources required to complete a financing package with lower amounts being preferred; (2) the percentage of Federal resources included in the Investment Plan in the form of grants with lower percentages being preferred; (3) the costs and the risks to the Federal taxpayer imposed by the terms of assistance provided in the financing package with lower costs and risks being preferred; and (4) the percentage of eligible project costs to be funded through non-Federal resources pledged by the applicant to complete a financing package, with higher percentages being preferred;

Also under subsection (g), the Fund shall determine through the investment planning process the terms of assistance to be offered to applicants at its sole discretion subject to the requirements of chapter 9 and subject to the availability of funding any other statutory and regulatory requirements. If the Fund and the applicant are able to reach mutually agreeable terms, the Fund would record determinations on Fund assistance along with details of the complete financing package in an Investment Plan. Under no circumstances would the Fund approve an Investment Plan that does not identify a complete financing package. Under no circumstances would the Fund be required or compelled to reach agreement on an Investment Plan.

The Executive Director of the Fund would submit Investment Plans approved by the Fund to the Investment Council at regular submission intervals, as set forth in the Operating Guidance. The Fund and the Department would 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, including 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 other elements within the Department as needed to safeguard the ability of the Fund to fairly and independently formulate Investment Plans as directed under this subsection.

Section 902(h) provides for the role of the Investment Council in evaluating each Investment Plan and deciding whether to recommend the Plan to the Secretary. After receiving a Plan from the Executive Director, the Council would vote on whether or not to recommend funding the Plan and communicate the outcome of the vote to the Secretary. Investment Plans submitted by the Executive Director to the Investment Council could not be modified. Investment Plans recommended for funding would be forwarded to the Secretary for approval. The Secretary would consider each Investment Plan recommended by the Investment Council without modification, and either approve or reject the Investment Plan. Applications with rejected Investment Plans would be returned to the Executive Director, with reconsideration by the Fund no sooner than one year after the date of return.

Section 902(i) addresses the relationship of Fund activities with other Federal laws. In the case of financial assistance provided by the Fund that would otherwise be eligible for financial assistance under title 23 or chapter 53 of title 49, policies would be established for determining which requirements of the title or chapter would be applied to the Fund projects, except that labor standards under title 23 or chapter 53 would apply in all cases, including, when applicable, the requirement that all laborers and mechanics employed by contractors or subcontractors on construction work performed on the projects would 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. Also, applicable planning and programming requirements of sections 134 and 135 of title 23, United States Code, would apply in every case.

In the case of all financial assistance provided by the Fund, all applicable environmental laws and requirements, including the National Environmental Policy Act of 1969 (NEPA) and the National Historic Preservation Act (NHPA), would apply. Detailed specifications are provided as to the designation of "Federal lead agency" and "joint lead agency" under Council on Environmental Quality regulations.

In the event that a project has cross-modal components, the Fund would have the discretion to designate the specific requirements that shall apply to the project.

**Section 903 of title 49:** Section 903(a) would authorize appropriations for Fund activities over the Fiscal-Year 2011-2015 time period, from \$4 billion in FY2011 to \$6 billion in FY2015. Amounts made available would remain available until expended.

Of the total made available in each fiscal year, not more than \$150 million would be available to make Planning and Feasibility Grants, and not more than \$50 million would be available for the analysis of costs and benefits of projects. In addition, of the total amount made available, from \$70 million in FY 2011 to \$52 million in FY 2015 would be available for costs of administering the new chapter 9.

**SEC. 2102. TITLE 5 AMENDMENT.**

This section would add to the Executive Pay authorities of the Federal Government at 5 U.S.C. 5315 the position of the Executive Director of the Fund.

**Part 2--Freight Policy Office**

**SEC. 2151. OFFICE OF FREIGHT POLICY.**

This section would establish an Office of Freight Policy in the Office of the Under Secretary for Policy, establish a National Freight Transportation Policy (and goals for this policy), direct the Secretary to designate a National Freight Transportation System, direct the Secretary to issue a biennial National Freight Transportation Plan (which would include a report on the conditions and performance of the National Freight Transportation System), direct the Secretary to develop transportation investment data and planning tools, direct the Secretary to use the findings of the National Freight Transportation Plan to guide investment decisions subject to the Secretary's discretion, and repeal 49 U.S.C. 5503 (Office of Intermodalism).

**Subtitle C--Federal-Aid Highways**

**Part 1--Authorizations and Programs**

**SEC. 2201. AUTHORIZATION OF APPROPRIATIONS.**

Section 2201(a) authorizes sums out of the Highway Account of the Transportation Trust Fund for the safety program, the national highway program, the livability program, and the federal allocation program. Section 2201(b) defines the terms "small business concern" and "socially and economically disadvantaged individuals," establishes a general rule for the expenditure of funds under certain titles of this Act and section 403 of title 23, requires states to provide the Secretary with an annual listing of disadvantaged business enterprises, requires the Secretary to establish minimum uniform criteria for use by State governments, and preserves the eligibility of individuals or entities to receive funding who are prevented from complying with this section due to a court order. This section also includes authorizations for critical highway infrastructure, including additional funds in fiscal year 2012 for transfer to the General Services Administration



for cross-border transportation activities and funding for credit assistance under the Transportation Infrastructure Finance and Innovation Act program.

**SEC. 2202. OBLIGATION CEILING.**

Subsection (a) would provide the overall ceiling on obligations for Federal-aid highway and highway safety construction programs for each of fiscal years 2012 through 2017.

Subsection (b) identifies the fund categories that would be exempt from the ceiling on obligations in subsection (a). This would include funds provided by earlier Acts that were exempt from limitation under such Acts, and new contract authority under the Transportation Opportunities Act for the Emergency Relief Program (\$100,000,000 for each fiscal year) and \$639,000,000 in funding apportioned for the Flexible Investment Program for each fiscal year.

Subsection (c) would provide the methodology for the distribution of the obligation authority, conforming the methodology to reflect the newly proposed program structure.

Subsection (d) would require the redistribution of obligation authority after August 1 of each fiscal year (commonly known as the August Redistribution process). The redistribution of obligation authority under the August Redistribution process would remain unchanged from current requirements.

Subsection (e) would provide that obligation limitation for the Transportation Research Programs and for the Surface Transportation Revenue Alternatives Office would be available until used (no-year limitation). The subsection would also provide that obligation limitation on funds set aside for the administrative expenses of Critical Highway Infrastructure Program would be available for a period of 3 fiscal years. The no-year and multi-year obligation limitation provided in a fiscal year would not count against the obligation ceilings in subsequent fiscal years.

Subsection (f) would retain the current requirement that, no later than 30 days after the distribution of obligation authority, authorized Federal-aid highway program contract authority that will not be allocated to the States and will not be available for obligation due to the imposition of the obligation limitation shall be redistributed among the States. The redistributed contract authority would be available to be obligated for activities eligible under the Flexible Investment Program.

**SEC. 2203. APPORTIONMENTS.**

This section would amend section 104 of title 23 to reflect the newly proposed Federal Highway Administration's program structure.

Subsection (a) of section 104 would be amended by this section to update the apportionment amounts from the Highway Account of the Transportation Trust Fund that

would be made available for Federal Highway Administration's operating expenses from fiscal year 2012 through fiscal year 2017.

Subsection (b) of section 104 would provide an outline for the apportionment factors for distribution of funds to the States for various programs, to be apportioned after the funds authorized in subsection (d) of this section have been set aside.

Subsection (c) of section 104 would provide a substantially unchanged version of current subsection 104(e), "Certification of apportionments." This provision would remove the reference to apportionments under sections 105 and 144.

Subsection (d) section 104 would be a substantially unchanged version of current subsection 104(f), "Metropolitan planning." This section would decrease the set aside amount for the metropolitan planning program from 1.25 percent to 1 percent and amend the programs from which the set aside would be taken to the Highway Infrastructure Performance Program, the Flexible Investment Program, and the Livable Communities Program.

Subsection (e) of section 104 would be a substantially unchanged version of current subsection 104(j). This provision would require the Secretary to submit a report, via the Internet, to Congress for each fiscal year on how funds were obligated in the preceding fiscal year. The report would include the amount obligated by each state for Federal-aid highways and highway safety construction, the balance of each State's unobligated apportionment and the rates of obligations apportioned or set aside under this section according to program, funding category or subcategory, type of improvement and State. Subsection (f) of section 104 would be a substantially unchanged version of current subsection 104(k), "Transfer of highway and transit funds." This section would remove the requirement under current subsection (k)(3)(C) for the surface transportation program and remove the reference under current subsection (k)(3)(B) to apportionments under sections 105 and 144.

## **SEC. 2204. DEFINITIONS.**

This section would provide a definition of the terms "asset management," "Federal lands access transportation facility," "Federal lands transportation facility," "State strategic highway safety plan," and "tribal transportation facility."

This section would strike the definitions for the terms "Federal lands highway," "forest highway," "Indian reservation road," "park road," "parkway," "public lands development roads and trails," "public lands highway," "public lands highways," and "refuge road," to be consistent with the new program structure.

This section would amend the definition of "construction" to clarify that non-traditional highway projects, preliminary engineering, reconstruction, preservation and all capital improvements that enhance the efficiency or effectiveness of an eligible Federal-aid highway are eligible construction costs.

This section would amend the definition of "Federal-aid highway" to add the qualifier "public" before "highway eligible for assistance under this chapter" and to insert the word functionally into the phrase "other than a highway functionally classified as a local road or rural minor collector." This modification would make the definition consistent with the eligibilities found in this bill and the term functional classification. Additionally, this change would clarify that local roads are classified by function rather than ownership.

This section would amend the definition of "Federal-aid system" to update the phrase "any of the Federal aid highway systems" with "the National Highway System."

This section would amend the definition of "maintenance area" to include the qualifier "air quality" before the words "nonattainment area" and "attainment area."

This section would delete a portion of the definition of "project" to clarify existing language.

This section would amend the definition of "project agreement" to clarify that such agreements are executed by the Secretary and the recipient.

This section would amend the definition of "safety improvement project" to be consistent with the definition in proposed section 148, the Highway Safety Improvement Program.

The definition of "transportation enhancement activity" at current subsection (a)(35) would be deleted. The eligibilities for transportation enhancement activities would be relocated to proposed section 150(a), the Livable Communities Program.

The definition of "transportation systems management and operations" would be relocated to subsection (a)(30). The definition of "transportation systems management and operation" would be amended to clarify that transportation systems management and operations is an "strategy" for operations and management of the transportation system and not a federal program. The existing definition would be expanded by providing examples of strategies and coordination activities that may be involved in transportation systems management and operations.

The definition of the term "truck stop electrification system" would be moved from current subsection (a)(38), "advanced truck stop electrification system," to subsection (a)(32). The subsection would be largely unamended, except to remove the word "advanced" from the term in order to adopt the more commonly used terminology.

Subsection (b)(1) would update the declaration of policy to accelerating the construction, reconstruction and rehabilitation of the National Highway System, from accelerating the construction of the Federal-aid highway systems.

Current subsection (b)(2), which prescribes completion dates for the Dwight D. Eisenhower National System of Interstate and Defense Highways, would be removed.

Proposed subsection (b)(2), Transportation needs of 21st Century, would be largely unamended, except to update the term "Interstate System" with "National Highway System" at proposed subsection (b)(2)(H).

Subsection (c) would be largely unamended, except to update the term "Federal-aid system" with "Federal aid highway."

#### **SEC. 2205. NATIONAL HIGHWAY PROGRAM.**

This section would establish the 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.

Subsection (b) would establish the two components of the National Highway Program: the Highway Infrastructure Performance Program (HIPP) within section 119 of title 23, United States Code, and the Flexible Investment Program (FIP), within section 133 of title 23, United States Code. The HIPP would ensure strategic investments to achieve national goals for preserving and improving the infrastructure condition and performance of the National Highway System. The FIP would 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.

Subsection (c) would provide that in order to use funds apportioned to carry out section 119, States shall develop a performance-based framework for investments including an asset management plan for the National Highway System to make progress toward achieving national goals.

#### **SEC. 2206. NATIONAL HIGHWAY SYSTEM.**

This section would define the Federal-aid system as being the National Highway System (NHS). It would also expand the NHS.

This section would expand the NHS under section 103(b) to include all urban and rural principal arterials, the strategic highway network and intermodal connectors. Initially, the NHS would expand from approximately 160,000 miles to 223,115 miles. The subsection would give the Secretary authority to modify the NHS for roadways that meet NHS criteria based on requests made by the States in cooperation with local and regional officials and metropolitan planning organization.

This section would require States under section 103(c) to develop and implement a risk-based State asset management plan for infrastructure assets on the NHS based on a process defined by the Secretary. State asset management plans would be required to include strategies leading to a program of projects that would make progress toward achievement of the national goals of improving the condition and operation of the NHS. The subsection would identify minimum components of the State asset management plan.

This section would carry forward existing requirements under section 103(d) for establishment and modification of the Interstate System.

This section would amend section 103(e) to update transfer provisions for remaining Interstate Construction funds to account for new funding categories.

This section would specify in section 103(f) that the term “National Freight Corridors” means the national freight corridors identified under section 310 of title 49. **\*\*[??]** means the national freight corridors identified under section 310 of title 49. **\*\*[??]** States would be afforded broadened flexibility on the use of HIPP and FIP funds along these corridors.

This section would also repeal the National Network designated under STAA of 1982. It would apply the conventional combination vehicle standards for operation. It would change the length of the conventional combination vehicle from 48 feet to 53 feet, which is the current industry standard. It would allow States to exempt segments that were open to traffic on the date of enactment of subsection (g) and on which all non-passenger commercial motor vehicles were banned, and it provides States to put in place 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. This section also would provide reasonable access for conventional combination vehicles to services and terminals on the expanded NHS that applied to the National Network.

## **SEC. 2207. HIGHWAY INFRASTRUCTURE PERFORMANCE PROGRAM.**

This section would establish the highway infrastructure performance program.

This section would establish under section 119(b) the purposes of this program to provide support for the condition and operational performance of the National Highway System and to ensure that investments of Federal-aid funds in highway infrastructure are directed to achievement of established national performance goals for infrastructure condition and operations.

This section would provide, with limited exceptions, that only facilities on the National Highway System are eligible under this program.

This section would provide under section 119(d) the list of eligible projects to include preservation and operational improvements without capacity improvements on the National Highway System. The section would establish eligibility for tunnel inspection and repair, and for cost effective improvements on National Freight Corridors.

This section would limit under 119(e) new capacity improvement under this program to construction of auxiliary lanes or widening of a bridge during rehabilitation or replacement.

**SEC. 2208. FLEXIBLE INVESTMENT PROGRAM.**

This section would establish a flexible investment program.

This section would establish under section 133(b) that the purpose of this program is to provide flexibility to States to direct funding to improve the condition and performance on Federal-aid highways and on bridges on any public road.

This section would provide the list of eligible projects under section 133(c), including eligibilities found currently in section 133. Unlike the HIPP, FIP funds could be used for capacity improvements.

This section would provide under section 133(d) that to be eligible for funding under this program, facilities must be functionally classified as other than local or rural minor collectors, unless such roads were on a Federal-aid highway system on January 1, 1991. Exceptions would apply for bridges on any public road, carpool and vanpool projects and safety projects.

This section would require under section 133(e) that projects be consistent with the planning requirements of sections 134 and 135 of title 23.

This section would set aside funding for highway bridges located on public roads, other than Federal-aid highways. The set aside would not be less than 15 percent of the amount of funds apportioned to the State for the Highway Bridge Program for fiscal year [2011]. It would continue the current provision for reduction of expenditures when the Secretary determines that the State has inadequate needs to justify the expenditure. It would also continue the current credit provisions for bridges not on a Federal-aid highway.

**SEC. 2209. HISTORIC HIGHWAY BRIDGES.**

This section would amend section 144 of title 23, United States Code, to align with the Flexible Investment Program and the Highway Infrastructure Performance Program. The eligibility and inspection requirements of the Highway Bridge Program would be deleted since eligibility for bridge infrastructure would be contained within the Flexible Investment Program and the Highway Infrastructure Performance Program. The inspection requirements would be consolidated under section 151. This section would retain and update the provisions concerning historic highway bridges.

Subsection (a) would require the Secretary in cooperation with the States to encourage the inventory, retention, rehabilitation, adaptive reuse, and future study of historic highway bridges.

Subsection (b) would define "historic highway bridge" as any bridge that is listed on, or eligible for listing on, the National Register of Historic Places.

Subsection (c) would continue current provisions for State inventories of bridges to determine their historic significance.

Subsection (d) would establish eligibility under this title for preservation of historic highway bridges. For bridges that will no longer be used for motorized vehicular traffic, reimbursable project costs would be limited to 200 percent of the estimated cost of demolition.

Subsection (e) would continue current requirements for making available for donation historic highway bridges that are proposed to be demolished and are reasonably expected to be relocated. It would also provide eligibility for future funding for preserved structures as otherwise provided in title 23.

## **SEC. 2210. NATIONAL BRIDGE AND TUNNEL INVENTORY AND INSPECTION PROGRAMS.**

This section would continue the requirement of the National Bridge Inventory and would consolidate bridge inventory requirements previously contained in 23 USC 144.

This section would continue current provisions requiring the Secretary, in consultation with the States and the Secretaries of the appropriate Federal agencies, to determine the cost of replacing and rehabilitating bridges.

This section would establish requirements for a National Tunnel Inventory in section 151(c).

This section would require under section 151(d) that the Secretary, in consultation with the States and the Secretaries of the appropriate Federal agencies, to determine the cost of replacing and rehabilitating tunnels.

This section would require under section 151(e) that the Secretary, in consultation with the State transportation departments and interested and knowledgeable private organizations and individuals, to establish national bridge inspection standards and national tunnel inspection standards.

This section would set minimum requirements for inspection standards.

This section would provide that the Secretary shall establish a program designed to train appropriate governmental employees to carry out highway bridge and tunnel inspections.

This section would allow the Secretary to use funds made available from 23 USC 104(a) and 503 to carry out section 151.

This section would outline requirements for compliance with the national bridge inspection standards and the national tunnel inspection standards and the penalty for noncompliance. Whenever bridges are discovered with safety concerns in need of immediate action, this section would require the Secretary to immediately notify the State of noncompliance and require the State to correct the noncompliance.

This section would require the set aside of one percent of each State’s HIPP and FIP apportionments, to be used for bridge and tunnel inspections under sections 119 and 133 of title 23.

**SEC. 2211. LIVABILITY PROGRAM**

This section would authorize a new Livability Program to promote safe and efficient multi-modal choices for transportation users throughout the country; increase access to transportation services; enhance the relationship between transportation and land use while protecting the environment; provide affordable connections from residences to employment centers and other key amenities; and enhance economic opportunities and environmental sustainability. The Livability Program would consist of three program components: the formula-based Livable Communities Program, the discretionary Bicycling and Walking Transportation Grant Program, and a discretionary Livability Capacity Building Grant Program.

Livable Communities Program

Subsection (c) would authorize the Secretary to establish a new formula-based Livable Communities Program, codified in section 150(a) of title 23. The purposes of this program would include helping States deliver transportation projects that improve quality of life for communities across the country, including rural and urban areas; improving the safety and efficiency of the transportation system for all transportation modes; reducing impacts of transportation on the environment, including the reduction of greenhouse gas emissions; reducing the need for costly future transportation infrastructure; ensuring efficient access to jobs, services and centers of trade; and encouraging private sector development patterns and investments that support livability goals.

Proposed section 150(a)(3) of title 23 would outline the eligible projects and activities under the Livable Communities Program. Eligible activities for the formula-based program would include those currently eligible under 23 U.S.C. sections 101(a)(35), 149(b), 162, 206, and 217 and SAFETEA-LU section 1404 (i.e., Transportation Enhancement Activities, Congestion Mitigation and Air Quality Improvement Program, National Scenic Byways Program, Recreational Trails Program, Bicycle Transportation and Pedestrian Walkways, and Safe Routes to School, respectively). The eligible activities from these popular programs represent key livability-related transportation activities, ranging from congestion reduction and traffic flow improvements to walking and bicycling facilities to environmental mitigation for highway projects.



Section 150(a)(4) would continue to require air quality improvements for nonattainment and maintenance areas. If a State has nonattainment or maintenance areas it would be required to devote at least 15 percent of its Livable Communities Program funds to projects that will improve air quality in these areas. States without nonattainment and maintenance areas would not be constrained by this minimum requirement. Section 150(a)(5) would specify that a State may use Livable Communities Program funds for a transit project if such project would improve air quality in a nonattainment or maintenance area, except that such use of funds could not exceed the amount required to be set aside under paragraph (4).

Section 150(a)(6) would require States to use such sums as necessary to fund one or more State bicycle and pedestrian coordinators and a full-time safe routes to school coordinator.

Section 150(a)(7) would require States to develop a strategy to invest Livable Communities Program funding to achieve State targets that support national performance goals for improving livability. States would report annually on progress in achieving such targets.

Subsection (d) would include a transition period for the establishment of State performance targets.

**\*\*[NEED TO MODIFY] Bicycling and Walking Transportation Grant Program**

**Subsection (c) would authorize the Secretary to establish a new discretionary Bicycling and Walking Transportation Grant Program, codified in section 150(b) of title 23, to assist communities in building safe and convenient pedestrian and bicycle networks.**

**As specified under proposed section 150(b)(3), under this program, eligible applicants would include State departments of transportation, tribal governments, local governments, or metropolitan planning organizations. Section 150(b)(4) would provide a list of eligible projects, which would include projects for constructing networks of nonmotorized transportation infrastructure facilities, including sidewalks, bikeways, and shared use paths, that connect people with public transportation, workplaces, schools, residences, businesses, recreation areas, and other community activity centers; providing for bicycle facilities, including bicycle sharing stations; restoring and upgrading current nonmotorized transportation infrastructure facilities; supporting educational activities and activities to encourage biking, safety-oriented activities, and technical assistance to further the purposes of the program; and improving safety for pedestrians and bicyclists. Section 150(b)(5) would provide that applicants could request up to \$20 million for an eligible project. In selecting grants, the Secretary would consider a number of factors, including, for example, the extent to which the project would contribute to a mode shift to walking and bicycling, demonstrate community support, and commit State, local or other Federal matching funds.**

### Livability Capacity Building Grant Program

Subsection (e) would authorize a discretionary Livability Capacity Building Grant Program to improve capacity for addressing livability needs. Eligible applicants would include State departments of transportation, tribal governments, local governments, or metropolitan planning organizations. Eligible projects would include a variety of projects for capacity-building such as improving data collection, providing training, upgrading computers and software, and developing and implementing transportation modeling.

In awarding grants under this program, the Secretary would consider the extent to which the proposed project would help address the principles from the HUD-EPA-DOT interagency partnership for sustainable communities; the degree to which the project leverages investment; and the extent of coordination and collaboration demonstrated between all relevant transportation entities in connection with the project.

## **SEC. 2212. FEDERAL LANDS AND TRIBAL TRANSPORTATION PROGRAMS.**

This section would amend sections 101 and 201-204 of title 23, United States Code, to: 1) improve multi-modal access, support increasing visitation to recreational areas on public lands, and expand economic development in and around Federal lands while preserving the environment and reducing congestion at our national treasures; 2) provide access to and through our national parks, forests, wildlife refuges, Bureau of Land Management lands, US Army Corps of Engineers recreation areas, and other Federal lands; and 3) enhance livable communities and the quality of life of tribal residents by including safer access to schools and healthcare facilities as well as improved opportunities for economic development on Tribal lands.

This section would replace current sections 201 through 204 of title 23. The current sections related to the individual components of the Federal lands highway program are scattered throughout these four sections. DOT proposes aligning the relevant subsections with the proper programs since many of the existing Federal lands programs are proposed to change significantly. Specifically, all of the code related to the Tribal transportation program was moved to section 202, all of the code related to the Federal lands transportation program was moved to section 203, and all of the code related to the Federal lands access transportation program was moved to section 204. Section 201 provides the overarching language that affects sections 202-204.

### Section 201 – Federal lands and tribal transportation programs

Section 201(a) would generally replicate the purpose statement found currently in section 204(a)(1) with updates to; reflect new definitions.

Section 201(b)(1) would consolidate existing language currently found in sections 202(b), 202(c), 202(d), 202(e), and 203.

Section 201(b)(2), 201(b)(3), and 201(b)(4) would replicate existing language included in section 203 with updates to reflect new definitions.

Section 201(b)(5) would ensure that funds stemming from the component programs of the current Federal lands highway program continue to operate under the current laws and regulations.

Section 201(b)(6) would replicate existing language currently found in section 203. The authority to obligate funds at the point of approval of plans, specifications, and estimate would be expanded to include all funds (Title 23 and Non-title 23), similar to authorities currently granted to States under the Federal-aid program.

Section 201(c)(1) through 201(c)(5) would substantially replicate existing language currently found in sections 204(a)(2) through 204(a)(6). References to formal rulemakings for planning processes and management systems would be omitted; however, there would still be a requirement that these processes are followed, as appropriate.

Section 201(c)(6), Data Collection, would require Federal land management agencies to collect and report data necessary to implement the Federal lands transportation program, the Federal lands access program, and the tribal transportation program including inventory and condition information of their transportation facilities and bridge inspections of all publicly accessible bridges.

Section 201(c)(7), Administrative Expenses, would create a planning and data collection program category, funded by a set-aside of up to five percent of the Federal lands access program and the Federal lands transportation program. These funds would provide a dedicated funding source for comprehensive and coordinated transportation planning and performance management activities including data collection and reporting from Federal land management agencies. These funds would also support the transportation planning activities of Federal land management agencies that which are not eligible for Federal Lands Transportation Program funding, such as the Department of Defense and the Bureau of Reclamation.

Section 201(d), Reimbursable Agreements, would permit the use of reimbursable authority for work funded by States, Tribes, and local public authorities. Today, reimbursable authority is limited to a Federal-to-Federal arrangement only. This change would increase flexibility in supporting the delivery of projects.

Section 201(e), Loans, would permit the temporary loaning of funding between and within the recipients of the Federal lands transportation and Federal lands access programs to enable efficient and flexible use of funding. The loan is a purely voluntary activity and requires the consent of all participating entities.

#### Section 202 – Tribal transportation program

Section 202(a), Use of Funds, would be substantially similar to existing language found in current section 204(b). Section 202(a)(1) describes the program eligibilities, which would not change substantially from existing eligibilities described in sections 204(b)(1), 204(b)(5) and 204(h). The eligible activities lists would be combined and revised slightly to more closely match the eligibility list appearing in implementing regulations (25 CFR 170).

Sections 202(a)(2) through 202(a)(6) would be virtually identical to existing language currently appearing in sections 202(d)(2)(F), 204(b), and 204(f), with updates to conform to new definitions. The six percent administrative set-aside is a conversion of the annual dollar figures that appear in section 202(d)(2)(F)(i), which are equivalent to six percent of each year's program authorization. Approximately six percent has been set aside for administrative expenses over the past two authorizations.

Section 202(a)(7), Maintenance, would replicate existing language currently appearing in sections 204(c) and 204(l). The provision would be modified to permit spending on maintenance activities at the greater of \$500,000 or 25% of the funding a Tribe receives from the Tribal share formula. This change would allow many smaller Tribes, who receive modest amount(s) of funds via the Tribal share formula, to immediately leverage their resources on maintenance activities and reap the benefits of those transportation improvements within their communities. The requirement for an annual maintenance report would be removed, because only a minimal number of the 564 Federally-recognized Tribes currently have a State-tribal maintenance agreement in place in which funding is transferred to the Tribes.

Sections 202(a)(8) and 202(a)(9) are virtually identical to language currently appearing in sections 204(d) and 204(e). References would be updated to conform to new definitions.

Section 202(b)(1) would replicate language currently appearing in section 202(d)(2). References to a negotiated rulemaking with Tribes would be replaced by a reference to 25 CFR 170, which is the result of that negotiated rulemaking.

Section 202(b)(2), National Tribal Transportation Facility Inventory, is similar to language currently appearing in section 202(d)(2)(G). The requirement for a report to Congress would be removed, since that report has been completed.

Section 202(b)(3), Regulations, is similar to language currently appearing in section 202(d)(2)(B). References to a negotiated rulemaking with tribes to establish a funding formula would be removed because the formula was established in 25 CFR 170, which is the result of that negotiated rulemaking.

Section 202(b)(4), Basis for Funding Formula, would replicate language currently appearing in section 202(d)(2)(D). The funding formula would be refined to require that at least 50 percent of the funding be generated from transportation facilities that are owned by Tribal Governments, the Bureau of Indian Affairs, or were part of the Indian

reservation roads program system inventory in 1992 or subsequent fiscal year. In this manner, the program preserves a minimum threshold of resources for roads owned by Tribes/BIA regardless if the inventory of State and County owned roads continues to increase.

Section 202(b)(5) would replicate language currently appearing in section 202(d)(2)(E). References to program names would be updated.

Section 202(b)(6) would replicate language currently appearing in section 202(d)(2)(F)(ii). A fourth provision would be added to require a Tribe to receive advanced written approval from a facility owner before that Tribe could approve plans, specifications, and estimates (PS&E), or commence with construction. This change would align the law with the current regulations appearing in 25 CFR 170.

Sections 202(b)(7) and 202(b)(8) would replicate language currently appearing in sections 202(d)(3) and 202(d)(5). References would be updated to conform to new definitions. Under 202(b)(8)(F), the approval of the Secretary would be added as a condition of accepting new Tribes for direct disbursement of funding from FHWA. This change would ensure that FHWA could manage the oversight required by the significantly increasing number of Tribes that want program funds directly from FHWA.

Section 202(c), Planning, would replicate language currently appearing in section 204(j). The amount of the set-aside would be increased from 2 percent to 3 percent to support the additional collection and reporting of data, and increased planning activities. References to program names would be updated and references to other sections would be conformed.

Section 202(d), Tribal Transportation Facility Bridges, would replicate language currently appearing in section 202(d)(4). The standalone \$14 million Indian reservation roads bridge program would be replaced with up to a 5 percent set-aside of the Tribal Transportation Program thereby providing an opportunity to consolidate programs.

Section 202(e), Safety, would create a safety funding category of up to 2 percent set-aside of the Tribal Transportation Program to provide dedicated funds for transportation safety improvement projects, collection of safety information, development and operation of safety management systems, highway safety education programs, and other eligible activities under section 148. This proposed change is predicated on the disproportionate numbers of fatalities and crashes in Indian country compared to similar safety numbers in the remaining locations of their State(s).

Section 202(f), Federal-aid Eligible Projects, would replicate language currently appearing in section 204(c) with updates to references to new program names and sections.

### Section 203 – Federal Lands Transportation Program

Section 203(a), Use of Funds, would substantially replicate language in current section 204(b). Section 203(a)(1) would describe the program eligibilities, which would not change substantially from existing eligibilities described in sections 204(b)(1), 204(b)(5) and 204(h). The operations and maintenance of transit facilities from section 204(b)(1)(B) would be removed.

Sections 203(a)(2) through 203(a)(5) would replicate existing language currently appearing in sections 204(b)(2), 204(d), 204(e) and 204(f). References to the "Buy Indian" Act and ISDEAA (P.L. 93-638) would be removed from the Federal Lands Transportation Program. References would be updated to conform to new definitions.

Section 203(b), Agency Program Distributions, would create a Federal Lands Transportation funding category for improvement projects on high-use Federal lands transportation facilities (public roads, bridges, trails, and transit systems) owned by the National Park Service, the U.S. Forest Service, the U.S. Fish & Wildlife Service, the U.S. Army Corps of Engineers, and the Bureau of Land Management. This program would be allocated to programs of projects for four of the five agencies in a competitive manner. The DOT proposes that a portion of the funds be reserved for the National Park Service (NPS) as shown in section 1101. The NPS would be required to demonstrate how their program of projects supports the below objectives similar to the other four agencies. The remaining four agencies would compete for the balance of the funds based on applications that describe how their programs of projects will:

- (A) Address the transportation goals of the Secretary of Transportation, including performance management as appropriate;
- (B) Address the resource management goals of the Secretaries of the respective Federal land management agencies; and
- (C) Support high-use Federal recreation sites or economic generators.

Section 203(c), National Federal Lands Transportation Facility Inventory, would require the five Federal land management agencies to maintain inventories of their transportation facilities that provide access to high-use Federal recreation sites or economic generators.

#### Section 204 – Federal Lands Access Program

Section 204(a), Use of Funds, would substantially replicate existing language in current 23 USC 204(b). Section 204(a)(1) describes the program eligibilities, which would not change substantially from existing eligibilities described in 23 USC 204(b)(1), 204(b)(5) and 204(h). The operations and maintenance of transit facilities from 23 USC 204(b)(1)(B) would be removed.

Sections 204(a)(2) through 204(a)(5) are virtually identical to existing language currently appearing in 23 USC 204(b)(2), 204(d), 204(e) and 204(f). References to the "Buy Indian" Act and ISDEAA (P.L. 93-638) would be removed from the Federal Lands Transportation Program. References would be updated to conform to new definitions.

Section 204(b), Program Distributions, would create a Federal Lands Access funding category for improvement projects on Federal lands access transportation facilities (public roads, bridges, trails, and transit systems) owned by States, counties, or local governments which provide access to public or non-public Federal lands, including lands owned by the Departments of Interior, Agriculture, Defense, and Energy. This program would be allocated by formula to all 50 States, Puerto Rico, and the District of Columbia.

Section 204(c) would enable programming decisions to be made by a tri-partite committee in each state, made up of a representative from the Federal Highway Administration, a representative from the respective State Department of Transportation, and a representative from County or other local governments in that State.

Section 204(d) would require that this committee 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 public and non-public Federal lands.

Subsection (b) would repeal 23 U.S.C. 214, Public lands development roads and trails.

Subsection (c) would provide conforming amendments for consistency with the definition changes made in this section. This subsection would also replace the term "park road or parkway under Section 204" with "Federal lands transportation facility" in Section 138, Preservation of Parklands. This change would conform the new definitions and treat Federal lands transportation facilities in a consistent manner. This change would also exempt Federal owners from "section 4f" by amending section 138(a) of title 23. This exemption is similar to the exemption provided to the National Park Service under the Transportation Equity Act for the 21<sup>st</sup> Century.

### **SEC. 2213. EMERGENCY RELIEF PROGRAM.**

This section would continue the emergency relief (ER) program at the existing annual authorization of \$100 million.

This section would continue existing statutory requirements allowing nationwide ER program eligibility for natural disasters and catastrophic failures from an external cause.

This section would add language to clarify existing policy prohibiting ER funding participation in repairs when the construction phase of a replacement structure is included in the statewide transportation improvement program at the time of a disaster.

This section would require identification of all eligible ER sites and associated project costs, for any given disaster, to be identified within two years of the disaster occurrence. It would also continue existing provisions in title 23 section 120(e) limiting the eligibility of ER funding participation to the cost of repair or reconstruction of a comparable facility. The definition of a "comparable facility" would be moved from title 23, section 120(e) to this subsection.

This section would limit ER participation in debris removal costs to those events not eligible for assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. This provision would simplify the process of debris removal cost accounting for state and local agencies. This section would remove the \$100 million cap on a single ER event within a state. This cap has historically been lifted by Congress through supplemental appropriations legislation when a large scale disaster results in ER expenses that exceed \$100 million within a state.

This section would allow additional transit service to be an eligible ER expense when such service provides temporary substitute highway traffic service to accommodate detoured traffic associated with a disaster.

This section would allow eligibility for reimbursement of emergency relief work completed with an agency's own funds prior to determination of eligibility. This would eliminate confusion about state and federal lands management agencies' eligibility for reimbursement for emergency relief work completed with their own funds prior to a determination of eligibility.

This section would carry forward existing statutory requirements concerning the treatment of territories as a state for the purpose of ER program eligibility.

#### **SEC. 2214. WORKFORCE DEVELOPMENT.**

This section would amend section 140 of title 23, United States Code, by striking the authorization amount references for the on-the-job training and disadvantaged business enterprise programs. Such references, with higher authorization amounts, would be located in section 2201 of this bill.

#### **SEC. 2215. HIGHWAY SAFETY IMPROVEMENT PROGRAM.**

This section would provide important changes to the Highway Safety Improvement Program (HSIP), the core highway safety program created by SAFETEA-LU and codified in section 148 of title 23. This program supports DOT's highest priority, reducing transportation-related fatalities and injuries, and reflects the continuing importance of highway safety to our social and economic health and future productivity. This section would target highway safety concerns on all public roads and provide flexibility for States to use their safety funds to address their highest priority safety problems in ways that achieve the greatest safety benefits.

SAFETEA-LU advanced safety by requiring States to develop data-driven and comprehensive Strategic Highway Safety Plans (SHSP) in consultation with public and private sector safety stakeholders at the local, State and Federal levels. All fifty States and the District of Columbia have responded positively to this requirement by completing SHSPs that were approved by the Governor or the responsible agency in each State. This proposal would reinforce and strengthen the SHSP by providing for the establishment and



implementation of performance measures and targets for reducing the more than 33,000 fatalities that occur every year.

Building on the core HSIP authorized by SAFETEA-LU, FHWA identified improvements to the program to increase safety performance at the local, State and Federal levels. This section would require SHSP updates, an annual implementation plan describing how HSIP funds will be spent, and an annual evaluation report of the progress made toward improving safety performance as part of a State performance-based management program. The proposal would provide additional flexibility in the use of HSIP funds.

The proposal would replace the High Risk Rural Roads Program (HRRRP) with a 10 percent set aside dedicated to rural road safety and would eliminate the \$220 million annual set-aside for railway-highway crossings. In SAFETEA-LU, these funds represented 17 percent of HSIP while highway-rail crossing fatalities represented less than 1 percent of all highway fatalities each year. The set-aside deprived States of funding to address greater safety needs such as roadway-departure crashes (which represent 53 percent of fatal crashes). Under this proposal, rail crossing safety projects would remain fully eligible for HSIP funds, so States could choose to spend appropriate HSIP funds to address railway-highway crossing safety problems.

As revised, section 148(a) would define "highway safety improvement program" to include projects, activities, plans and reports carried out under this section. The definition of "highway safety improvement project" would include strategies, activities and projects on a public road consistent with the State strategic highway safety plan. The "project examples" definition would include a non-exhaustive list of activities eligible for the use of HSIP funds. This proposal would include new definitions for road safety audits, road users, systemic safety improvements and safety data.

Revised section 148(b) would require the Secretary to carry out an HSIP to achieve a significant reduction in traffic fatalities and serious injuries on all public roads.

Section 148(c) would specify the requirements for a State strategic highway safety improvement program. Paragraph (1) would describe the State highway safety improvement program States must have in place to obligate HSIP funds.

The State program would include a number of components:

Section 148(c)(2): Data and Analysis. The first step in meeting a State's safety needs is understanding the problems. States would develop a safety data system to: collect and maintain a record of safety data on all public roads; advance the State's capabilities for safety data collection, analysis and integration; identify roadway features that constitute a danger to road users; and perform safety problem identification and countermeasure analysis. This provision would be supported by the new Highway Safety Data Improvement Program under section 149 of title 23.

Section 148(c)(3): Strategic Highway Safety Plan. Under this proposal, States would continue the very successful SHSP process that began in SAFETEA-LU. This provision would require States to update their SHSPs every 5 years and submit them to the Secretary. An SHSP is a statewide-coordinated safety plan that provides a comprehensive framework for reducing highway fatalities and serious injuries on all public roads. The SHSP would be developed by the State DOT in a cooperative process with Local, State, Federal, and private sector safety stakeholders. The SHSP is a data-driven, four- to five-year comprehensive plan that establishes statewide goals, objectives, and areas of greatest need and integrates the four E's—engineering, education, enforcement and emergency services. This proposal would require SHSPs to include State safety performance targets developed in consultation with the Secretary.

This paragraph would add Federal and tribal stakeholders to the list of major State and local safety stakeholders States should consult before updating their SHSPs. Although this provision would not specifically include persons responsible for administering section 130 of title 23 at the State level and Operation Lifesaver from this list, States would have discretion to consult them and other major stakeholders.

Section 148(c)(4): Implementation. Based on the data collection and analysis required and consistent with the SHSP, States would prioritize their safety needs. The proposal would provide States with flexibility to address potential and existing highway safety problems. States would determine priorities for correcting roadway features that constitute a hazard to road users as well as highway safety improvement projects based on crashes, injuries, deaths, traffic volume, and other relevant data. A State should consider which projects maximize opportunities to advance safety as well as annual progress in achieving State safety goals in the SHSP in conjunction with the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration.

States would then establish and implement a schedule of highway safety improvement projects, activities or strategies to address the identified safety problems. A State would submit an annual implementation plan for the Secretary's review describing how the HSIP funds would be allocated; how the proposed projects, activities and strategies funded by the HSIP would allow the State to make progress toward achieving its safety performance targets; and the actions the State would undertake to meet its performance targets if it had not met them for two consecutive years.

Section 148(c)(5): Eligible Projects. This paragraph would provide that States could obligate HSIP funds for highway safety improvement projects on any public road or publicly owned pathway or trail and would encourage States to also make use of other funding to address their safety needs.

Section 148(c)(6): Flexible Funding. This provision would increase the percentage of HSIP funds that could be used for safety projects under other title 23 programs from 10 percent to 25 percent. The projects would be consistent with the SHSP, and the State would certify the funds are being used for the most effective projects to make progress

toward achieving its safety performance targets. This provision would provide flexibility to States to determine the most effective use of safety funds. If a State, as part of its SHSP process, identified greater opportunities for safety improvements through activities eligible under other highway programs, this provision would allow a greater portion of HSIP funds to support those activities. Since States would be required to achieve a performance target to reduce fatalities, they would be encouraged to determine the best ways to meet that target for their State and provided flexibility to use HSIP funds.

Section 148(c)(7): Rural Roads. This provision would require States to set aside 10 percent of their HSIP funds for projects to improve the safety on public rural roads. States would be encouraged to expend additional HSIP funds on public rural roads. The set-aside would replace the HRRRP in SAFETEA-LU because States encountered significant problems in obligating HRRRP funds due to the SAFETEA-LU language. This proposal would provide flexibility to States to address safety problems on all public rural roads. States would not have to determine statewide average crash rates by functional classification in order to use these funds on rural public roads. Since almost 60 percent of fatalities occur on rural roads, the proposal would ensure that at least 10 percent of HSIP funds would be used to address these crashes. If a State certifies to the Secretary it has met all State needs for safety improvements on rural public roads, the State could use the funds set aside for rural public roads for any HSIP project.

Section 148(c)(8): State Performance Management. Consistent with the overall approach to a performance based Federal-aid program, States would be required to establish a performance-based framework for their State highway safety improvement programs. The HSIP performance-based framework would be coordinated with the safety programs of the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration, since the DOT agencies will be working together to achieve a national safety goal. The State performance-based management framework would include statewide roadway safety performance measures and targets developed in consultation with the Secretary. States would also be required to track annual progress in achieving performance targets and analyze and assess results. This evaluation would be used to set priorities for the next annual implementation plan.

States would submit an annual report to the Secretary on their progress in implementing the program, including the performance-based management requirements. This report would describe how HSIP program funds were allocated and the extent to which the HSIP projects, activities, and strategies contributed to achieving the State's safety performance targets. Since safety goals are shared across agencies, the State also would identify progress made in conjunction with the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration in achieving State safety goals.

The provision would allow flexibility for States that meet their safety targets. Only States that achieve their performance targets could transfer up to 50 percent of their HSIP funds for use under other title 23 programs. In cases where a State does not meet its performance target in a fiscal year, the proposal would limit flexibility by requiring that,

in the following year, the portion of a State's obligation authority that is equal to its HSIP apportionment be used for HSIP projects.

To help the public understand the HSIP program, follow how funds are used, and track State progress toward meeting safety goals, section 148(d) would require that all plans and reports submitted to the Secretary be made available to the public through the web site of the State Department of Transportation or other means as the Secretary deems appropriate. This would include the SHSP, the annual implementation plan and the annual performance report. As revised, this subsection would require States, rather than the Secretary, to post the reports.

Section 148(e) would continue the provision that reports, surveys, schedules, lists or data relating to this program are not subject to discovery or admission into evidence in a Federal or State court proceedings or for any other purposes in any action for damages.

Section 148(f) would continue the SAFETEA-LU match requirement for HSIP funds. The Federal share of HSIP projects would continue to be 90 percent, with the exception of specific highway safety improvements included in section 120(c), which would be accorded up to 100% Federal share.

Subsection (b) would provide an appropriate transition period for the new HSIP requirements. States would have until October 1 of the second fiscal year after enactment to submit to the Secretary and have in effect an updated strategic highway safety plan that meets the new requirements. Before such date, HSIP funds would be apportioned to a State for eligible projects consistent with the State's existing SHSP. After such date, a State that had not submitted an updated SHSP would only receive HSIP apportionment equal to the amount apportioned to the State in fiscal year 2011 for each subsequent year until the State had in effect and submitted an updated SHSP to the Secretary.

States would have one year after the Secretary establishes safety performance measures and a national target to develop, in consultation with the Secretary, State safety performance targets. Until a State had developed and identified in its SHSP State safety performance targets, the Secretary could approve obligations of funds to a State to carry out its HSIP for eligible projects consistent with the State's existing SHSP.

Section 2310(c) would amend section 130 of title 23 to eliminate subsection (e), the set-aside of HSIP funds for the elimination of hazards and installation of protective devices at railway-highway crossing. In SAFETEA-LU, these funds represented 17 percent of HSIP funds, while highway-rail crossing fatalities represented less than 1 percent of all highway fatalities each year. The set-aside deprived States of funding to address greater safety needs such as roadway-departure crashes (which represent 53 percent of fatal crashes). Rail crossing safety projects would remain fully eligible for HSIP funds, so States could choose to spend appropriate HSIP funds to address railway-highway crossing safety problems. Subsections (f)(1), (2) and (3) would be deleted because they are no longer needed.

**SEC. 2216. HIGHWAY SAFETY DATA IMPROVEMENT PROGRAM**

This section would authorize a new Highway Safety Data Improvement Program (HSDIP) under section 149 of title 23 to ensure that States have the most complete and reliable highway safety data available in order to make the most cost effective infrastructure design decisions with the greatest safety payoff. This program primarily would focus on improvement of roadway inventory data systems. The HSDIP would provide States with the necessary tools and information to use crash data, along with information about roadway design characteristics and traffic data, to make better safety investment decisions. With these data systems integrated into highway basemaps, advanced analysis tools could be used to improve States' safety programs. This program would bolster the data-driven principles of the Highway Safety Improvement Program (HSIP) in under section 148 of title 23. In addition, all other planning decisions for highways could benefit from the availability of basemaps.

In order to make appropriate data-driven decisions, highway professionals must use analytical practices that take advantage of a rich set of highway data elements. Several roadway safety tools are now available to conduct quantitative safety analyses, allowing States to quantify the safety effects of decisions in planning, design, operations, and maintenance. Robust safety data is needed to fully use these new tools and to make the most cost effective and impactful infrastructure design decisions, based on the actual safety aspects of the system.

Under the HSDIP, States would receive funding to assist in the creation of highway basemaps—with the ability to geolocate attribute data through linear referencing system—of all public roads. States would be able to enhance their roadway inventory data systems and analysis for all public roads by linking roadway safety data to basemaps to determine highway safety improvement project and strategy priorities. The HSDIP also would help improve the timeliness, accuracy, completeness, consistency, integration, and accessibility of roadway safety data.

Section 149(a) would direct the Secretary to establish and implement a highway safety data improvement program. Section 149(b) would specify the purposes of the HSDIP. Section 149(c) would include definitions for highway basemaps, highway safety data improvement projects, model inventory of roadway elements, roadway safety analysis tools and roadway safety data.

Section 149(d) would specify the eligible uses of HSDIP funds. HSDIP funds could be used to create, update, or enhance a highway basemap as well as to collect roadway safety data for creation of or use on a highway basemap of all public roads in a State. To support the data collection and highway basemaps, HSDIP funds also would be available to store and maintain roadway safety data in an electronic format. These basemaps also could be used as a mapping layer with other highway, multi-modal and economic development data. Finally, this provision would allow States to use HSDIP funds to develop analytical processes for roadway safety data elements and to acquire and

implement the roadway safety analysis tools which will provide information to make cost-effective safety investment decisions.

Section 149(e) would require States to develop a strategic highway safety data improvement plan that describes a program of strategies to achieve a data-driven safety program. The data improvement plan would define State safety data improvement goals and annual safety data targets to inform how HSDIP funds should be spent over the authorization period. States would have one year from date of enactment to submit their strategic highway safety data improvement plan to the Secretary. The data improvement plan would describe what the State intends to achieve with its HSDIP funds and the projects, strategies and activities it will implement to achieve data improvement goals. Under section 149(f), States would report to the Secretary on progress in achieving State roadway safety data targets and would publish their reports on their State DOT websites.

Section 149(g) would provide that the Federal share of HSDIP projects would be 90 percent. Under section 149(h), if a State certifies to the Secretary that it has met all its needs for highway safety data improvements, the State could use HSDIP funds for any project under the HSIP.

Subsection (b) would allow an appropriate transition period for States to develop their strategic highway safety data improvement plans.

Subsection (c) would provide that \$17.5 million from the HSDIP be reserved for the Federal Highway Administration to work with the National Highway Traffic Safety Administration, the Federal Motor Carrier Safety Administration and the Research and Innovative Technology Administration to foster cross modal implementation of safety data programs and implement an integrated strategic and tactical approach to planning for safety data improvements. FHWA would work with its modal partners to develop coordinated safety data plans and improve the standardization, timeliness, accuracy, completeness, consistency, integration, and accessibility of safety data, systems, and processes.

**SEC. 2217. TOLLING.**

This section amends existing law to include two new options that provide more flexibility to finance new construction or capacity, and manage congestion, through the imposition of tolls. The first option focuses on Metropolitan Congestion Reduction and permits State and local governments to impose tolls on existing Interstate and non-Interstate facilities for the purposes of improving or reducing congestion in metropolitan areas with populations over 1 million people. Under this option, tolls may be imposed on specific lanes, whole facilities, or a network of facilities within the metropolitan area. The tolls must vary in order to manage demand and may only be collected through electronic toll collection systems. Toll revenues must first be used for the improvement, operation and maintenance of the facilities that are tolled, and any revenues in excess of the facilities' needs may be used for other title 23 eligible projects directly benefiting the operational performance of the tolled facility or facilities if the State or public authority certifies 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 annual performance report demonstrates that the pricing strategy has been effective in reducing or managing congestion. In order to toll a facility under this option, the State or local government must submit an application to the Secretary that identifies the facilities to be tolled, a description of the congestion problem sought to be addressed,, a facility management plan, a description of the transportation choices available to users of the facilities, what measures are being taken to address the impacts on low income populations, an analysis of whether the anticipated traffic diversion will significantly affect the safety of the routes onto which diversion may occur, and a monitoring and reporting plan.

The second option is focused on Interstate System Improvement and permits States and local governments to impose tolls for the purpose to initially construct Interstate facilities if the facility could not otherwise be constructed without the collection of tolls. The Interstate System Improvement option also permits State and local governments to toll existing Interstate facilities for the purpose of constructing one or more lanes. Any tolls collected under this program may only be collected through electronic toll collection systems. Toll revenues may only be used for the improvement, operation and maintenance of the facilities that are tolled. In order to toll a facility under this option, the State or local government must submit an application to the Secretary that identifies the facility to be tolled, describes the project and mobility needs to be addressed, includes a financial analysis showing that the facility could be constructed without the collection of tolls in the case of initial construction, a facility management plan, an analysis of any expected traffic diversion in the case of an existing free facility, what measures are being taken to address the impacts on low income populations, and a proposed monitoring and reporting plan.

This provision also makes various conforming amendments repealing existing pilot programs that are no longer needed. State and local governments should be able to impose tolls largely to the same extent permitted to do so under existing programs. Any facility operating pursuant to the terms of an executed toll or cooperative agreement under any of these repealed pilot programs may continue tolling pursuant to the terms of those agreements. Also, the interoperability requirements are amended to apply to any toll facility operating under authority granted by the Secretary rather than only certain specified pilot programs.

## **SEC. 2218. SURFACE TRANSPORTATION REVENUE ALTERNATIVES OFFICE.**

This section would establish a Surface Transportation Revenue Alternatives Office within the Federal Highway Administration. The Office would analyze the feasibility of implementing a national mileage-based user fee system that would convey prices to users to reflect system use and other travel externalities and serve as a funding source for surface transportation programs.

As vehicles become more efficient and the use of non-petroleum energy sources become more prevalent the current user fee system for funding the transportation system will become less viable. As a result, there is considerable interest in the potential for a mileage-based excise tax regime as a revenue source for surface transportation programs. Many unanswered questions and issues remain concerning the technologies that might be used to implement mileage-based user charges. The final outcome of the Office's 6-year effort would be documented evidence of the feasibility of a Nationally-implemented mileage-based user fee system and recommendations for next steps leading to the potential implementation of such a system.

Subsection (c) would establish a Surface Transportation Revenue Alternatives Policy Decision Group ("the Group"), consisting of public agency representatives as determined by the Secretary, to inform the selection and evaluation of mileage-based user fee systems. The Group would create a study framework that defines the functionality of a mileage-based user fee system, identify mileage-based user fee systems for field testing, provide objectives to assess technological, administrative, institutional, privacy, and other issues associated with identified systems, establish a public awareness communications plan, and evaluate the system design of mileage-based user fee systems.

Subsection (d) would require the Office to conduct field trials of the mileage-based user fee systems indentified by the Group for testing. In constructing the field trials, the Office would consider the capability of States to coordinate administrative and financial functions, the reliability of technology over greater distances and terrains, administrative cost estimates, and user acceptance.

**SEC. 2219. TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.**

This section would establish a foundation for transportation systems management and operations, codified in section 168 of title 23, United States Code.

Proposed section 168(b) of title 23 would express the purposes of the section, which reflect Departmental priorities and include furthering efficient and effective management and operation of the transportation system in order to promote the safe, reliable, and secure movement of people and goods at all times and under varying conditions; improving the safety, performance, and reliability of existing infrastructure while bolstering the Nation's economic competitiveness and supporting livable and sustainable communities; and ensuring 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.

Proposed section 168(c) of title 23 would authorize the Secretary to collaborate with and provide guidance to government and private entities at the federal, state, regional, and local level in order to improve transportation systems management and operations, thereby increasing the performance, safety, reliability, and security of our surface



transportation system. This section would also encourage and authorize multi-State agreements in order to support a transportation systems management and operations strategy within interstate regions or corridors. Such agreements are especially important during road construction, emergencies, and weather-related events.

Proposed section 168(d) of title 23 sets forth the objectives of a transportation systems management and operations strategy, including reducing congestion, planning for and organizing operations, and enhancing freight management. This section also provides examples of strategies toward achieving the objectives, such as travel demand management, collaboration and coordination, and use of advanced technologies.

## **Part 2--Performance Management**

### **SEC. 2301. PERFORMANCE MANAGEMENT PROCESS.**

This section would authorize the establishment of Performance Management of the Federal-aid program, identify national goals to be achieved by the Federal program, and establish a process by which the Secretary and the states would measure progress in attaining the goals. Performance Management is the means to make the most efficient investment of federal funds, increase the accountability and transparency of the federal program, achieve national goals, and improve decision-making.

The process, referenced throughout the bill, would include the identification of measures to assess system performance, the determination of national and separate state targets based on resources, the evaluation of the system, the identification of strategies to achieve the targeted outcomes, and the monitoring of system progress in meeting the targets and achieving the goals.

The process would be evolutionary. In several goal areas, consistent state data do not currently exist and for others, tools do not allow forecasting of future conditions. As experience is gained and improved data becomes available, new measures will be identified by the Secretary and targets developed by the states in consultation with the Secretary. By phasing-in Performance Management starting with the data that currently exists, for safety and system condition, the states will gain needed experience and allow for potential problems to be discovered early and best practices identified and applied to other goal areas.

### **SEC. 2302. METROPOLITAN TRANSPORTATION PLANNING.**

Section 134 (Metropolitan transportation planning ) of Title 23 as revised is amended to establish new metropolitan planning organization (MPO) designation and planning requirements. Modifications to MPO designation requirements ensure that MPO boundaries reflect regional development patterns and account for the size and technical capacity of MPOs. The new approach to planning focuses on enhancing the effectiveness of MPOs, both independently and as a partner with state DOTs, local jurisdictions, and

other planning bodies, in developing and implementing metropolitan transportation plans and Transportation Improvement Programs (TIPs).

Subsection (c) (*General requirements*) increases the minimum population threshold for MPO designation from 50,000 to 200,000 and establishes population-based tiers among MPOs in order to better align technical capacity and resource availability with planning requirements:

- *Tier I* designation is reserved for MPOs operating within urbanized areas of 1 million or more persons. Tier I MPOs are required to implement a performance-based, outcome-driven approach to planning. MPOs operating within urbanized areas of more than 200,000, but less than 1 million persons, may request, with the support of the Governor, designation as a Tier I MPO if it can demonstrate to the Secretary adequate technical capacity to fulfill the requirements of a Tier I MPO.
- *Tier II* designation is reserved for MPOs operating within urbanized areas of less than 1 million, but more than 200,000 persons. Tier II MPOs are subject to more streamlined performance-based planning requirements.
- Existing MPOs operating within urbanized areas of less than 200,000 persons prior to enactment of the Transportation Opportunities Act may, with the support of the Governor, request designation as a Tier II MPO. In the absence of a Tier II designation, these existing MPOs operating within urbanized areas of less than 200,000 persons are to be dissolved and the planning responsibilities returned to the State for those communities.

MPOs operating within contiguous or adjacent urbanized areas may elect to consolidate in order to meet the population thresholds required in order to achieve designation as a Tier I or Tier II MPO.

Subsection (g) (*MPO consultation in metropolitan transportation plan and TIP coordination*) requires MPOs to cooperate with officials and entities responsible for related planning activities, enhancing consideration of other key planning activities in the development of metropolitan transportation plans and TIPs. Additionally, MPOs that are adjacent or geographically close are required to coordinate their planning processes, including the preparation of metropolitan transportation plans and TIPs, to the maximum extent practicable.

Subsection (h) (*Scope of planning process*) is revised to begin the transition to, and implementation of, a performance-based, outcome-driven planning process in which MPOs are charged with considering certain outcomes as objectives in the planning process. In recognition of locally-preferred solutions and innovation, MPOs are granted the flexibility to develop and implement effective performance measures and targets for the national outcomes, in addition to measures that may be specifically prescribed by the Secretary. MPOs are required to periodically develop and publish a system performance report describing the condition of, and performance of, their transportation system. The

report is designed to serve as the basis for the development of policies, programs, and investment priorities that are reflected in the transportation plans and TIPs.

Subsection (i) (*Participation by interested parties*) improves the planning process through enhanced public participation and input.

Subsections (j) and (k) (*Development of a metropolitan transportation plan and Metropolitan TIP*) require MPOs to develop transportation plans and TIPs that focus on projects selected to achieve outcomes and performance targets. Accountability in planning is improved by requiring the development of fiscally-constrained transportation plans and TIPs so that MPOs select projects with a realistic financial model. Furthermore, TIPs must include, for illustrative purposes, the preliminary elements of benefit-cost analysis for certain projects that exceed an expected total project cost.

Subsection (n) (*Performance-based planning process evaluation*) allows the Secretary to evaluate periodically the quality of the performance-based planning processes of each MPO. The Secretary is empowered to designate high-performing MPOs, as well as those that have made significant progress in improving their performance-based planning processes. The Secretary may use these designations as a criterion when administering certain discretionary programs.

### **SEC. 2303. STATEWIDE AND NON-METROPOLITAN TRANSPORTATION PLANNING.**

Section 135 (Statewide transportation planning) of Title 23 is amended to establish new statewide transportation planning requirements. The new approach to planning focuses on enhancing the effectiveness of States, both independently and as a partner with metropolitan areas, local jurisdictions, and other planning bodies, in developing and implementing statewide transportation plans and Statewide Transportation Improvement Programs (STIPs).

Subsection (a) (*General requirements*) ensures that that States incorporate without change, or by reference, the metropolitan transportation plans and TIPs -- prepared by MPOs located within the State -- into statewide transportation plans and STIPs. Additionally, States are required to assume the planning responsibilities of existing small-urbanized areas (with a population of less than 200,000) that are no longer under the jurisdiction of a MPO.

Subsection (c) (*Coordination in multistate areas*) encourages Governors with responsibility for a portion of a multistate planning area and/or transportation corridor to coordinate their planning processes. The Secretary is allowed to consider the effectiveness of multistate coordination when approving funding for a multistate corridor project and when administering certain discretionary programs.

Subsection (d) (*Relationship with other planning officials*) requires States, to the extent practicable, to cooperate with officials and entities responsible for related planning activities in the development of statewide transportation plans and STIPs.

Subsection (e) (*Scope of planning process*) is revised to begin the transition to, and implementation of, a performance-based, outcome-driven planning process in which States are charged with considering certain outcomes as objectives in the planning process. In recognition of locally-preferred solutions and innovation, States, in coordination with MPOs, are granted the flexibility to develop and implement effective performance measures and targets for the national outcomes, in addition to measures that may be specifically prescribed by the Secretary. States are required to periodically develop and publish a system performance report describing the condition of, and performance of, their transportation system. The report is designed to serve as the basis for the development of policies, programs, and investment priorities that are reflected in the statewide transportation plans and STIPs.

Subsection (f) (*Participation by interested parties*) improves the planning process through enhanced public participation and input.

Subsections (h) and (i) (*Statewide transportation plan and STIP*) require States to develop statewide transportation plans and STIPs that focus on projects selected to achieve outcomes and performance targets. Accountability in planning is improved by requiring the development of fiscally-constrained statewide transportation plans and STIPs so that States select projects with a realistic financial model. Furthermore, STIPs must include, for illustrative purposes, the preliminary elements of benefit-cost analysis for certain projects that exceed an expected total project cost.

Subsection (l) (*Certification*) requires the Secretary to certify at least every 5 years that the planning process of a State is being carried out as outlined in Sec. 135.

Subsection (m) (*Performance-based planning process evaluation*) allows the Secretary to evaluate periodically the quality of the performance-based planning processes for each State. The Secretary is empowered to designate high-performing States, as well as those that have made significant progress in improving their performance-based planning processes. The Secretary may use these designations as a criterion when administering certain discretionary programs.

### **Part 3--Improved Federal Stewardship**

#### **SEC. 2501. SPECIAL PERMITS DURING PERIODS OF NATIONAL EMERGENCY.**

Section 127 of title 23, United States Code, establishes vehicle weight limitations. This section would amend 127 to grant States the legal authority to issue permits for overweight divisible loads for limited periods of time during declared emergencies.

Current law restricts the authority for the States to issue overweight special permits by restricting their authority to non-divisible loads or preempting their authority to exceed certain limits with respect to some vehicle combinations. Such authority is needed in order to expedite relief supplies that are divisible (e.g., bottled water).

Section 31112 of title 49, United States Code, establishes vehicle length limitations. This section would amend 31112 to grant States the legal authority to issue permits for divisible loads which exceed the length limitations for limited periods of time during declared emergencies. Current law restricts the authority for the States to issue overlength special permits by restricting their authority to non-divisible loads or preempting their authority to exceed certain limits with respect to some vehicle combinations. Such authority is needed in order to expedite relief supplies that are divisible (e.g., bottled water).

#### **SEC. 2502. CHARGING INFRASTRUCTURE IN INTERSTATE RIGHTS-OF-WAY.**

This section would amend section 111 of title 23, United States Code, to allow States to 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, and to charge users a fee, or permit the charging of a fee, for use of such charging infrastructure. Such charging infrastructure would not be eligible for Title 23 funding. This section would also include a definition for the term charging infrastructure.

#### **SEC. 2503. FEDERAL SHARE PAYABLE.**

This section would amend section 120 of title 23, United States Code, by amending terms to reflect the newly proposed Federal Highway Administration's program structure.

This section would also strike subsection (g) to bring the reimbursement of preliminary engineering and construction engineering into alignment with Federal cost principles, provisions of this title, and current consultant contracting requirements.

This section would also add “shoulder and centerline rumble strips and stripes” to the list of safety projects that are eligible for 100 percent federal funding. Rumble strips are raised or grooved patterns on the roadway that provide both an audible warning (rumbling sound) and a physical vibration to alert drivers that they are leaving the driving lane. They may be installed on the roadway shoulders on undivided and divided highways or on the centerline of undivided highways. If the placement of rumble strips coincides with centerline or edgeline striping, the devices are referred to as rumble stripes. Rumble strips and rumble stripes are proven, low cost, highly effective safety countermeasures with a high benefit cost ratio. They are one of the most effective options for addressing roadway departure crashes (over 50% of all fatalities), particularly in rural areas.

#### **SEC. 2504. HOV FACILITIES.**

This provision would restore the original intent of section 166 of title 23 by eliminating access for low emission and energy efficient vehicles from HOV lanes and strengthen performance requirements for facilities that allow use by statutorily permitted single-occupant vehicles. These changes would specify what actions should be taken when performance becomes degraded and potential penalties for non-compliance. Additionally, before opening a facility to high occupancy toll vehicles, this section would require the submission of a report establishing that the facility is not already degraded and that the presence of such vehicles will not cause the facility to become degraded. Once access is allowed, state agencies would be required to provide the Secretary with a semi-annual report on the impact of such vehicles on the operation of the facility and adjacent highways.

#### **Part 4--Other**

##### **SEC. 2601. PROGRAM EFFICIENCIES.**

This section would maintain the current prohibition on States or political subdivisions of a State from restricting the access of motorcycles to any highway or portion of a highway for which Federal-aid highway funds have been used. It would continue the existing authority of a State or political subdivision of a State to regulate motorcycles for safety.

This section would maintain existing pay back requirements of funds used for preliminary engineering of a project if on-site construction of, or acquisition of right-of-way for, a highway project is not commenced within 10 years. This section would change the phrase "the State shall pay an amount equal to the amount of Federal funds made available for such engineering" to "the State shall pay an amount equal to the amount of Federal funds reimbursed for such engineering" to improve clarity.

##### **SEC. 2602. ALASKA HIGHWAY.**

Section 218(c) of title 23, United States Code, would be amended by inserting "related to the State's ferry system" after "equipment in Alaska" in order to clarify that the Alaska Marine Highway System includes all existing or planned transportation facilities and equipment in Alaska related to the State's ferry system.

##### **SEC. 2603. LETTING OF CONTRACTS.**

This section would amend sections 112(a) and 112(b)(1) of title 23, United States Code, pertaining to the bidding requirements for Federal-aid highway projects. Section 112(b)(1) now requires construction contracts to be awarded by competitive bidding, on the basis of the lowest responsive bid submitted by a responsible bidder. This section prohibits the imposition of a requirement or obligation as a condition precedent to the award of a contract to a bidder unless it is otherwise lawful and specifically set forth in the advertised specifications. Under section 112(b)(1), a State may demonstrate to the

satisfaction of the Secretary that another bidding method would be more cost effective or because an emergency exists.

Section 112 previously contained language allowing the Secretary to find that under the circumstances relating to a project, some other bidding method would be in the public interest. This language was struck in 1983, and current language concerning cost effectiveness was implemented. This amendment to section 112(b)(1) reinserts the prior language to provide additional flexibility in limited circumstances for the Secretary to affirmatively find that some other bidding method would be in the public interest.

Although amending section 112(b)(1) alone would provide the Secretary additional flexibility to affirmatively find that some other bidding method would be in the public interest, it may not fully address all competition issues. A 2007 Sixth Circuit case determined that section 112(b)(1) only deals with the process of how bids are awarded, rather than the substance of the underlying contract provisions themselves. *City of Cleveland v. Ohio*, 508 F.3d 827 (6th Cir. 2007). The Court stated that section 112(a), on the other hand, "gives the FHWA the authority to review 'plans and specifications' with an eye toward 'securing competition' within the public bidding process." In light of the distinction drawn by the Court between subsection (a) and (b), this section amends section 112(a) to include similar public interest language to afford the Secretary with flexibility to find that the inclusion of a certain contract provision would be in the public interest, notwithstanding the provision's adverse impact on competition.

**SEC. 2604. CONSTRUCTION.**

This section would maintain current provisions in section 114(a) of title 23 concerning State responsibility for construction; the Secretary's right to conduct such inspections and take such corrective action; and the prohibition of any informational signs other than official traffic control devices conforming to standards developed by the Secretary of Transportation. This section would amend section 114(a) to include a reference to the exception provided in section 321 of title 23 concerning signs identifying funding sources.

This section also would maintain current restrictions concerning convict labor and convict produced materials and construction work in Alaska, but would amend sections 114(b) and (c) to reflect the change in the definition of "Federal-aid system".

**SEC.2605. MAINTENANCE.**

This section would provide that other direct recipients are responsible for the maintenance of projects construction with Federal-aid funds. Paragraph (1)(B) of this section would restore the original intent of section 116 of title 23—that all highway projects shall be maintained, not just those on the Federal-aid system.

Paragraph (2)(B) of this section would remove the reference to the Federal-aid secondary

system, which was eliminated in 1991 by ISTEA.

**SEC. 2606. PROJECT APPROVAL AND OVERSIGHT.**

This section would maintain existing provisions regarding project approval and oversight but would amend the value engineering requirements in subsection (e) of section 106 of title 23 to clarify their applicability to the National Highway System. This section would establish a requirement that States develop and sustain a value engineering program.

This section also would establish funding eligibility for State administration of subgrants and oversight of subrecipients.

**SEC. 2607. ADJUSTMENTS TO PENALTY PROVISIONS.**

This section would make significant changes to the existing program structure and would concentrate funding in a smaller number of programs. To ensure that currently enacted penalty provisions continue to work as originally intended, the penalty provisions would be amended to apply to new programs comparable to those to which the original penalty applied. In cases where the new programs are disproportionately larger in size than their predecessors, the penalty percentage would be reduced, so that the penalty imposed would be approximately equivalent to what was imposed in the past.

**SEC. 2608. OPEN CONTAINER REQUIREMENTS.**

This section amends section 154(c) ("Transfer of funds") of title 23, United States Code, by (1) Revising paragraph (2) to provide that for fiscal year 2012 and thereafter, that (A) 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); and (B) 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); and (2) Revising paragraph (3) to provide that a State may elect to use all or a portion of the funds transferred under paragraph (2) for activities eligible under section 148. This section also makes a conforming amendment to paragraph (5).

**SEC. 2609. MINIMUM PENALTIES FOR REPEAT OFFENDERS FOR DRIVING WHILE INTOXICATED OR DRIVING UNDER THE INFLUENCE.**

Subsection (a) of this section amends section 164(a)(5) of title 23, United States Code, to eliminate the limited driving privileges restriction in clause (A)(ii) for drivers who have an alcohol ignition interlock installed in their vehicles.



Subsection (b) of this section amends section 164(b) of such title by (1) Revising paragraph (2) to provide that for fiscal year 2012 and thereafter, that: (A) 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); and (B) 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); and (2) Revising paragraph (3) to provide that a State may elect to use all or a portion of the funds transferred under paragraph (2) for activities eligible under section 148. This section also makes a conforming amendment to paragraph (5).

**SEC. 2610. UNIFORM RELOCATION ASSISTANCE ACT AMENDMENTS.**

This section would amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act).

Subsection (a) would increase the maximum amount payable to cover the actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new location (reestablishment), and the optional maximum alternative fixed business allowance amount that a business, farm, or nonprofit organization may elect to receive in lieu of actual moving and related expenses. Since the current statutory limits were established in 1988, the complexities and expenses associated with moving and reestablishing a displaced farm, nonprofit organization, or small business at its new site have greatly increased.

**Background:**

The Lead Agency (FHWA) convened an All Federal Agency Uniform Act Update working group (working group), of representatives of the 18 Federal Agencies subject to the Uniform Act, in 2005 to consider the adequacy of the current limits. The working group considered research conducted by the Lead Agency, 775 public comments received during the comment period on the rulemaking issued on January 4, 2005 (49 CFR Part 24 – Federal Register Volume 70, No.2), more than 200 comments received during national listening sessions, programmatic data from State and Federal programs, and the working group’s Uniform Act programmatic experience. The research also included a review of programmatic data from several States that established in State law reestablishment and alternative business payments in excess of the Uniform Act statutory limits, a review of the Lead Agency’s programmatic data on these payments, a research and analysis of the historic rate of growth of several economic indexes and that growth rate’s effect on the current statutory limits, a Virginia State study of its business relocation processes, and the Lead Agency’s National Business Relocation Study of 2002.

Based on its review of the research and comments received, the working group concluded that time, inflation, and market conditions have made the current statutory limits inadequate. The working group believes that the adjusted amounts will more fairly reflect the costs businesses incur when displaced by Federal or federally-assisted projects.

A GAO report, entitled “Eminent Domain: Information about Its Uses and Effect on Property Owners and Communities Is Limited,” (GAO-07-28, November 30, 2006) supports the working group’s determination that current statutory limits are inadequate. The report notes that State and local officials interviewed for the report stated that certain relocation benefits were too low and needed to be increased.

The amounts of the proposed increases in the statutory limits for reestablishing a displaced farm, nonprofit organization, or small business at its new location were based on recommendations from the Lead Agency’s National Business Relocation Study of 2002, and a review of the findings from the Virginia State study of its business relocation processes and State and Federal historic programmatic data on these payments. The goal of the proposed increases is to reflect current economic conditions. The increases would be consistent with the intent of the Uniform Act to provide the benefits necessary to relocate and reestablish successfully.

Subsection (b) would increase the maximum amount payable to any displaced person who is a homeowner that meets the statutory eligibility criteria. The working group believes, based on its review of the Lead Agency’s programmatic data, project data from several Federal agency projects, research and from member agencies’ experience with their respective programs, that the proposed increase will reduce the frequency and need to utilize the last resort provisions for housing replacement authorized under section 206.

Subsection (b) also would require that a displaced person must have owned and occupied a dwelling for not less than 90 days (instead of 180 days) prior to the initiation of negotiations for the acquisition of the property in order to be eligible to receive a replacement housing payment for a displaced homeowner.

#### Background:

Sections 205 and 206 of title 42 U.S.C. provide that projects cannot go forward unless comparable replacement housing is available to displaced persons. Section 206 provides that if replacement housing is not available the displacing agency may take necessary and appropriate action to provide housing so that a project may proceed. Frequently the most effective way of providing housing under section 206 is to provide relocation payments that exceed the statutory limit. The Uniform Act requires justification for use of this provision on a case-by-case basis. The current statutory limit has resulted in the more frequent use of the section 206 last resort housing provision, which increases administrative burdens a displacing agency experiences as a result of these requirements.

FHWA, as the Lead Agency, has researched the effectiveness of this payment, which included a review of the Lead Agency's historic programmatic data on this payment, a review and analysis of the historic growth rate of several economic indexes, and a comparison of those growth rates to actual growth in program average claim amount. The research has shown that the current benefit limit has led to an excessive utilization of the section 206 last resort housing provision. The Lead Agency's programmatic data shows that from 1991 to 2001 the utilization of the last resort provision has nearly doubled. Over the last several years, the last resort provisions were utilized on an average of 40 percent of the 180-day homeowner cases. The increased use of last resort provisions is primarily the result of the costs of available comparable dwellings exceeding the current statutory maximum.

The increased use of the last resort provisions creates additional administrative requirements, including the need to justify the use of the provisions on a case-by-case basis, and diminishes an agency's ability to effectively and efficiently ensure that projects and programs can proceed on a timely basis. FHWA contacted 8 State Department of Transportation officials, officials from 3 Federal agencies and a principal from a national right-of-way contracting agency to determine what administrative effort and costs are specifically associated with reviewing and approving last resort claims. The goals of the proposed payment increase are to ensure that the housing replacement payments to displaced persons are made as expeditiously as possible and to reduce the administrative burdens necessitated by the need to utilize routinely the section 206 last resort housing provisions.

Subsection (b) also would require that a displaced person must have owned and occupied a dwelling for not less than 90 days (instead of 180 days) prior to the initiation of negotiations for the acquisition of the property in order to be eligible to receive a replacement housing payment for a homeowner. The current 180-day occupancy requirement has proven to be unnecessarily restrictive. In some cases, homeowners fail to meet the length of occupancy requirements and, as a result, are not eligible for a number of the benefits that homeowners in occupancy at least 180 days may receive. The members of the working group do not believe that the reduction in length of occupancy requirements for a homeowner will result in a significant increase in either the costs associated with relocating displaced persons or in instances where people purchase and occupy a dwelling solely to gain eligibility for Federal program benefits.

The proposed change in the homeowner occupancy requirement would make benefits accessible to homeowners who are not currently eligible and would also ensure that these homeowners have a greater probability of continuing to be homeowners after they are relocated. The proposed requirement also would reduce the displacing agency's administrative costs by streamlining the process that displacing agencies must follow when displacing homeowners. This streamlining includes the elimination of administrative procedures that must be followed in those instances when homeowners occupy their dwelling for a period of more than 90 days but less than 180 days and a reduction in administrative burden associated with the use of the last resort provisions.

Subsection (c) would increase the maximum replacement housing payment allowed for qualified displaced tenants. Research has shown that the current benefit limit leads to an excessive need to utilize the section 206 last resort housing provisions.

Subsection (c) also would eliminate the provision addressing the amount of replacement housing payment available to a qualified homeowner who occupied a dwelling for more than 90 days, but less than 180 days.

Background:

The Lead Agency's programmatic data indicates that, on average, the last resort provisions are required for tenant relocations in more than 50 percent of the displacements. The increased use of the section 206 last resort housing provisions result in additional administrative requirements and burdens, including the need to justify the use of the provisions on a case-by-case basis. The use of the last resort provision impacts an agency's ability to ensure effectively and efficiently that projects and programs can proceed on a timely basis. The purpose of increasing the payment limit is to ensure that the housing replacement payments to displaced persons are made as expeditiously as possible and to eliminate the additional administrative burdens associated with utilization of the last resort provisions.

Based on a review of the available information, the working group believes that the proposed increase in the statutory limit will decrease the need to utilize the section 206 last resort housing provisions. The section 206 last resort housing provisions were intended to address unique situations in which comparable dwellings are not otherwise available. However, there has been an upward trend in the use of the section 206 last resort housing provisions, for tenants, because the cost of available comparable rental units cause eligibility calculations that routinely exceed the current statutory maximum payment amount. An increase in the statutory amount will reduce the need to utilize the last resort provisions; thus, providing housing replacement payments to tenants more expeditiously and relieving acquisition agencies of unneeded administrative burden.

Subsection (d) would require each Federal Agency to report annually to the Lead Agency (FHWA) on its Uniform Act activities. With the information from the proposed reports, FHWA, as the Lead Agency, would compile information contained in each Agency's report and include the information in the annual U.S. Department of Transportation Report on implementation of the Uniform Act.

Subsection (d) also would require the Lead Agency to issue regulations to allow for periodic adjustment of the statutory benefit levels established in this bill. The ability to periodically adjust benefit levels would ensure that displaced persons and businesses receive benefits that are appropriate, consistent with the intent of the Uniform Act, and fairly compensate them.

Background:

The need for this proposed change was noted by 4 commenters during the national listening sessions and by the majority of the working group members. The GAO report mentioned above noted that the lack of available data limited their assessment of the use of eminent domain both State and nationwide.

The information would serve to enhance the Lead Agency's ability to effectively carry out the duties outlined in section 213 of the Uniform Act by providing accurate and up-to-date information on the impact of the Federal Government's real estate acquisition and relocation activities. The information would be used by the Lead Agency to identify emerging issues and programmatic trends, determine areas of programmatic need and to utilize more effectively Lead Agency resources to meet identified needs. As suggested by the GAO report, this information would also be used by others to perform an objective analysis of use and effect of eminent domain and other related issues.

Subsection (e) would add a new section to the Uniform Act, requiring the head of the Lead Agency to enter into agreements with other Federal agencies for providing services related to the Uniform Act. The services may include coordination, monitoring, research, training, and other related activities. This new section also would require other Federal agencies subject to the Uniform Act to provide a specified minimum amount of funding to the head of the Lead Agency each year for these services.

Background:

The need for additional Uniform Act services was noted in several of the Lead Agencies research efforts, by several of the working group members, and in the GAO report. In 2006, FHWA initiated a research effort, Future Needs of Public Sector Real Estate, to provide information to make strategic decisions about resources so that public sector real estate work in the future is accomplished as effectively and efficiently as possible. Three consultants, using different approaches, each undertook independent research. The three reports, including methodology and conclusions, are available on the FHWA Web site ([www.fhwa.dot.gov/realestate/fnpsrwgraph.htm](http://www.fhwa.dot.gov/realestate/fnpsrwgraph.htm)). The findings of the research included the need for enhanced training, career path development for Uniform Act public sector real estate professionals, a certification program for these professionals, development of technological resources to meet future needs and enhanced outreach activities.

The GAO report also included findings that suggest a need for enhanced Lead Agency activity, both to respond to requests for increases to benefits and services provided to displaced persons, as well as to ensure that Uniform Act requirements are consistently understood and implemented. The working group believes that these new requirements will give Federal agencies subject to the Uniform Act some of the tools needed to address the identified needs.

Subsection (f) would amend section 308(a) of title 23 to facilitate the lead agencies provision of services related to the Uniform Act proposed under Subsection (e)

Subsection (g) would provide that most of these amendments to the Uniform Act would take effect upon enactment. However, amendments made under subsections (a) through (c) of this section would take effect two years after the date of enactment of this Act. The delayed effective date is necessary to give States sufficient time to amend their statutes that provide for relocation payments.

**SEC. 2611. COMPLETE STREETS.  
[TO BE PROVIDED]**

**Subtitle D—Public Transportation**

**SEC. 2901. SHORT TITLE.**

Subsection (a) provides that this title be cited as the Federal Public Transportation Act of 2011. Subsection (b) provides that amendments in this title, unless otherwise specified, are made to title 49 of the United States Code.

**SEC. 2902. DEFINITIONS.**

Section 2902 provides several modifications and additions to "Definitions" in section 5302. The definition of "capital project" in subsection 5302(a)(1)(A) is amended to clarify that relocation assistance expenses includes acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing of last resort. In addition, "capital project" is further amended in subparagraph (G) to clarify eligible joint development activities. New subparagraphs (M) and (N) are added, which authorize public transportation management systems and access for bicycles to public transportation facilities as eligible capital expenses. Also added is a new subparagraph (O), which clarifies that equipment and facilities designed to provide access and use of public transportation to people with sensory disabilities are eligible capital projects. A new subparagraph (P) supports capital projects that improve the path of travel to and in public transportation facilities so as to increase accessibility. Mobility training is added as an eligible capital expense under new subparagraph (Q).

The definition of " Fixed Guideway" in section 5302(a)(4)(A) is amended to expressly exclude the eligibility of funds provided under Chapter 53 to be used for any high occupancy lane used by single occupancy vehicles.

The term "public transportation" is modified in subsection 5302(a)(10) for clarity and to indicate that service must be regular, continuing and shared-ride surface transportation open to the general public or open to a segment of the general public defined by age, disability, or low income.

A new definition of "Public Transportation Asset Management System" is provided in section 5302(a)(11). A public transportation asset management system will support a state of good repair. The main purpose of a state of good repair is to minimize the costs over the life cycle of the asset. Current paragraphs 11 through 17 are redesignated as paragraphs 12 through 18, respectively.

Other amendments are technical nature.

**SEC. 2903. METROPOLITAN TRANSPORTATION PLANNING.**

Section 5303 (Metropolitan transportation planning) of Title 49 is amended to establish new metropolitan planning organization (MPO) designation and planning requirements. Modifications to MPO designation requirements ensure that MPO boundaries reflect regional development patterns and account for the size and technical capacity of MPOs. The new approach to planning focuses on enhancing the effectiveness of MPOs, both independently and as a partner with state DOTs, local jurisdictions, and other planning bodies, in developing and implementing metropolitan transportation plans and Transportation Improvement Programs (TIPs).

Subsection (c) (*General requirements*) increases the minimum population threshold for MPO designation from 50,000 to 200,000 and establishes population-based tiers among MPOs in order to better align technical capacity and resource availability with planning requirements:

- *Tier I* designation is reserved for MPOs operating within urbanized areas of 1 million or more persons. Tier I MPOs are required to implement a performance-based, outcome-driven approach to planning. MPOs operating within urbanized areas of more than 200,000, but less than 1 million persons, may request, with the support of the Governor, designation as a Tier I MPO if it can demonstrate to the Secretary adequate technical capacity to fulfill the requirements of a Tier I MPO.
- *Tier II* designation is reserved for MPOs operating within urbanized areas of less than 1 million, but more than 200,000 persons. Tier II MPOs are subject to more streamlined performance-based planning requirements.
- [Existing MPOs operating within urbanized areas of less than 200,000 persons prior to enactment of the Transportation Opportunities Act may, with the support of the Governor, request designation as a Tier II MPO.](#) In the absence of a Tier II designation, these existing MPOs operating within urbanized areas of less than 200,000 persons are to be dissolved and the planning responsibilities returned to the State for those communities.

MPOs operating within contiguous or adjacent urbanized areas may elect to consolidate in order to meet the population thresholds required in order to achieve designation as a Tier I or Tier II MPO.

Subsection (g) (*MPO consultation in metropolitan transportation plan and TIP coordination*) requires MPOs to cooperate with officials and entities responsible for related planning activities, enhancing consideration of other key planning activities in the development of metropolitan transportation plans and TIPs. Additionally, MPOs that are adjacent or geographically close are required to coordinate their planning processes, including the preparation of metropolitan transportation plans and TIPs, to the maximum extent practicable.

Subsection (h) (*Scope of planning process*) is revised to begin the transition to, and implementation of, a performance-based, outcome-driven planning process in which MPOs are charged with considering certain outcomes as objectives in the planning process. In recognition of locally-preferred solutions and innovation, MPOs are granted the flexibility to develop and implement effective performance measures and targets for the national outcomes, in addition to measures that may be specifically prescribed by the Secretary. MPOs are required to periodically develop and publish a system performance report describing the condition of, and performance of, their transportation system. The report is designed to serve as the basis for the development of policies, programs, and investment priorities that are reflected in the transportation plans and TIPs.

Subsection (i) (*Participation by interested parties*) improves the planning process through enhanced public participation and input.

Subsections (j) and (k) (*Development of a metropolitan transportation plan and Metropolitan TIP*) require MPOs to develop transportation plans and TIPs that focus on projects selected to achieve outcomes and performance targets. Accountability in planning is improved by requiring the development of fiscally-constrained transportation plans and TIPs so that MPOs select projects with a realistic financial model. Furthermore, TIPs must include, for illustrative purposes, the preliminary elements of benefit-cost analysis for certain projects that exceed an expected total project cost.

Subsection (n) (*Performance-based planning process evaluation*) allows the Secretary to evaluate periodically the quality of the performance-based planning processes of each MPO. The Secretary is empowered to designate high-performing MPOs, as well as those that have made significant progress in improving their performance-based planning processes. The Secretary may use these designations as a criterion when administering certain discretionary programs.

## **SEC. 2904. STATEWIDE AND NON-METROPOLITAN TRANSPORTATION PLANNING.**

Section 5304 (Statewide transportation planning) of Title 49 is amended to establish new statewide transportation planning requirements. The new approach to planning focuses on enhancing the effectiveness of States, both independently and as a partner with metropolitan areas, local jurisdictions, and other planning bodies, in developing and implementing statewide transportation plans and Statewide Transportation Improvement Programs (STIPs).



Subsection (a) (*General requirements*) ensures that that States incorporate without change, or by reference, the metropolitan transportation plans and TIPs -- prepared by MPOs located within the State -- into statewide transportation plans and STIPs. Additionally, States are required to assume the planning responsibilities of existing small-urbanized areas (with a population of less than 200,000) that are no longer under the jurisdiction of a MPO.

Subsection (c) (*Coordination in multistate areas*) encourages Governors with responsibility for a portion of a multistate planning area and/or transportation corridor to coordinate their planning processes. The Secretary is allowed to consider the effectiveness of multistate coordination when approving funding for a multistate corridor project and when administering certain discretionary programs.

Subsection (d) (*Relationship with other planning officials*) requires States, to the extent practicable, to cooperate with officials and entities responsible for related planning activities in the development of statewide transportation plans and STIPs.

Subsection (e) (*Scope of planning process*) is revised to begin the transition to, and implementation of, a performance-based, outcome-driven planning process in which States are charged with considering certain outcomes as objectives in the planning process. In recognition of locally-preferred solutions and innovation, States, in coordination with MPOs, are granted the flexibility to develop and implement effective performance measures and targets for the national outcomes, in addition to measures that may be specifically prescribed by the Secretary. States are required to periodically develop and publish a system performance report describing the condition of, and performance of, their transportation system. The report is designed to serve as the basis for the development of policies, programs, and investment priorities that are reflected in the statewide transportation plans and STIPs.

Subsection (f) (*Participation by interested parties*) improves the planning process through enhanced public participation and input.

Subsections (h) and (i) (*Statewide transportation plan and STIP*) require States to develop statewide transportation plans and STIPs that focus on projects selected to achieve outcomes and performance targets. Accountability in planning is improved by requiring the development of fiscally-constrained statewide transportation plans and STIPs so that States select projects with a realistic financial model. Furthermore, STIPs must include, for illustrative purposes, the preliminary elements of benefit-cost analysis for certain projects that exceed an expected total project cost.

Subsection (l) (*Certification*) requires the Secretary to certify at least every 5 years that the planning process of a State is being carried out as outlined in Sec. 5304.

Subsection (m) (*Performance-based planning process evaluation*) allows the Secretary to evaluate periodically the quality of the performance-based planning processes for each

State. The Secretary is empowered to designate high-performing States, as well as those that have made significant progress in improving their performance-based planning processes. The Secretary may use these designations as a criterion when administering certain discretionary programs.

#### **SEC. 2905. PLANNING PROGRAMS**

Section 2905 amends section 5305, Planning Programs. While most amendments to section 5305 are conforming, subsection (d)(2)(A) is revised to provide a new formula for allocations. A State must allocate its apportionment under a formula that considers urbanized areas with a population of 50,000 or more. The formula must also provide an appropriate distribution for MPOs and the State to carry out the cooperating planning process described in sections 5303 and 5304 for urbanized areas. In addition, the State must develop the formula in cooperation with the MPO and the Secretary must approve the formula.

Subparagraph (B) provides that funds allocated to an urbanized area for which a MPO has been established under section 5303 shall be made available to the MPO not less than 30 days after funds are apportionment to the State. In the case were funds are allocated to an urbanized area for which the State is responsible for the planning activities required under sections 5303 and 5304, said funds shall be available to the State.

#### **SEC. 2906. STATE OF GOOD REPAIR FORMULA GRANTS PROGRAM.**

The Department of Transportation is proposing to establish a new State of Good Repair Formula Grants program for bus and rail under section 5306. The purpose of this capital grant program is to help improve the condition of nation's transit capital assets, of which FTA estimates 29 percent are in marginal or poor condition. The consequence of transit agencies relying on deteriorated capital is that system performance suffers, creating inconveniences and costs for transit riders.

FTA will distribute grant funds by formula and will allow the acquisition of asset management systems to be an eligible expense. FTA has not yet developed distribution formulas and expects to work with Congress on the formula. A 20 percent local match will be required. This program will begin to address the estimated \$78 billion backlog of bus and rail transit assets nationwide needing repair or replacement. Transit systems with assets in an improved state of good repair have less brake-downs and service disruptions. The SGR program is aligned with the Department's State of Good Repair goal and takes the place of the existing Fixed Guideway Modernization Program and the Bus and Bus Facilities Programs.

Section 2906(a) amends section 5306 to establish a State of Good Repair Formula Grants program.

Section 5306(a) defines an eligible recipient and identifies what capital project activities are eligible under the program. also, what constitutes a state of good repair is to be

defined by the Secretary, but the determination must be founded on the capital asset base of the public transportation system.

Subsection 5306(b) provides the Secretary with authority to make grants eligible recipients for a capital project that restore or replace existing public transportation bus and rail assets related provided the recipient has established and utilizes a public transportation asset management system, as defined in section 5302(a)(11).

Section 5306(c) requires the Secretary to develop a formula to apportion funds made available to carry out this program. In doing so, the Secretary must ensure that the formula (1) allocates funds based on the relative cost to restore public transportation assets of eligible recipients to a state of good repair, taking into account the funding made available under sections 5307 and 5311; (2) does not inequitably reward public transportation agencies that have failed to adequately maintain their capital assets in a state of good repair; (3) assures equitable treatment of relative needs of rail and bus systems; and (4) provides an incentive for the development and implementation of aggressive asset management methods and techniques. In addition, when developing the formula, the Secretary may take into account any other factors he deems necessary.

Pursuant to section 5306(d), a certain amount of the funds available to carry out the program will be allocated to restoring or replacing existing public transportation assets related to bus systems.

Section 5306(e) the Secretary must determine the necessary terms and conditions of a grant.

Section 5306(f) states that, at the option of the recipient, the Federal share shall be up to 80 percent, with the remainder provided by the recipient from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

Section 2906(b) amends the table of sections for chapter 53 to reflect this newly established program.

#### **SEC. 2907. URBANIZED AREA FORMULA GRANTS.**

The definition of the term "associated capital maintenance items" in section 5307(a) is deleted because such items fall within the scope of "preventive maintenance." The term "designated recipient" in that same subsection is revised to delete the reference to the planning citations and to the term "transportation management areas". The planning sections are no longer relevant to the definition of "designated recipient" and the term "transportation management area" is replaced with the words "an urbanized area with a population of at least 200,000. A "transportation management area," which is a term of art for an urbanized area with a population of at least 200,000, is not used any longer in the 5303 and 5304 planning sections.

Subsection (b)(1) is amended to delete the reference to "associated capital maintenance items" in paragraph (A) for the reasons set forth above. Subparagraph (D) is amended to allow up to 25 percent of the amount apportioned to a recipient to be used for operating assistance pursuant to a standard developed by the Secretary that considers the changes in national employment levels as measured by the United States Department of Labor. According to revised subsection (b)(2), operating assistance authorized under subsection (b)(1)(D) would be available to the recipient for obligation and expenditure until the end of the fiscal year following the fiscal year in which the funds were made available for that purpose, unless the Secretary determines there is a compelling need to continue to provide for such assistance. After that time, and absent a determination of a compelling need, the funds will be available to the recipient for other eligible activities under this section.

Subsection (b)(1)(E) is amended to allow recipients to use urbanized area funds for operating assistance, under the terms and conditions of the Secretary, in the event of a national or regional emergency declared by the Governor of the State and concurred in by the Secretary or declared by the President to be a major disaster for purposes of the Robert T. Stafford Disaster and Emergency Assistance Act (42 U.S.C. 5121 et seq.). Subsection (b)(1)(F) is stricken and paragraphs (3) and (4) of subsection (b) are redesignated as paragraphs (4) and (5), respectively. A new paragraph (3)(A) allows recipients in urbanized areas with a populations of at least 200,000, as determined by the 2010 decennial census, to use their funds for operating assistance if the urbanized area has a population of less than 200,000, as determined by the 2000 decennial census; 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; the area was not designated as an urbanized area, as determined by the 2000 decennial census of population; or 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 in fiscal year 2011.

Paragraph (3)(B) of subsection (b) allows grandfathered urbanized areas under paragraph (3)(A) to use their funds for operating assistance based on a declining percentage that is phased out by the end of fiscal year 2016. Urbanized areas having at least 200,000 in population as determined by the 2010 census, but which had a population of less than 200,000 as determined by the 2000 census, as well as urbanized areas having at least 200,000 in population as determined the 2010 census, but a portion of the urbanized area was a separate urbanized area with less than 200,000 as determined by the 2000 census, may use 80 percent of their funds for operating assistance in 2013, 60 percent in 2014, 40 percent in 2015, and 20 percent in 2016.

An urbanized area having at least 200,000 in population as determined by the 2010 census, but was not an urbanized area according to the 2000 census, may use an amount of section 5307 urbanized area funds that is not more than: (1) 80 percent of its FY 2011 section 5311 apportionment for operating assistance in FY 2013; (2) 60 percent of its FY 2011 section 5311 apportionment for operating assistance in FY 2014, (3) 40 percent of

its FY 2011 section 5311 apportionment for operating assistance in FY 2015; and (4) 20 percent of its FY 2011 section 5311 apportionment for operating assistance in FY 2016. An urbanized areas having at least 200,000 in population as determined by the 2010 census, but for which a portion or portions of the area were not designated an urbanized area as determined by the 2000 census, may use: (1) in FY 2013 an amount of section 5307 urbanized area funds that is not more than 80 percent of the amount the portion of the area received under section 5311 in FY 2011; (2) in FY 2014 an amount of section 5307 urbanized area funds that is not more than 60 percent of the amount the portion of the area received under section 5311 in FY 2011; (3) in FY 2015 an amount of section 5307 urbanized area funds that is not more than 40 percent of the amount the portion of the area received under section 5311 in FY 2011; (4) in FY 2016 an amount of section 5307 urbanized area funds that is not more than 20 percent of the amount the portion of the area received under section 5311 in FY 2011.

Redesignated subsection (b)(4) strikes the term “transportation management area” and its corresponding reference to section 5303(k) and inserts “an urbanized area with a population of at least 200,000.” These amendments do not change the substance of the transfer provision as it exists today.

Redesignated subsection (b)(5) is stricken. Subsection 5307(d)(1)(E) is amended to delete redundancy. In that same subsection, paragraph (H) is revised to refer to the appropriate cites.

In subsection (e)(1), the reference to associated capital maintenance items is stricken as such items are included in preventive maintenance, an eligible expense under the definition of a capital project. The paragraph is further amended to clarify that the recipient may accept a lower Federal match than 80 percent.

Subsection 5307(g) was stricken as provisions involving debt financing were moved into section 5319. As a result, subsection 5307(h) was redesignated subsection (g). Redesignated subsection 5307(g)(2) was revised to reflect the correct planning cites. Subsection (i) was stricken since procurement system approval is typically not requested. Subsection (j), (k) and (l) are redesignated as subsections (i), (j) and (k). Paragraphs (1) and (2)(A) in redesignated subsection (k) are stricken because they are unnecessary.

**SEC. 2908. GREENHOUSE GAS AND ENERGY REDUCTION PROGRAMS.**

From a transportation emissions and fuel consumption standpoint, transit sets the standard among transportation modes for environmental sustainability. For this reason, one of FTA’s a major objectives is to find ways to encourage the public to take transit more often as well as to make transit systems themselves more energy efficient. To that end, section 2908 of FTA’s reauthorization proposal effectively repeals the Clean Fuels Program under section 5308 and establishes a new Greenhouse Gas and Energy Reduction Program in its place. The program will conduct research and provide competitive deployment demonstration grants to advance green technologies within the transit industry that help lower emissions that impact climate change, as well as increase the energy efficiency of transit vehicles, buildings, and facilities.

More specifically, subsection 5308(a) authorizes the Secretary to make grants, contracts, cooperative agreements, and other agreements with Federal governmental entities, States, local governmental authorities, private entities or persons to carry out a Clean and Energy Efficient Public Transportation Research Program. Under this program, the Secretary will administer and undertake nationally significant research, development, demonstration, deployment and evaluation projects that are determined to reduce energy consumption or emissions of public transportation systems or support public transportation's contribution to larger emission or energy consumption reductions.

Subsection 5308(b) establishes a Public Transportation Test Beds Demonstration Program. To carry out this program, the Secretary is authorized to make grants, contracts, cooperative agreements, or other agreements with Federal governmental entities, public transit agencies, consortiums of public transportation agencies or other entities. The Secretary will administer and undertake the test beds demonstration program through 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.

A Greenhouse Gas and Energy Reduction Demonstration Program is established under subsection 5308(c). In carrying out this demonstration program, the Secretary may make grants to, or enter into 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.

Subsection (d) allows the Secretary to use up to 3 percent of the amount available to carry out section 5308 for project and program evaluation and analysis; for program management; and to provide technical assistance.

Subsection 5308(e) provides that the funds available under this section shall be awarded subject to the terms and conditions the Secretary deems necessary. Likewise, subsection (f) requires the Secretary to determine the Government's share of a project selected under section 5308.

Subsection 2908(b) amends the table of sections for chapter 53 to reflect the title of the new programs under section 5308.

## **SEC. 2909. CAPITAL INVESTMENT GRANTS.**

The Capital Investment Grants Program is a distinct discretionary grant program authorized under section 5309. The program is dedicated to expanding transit by funding new construction and extensions of existing transit systems. The program includes two categories, the large Capital Investment Grants and Exempt projects, which request less

than 10 percent of their funds from this section, and in any case, no more than \$100,000,000.

Section 5309(b) provides the authority for FTA to fund investments in the development and construction of new public transportation fixed guideway systems and corridors. The Fixed Guideway Modernization formula program and Bus and Bus Related Facilities program are moved to section 5306 Bus and Rail State of Good Repair program. Because the project development process would be substantially streamlined, a separate "small starts" category would not be continued. However, pursuant to subsection (e), those projects requesting less than \$100 million and 10 percent of a project's total cost would be subjected only to the requirement that they meet basic Federal grant requirements. All larger projects would be subject to the new streamlined project development process and evaluation criteria under subsection (d). Subsection (e) states that the exemption for projects receiving less than \$25,000,000 in section 5309 funds would be eliminated once guidance on the new project development and evaluation process is established. As in current law, all new fixed guideway projects would be eligible but the eligibility of bus rapid transit projects not operating on a separate guideway would be eligible no matter the total cost, rather than only as a "small start" as in current law.

As defined by section 5309(d)(5), the project development process would consist only of two steps: Project Development, and Construction under either a Full Funding Grant Agreement (for a project requesting over \$100,000,000 and 10 percent of total costs) and a Project Construction Grant Agreement (for smaller projects). The requirement for a separate New Starts Alternatives Analysis would be eliminated. Instead, the National Environmental Policy Act and metropolitan planning processes would be relied on to evaluate alternatives and select a locally preferred alternative as a candidate for section 5309 funds. Separate Preliminary Engineering and Final Design are removed as independent phases of project development and are replaced by one phase, Project Development.

Under section 5309(d), the project evaluation criteria would be streamlined into Project Performance and Financial Plan. The Project Performance criteria would address a simplified set of performance measures: transportation effects, environmental effects, economic development effects, and a comparison of projects effects to costs. The Financial Plan criteria would focus on a single financial plan addressing both capital and operating costs and would address the degree to which stable and reliable funding sources were available and committed to the project. The Project Performance evaluation considerations would be streamlined to focus on the reliability of estimates and forecasts, technical capacity, and the locally supporting land use policies and patterns. Project Finance considerations would also be streamlined to focus on factors related to the reliability of the forecasts and degree of stability and reliability of the funds to be committed to the project.

Paragraph (6) of subsection (d) incorporates the Program of Interrelated Projects provision from section 5328(c), but modified to focus on programs which are carried out as a comprehensive simultaneous effort over a defined future period.

The current requirements for Letters of Intent, Full Funding Grant Agreements, Project Construction Grant Agreements, and Early System Work Agreements would be continued with minor clarifying changes under subsection (g). As in current law, under paragraph (5) of subsection (g), the limit on future Contingent Commitments would be based on the amount authorized plus an amount equal to the last three years authorized as a look-ahead into the next authorization period. Paragraph (6) reduces the requirement for notification of Congress on pending FFGA's or PCGA's from 60 days to 30 days. In subsection (h), the requirement for a "Before and After Study" would be continued for FFGA's and expanded in statute to PCGA's. The requirement for a Contractor Performance Assessment Report would be eliminated.

Pursuant to section 5309(i), Government share requirements would stay the same as the current program, although the incentive for completion under budget would be limited to those projects whose final cost was less than estimated in the FFGA, rather than continuing the current incentive for projects coming in under the preliminary engineering estimate.

## **SEC. 2910. CONSOLIDATED SPECIALIZED TRANSPORTATION GRANT PROGRAM.**

Section 2910 replaces the Formula Grants for Special Needs of Elderly Individuals and Individuals with Disabilities program under section 5310 with the Consolidated Specialized Transportation Grant Program. This new program consolidates the Elderly Individuals and Individuals with Disabilities Program currently under section 5310, Job Access and Reverse Commute (JARC) under section 5316, and New Freedom Programs under section (5317). The objective of this program is to ensure transportation services are made available in urbanized and nonurbanized areas that are designed to fill gaps in or enhance transportation services available to meet the particular needs of older adults, low-incomes individuals, and people with disabilities who are not well served by existing public transportation service for reasons related to their age, low-income or disability.

Section 5310(a) provides definitions relevant to the program. A designated recipient as defined under section 5307 or a State may be a recipient. Eligible subrecipients include public entities, operators of public transportation and non-profit organizations. Definition of disability is added via reference to Americans with Disabilities Act. This section also includes definitions for access to jobs projects, eligible low-income individual and reverse commute project.

Section 5310(b) authorizes grants for planning, capital, and operating assistance for public transportation service designed to fill gaps in or enhance transportation services available to accommodate the needs of older adults, people with disabilities, or low-income individuals. Grants are also available for planning, capital and operating



assistance for shared ride alternatives to public transportation for these same groups of individuals as well as access to jobs and reverse commute projects.

Under subsection (c) a designated recipient or a State may use up to 10 percent of the amount apportioned to it pursuant to the formula to administer, plan, and provide technical assistance for a project funded under this section.

Funding for the program will be distributed in accordance with subsection (d). Of the funds available under the program, 20 percent will be allocated to States for use in rural areas; 20 percent will be allocated to State for use in small urbanized areas (areas with a population of less than 200,000); and 60 percent will be allocated to a designated recipient for use in large urbanized areas (areas with a population 200,000 or over). The formula will be based on the number of elderly individuals in a state or urbanized area; the number of people with disabilities in a state or urbanized area; the number of eligible low-income individuals in a state or urbanized areas; and, any other factors the Secretary deems necessary. A State may use its apportionment for rural and small urbanized areas for projects serving other than those areas if the Governor certifies that all of the objectives of this program are already met in those areas. Alternatively, a State may use its apportionment for rural and small urbanized areas for projects anywhere in the State if the State has established a statewide program for meeting the objectives of this program.

Section 5310(e) provides that vehicles acquired with funds under this program may be leased to local governmental authorities, private non-profit organizations and operators of public transportation to improve transportation service designed to meet the special needs of older adults and people with disabilities.

Subsection (f) allows public transportation service providers receiving assistance under this section or 5311 to coordinate and assist in the delivery of meals for homebound individuals; however, the delivery may not conflict with or reduce public transportation service.

Grant requirements are set forth in subsection (g). This program follows 5307 requirements to the extent that they are applicable and appropriate.

Subsection (h) requires that projects be derived from, and reflect the priorities articulated in, a coordinated public transit human service transportation element as required under 49 U.S.C. 5303(j)(1)(G) and 5304(h)(1)(G). The planning process proposed in 5303 and 5304 includes additional safeguards to ensure that the process fairly addresses the priorities of older adults, people with low-incomes, and people with disabilities. In addition, it allows for assets acquired with funds under this section to be available for disaster evacuation response and exercises or drills.

Pursuant to section 5310(i), the Federal share for capital expenses for this program is 80 percent, and, where eligible, operating assistance is available for up to 50 percent Federal share.

Subsection (j) makes it clear that amounts apportioned to a designated recipient or a State are available for obligation for a period of 3 fiscal years. Any funds that remain unobligated after that period of time will be added to the amount of funds available to carry out the section in the next fiscal year and apportioned pursuant to the formula.

Subsection (k), with the permission of the recipient in possession of a facility or equipment, a State may transfer a facility or equipment constructed or acquired with Chapter 53 funds to another eligible chapter 53 recipient provided the facility or equipment will continue to be used for eligible purposes under this section. Section 2910(b) is a conforming amendment.

## **SEC. 2911. FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.**

The Formula Grants for Other Than Urbanized Areas Program under section 5311 provides financial assistance to states to support public transportation in rural areas, i.e., areas of less than 50,000 in population.

Section 2911 amends section 5311(b)(1) by redesignating paragraphs (A), (B), and (C) as (B), (C), and (D) respectively. A new subparagraph (A) allows planning as eligible activity under this program, provided that funds are utilized in addition to planning funds authorized section 5305. In redesignated subparagraph (B), "public transportation" is stricken as unnecessary since a "capita project" is defined in section 5302(a)(1). Also, project administration is added to clarify its eligibility under the program. Paragraph (3) of section 5311(b), the Rural Transportation Assistance Program (RTAP), is stricken. However, a new subsection (g) continues a two percent takedown from each State's apportionment that must be used for eligible RTAP activities. The national RTAP is moved to a newly established Technical Assistance and Workforce Development program under in section 5314. Paragraph (4) is redesignated as paragraph (3) and is amended to require that a recipient's annual report also include information on planning activities.

Section 5311(c) provides the formula by which funds are to be apportioned. The existing formula remains. However, paragraph (1) of section 5311(c), which provided a takedown for Indian Tribes, is stricken because the Tribal Transit Program is codified under its own section, i.e., section 5315. As a result, paragraphs (2), (3) and (4) are redesignated paragraphs (1), (2), and (3) respectively, and revised to reflect technical amendments.

Section 5311 is further amended by redesignating subsections (e), (f), (g), (h), and (i) as subsections (f), (h), (i), (j) and (k), respectively. A new subsection (e) is added that allows current sub-recipients that are incorporated into an urbanized area after the 2010 Census to continue as sub-recipients by, transferring their share of the urbanized area urban formula to the State for administration under this program.

Redesignated subsection (f) allows a state to use up to 15 percent of its apportionment under this section for administration, planning, and technical assistance.

Redesignated subsection (h) continues to support rural intercity bus service by requiring that States spend 15 percent of their annual apportionment to support such service, unless they certify that the needs are being met. However, the provision has been amended to require that States would be required to consult with affected other than urbanized (rural) areas in addition to intercity bus providers.

**SEC. 2912. RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.**

Section 2912 makes technical amendments to FTA's research program under section 5312. Section 5312(a)(1) is amended to clarify the recipients eligible to receive research funds. A new paragraph (4) authorizes the Secretary to use section 5312 funds to supplement amounts made available for the Transit Cooperative Research Program under section 5313. A new paragraph (5) provides that the Government's share is to be consistent with the clear and direct financial benefit to a recipient of section 5312 research funds.

**SEC. 2913. TRANSIT COOPERATIVE RESEARCH PROGRAM.**

Section 2913 makes technical amendment to FTA's Transit Cooperative Research Program under section 5313. Section 5313(a) is amended to reflect the source of authorized funding for the program.

**SEC. 2914. TECHNICAL ASSISTANCE AND WORKFORCE DEVELOPMENT PROGRAM.**

Section 2914 replaces existing section 5314, National Research Programs, with the Technical Assistance and Workforce Development Program. This restructured program will fund technical assistance for services to targeted populations, on safety and security, and on institutional and policy issues, as well as training and capacity building programs. This program includes elements currently found under sections 5314 (National Research Programs), 5315 (National Transit Institute) and 5322 (Human Resource Programs).

Under section 5314(a), the Secretary may enter into grants, contracts or cooperative agreements, and other agreements to provide technical assistance that will address the needs of transit providers nationwide. FTA's technical assistance efforts will assist FTA grantees to administer Federal transit assistance (both pre- and post-award assistance), and to improve FTA's grantees' ability to meet their missions through capacity building and best practices.

Section 5314(b) establishes a Workforce Development Program. Paragraph (1) of this subsection authorizes the Secretary to 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. The program will fund innovative workforce development models for public transportation throughout the country. Training and capacity building

programs will educate a workforce with the skill-set needed to fill public transportation jobs of the future. The program will identify and support the development of new practices, approaches, curricula that will address the needs of a changing public transportation industry. Paragraph (2) states that eligible activities include pre-employment training; on-the-job training; and technical assistance and training that is directed targeted populations and capacity building, focused on safety and security, and related to institutional and policy matters.

Subsection (c) continues FTA's fellowship authority. It authorizes grants to States, local governmental authorities, and operators of public transportation systems that will fund fellowships to train personnel employed in managerial, technical, and professional positions in the public transportation industry.

The Secretary is authorized to fund national public transportation institutes pursuant to section 5314(d). In doing so, the Secretary may enter into grants, contracts or cooperative agreements, and other agreements to conduct one or more national public transportation institutes for the purpose of developing and conducting training and educational programs for Federal, State, and local transportation employees, United States citizens, and foreign nationals engaged or to be engaged in Government-aided public transportation work. Paragraph (2) of subsection (d) requires that the national public transportation institutes develop and conduct training and education program authorized under this subsection in cooperation with the Secretary. Subsection (d)(3) itemizes the courses that may be offered. The courses must reflect recent developments, techniques and procedures involving public transportation. Paragraph (4) states that education and training of Government, State and local transportation employees at a national public transportation institute is provided at no cost to the State or local governments for subjects that are a government program responsibility.

Subsection (e) specifically authorizes the National Rural Transportation Assistance Program (RTAP) in support of operators of public transportation in rural areas.

Subsection (f) authorizes the Secretary to 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, this subsection shall be carried out through a contract with a national nonprofit organization serving people and that has a demonstrated capacity to carry out the authorized activities.

Pursuant to subsection (g), the Government share shall be consistent with the clear and direct financial benefit to a recipient of funds under this section. Subsection (h) provides for the allocation of funds among the National Public Transportation Institutes, the Workforce Development Program and Other Technical Assistance and Workforce Development Activities. Under subsection (i), recipients of 5306, 5307, 5310 and 5311 funding are eligible to use up to 0.5 percent of their annual apportionment to cover costs

of training with the National Transit Institute, as well as other institutes created by the Secretary, to ensure transit agency staff are able to participate in seminars and workshops to learn the latest on advanced technology, multi-modal planning, management development and training effectiveness.

Section 2914(b) is a conforming amendment.

#### **SEC. 2915. TRIBAL TRANSIT PROGRAM.**

Section 2915 codifies the Tribal Transit Program under its own section, 5315. Currently, pursuant to section 5311(c)(1), the program is a takedown from amounts made available to carry out the Formula Grants for Other than Urbanized Areas. Generally, section 5315 makes Tribes in urbanized areas newly eligible. This could provide some relief to Tribes currently receiving funding that find themselves within expanded urbanized area boundaries in 2010 census.

Section 5315(a) provides the Secretary with the authority to award grants to Indian Tribes for capital project, operating assistance, planning activities as well as activities authorized in the Consolidated Specialized Transportation Grant Program (section 5310).

Pursuant to subsection (b), the Secretary is responsible for determining, in consultation with the Indian Tribes, the terms and conditions, including the share requirements, of a Chapter 53 grant to an Indian Tribe. More specifically, this subsection authorizes the use of special conditions for any Chapter 53 grant tribe, not just under this section. Subsection (c) authorizes the Secretary to establish the project selection criteria under this section, but must do so in consultation with the Indian Tribes.

Section 2915(b) is a conforming amendment.

#### **SEC. 2916. PUBLIC TRANSPORTATION EMERGENCY RELIEF PROGRAM.**

Section 2916 establishes a Public Transportation Emergency Relief Program under section 5316. Currently, section 5316 authorizes the Job Access and Reverse Commuter Program, which has been incorporated into section 5310, the newly established Consolidated Specialized Transportation Grant Program. This new program will make funds available to restore transit operations as quickly as possible in the wake of a natural or manmade disaster. As such, the program would provide grants for necessary activities, including providing funds for evacuations, leasing vehicles from other transit agencies to restore service, and any costs eligible for temporary vehicles or facilities.

More specifically, section 5316(a)(1) authorizes the Secretary to 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

natural disaster over a wide area, such as by a flood, hurricane, tidal wave, earthquake, severe storm, or landslide; or a catastrophic failure from any external cause. Operating assistance is an eligible expense under section 5316(a)(2) for a period not to exceed one year after the date the emergency has been declared consistent with subsection (b). If the Secretary determines that there is a compelling need, funds may continue to be available for operating assistance not more than one additional year. Eligible operating costs include evacuation services; rescue operations; temporary public transportation service; and re-establishing, expanding, or relocating public transportation route service before, during, or after the emergency.

Under subsection (b), funds provided to carry out this program could not be obligated unless the Governor of the State has been declared an emergency, which is concurred in by the Secretary; or the President has declared an emergency for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

Subsection (c) states that funds provided to carry out this program are in addition to any other funds available under the State of Good Repair, Urbanized Area Formula Grants, and Formula Grants for Other than Urbanized Areas Programs. The funds are also in addition to any other assistance provided for emergency purposes by any other branch of the Federal government, including the Federal Emergency Management Agency (FEMA), a State agency, local governmental entity, organization, or person. Subsection (d) authorizes the transfers of emergency funds appropriated to any other branch of the Federal government, including FEMA, to the Secretary for purposes of carrying out this program.

Section 5316(e) allows the Secretary to use up to 1 percent of the amounts provided to carry out this section and up to 1 percent of any funds transferred pursuant to subsection (d) for administration and technical assistance.

The Secretary has the authority to determine the terms and conditions of a grant pursuant to subsection (f). Subsection (g) controls the Federal share, which is up to 80 percent, at the option of the recipient, for both capital and operating expenses, but the Secretary has the authority to waive match requirements. Pursuant to subsection (h), funds that remain unobligated after one fiscal year may be used for any Chapter 53 purpose.

Section 2916(b) is a conforming amendment.

## **SEC. 2917. LIVABILITY DEMONSTRATION GRANTS PROGRAM.**

Section 2917 repeals the New Freedom Program under section 5317 and establishes a Livability Demonstration Program in its place. The objectives of the existing New Freedom Program are incorporated into the Consolidated Specialized Transportation Grant Program under a new section 5310. The Livability Demonstration Grants Program is a competitive program for planning activities and capital projects to demonstrate innovative livability projects for any community in the United States. The purpose of the

program is to spur innovative improvements to existing underdeveloped transit stations and surrounding areas. This program should result in savings that are realized from coordination of local development efforts. It is intended that projects be evaluated based upon their demonstration of innovative or best practices, and local incentives for integrating transit with the community development in accordance with the DOT-HUD-EPA Partnership's livability principles.

Eligible subrecipients are defined under section 5317(a) as a State or local governmental entity, or a private nonprofit organization. Subsection (b) provides the Secretary with authority to make planning and capital grants for projects that demonstrate 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 innovative improvements to an existing underdeveloped public transportation facility and surrounding area provided the improvements in that area are physically or functionally related to the public transportation facility. Eligible projects under subsection (c) include transit station area planning, real estate acquisition, streetscape improvements, pedestrian and bike improvements, demolition and/or site preparation, open space improvement, permitting, intermodal facilities, land preservation for affordable housing, community service facilities and increasing ADA accessibility.

Under subsection (d), the Secretary must select projects based on the degree to which the project demonstrates innovative or best practices; provides additional transportation choices; promotes equitable, affordable housing; enhances economic competitiveness; supports existing communities; coordinates Federal policies and leverages Federal investment; and enhances the characteristics of rural, urban or suburban communities in a manner that includes promoting the planning process under sections 5303 and 5304.

Subsection (c) authorizes the Secretary to use up to 2 percent of the funds available to carry out this program for project and program evaluation and analysis, and technical assistance activities such as peer exchanges, knowledge sharing, information sharing, and industry dialog activities.

The Secretary will determine the terms and conditions that attach to the grant as indicated in subsection (f). Subsection (g) requires a Federal share of a grant under this section to be, at the option of the recipient, up to 50 percent of the net capital costs of the project with the remainder being derived from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital. The remainder may also be derived from amounts appropriated to or made available to another Federal government (other than the Department of Transportation) as long as the funds are eligible to be expended for transportation.

Section 2917(b) is a conforming amendment.

**SEC. 2918. BUS TESTING FACILITY.**

Section 2918 amends the Bus Testing Facility provisions under current section 5318. Section 5318(a) requires that the Secretary maintain one facility for testing a new bus model acquired with Federal public transportation assistance awarded under chapter 53. Pursuant to subsection (b), the Secretary will determine the types of tests performed on a new bus model. Subsection (c) allows the Secretary to prescribe "in service" testing of a new model bus. Operation and maintenance is provided for under subsection (d), which requires the Secretary to enter into a contract or cooperative agreement with, or make a grant to, a qualified person or organization to operate and maintain the facility. Funding is also available for the testing of rail cars and other public transportation vehicles at the facility. Subsection (e) requires the facility's operator to establish fees for testing vehicles at the facility in an amount approved by the Secretary and collect those fees. Under subsection (f), the Federal share for the costs of testing a vehicle is 80 percent with the testing facility covering the remainder of the costs. Subsection (g) prohibits recipients from using funds provided under Chapter 53 to purchase a bus until that particular model is inspected at the bus testing facility maintained pursuant to this section.

**SEC. 2919. DEBT FINANCING INSTRUMENTS.**

Section 2919 replaces the current Bicycle Facilities provisions under section 5319 with provisions that address debt financing instruments in public transportation. The relevant components of Bicycle Facilities provisions have been moved to section 5302(a), definition of Capital Project, and section 5323(i), Government's share of costs for certain projects. The purpose of the new section is to consolidate debt financing provisions currently found in sections 5302(a)(1)(K), 5307(g), 5309(i), and 5323(e).

Section 5319(a) defines the term "debt financing instrument" to mean 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 a recipient of assistance under chapter 53 and for which the proceeds will be used for an eligible capital project as defined under section 5302(a).

Under subsection (b), a grant awarded under chapter 53 for a capital project may be used to reimburse eligible debt financing instrument costs, including interest, principal repayment, and other related financing expenses. To be an eligible cost, interest must be at a rate that was the most favorable of financing terms available for the capital project at the time of borrowing.

Grant requirements are controlled by subsection (c), which states that reimbursement pursuant to this section is subject to 1) the Secretary having approved the plans and specifications for the capital project or any portion of the project 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; 4) the recipient certifies, in a manner satisfactory to the Secretary, that the recipient has shown reasonable diligence in seeking



the most reasonable financing terms; and 5) a lease agreement for an eligible capital project under chapter 53 is more cost-effective than purchasing or construction of the capital project.

Section 2919(b) is a conforming amendment.

## **SEC. 2920. ALTERNATIVE TRANSPORTATION IN PARKS AND PUBLIC LANDS.**

Section 2920 amends the existing Alternative Transportation in Parks and Public Lands Program under section 5320. This program will continue to provide funding for alternative transportation systems, such as shuttle buses, rail connections, bicycle trails, in national parks and Federally-owned public lands. The program seeks to conserve natural, historical, and cultural resources; reduce congestion and pollution; improve visitor mobility and accessibility; enhance visitor experiences; and ensure access to all, including people with disabilities.

Section 5320(b)(1) is amended to eliminate the consultation requirement with the Department of the Interior (DOI) regarding the award of funds under this section. Paragraphs (2) and (3) are redesignated as paragraphs (3) and (4) and a new paragraph (2) states that, to the extent eligible projects are not within the jurisdiction of DOI, the Secretary is to consult with the heads of relevant Federal land management agencies when selecting projects under subsection (h). Moreover, as set forth in subsection (d), the Secretary will develop cooperative arrangements with these agencies that provide for technical assistance in alternative transportation; interagency and multidisciplinary teams to develop alternative transportation policy, procedures and coordination; and the development of procedures and criteria relating to the planning, selection and funding of qualified projects and the implementation and oversight of the program of projects. The Secretary will also develop transportation planning procedures in cooperation with these agencies as required under subsection (f).

Subsection (e)(1) is amended to eliminate the requirement that the Secretary consult with DOI using amounts available to administer this program or carry out planning, research and technical assistance. Subsection (g)(1) is similarly amended for purposes of determining the Government's share of the project. In addition, the Secretary will no longer be required to consult with DOI, prior to approving funding for a project carried out in advance of Federal assistance as currently required under subsection (i)(1). Paragraphs (2) and (3) in subsection (j) are redesignated as paragraphs (3) and (4) and a new paragraph (2) is inserted that exempts selected projects under this program from section 4(f) (49 U.S.C. 303; 23 U.S.C. 138) requirements, which "prohibits the use of land of significant publicly owned public parks, recreation areas, wildlife and waterfowl refuges, and land of a historic site for transportation projects unless the Administration determines that there is no feasible and prudent avoidance alternative and that all possible planning to minimize harm has occurred."

Subsections (k) and (l) are amended so that the Secretary is no longer required to consult with DOI concerning asset management and the award of funding for research, development and deployment of new technologies.

There are other amendments to the section that are technical in nature.

**SEC. 2921. EFFICIENT ENVIRONMENTAL REVIEWS FOR PROJECT DECISIONMAKING [STILL WORKING ON—I OWE YOU]**

**SEC. 2922. GENERAL PROVISIONS ON ASSISTANCE.**

Section 2922 amends current section 5323, which provides various requirements that apply to recipients of Chapter 53 funds.

Section 5323(a)(1)(A) makes a technical amendment to reference the correct planning provisions, i.e., sections 5303 and 5304.

The debt service reserve provision in subsection (e)(3) is stricken as the essence of that provision has been incorporated in a new section 5319, Debt Financing Instruments. The debt service pilot program in paragraph (4) was also stricken as it has been completed. Paragraph (2) of subsection (i) was amended to incorporate the share requirements for bicycle facilities currently set forth in section 5318. Except for Livability Demonstration Program funds, for which the Government's share is up to 50 percent, the Government's share for bicycle facilities and equipment as defined under section 5302(a)(1)(N) shall be 90 percent. However, if the funds are expended to address transit enhancement requirements under 5307(d)(1)(K), the Government's share for bicycle facilities and equipment is 95 percent.

The Buy America provisions under subsection (j) are amended to reflect the Administration's desire to encourage transit vehicle manufacturers (TVMs) to acquire a greater number of components from firms with manufacturing facilities within the United States, thereby preserving and protecting our domestic manufacturing base. Final assembly of rolling stock prototypes must occur in the United States. Moreover, rolling stock prototypes are subject to the newly established increase in the cost of components and subcomponents as set forth in subsection (j)(2)(C). The increase in domestic components graduates from 60 percent for rolling stock in fiscal year 2012, 70 percent in fiscal year 2013, 80 percent in fiscal year 2014, and 90 percent in fiscal year 2015. By 2016, 100 percent of the cost of components and subcomponents for rolling stock, including rolling stock prototypes, must be produced in the United States and final assembly must occur in the United States as well. The increase is staggered over a five-year period to enable TVMs to enlist a greater number of US-based vendors, and to give vendors time to relocate or commence manufacturing activities within the United States. Remaining amendments are technical in nature.

**SEC. 2922. GENERAL PROVISIONS ON ASSISTANCE.**

Section 2922 amends current section 5323, which provides various requirements that apply to recipients of Chapter 53 funds.

The amendment to section 5323(a)(1)(A) is a technical change to reference the correct planning provisions, i.e., sections 5303 and 5304.

The debt service reserve provision in subsection (e)(3) is stricken as the essence of that provision has been incorporated in a new section 5319, Debt Financing Instruments. The debt service pilot program in paragraph (4) was also stricken as it has been completed. Paragraph (2) of subsection (i) was amended to incorporate the share requirements for bicycle facilities currently set forth in section 5318. Except for Livability Demonstration Program funds, for which the Government's share is up to 50 percent, the Government's share for bicycle facilities and equipment as defined under section 5302(a)(1)(N) shall be 90 percent. However, if the funds are expended to address transit enhancement requirements under 5307(d)(1)(K), the Government's share for bicycle facilities and equipment is 95 percent.

The Buy America provisions under subsection (j) are amended to reflect the Administration's desire to encourage transit vehicle manufacturers (TVMs) to acquire a greater number of components from firms with manufacturing facilities within the United States, thereby preserving and protecting our domestic manufacturing base. Final assembly of rolling stock prototypes must occur in the United States. Moreover, rolling stock prototypes are subject to the newly established increase in the cost of components and subcomponents as set forth in subsection (j)(2)(C). The requirement for domestic components increases from the current 60 percent level to 70 percent in fiscal year 2013, 80 percent in fiscal year 2014, and 90 percent in fiscal year 2015. By 2016, 100 percent of the cost of components and subcomponents for rolling stock, including rolling stock prototypes, must be produced in the United States and final assembly must occur in the United States as well. The increase is staggered over a five-year period to enable TVMs to enlist a greater number of US-based vendors, and to give vendors time to relocate or commence manufacturing activities within the United States. Remaining amendments are technical in nature.

### **SEC. 2923. SPECIAL PROVISIONS FOR CAPITAL PROJECTS.**

Section 2923 amends section 5324, Special Provisions for Capital Projects, which provides various requirements that attach to the award of chapter 53 funds. Revisions are made for purposes of environmental mitigation under section 5324(b). Under paragraph (2) of that subsection, the public participation provision is expanded to include the requirement that FTA consider comments received during public review periods in addition to hearing transcripts. Additionally, paragraph (3)(A), clause (iii) is revised to ensure that funding under chapter 53 may not be provided unless the Secretary makes written findings that due consideration has been given to adverse environmental impacts of a project, and mitigation measures have been developed to counter adverse impacts.

### **SEC. 2924. CONTRACT REQUIREMENTS.**

Section 2924 makes technical modifications to existing section 5325, Contract Requirements. Subsection (h) is revised to reference applicable Federal transportation statutes. Subsection (j)(2)(C) is amended by removing the reference to the Contractor Performance Assessment Reports, which would no longer be required under a proposed amendment to section 5309.

#### **SEC. 2925. OVERSIGHT.**

Section 2925 amends existing section 5327, Project Management Oversight. FTA's statutory authority and programmatic takedowns continue to support oversight efforts. Section 5327(a) is revised to reflect that assistance under Chapter 53 and any other Federal law for a major capital project is contingent on a recipient preparing and carrying out the project in accordance with a project management plan approved by the Secretary. Paragraphs (1), (2), and (3) of subsection (a) are revised in their entirety. Paragraph (1) requires that a management plan be developed to ensure that the recipient has the necessary technical capacity to carry out the project by outlining the necessary organizational structures and skills, a recipient staff organization with well-defined reporting relationships, statements of functional responsibilities and job qualifications, and adequate internal and external controls. Under paragraph (2), the plan must provide a budget covering the project management organization, risk and contingency management, appropriate consultants, and plans for real estate acquisition, utility relocation, fleet management, and equipment acquisition. Paragraph (3) requires the plan include an integrated project schedule covering all phases of the project.

Subsection (c)(1) is also revised in its entirety. It now allows the Secretary to use for oversight activities identified in subsection (c)(2) up to 1 percent of the amounts available to carry out sections 5305 through 5317, 5320, 5340 and section 601 of division B of Public Law 110-432, which authorizes an appropriation of funds for the Washington Metropolitan Area Transportation Authority. Currently, the takedown applies to only certain chapter 53 public transportation assistance programs and the rate of the takedown varies among them.

Subsection (c)(2)(A) authorizes activities to oversee the design and construction of a capital project funded with Federal assistance. Currently, oversight activities are limited to the construction of a major capital project. Subparagraph (B) authorizes 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. Currently, such activities are limited to certain Chapter 53 Federal public transportation assistance programs. Subparagraph (C) is amended to ensure that technical assistance can be provided not only to correct deficiencies, but to also prevent them. A new subparagraph (4) is added to subsection (c) that authorizes the takedown to be used for activities necessary to enforce safety and security, procurement, management, and financial compliance of a recipient or subrecipient of Federal public transportation assistance should a deficiency remain unresolved for an unreasonable

period of time. The Secretary is responsible for defining an "unreasonable period of time".

Under subsection (d), as revised, recipients and subrecipients of Federal public transportation assistance must provide the Secretary and the oversight contractor with access to construction sites and records when requested.

Subsection (e) is stricken as unnecessary since the Secretary has authority to prescribe regulations under section 5334.

The remaining amendments are technical in nature.

#### **SEC. 2926. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.**

Section 2926 amends existing section 5331, Alcohol and Controlled Substances Testing Program. More specifically, return to duty and follow-up testing is added to section 5331(b)(1)(A) for clarity. Subparagraph (B) requires to the Secretary to prescribe a regulation that permits public transportation agencies to conduct pre-employment testing of covered employers for alcohol misuse.

Section 5331(b)(2) is amended to require the Secretary to establish and implement an enforcement program, including the imposition of penalties for failure to comply with FTA's Alcohol and Controlled Substances Testing program. It has also been amended to require the Secretary mandate, through regulation, 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. In addition, regulations must require that 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, in the case of the covered employee fatality in an accident involving public transportation. Regulations shall require that a covered employee provide notification to the public transportation agency when using a prescription or over-the-counter medication that may impair the covered employee's ability to perform in a safety-sensitive function.

Subsection (d), paragraph (7), has been amended to ensure that the confidentiality of a covered employee's test results and medical information, including notification provided by the employee regarding the use of prescription and over-the-counter medication. However, this assurance will not prevent the use of test results for the orderly imposition of appropriate sanctions authorized under this program. In addition, this assurance will not apply to a national drug and alcohol violations database established by the Federal government that lists employees covered by this section.

Other amendments are technical in nature.

#### **SEC. 2927. ADMINISTRATIVE PROVISIONS.**

Section 2927 amends section 5334, Administrative Provisions. Subsection (a)(1) is revised to clarify that the Secretary is authorized to prescribe terms and conditions of an FTA grant not only for a project awarded Federal public transportation assistance in accordance with chapter 53 of title 49, United States Code, but also any other statute that provides assistance for public transportation purposes and for which FTA awards a grant. Section 2927 also amends the current prohibition in Section 5334(b)(1) to allow Federal regulation of transit operations and service practices for purposes of public transportation safety. Paragraph (4) of subsection (c) and subsection (j) are stricken as unnecessary. Subsections (k) and (l) are redesignated as subsection (j) and (k), respectively. Subsection (i), dealing with the transfer of chapter 53 funds to the Federal Highway Administration (FHWA) for highway purposes, is currently mandatory, but is amended to allow such transfers to be discretionary in order to match FHWA's corresponding transfer provision.

**SEC. 2928. NATIONAL TRANSIT DATABASE.**

The National Transit Database (NTD), which is authorized under section 5335, is the Nation's primary source for information and statistics on our public transportation systems. Recipients or beneficiaries of grants of FTA's Urbanized Area Formula funds (section 5307) and Other than Urbanized Areas Formula funds (section 5311) are required to report to the NTD. Funding apportionments to urbanized areas are determined in part by data reported to the NTD.

Section 2928 amends section 5335 in subsection (a) by requiring those subject to NTD reporting to include asset management conditions. It is anticipated that this requirement will be phased in over a period of time pursuant to regulation. Subsection (b) is amended to require that recipients of the newly established Bus and Rail State of Good Repair (5306) and the Consolidated Specialized Transportation Grant (5310) programs also report to the NTD.

**SEC. 2929. APPORTIONMENT OF APPROPRIATIONS FOR FORMULA GRANTS.**

Section 2929 amends section 5336, which sets forth the apportionment of Urbanized Area formula funds available to carry out section 5307. Section 5336(b)(1) is amended by eliminating an apportionment to the Alaska Railroad for passenger operations. Alaska Railroad is an intercity rail passenger carrier, which is not public transportation as defined pursuant to section 5302(a)(10). Consequently, absent specific authorization, Alaska Railroad is not an eligible recipient of public transportation assistance for its intercity rail service.

Subsection (f) is revised to clarify that the Governor of a State may transfer any part of the State's apportionment under subsection (a)(1) to supplement (1) a State's Other than Urbanized Area formula apportionment; and (2) amounts apportioned to urbanized areas. A new subparagraph (2) clarifies that transfers under paragraph (1) may only take place

after the Governor consults with responsible local officials and publicly owned operators of public transportation in each area for which the amount originally was apportioned. Paragraph (3) is amended to make clear that a Governor may use throughout the State amounts of a State's apportionment remaining available for obligation at the beginning of the 90-day period before the period of the availability of the amounts expires, without the need for consultation required in paragraph (2);

Subsection (h) regarding the application of other sections is stricken as unnecessary. Subsections (i) and (j) are redesignated as subsections (h) and (i). The requirement for a study on incentives in formula programs in subsection (k) is stricken. This research was conducted and a report was submitted to Congress in August 2008.

Other amendments were technical in nature.

### **SEC. 2930. AUTHORIZATIONS.**

Section 2930 amends section 5338 to authorize Federal assistance to carry out Chapter 53 public transportation programs from the Mass Transit Account (MTA) of the Transportation Trust Fund. Under SAFETEA-LU, the new fixed guideway (New Starts) category of the Capital Investment Grants, Administrative Expenses and Research accounts were appropriated general funds while the remainder of the accounts derived funding from the MTA. Section 5338(a) provides the total amount of trust funds to be available to carry out Chapter 53 programs in each fiscal year 2012 through 2017.

Section 5338 will require establishing new appropriations accounts to carry out public transportation assistance programs. Under subsection (b), a Livable Communities account will house funding for the Livable Communities Demonstration Program under section 5317 and the Planning Programs under section 5305. A new Bus and Rail State of Good Repair appropriations account under subsection (c) would provide funding for the program, which is authorized under section 5306. Subsection (d) also creates a new Transit Formula Program account that provides funds to carry out the Urbanized Area Formula Grants (5307), Consolidated Specialized Transportation Grant (5310), Formula Grants for Other Than Urbanized Areas (5311), National Transit Database (5335), and the Growing States and High Density States Formula programs (5340).

A Greenhouse Gas and Energy Reduction account is established pursuant to subsection (e). Funds would be provided from this account to carry out the Clean Energy Efficient Public Transportation Research (5308(a)); Public Transportation Test Beds Demonstration Program (5308(b)); and Greenhouse Gas and Energy Reduction Demonstration Program (5308(c)). Subsection (f) creates a Public Transportation Expansion Programs account for purposes of funding Capital Investment Grants (5309); the Tribal Transit Program (5315); and Alternative Transportation in Parks and Public Lands (5320).

The National Research and Technology Programs account under subsection (g) provides funds for Research, Development, Demonstration, and Deployment Projects (5312), \$8

million dollars for two University Transportation Centers that focus on public transportation in accordance with 49 U.S.C. 5505, and Transit Cooperative Research Program (5313). Subsection (h) creates a Technical Assistance and Workforce Development account to carry out activities of that program authorized under section 5314. A new Public Transportation Emergency Relief account is established to provide emergency funding in accordance with section 5316. A new Public Transportation Safety Program account under subsection (j) provides funds for public transportation safety activities authorized under section 5329. Subsection (k) provides for administrative expenses authorized under section 5334.

Subsection (l) provides contract authority for all funding set forth in this section. Pursuant to subsection (m), amounts made available under this section remain available under expended.

### **SEC. 2931. APPORTIONMENTS BASED ON GROWING STATES AND HIGH DENSITY STATES FORMULA FACTORS.**

Section 2931 amends section 5340(a) to reference the appropriate funding cite.

### **SEC. 2932. OBLIGATION CEILING.**

This section sets forth the annual obligation ceiling for the Federal Transit Administration programs authorized by this Act for fiscal year 2012 through 2017 from the Mass Transit Account of the Transportation Trust Fund.

### **SEC. 2933. REPEAL OF OBSOLETE PROVISIONS OF TITLE 49 AND OTHER LAWS.**

Section 2933(a) repeals 49 U.S.C. 5321, Crime Prevention and Security, because the eligibility for such activities is set forth in the definition of a capital project under section 5302(a)(1). Section 5328, Project Review, is repealed as still relevant and necessary provisions of that section have been incorporated in the Capital Investment Grants Program. Section 5337, Apportionment Based on Fixed Guideway Factors, is repealed because fixed guideway modernization activities are authorized in a newly established State of Good Repair Formula Grants Program under section 5306. Section 5339, Alternatives Analysis Program, is repealed as the activity is no longer a prerequisite for funding under Capital Investment Grants in section 5309. Section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note), Over-the-road Bus Accessibility Program, is repealed as the purpose of the program has been fulfilled. Subsection (b) makes conforming amendments.

## **TITLE III—SURFACE TRANSPORTATION SAFETY**

### **Subtitle A -- Highway Safety**

#### **Part 1--Traffic Safety**



## **SEC. 3001. AUTHORIZATION OF APPROPRIATIONS.**

Subsection(a) ("In general") authorizes funds, out of the Highway Account of the Transportation Trust Fund, for the following: State and community highway safety grant program under section 402 of title 23, United States Code; highway safety research and development under section 403 of title 23, United States Code; national driver register under chapter 303 of title 49, United States Code; combined occupant protection grants under section 405 of title 23, United States Code; State traffic safety information system improvements grants under section 408 of title 23, United States Code; impaired driving countermeasures grants under section 410 of title 23, United States Code; distracted driving grants under section 411 of title 23, United States Code; high visibility enforcement program under section 3010 of this Act (enacted under section 2009 Public Law 109-59 (23 USC 402 note)); motorcyclist safety program under section 3011 of this Act (enacted under section 2010 of Public Law 109-59 (Grants. 23 USC 402 note)); administrative expenses to carry out chapter 4 of title 23, United States Code .

Subsection (b) ("Prohibition on other uses") prohibits use of the amounts made available from the Highway Account of the Transportation Trust Fund for a program under chapter 4 ("Highway Safety") of title 23, United States Code, from use by States or local governments for construction purposes.

Subsection (c) ("Applicability of Title 23") provides that, except as otherwise provided in chapter 4 of title 23, United States Code, and this title, amounts made available under subsection (a) for each of fiscal years 2012 through 2017 are to be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code.

Subsection (d) ("Regulatory authority") provides that grants awarded under this title are to be in accord with regulations issued by the Secretary.

Subsection (e) ("State matching requirements") provides that where a grant awarded under this title 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) are to 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 title (other than planning or administration) without regard to whether such expenditures were actually made in connection with such project.

Subsection (f) ("Maintenance of effort") provides that no grant may be made to a State under sections 3005, 3006, 3007, 3008, or 3010 of this title 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.

Subsection (g) ("Transfers") authorizes the Secretary to transfer any amounts remaining available under the combined occupant protection grant program under section 405, the State traffic safety information system improvements grant program under section 408, the impaired driving countermeasures grant program under section 410, or the motorcyclist safety grant program (enacted under section 2010 of SAFETEA-LU (Public Law 109-59; 23 USC note), as amended by this Act), to ensure, to the maximum extent possible, that all funds are obligated.

Subsection (h) ("Grant application and deadline") provides that to receive a grant under this subtitle, a State must 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.

Subsection (i) ("Allocation to support State distracted driving laws") provides that, of the amounts available under subsection (a)(8) for distracted driving grants, the Secretary is authorized to 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.**

Subsection (a) ("Programs included") amends section 402 ("Highway Safety Programs") of title 23, United States Code, to revise subsection (a), after clause (7), to make a number of editorial changes which eliminate sentences that are no longer relevant, and also to eliminate certain inconsistencies and ambiguities.

Subsection (b) ("Administration of State programs") amends section 402(b)(1) of such title to provide, beginning in fiscal year 2013, that the Secretary may not approve a State highway safety program under section 402 that does not 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. The subsection also requires that each State, as a condition to having its highway safety program approved by the Secretary, provide satisfactory assurances that it will (1) implement national law enforcement mobilizations and high-visibility law enforcement mobilizations coordinated by the Secretary, and (2) ensure 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 title 23.

Subsection (c) ("Approved highway safety programs") amends section 402(c) of such title to:

- (1) strike "Such" at the beginning of the second sentence and insert the following: "Except for amounts identified in subsection (n) of this section, and section 403(e), such.";
- (2) strike the seventh sentence, which prohibits the Secretary from requiring States to include in an approved highway safety program the adoption or enforcement of a law, rule, or regulation requiring a motorcycle operator eighteen years of age or older, or a

motorcycle passenger eighteen years of age or older, to wear a safety helmet when operating or riding a motorcycle on the streets or highways of the State;

(3) add a new sentence permitting States to pool their section 402 apportioned funds, in cooperation with neighboring States, for the purpose of regional highway safety programs;

(4) revise the provision in subsection (c)(1) that reduces the amount of section 402 funds the Secretary can withhold from a State that does not have or does not implement an approved highway safety, from 50 percent to 20 percent; and

(5) revise the date of the Secretary's reapportionment of funds withheld from a State to other States by revising the last sentence to substitute "the end of the fiscal year" in place of "30 days after such determination."

Subsection (d) ("Use of highway safety program funds") amends section 402(g) of such title to permit a State to use its section 402 funds to supplement research and demonstration projects in the State that are funded under section 403 ("Highway safety research and development").

Subsection (e) ("Expenditures for local highway programs in Indian country") amends section 402(i)(2) to permit the Secretary of the Interior to use 10 percent of the Secretary's section 402 apportionment (in place of current 5 percent) to enhance the Secretary's ability to administer the section 402 highway safety program for the Indian tribes, and also to allow the Secretary to provide services for the benefit of the Indian tribes, such as law enforcement, as requested and agreed to by a grantee Indian tribe.

Subsection (f) repeals section 402(k) of such title, an outdated and no longer relevant section which authorizes the Secretary to make a grant to a State that includes, as part of its section 402 program, the use of a comprehensive computerized safety recordkeeping system.

Subsection (g) ("Cooperative research and evaluation") amends section 402 of such title to add a new subsection (n), "Cooperative Research and Evaluation," which provides, notwithstanding the apportionment formula under section 402(c), that in each fiscal year \$2.5 million of the total annual apportionment to the States under section 402(c) for the highway safety programs will remain available for expenditure by the Secretary, acting through the Administrator of NHTSA, for a Cooperative Research and Evaluation Program to research and evaluate priority highway safety countermeasures. The program is to be administered by NHTSA, and jointly managed by the Governors Highway Safety Association and NHTSA.

Subsection (h) ("Activities to promote highway and motor vehicle safety") amends section 402 of such title to add a new subsection (o), which provides that, notwithstanding any other law, funds appropriated to the Secretary for NHTSA are to 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.**

This section amends section 403 ("Highway safety research and development") of title 23, United States Code, by substituting a new section 403 for the existing section.

Subsection (a) ("Definition") of section 403 of such title provides a definition for the term "Federal laboratory."

Subsection (b) ("General authority") of section 403 of such title has two paragraphs:

Paragraph (1) ("Research and development activities") authorizes the Secretary to 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, in the following four areas:

(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 (A), (B) and (C).

Paragraph (2) ("Cooperation, grants, and contracts") authorizes the Secretary to carry out section 403 in four ways:

(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.

Subsection (c) ("Collaborative research and development") of section 403 of such title has three paragraphs:

Paragraph (1) ("In general") authorizes the Secretary to carry out, on a cost-shared basis, collaborative research and development with--

- (A) non-Federal entities, including State and local governments, foreign governments, colleges, universities, corporations, institutions, partnerships, sole proprietorships, and trade associations that are incorporated or established under the laws of any State or the United States; and
- (B) Federal laboratories.

Paragraph (2) ("Agreements") authorizes the Secretary, in carrying out this subsection, to 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 that the Secretary selects under this subsection.

Paragraph (3) ("Use of technology") provides that 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, will be subject to the provisions of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

Subsection (d) ("Title to equipment") of section 403 of such title authorizes the Secretary, in furtherance of the purposes of section 402 of such title, to 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.

Subsection (e) ("Training") of section 403 of such title provides that, 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 will remain available through the end of the succeeding fiscal year for expenditure by the Secretary, acting through the NHTSA Administrator, 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.

Subsection (f) ("Driver licensing and fitness to drive clearinghouse") of section 403 of such title authorizes the Secretary, in addition to the authority provided under section 403, acting through the NHTSA Administrator, to expend, out of the funds provided for section 403, 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.

Subsection (g) ("International Highway Safety Information and Cooperation") of section 403 of such title has two paragraphs:

Paragraph (1) ("Establishment") authorizes the Secretary, acting through the NHTSA Administrator, to 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.

Paragraph (2) ("Cooperation") authorizes the Secretary to carry out this subsection in cooperation with any appropriate Federal agency, State or local agency or authority, foreign government, or multinational institution.

Subsection (h) ("Public Health Authority") of section 403 of such title provides that for purposes of collecting and analyzing medical data for transportation safety research under chapter 4 ("Highway Safety") of title 23, United States Code, or chapter 301 ("Motor Vehicle Safety") 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, includes 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.

The National Highway Traffic Safety Administration's (NHTSA) primary mission is to prevent and reduce deaths, injuries and economic losses resulting from automotive travel on our nation's roadways. To accomplish this mission, NHTSA has specific statutory authority and, indeed, a congressional mandate, to collect crash injury data and conduct research and analysis of such data in the interest of public health (*see* existing authority under 49 U.S.C. § 30168(a)(1) and 23 U.S.C. § 403(a)(1)). As a recognized public health authority, NHTSA would be in a better position to collect and analyze relevant medical data for transportation safety research purposes and support the Administration's efforts to prevent and reduce deaths, injuries and economic losses resulting from automotive travel on our nation's roadways.

Subsection (i) ("Prohibition on certain disclosures") of section 403 of such title provides that any report of NHTSA or of any officer, employee, or contractor of NHTSA, relating to any highway traffic accident or the investigation thereof conducted pursuant to chapter 4 of title 23, United States Code, or chapter 301 of title 49, United States Code, is to be made available to the public in a manner that does not identify individuals.

Subsection (j) ("Model specifications for devices") provides that the Secretary, acting through the NHTSA Administrator, 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.**

This section amends section 30302(b) ("Accuracy of information") of title 49, United States Code, to direct the Secretary to make continual improvements to modernize the National Driver Register's data processing system.

#### **SEC. 3005. COMBINED OCCUPANT PROTECTION GRANTS.**

NHTSA estimates that seat belts saved more than 72,000 lives during the five years between 2005 and 2009. Child restraints saved hundreds more. Among children under age five in passenger vehicles alone, NHTSA estimates that 284 lives were saved due to the use of child restraints. This section consolidates and combines various elements of occupant protection grant programs established under SAFETEA-LU (Public Law 109-59) into a new incentive grant program that provides funding to implement and enforce occupant protection efforts in the States, including high-visibility enforcement programs. NHTSA's research shows that comprehensive State occupant protection programs that combine strong laws, enforcement, education, and communication are the most effective way to achieve significant, lasting increases in seat belt and child restraint use.

Subsection (a) amends section 405 of title 23, United States Code, to establish a new section 405, entitled "Combined Occupant Protection Grants." The following summarize the subsections of the new section 405.

Subsection (a) ("General authority") of the new section 405 directs the Secretary to 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.

Subsection (b) ("Federal share") provides that the Federal share of the costs of activities funded from grants under this section is not to exceed 80 percent for each fiscal year for which a State receives a grant.

Subsection (c) ("Eligibility") provides the eligibility criteria for a grant. To qualify for a grant, States 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, would be required to submit, during the first fiscal year, an occupant protection plan; participate in the nationwide *Click It or Ticket* mobilization; have an active network of child restraint inspection stations; and have a plan to recruit, train, and maintain a sufficient number of child passenger safety (CPS) technicians.

To qualify for a grant, States with observed safety belt use rates below 90 percent, based on the most recent survey data from a survey that conforms with NHTSA's national

criteria, would have to meet all of the requirements required for States with an observed seat belt use rate of 90 percent or higher, and also meet 3 of the following 6 criteria:

- Conduct sustained (on-going and periodic) seat belt enforcement at a defined level of participation during the year.
- Enact and enforce a primary seat belt use law.
- Implement countermeasure programs for high-risk populations, such as drivers on rural roadways, or unrestrained nighttime drivers, or teenage drivers.
- Enact and enforce occupant protection laws requiring front and rear occupant protection use by all occupants in an age-appropriate restraint.
- 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.
- 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.

Subsection (d) ("Use of grant amounts") provides that the grant amount received by a State in a fiscal year may be used for any of the following purposes:

(A) a program to support high-visibility enforcement mobilizations, including paid media that emphasizes publicity for the program, and law enforcement;

(B) 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;

(C) a program to educate the public concerning the proper use and installation of child restraints, including related equipment and information systems;

(D) 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;

(E) 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; and

(F) Information systems containing data concerning occupant protection, including the collection and administration of child passenger safety and occupant protection surveys.

Subsection (e) ("Grant amount") provides that the amount of a grant to a State for a fiscal year under this section is to be allocated in proportion to the State's apportionment under section 402 for fiscal year 2009.

Subsection (f) ("Report") requires a State that receives a grant under this section must 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. This subsection also requires that the report 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.



Subsection (g) ("Definitions") provides definitions for the terms "child restraint" and "seat belt."

Subsection (b) of the new section 405 provides a clerical amendment by amending the analysis for chapter 4 of such title by striking the item relating to section 405 and inserting "405. Combined occupant protection grants."

### **SEC. 3006. STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.**

This section amends section 408 ("State traffic information improvements") of title 23, United States Code. The following summarize the amended subsections.

Subsection (a) ("General authority") directs the Secretary to make grants to States to support the development and implementation of effective State programs to--

- (1) improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of the safety data of the State that are 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.

Subsection (b) ("Federal share") provides that 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.

Subsection (c) ("Eligibility") provides the eligibility criteria for a grant. To qualify for a grant in a fiscal year, a State must 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.

Subsection (d) ("Use of grant amounts") provides that a State receiving a grant under this section in a fiscal year must 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).

Subsection (e) ("Grant amount") provides that the amount of a grant to a State for a fiscal year under this section is to be allocated in proportion to the State's apportionment under section 402 for fiscal year 2009.

### **SEC. 3007. IMPAIRED DRIVING COUNTERMEASURES.**

NHTSA's data show that more than 30 percent of drivers involved in fatal motor vehicle traffic crashes have a blood-alcohol concentration (BAC) level of .08 or higher (which is illegal *per se* in every State in the U.S.). Approximately 13,000 people are killed in these crashes annually. According to NHTSA's latest National Roadside Survey, 11 percent of day-time drivers and 14 percent of night-time drivers tested positive for drugs (including illicit, prescription and over-the-counter drugs and medications). In 2009, 18 percent of fatally injured drivers in the U.S. tested positive for drugs.

This section amends section 410 ("Alcohol-impaired driving countermeasures") of title 23, United States Code, enacted under section 2007 of SAFETEA-LU (P.L. 109-59) to establish a new section 410, entitled "Impaired Driving Countermeasures." Among other amendments this section establishes new eligibility criteria that target high-risk impaired drivers to reduce driving under the influence of alcohol, drugs, or the combination of alcohol and drugs. The section also provides additional grants for States that adopt mandatory alcohol-ignition interlock laws.

Subsection (a) of this section amends section 410 of such title to establish a new section 410 ("Impaired Driving Countermeasures"). The following summarize the subsections of the new section 410.

Subsection (a) ("General authority") of the new section 410 authorizes the Secretary to 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.

Subsection (b) ("Federal share") provides that the Federal share of the costs of activities funded from a grant under this section may not exceed 80 percent in any fiscal year in which the State receives a grant.

Subsection (c) ("Eligibility") provides three categories of eligibility criteria for a grant, as follows:

(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, will 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, will 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, will 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 paragraph--

(A), unless such a 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 NHTSA 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.

Subsection (d) ("Use of grant amounts") limits the use of grant amounts as follows:

A grant amount received by a *Low-Range State* in a fiscal year may be used by the State for any expenditure designed to reduce impaired driving based on problem identification.

A grant amount received by a *Mid-Range State* in a fiscal year may only be used by the State 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 NHTSA;

(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. A grant amount received by a *High-Range State* in a fiscal year may only be used by the State for one or more of the following:

(A) conduct of one or more activities under paragraphs (A) through (L) for a *Mid-Range State*; and

(B) other activities designed to reduce impaired driving in the State based on problem identification and identified as high priority in the State's assessment report and included in its statewide plan addressing the problem of impaired driving. Subsection (e) "(Grant amount)" provides that, subject to subsection (i), the amount of a grant to a State in a fiscal year is to be allocated in proportion to the State's apportionment under section 402(c) for fiscal year 2009.

Subsection (e) "(Grant amount)" provides that, subject to subsection (i), the amount of a grant to a State in a fiscal year is to be allocated in proportion to the State's apportionment under section 402(c) for fiscal year 2009.

Subsection (f) ("Allocation of additional highway safety funds for impaired driving initiatives") requires that a *High-Range State* may have to make additional allocations as follows:

(1) If such a State 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 must 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.

(2) If the State 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 must 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.

Subsection (g) ("Changes in the average impaired driving fatality rate") provides that the Secretary, acting through the NHTSA Administrator, 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.

Subsection (h) ("Impaired driving fatality rate") defines the term "impaired driving fatality rate." Subsection (i) ("Grants to States that adopt and enforce mandatory alcohol-ignition interlock laws") contains four provisions, as follows: The first provision ("In general") directs the Secretary to 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. The second provision ("Use of funds") provides that 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. The third provision ("Allocation") directs that the funds made available under this subsection are to be allocated among qualifying States, described in the first provision, on the basis of the apportionment formula under section 402(c). The fourth provision ("Funding") limits the funds available to carry out this subsection in a fiscal year to not more than 15 percent of the amounts made available to carry out this section in a fiscal year.

Subsection (b) provides that the analysis for chapter 4 of such title is amended by striking the item relating to section 410 and inserting "410. Impaired driving countermeasures."

### **SEC. 3008. DISTRACTED DRIVING GRANTS.**

Distracted driving is an emerging and growing highway safety problem. In 2009, distracted driving crashes claimed 5,474 lives and led to 448,000 traffic injuries across the U.S. NHTSA's research shows that distraction-related fatalities represented 16 percent of overall traffic fatalities in 2009, the same percentage as in 2008.

NHTSA surveys indicate that most drivers are aware of the dangers of driving while talking on a cell phone or while texting. However, one survey found that two-thirds of drivers admitted to talking on their cell phone while driving last year, and 21 percent indicated that they had sent or read a text message while driving. These figures are higher for younger drivers. At any given time in 2009, the drivers of approximately 800,000 motor vehicles in the U.S. were using a hand-held phone. This section establishes a new incentive grant program for States that enact and enforce distracted driving laws that prohibit text messaging while driving.

Section 3001(i) of this legislation provides that of the amounts available under section 3001(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.

Subsection (a) of this section amends section 411 of title 23, United States Code, to establish a revised section 411, entitled "Distracted Driving Grants." The following summarize the subsections of the revised section 411.

Subsection (a) ("General authority") of the new section 411 directs the Secretary to make grants to States that enact and enforce distracted driving laws that prohibit text messaging while driving.

Subsection (b) ("Federal share") provides that the Federal share of the costs of activities funded from grants under this section is to be 80 percent.

Subsection (c) ("Eligibility") provides the eligibility criteria for a grant. To qualify for a grant in a fiscal year, a State must:

(1) Enact and enforce a law that prohibits a driver of a motor vehicle, while driving, from texting or text messaging;

(2) Authorize 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) Provide 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, provide for minimum penalties as determined appropriate by the Secretary; and

(C) For any offense that results in a death or serious injury, provide for minimum penalties as determined appropriate by the Secretary; and

(4) Conduct education, awareness, and related activities to inform the public about the safety risks associated with texting or text messaging while driving.

Subsection (d) ("Use of grant amounts") directs that a State receiving a grant under this section in a fiscal year must use the amount for any highway safety activity under chapter 4 of title 23, United States Code, including law enforcement, collecting and analyzing data pertaining to distracted driving, and developing and conducting education and training programs targeting distracted driving.

Subsection (e) ("Grant amount") provides that the amount of a grant to a State for a fiscal year under this section is to be allocated in proportion to the State's apportionment under section 402 for fiscal year 2009.

Subsection (f) ("Definitions") provides definitions for the terms "driving" and "texting" or "text messaging."

Subsection (b) of the revised section 411 provides a clerical amendment by amending the analysis for chapter 4 of such title by striking the item relating to section 411 and inserting "411. Distracted driving grants."

### **SEC. 3009. HIGH VISIBILITY ENFORCEMENT PROGRAM.**

This section provides five amendments to the High Visibility Enforcement Program established under SAFETEA-LU's section 2009 (Public Law 109-59; 23 USC 402 note).

The first amendment revises subsection (a) ("In general") of the section to clarify that the NHTSA Administrator may initiate and support campaigns in addition to the high-visibility traffic safety law enforcement campaigns provided under the subsection throughout this Act's period of authorizations.

The second amendment revises subsection (b) ("Purpose") of the section to insert "or related" before "objectives" to allow the law enforcement campaigns under the section to

achieve objectives related to (1) reducing alcohol-impaired or drug-impaired operation of motor vehicles; and (2) increasing use of seat belts by occupants of motor vehicles.

The third amendment revises subsection (c) ("Advertising") of the section to update the permitted modes of advertising by including "Internet-based outreach."

The fourth amendment revises subsection (e) ("Use of funds") of the section to delete the unnecessary reference to subsection (a) and to delete the reference to subsection (f) to conform to the fifth amendment.

The fifth amendment strikes subsection (f) ("Annual evaluation") of the section.

### **SEC. 3010. MOTORCYCLIST SAFETY.**

This section revises the motorcyclist safety incentive grant program established under SAFETEA-LU's section 2010 by establishing new eligibility criteria that emphasize the use of motorcycle helmets. NHTSA's data show that, between 2005 and 2009, motorcycle helmets saved 8,323 lives. NHTSA estimates that the use of motorcycle helmets by motorcyclists reduces the likelihood of a motorcycle crash fatality by 37 percent. The passage of motorcycle helmet use laws governing all motorcycle riders is the most effective method of increasing helmet use.

This section amends section 2010 ("Motorcyclist Safety") of SAFETEA-LU (Public Law 109-59; Grants. 23 USC 402 note) by striking all after subsection (b) and inserting the following new subsections:

Subsection (c) ("Allocation") provides that 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.

Subsection (d) ("Eligibility") provides the eligibility criteria for a grant.

A State with a universal motorcycle helmet use law (i.e., a law requiring all motorcycle operators and passengers to wear helmets meeting Federal Motor Vehicle Safety Standard (FMVSS) 218), would be eligible for a grant in a fiscal year by satisfying at least one of the following:

- (1) a reduction in the number of motorcycle fatalities or in the number of crashes involving motorcycles, compared to the prior year;
  - (2) an impaired riding communication and enforcement program;
  - (3) a reduction in the number of impaired motorcycle fatalities or in the number of reported crashes involving impaired motorcyclists, compared to the prior year;
  - (4) 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;
- and

(5) statewide motorcycle rider training courses.

A State without a universal motorcycle helmet use law would be eligible for a grant in the first two fiscal years by satisfying at least two of the criteria under the above paragraphs (1) through (5), and would be eligible for a grant in each of the succeeding fiscal years by satisfying at least three of the criteria under the above paragraphs (1) through (5).

Subsection (e) ("Use of grant amounts") provides that of the grant amount received by a State in a fiscal year, the following allocations must be made:

- (1) 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; and
- (2) a State without a universal motorcycle helmet use law must 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.

Of the remaining amounts, a grant amount received by a State in a fiscal year, other than an amount subject to the above allocations, may only be used for the following activities:

- (1) promote the increased use of motorcycle helmets meeting Federal motor vehicle safety standard No. 218;
- (2) increase communication and enforcement efforts to reduce impaired riding;
- (3) reduce the number of improperly licensed motorcyclists;
- (4) link State motorcycle data, including data regarding licensing, registration, crashes, education or training, hospital data related to motorcycle traffic crash injuries or traffic citations;
- (5) 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;
- (6) implement a graduated driver licensing system for novice motorcycle operators; and
- (7) implement communication and enforcement programs to reduce speeding and reckless riding.

Subsection (f) ("Definitions") provides definitions for the terms "motorcycle rider training" and "State."

### **SEC. 3011. AGENCY ACCOUNTABILITY.**

This section amends subsection (a) ("Triennial State management reviews") of section 412 ("Agency accountability") of title 23, United States Code, by: (1) authorizing the Secretary to conduct State management reviews of the Territories (viz., Puerto Rico, American Samoa, Guam, and the Northern Marianas) as the Secretary determines is appropriate, instead of every three years as currently required by subsection (a); and (2) repealing subsections (d) ("Regional harmonization") and (f) ("GAO review") of section 412, which have been completed and no longer need to be included in the statute, and redesignating subsection (e) ("Best practices guidelines") as subsection (d).

### **SEC. 3012. EFFECTIVE DATE.**



This section makes sections 3002 through 3013 of this subtitle (and the amendments and repeals made by such sections) effective on October 1, 2011.

**SEC. 3013. EMERGENCY MEDICAL SERVICES.**

This section formally establishes the National Emergency Medical Services Advisory Council, informally established by the Secretary of Transportation in 2008, as a statutory non-Federal body representing all sectors of emergency medical services (EMS), to advise the Secretary and the Federal Interagency Council on Emergency Medical Services (established by Section 10202 SAFETEA-LU; 42 USC 300d-4) on matters relating to EMS.

This section amends section 300d-4 ("Emergency Medical Services") of title 42, United States Code, by adding a new subsection (b) ("National Emergency Medical Services Advisory Council"). The following summarize subsection (b).

Subsection (b)(1) ("Establishment") directs the Secretary of Transportation, the Secretary of Health and Human Services, and the Secretary of Homeland Security, acting through the Secretary of Transportation, to establish a National Emergency Medical Services Advisory Council.

Subsection (b)(2) ("Membership") directs that the Advisory Council is to consist of 25 members, representative of all sectors of the emergency medical services community, appointed by the Secretary of Transportation.

Subsection (b)(3) ("Purposes") requires the Advisory Council to: (1) advise and consult with the Federal Interagency Committee on Emergency Medical Services on matters relating to emergency medical services issues; and (2) advise and consult with the Secretary of Transportation on matters relating to emergency medical services issues affecting the Department of Transportation.

Subsection (b)(4) ("Administration") directs the NHTSA Administrator to provide administrative support to the Advisory Council, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

Subsection (b)(5) ("Leadership") directs the members of the Advisory Council to select a chairperson of the Council each year.

Subsection (b)(6) ("Meetings") directs the Advisory Council to meet as frequently as is determined necessary by the chairperson of the Council.

Subsection (b)(7) ("Annual reports") directs the Advisory Council to prepare an annual report to the Secretary of Transportation regarding the Council's actions and recommendations.

## **Part 2--Motor Vehicle Safety**

### **SECTION 3051. AUTHORIZATION OF APPROPRIATIONS.**

Subsection (a) ("In general") of this section authorizes the appropriation of funds, out of the Highway Trust Fund (other than the Mass Transit Account), 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, for each of fiscal years 2012 through 2017.

Subsection (b) ("Applicability of chapter 1 of title 23") of this section provides that amounts made available under subsection (a) for each of fiscal years 2012 through 2017 are to 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 any program, project, or activity carried out with such funds made available are to be 100 percent.

### **SEC. 3052. DEFINITIONS.**

This section amends section 30102 ("Definitions") of chapter 301 of title 49, United States Code, to revise the definition for "motor vehicle equipment" under subsection (a)(7) to: (1) clarify, under clause (C), that "motor vehicle equipment" includes a motorcycle helmet, and (2) provide, under a new clause (D), that "motor vehicle equipment" also includes hand-held and nomadic devices (electronic or otherwise), software or a system, 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.**

This section amends section 30105 ("Restrictions on lobby activities") of chapter 301 ("Motor Vehicle Safety") of title 49, United States Code, to provide that, notwithstanding any other law, all funds appropriated to the Secretary for NHTSA will 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. The section also would make conforming changes to the section 30105's heading and chapter analysis.

### **SEC. 3054. SAFETY OF RECALLED RENTAL MOTOR VEHICLES.**

This section amends section 30106 ("Rented or leased motor vehicle safety and responsibility") of chapter 301 ("Motor Vehicle Safety") of title 49, United States Code.

Subsection (a) of the section strikes the existing (a) ("In general") and inserts a new subsection (a) ("Limitation on rental or lease of motor vehicles"), which consists of three paragraphs. Paragraph (1) requires that 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. Paragraph (2) provides that paragraph (1) does 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. Paragraph (3) provides that 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.

Subsection (b) of the section ("Effective date") provides that this section takes effect 12 months after the date of enactment of this Act.

This section closes a loophole in chapter 301, pertaining to motor vehicles which have been recalled that are rented or leased by a business engaged in renting or leasing motor vehicles, by ensuring that all defects or noncompliances with respect to such a motor vehicle are remedied prior to its sale or lease. Currently, section 30120(i) of chapter 301 prohibits dealers who have been notified that new motor vehicles or new items of replacement equipment in their possession contain a safety-related defect or do not comply with a safety standard from selling or leasing the vehicles or items of equipment until the defects or noncompliances are remedied. The statute does not address the rental or lease of vehicles by a business engaged in renting or leasing which rents or leases motor vehicles that have a safety defect or a noncompliance. There also is no requirement that such a business inform a prospective renter or lessee of any defects or noncompliances with respect to the vehicle that have not been remedied.

This section also is in keeping with Section 3110 ("Used Motor Vehicle Consumer Protection") of this bill, which ensures that all defects or noncompliances with respect to a used motor vehicle are remedied prior to its sale or lease.

**SEC. 3055. AUTHORITY TO PRESCRIBE CERTAIN ELECTRONIC STANDARDS.**

This section amends section 30111 ("Standards") of chapter 301 ("Motor Vehicle Safety") of title 49, United States Code, to add a new subsection (f) ("Authority to prescribe certain electronic standards") that authorizes the Secretary to 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); and (2) . Subsection (f) also provides that these standards 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.**

This section amends section 30112 ("Prohibitions on manufacturing, selling, and importing noncomplying motor vehicles and equipment") of chapter 301 ("Motor Vehicle Safety") of title 49, United States Code, by:

(1) revising a subsection (a)(1) to add a new paragraph (3) to prohibit (with exceptions provided in sections 30112, 30114, 30120(i) and 30120(j) of such title and subchapter III of this chapter) the sale, offer for sale, introduction into interstate commerce, or import into the United States of 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 for which notice was given under section 30118(c) of such title or an order was issued under section 30118(b) of such title; and

(3) revising subsection (b)(2) to add at the end of paragraph (2) a new clause (C), to provide that section 30112 does not apply to a person who had no reason to know, despite exercising reasonable care, that a motor vehicle or motor vehicle equipment contains a safety-related defect for which notice was given under section 30118(c) of such title or an order was issued under section 30118(b) of such title.

Section 30112 currently prohibits manufacturing, selling, and importation of non-complying motor vehicles and equipment. However, the section does not prohibit those same activities for motor vehicles and equipment that have safety defects. Presumably this distinction is based on the view that noncompliance, if it exists, is present prior to the first retail sale, while safety defects often can be detected only after the first sale. However, such a view lessens the disincentives for producing and distributing defective products, a matter that is especially important at a time when an increasing proportion of motor vehicle equipment is manufactured in other countries. Even if the Secretary or the importer had already determined the product to have a safety-related defect, its importation and sale would not violate this provision. Such a result is not logical in light of section 30163(a), which permits the Attorney General to seek injunctive relief to prevent the sale, distribution, or importation of a motor vehicle or equipment that the manufacturer (which includes an importer) or the Secretary has determined to be defective. Accordingly, if the activity is subject to injunction under section 30163(a), the administration believes that the motor vehicle safety chapter should be amended, as provided by this section, to prohibit it.

#### **SEC. 3057. INFORMATION IN GENERAL.**

This section amends section 30117 ("Providing information to, and maintaining records on, purchasers") of chapter 301 ("Motor Vehicle Safety") of title 49, United States Code, by revising subsection (a) ("Providing information and notice") to add a third paragraph to clarify that the Secretary may require manufacturers to provide any information to the National Highway Traffic Safety Administration that the Secretary deems necessary to carry out the chapter.

#### **SEC. 3058. UPDATE OF MEANS OF PROVIDING NOTIFICATION; IMPROVING EFFICACY OF RECALLS.**

This section amends section 30119 ("Notification procedures") of chapter 301 ("Motor Vehicle Safety") of title 49, United States Code, in two respects. Subsection (a) ("Update of Means of Providing Notification") updates the means of providing notification of defects and noncompliance by a manufacturer under section 30118 of such title. The updates of the means of providing such notification are accomplished by revising subsection (d) of section 30119 ("Notification procedures") as follows: (1) striking, in paragraph (1), "by first class mail" and inserting "in the way the Secretary prescribes by regulation"; (2) 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) striking the first sentence; (B) inserting after "addition" the following: "to the notification required under paragraphs (1) and (2) of this subsection"; and (C) inserting after "given" the following: "by the manufacturer"; and (4) striking, in paragraph (4), "by certified mail or quicker means if available" and inserting "in the way the Secretary prescribes by regulation."

In view of the variety of methods of conveying documents now existing that were not in existence when section 30119(d) was enacted, first class mail and certified mail may no longer be the most efficient way for a manufacturer of a motor vehicle or replacement equipment (including a tire) to notify the owners, purchasers, and dealers of motor vehicles or replacement equipment about a safety defect or noncompliance. Accordingly, this section's amendments [namely, (i) general replacement of the mailing requirements in section 30119(d) with requirements that allow the Secretary to prescribe the method by which a manufacturer conveys such notifications about a safety defect or noncompliance, and (ii) deletion of such other specific notification options as public notice available to the Secretary under paragraphs (2) and (3), made unnecessary by this section's replacement of the mailing requirements with requirements that allow the Secretary to prescribe the method by which a manufacturer conveys such notifications] would ensure that the Secretary will always be able to determine the most efficient means of providing notification of defects and noncompliance under section 30118 of this title.

Subsection (b) of this section ("Improving Efficacy of Recalls") adds at the end of subsection (e) ("Second notification") a provision to improve the efficacy of recalls by allowing the Secretary (depending on the severity of the defect or noncompliance and in the event 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) to order the manufacturer to send additional notifications, in the way the Secretary prescribes by regulation. Such a regulation may 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 also 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.**

This section amends section 30120 ("Remedies for defects and noncompliance") of chapter 301 ("Motor Vehicle Safety") of title 49, United States Code, to: (1) revise

subsection (a)(1)(B) to expand the choices of remedy available to manufacturers of replacement equipment, by allowing the manufacturers to refund the purchase price of the equipment; (2) revise the heading of subsection (i) to more accurately reflect the content of the subsection; and (3) revise the heading of subsection (j) to more accurately reflect the content of the subsection.

Currently, subsection (a)(1)(B) specifies that a manufacturer of replacement equipment may remedy a defect or noncompliance by either repairing the equipment or replacing it. It does not allow for such a manufacturer to refund the purchase price, as vehicle manufacturers are permitted to do under subsection (a)(1)(A). The agency's experience with regard to imported replacement equipment, in particular, is that by not allowing manufacturers of replacement equipment to refund the purchase price of the equipment, consumers are often left with a replacement that is less desirable than the purchased product. This circumstance tends to discourage consumers from seeking a remedy and inhibits the success of a recall campaign. By expanding the choices of remedy available to manufacturers of replacement equipment to allow for refunding the purchase price, this section would enhance the remedies available to a consumer who otherwise might have no choice but to accept a less desirable remedy.

**SEC. 3060. USED MOTOR VEHICLE CONSUMER PROTECTION.**

Subsection (a) of this section amends section 30120 ("Remedies for defects and noncompliance") of chapter 301 ("Motor Vehicle Safety") of title 49, United States Code, to add at the end a new subsection (k), "Limitation on sale or lease of used motor vehicles."

Subsection (k)(1) prohibits dealers of used motor vehicles from selling or leasing used vehicles until any defect or noncompliance pursuant to section 30118(b) or section 30118(c) of such title with respect to the vehicle has been remedied.

Subsection (k)(2) provides that the prohibition of subsection (k)(1) on the sale or lease of used motor vehicles does not apply if notification of the defect or noncompliance with respect to the vehicle is required under section 30118(b) of such title but enforcement of the order is set aside in a civil action to which 30121(d) of such title applies.

Subsection (k)(3) provides that the 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 subsection (k)(6).

Subsection (k)(4) defines "dealer" as a person who has sold at least 10 motor vehicles to consumers during the prior 12 months, and a "used motor vehicle" as a vehicle that has previously been purchased other than for resale.

Subsection (k)(5) provides that the Secretary, by rule, may exempt the auctioning of used motor vehicles from the requirements of the subsection to the extent that the exemption does not harm public safety.

Subsection (k)(6) requires that, not later than 18 months after the date of enactment of this Act, the Secretary must 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 subsection also authorizes the Secretary to initiate a rulemaking proceeding to require that manufacturers provide the information required by subsection (k)(6) at no cost on publicly accessible Internet websites or through other reasonable means.

Subsection (b) of this section ("Effective Date") makes the section, with the exception of subsection (k)(6), effective 2 years after the date of Act's enactment.

Currently, section 30120(i) of such title prohibits dealers who have been notified that new motor vehicles or new items of replacement equipment in their possession contain a safety-related defect or do not comply with a safety standard from selling or leasing the vehicles or items of equipment until the defects or noncompliances are remedied. The statute does not address the sale or lease of used vehicles that have a safety defect or a noncompliance. Though all major passenger car and light truck vehicle manufacturers have indicated to NHTSA that they urge their franchised dealers to remedy any safety defects or noncompliances in the used vehicles they have manufactured before selling or leasing them to consumers, there is no requirement to do so. There also is no requirement to inform a prospective purchaser or lessee of any defects or noncompliances with respect to the used vehicle that have not been remedied. In addition, many used vehicles are sold through independent dealers.

This section would enhance motor vehicle safety by ensuring that all defects or noncompliances with respect to a used motor vehicle are remedied prior to its sale or lease.

If a dealer has any defects or noncompliances remedied, the dealer would not experience significant costs. Section 30120(a) of such title requires manufacturers of motor vehicles to remedy, without charge, any safety-related defects and noncompliances with Federal motor vehicle safety standards (FMVSS). Thus, franchised dealers could perform the remedy and receive reimbursement from the manufacturer in the usual way.

With respect to independent used motor vehicle dealers or franchised dealers who are selling used vehicles made by a different manufacturer, information about recalls, including information about whether a vehicle is covered by one or more recalls, would be readily accessible from several sources, pursuant to subsection (k)(6), as noted above. A used motor vehicle dealer may also contact a franchised dealer or the manufacturer who could provide the requested information. If the remedy has not been performed, the used motor vehicle dealer could present the vehicle to the manufacturer's franchised dealer for repair of the defect or noncompliance without charge.

**SEC. 3061. RECALL OBLIGATIONS AND BANKRUPTCY OF MANUFACTURER.**

This section amends Subchapter II ("Standards and compliance") of chapter 301 ("Motor Vehicle Safety") of title 49, United States Code, by adding a new section 30120a ("Recall Obligations and Bankruptcy of a Manufacturer") to ensure that 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 such title. In a bankruptcy proceeding, this section provides that a manufacturer's obligations under those sections are to 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. The section applies equally to actions of the manufacturer taken before and after the filing of a petition in bankruptcy.

The section also amends the analysis for chapter 301 by inserting after the item for section 30120 the following item: "30120a. Recall Obligations and Bankruptcy of a Manufacturer."

**SEC. 3062. AMENDMENT TO RENDER INOPERATIVE PROHIBITION.**

This section amends section 30122 ("Making safety devices and elements inoperative") of chapter 301 ("Motor Vehicle Safety") of title 49, United States Code, by revising subsection (b) ("Prohibition") to add two paragraphs.

Paragraph (1) provides that, except as provided in paragraph (2) of the 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, such 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."

Paragraph (2) provides that 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."

Accordingly, one of the effects of this amendment is to permit enforcement actions under chapter 301 of such title against persons who use electronic devices to affect remotely the performance of a motor vehicle or motor vehicle equipment of which they are neither the owner nor lessor.

**SEC. 3063. PERMIT REMINDER SIGNAL FOR NON-USE OF SAFETY BELT INTERLOCKS.**



This section amends section 30124 ("Buzzers indicating nonuse of safety belts") of chapter 301 ("Motor Vehicle Safety") of title 49, United States Code, to allow a reminder signal for nonuse of belts after the initial start-up warning. Comments received by NHTSA to rulemaking proposals on advanced air bag systems have advocated the increased use of warning signals as a means of increasing safety belt use rates. The amendment provided by this section permits, but not require, an expanded use of reminder signals for this purpose.

**SEC. 3064. FINANCIAL RESPONSIBILITY REQUIREMENTS FOR IMPORTERS.**

This section amends Subchapter III ("Importing Noncomplying Motor Vehicles and Equipment") of chapter 301 ("Motor Vehicle Safety") of title 49, United States Code, by revising : (1) the heading of such subchapter to read: "Importing Motor Vehicles and Equipment"; and (2) subsection (b) of section 30147 ("Responsibility for defects and noncompliance") to direct the Secretary to require, by regulation, importers of motor vehicle equipment to provide and maintain evidence, satisfactory to the Secretary, of sufficient financial responsibility to meet their duties concerning recalls, under sections 30117(b), 30118-30121, and 30166(f) of such title. If it appears that an importer of motor vehicle equipment 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), a motor vehicle or motor vehicle equipment imported by such importer would be refused admission into the customs territory of the United States.

Currently, section 30147(b) only authorizes the Secretary to require registered importers of non-complying motor vehicles to provide evidence, satisfactory to the Secretary, of sufficient financial responsibility to meet their duties concerning recalls, under sections 30117(b), 30118-30121, and 30166(f). Accordingly, this section's direction that the Secretary issue financial responsibility requirements with respect to importers of motor vehicle equipment sufficient to meet their duties concerning recalls, under sections 30117(b), 30118-30121, and 30166(f), complements section 30147(b)'s existing requirement with respect to registered importers of non-complying motor vehicles.

Given growing increases in such imported motor vehicle equipment as tires—now nearly half of all tires sold in the United States—the Administration believes this section provides added protection against safety risks that may be present in imported equipment. If equipment importers do not have the financial ability to conduct equipment recalls that may be necessary, consumers could be left without a remedy even though the equipment had been determined to be defective or noncompliant.

**SEC. 3065. JUDICIAL REVIEW.**

This section amends section 30161 ("Judicial review of standards") of chapter 301 ("Motor Vehicle Safety") of title 49, United States Code, by revising: (1) the heading of the section to read: "Judicial review of orders and standards"; and (2) the first sentence of subsection (a) ("Filing and venue") to provide that, except for an order to issue

provisional notification under section 30121 ("Provisional notification and civil actions to enforce") of such title, which may not be reviewed, a person adversely affected by an order issued under such chapter, a rule prescribing a motor vehicle safety standard under such chapter, or any other final agency action taken under such 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.

Currently, section 30161(a) addresses only the filing of a petition for review of an order prescribing a motor vehicle safety standard (within 59 days after the order is issued) and the judicial venue (courts of appeals) for review of the order prescribing a motor vehicle safety standard. This section amends section 30161(a) to make courts of appeals the exclusive forum for challenges to all final agency actions (rules and orders, including recall orders) under chapter 301 to expedite resolution of all such challenges.

#### **SEC. 3066. ACTIONS BY THE ATTORNEY GENERAL**

This section amends section 30163 ("Actions by the Attorney General") of chapter 301 ("Motor Vehicle Safety") of title 49, United States Code, by adding two subsections, (f) and (g).

Subsection (f) ("Actions to enforce recall orders") provides that in an action brought under subsection (a) ("Civil actions to enforce") of section 30163 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 section 30163 prior to the expiration of the time available for the filing of a petition under section 30161, the manufacturer would be permitted to seek a stay of the district court action until the resolution of any petition for review under section 30161.

Subsection (g) ("Actions to collect a civil penalty") provides that 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 the title.

#### **SEC. 3067. CONDITIONS ON IMPORTATION OF VEHICLES AND EQUIPMENT.**

This section amends section 30164 ("Service of process") of chapter 301 ("Motor Vehicle Safety") of title 49, United States Code, by: (1) revising the heading, "§ 30164. Service of process," to read "§ 30164. Service of process; conditions on importation of vehicles and equipment"; and (2) inserting two subsections, (c) and (d), at the end.

Subsection (c) ("Identifying information") requires a manufacturer (including an importer) offering a motor vehicle or motor vehicle equipment for import to identify (i) the product by name, the manufacturer's address, or such other identifying information as the Secretary may, by rule, request, and (ii) 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 such chapter.

Subsection (d) ("Rulemaking authority") authorizes the Secretary to issue a rule conditioning the import of a motor vehicle or motor vehicle equipment on the manufacturer's compliance with the section's requirements, any rules with respect to such requirements, or any other requirements of such chapter or rules issued under such chapter. The revision of section 30164's heading reflects the addition of subsections (c) and (d).

Chapter 301 does not give the Secretary jurisdiction over a foreign manufacturer that does not maintain a business presence in the United States. As a result, the Secretary has no authority to compel such manufacturers to provide any information, cooperate in motor vehicle safety investigations, or conduct a safety recall. While some foreign manufacturers do cooperate in these matters, others do not.

The rationale for subsection (c) is as follows. To help ensure the safety of a motor vehicle or motor vehicle equipment exported to the United States by foreign manufacturers, the Administration believes it is reasonable to require all manufacturers offering a motor vehicle or motor vehicle equipment for import into the United States to provide the Secretary with identifying information the Secretary may request concerning (i) a vehicle or equipment, and (ii) the retailer or distributor to which the manufacturer directly supplied such a vehicle or equipment over which the Secretary has jurisdiction under the motor vehicle safety statute. Such identifying information would enable the Secretary to inform United States Customs and Border Protection that a vehicle or equipment should not be permitted to enter the United States.

The rationale for subsection (d) is as follows. The Administration also believes the Secretary should be permitted to issue a rule conditioning the import of a motor vehicle or motor vehicle equipment on a manufacturer's compliance with section 30164's requirements with respect to service of process, identifying information and any rules related to such requirements. A rule conditioning the import of a motor vehicle or motor vehicle equipment on a manufacturer's compliance with these section 30164 requirements would enable the Secretary to inform United States Customs and Border Protection that a vehicle or equipment from a manufacturer not in compliance with section 30164's requirements, or in violation of a rule related to such requirements, should not be permitted to enter the United States.

#### **SEC. 3068. CIVIL PENALTIES.**

This section amends 30165 ("Civil penalties") of chapter 301 ("Motor Vehicle Safety") of title 49, United States Code, to: (1) revise paragraph (a)(1) ("In General") to insert after "violates" in the first sentence, the following: "or causes the violation of"; strike "5,000" and

insert "\$25,000"; strike "\$15,000,000" and insert "\$300,000,000"; and add at the end of the paragraph: "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) revise paragraph (a)(2) ("School buses") to strike, in clause (A), "10,000" and insert "100,000"; and strike, in clause (B), "15,000,000" and insert "300,000,000"; and (3) revise paragraph (a)(3) ("Section 30166") to strike "\$5,000" and insert "\$25,000"; and strike "\$15,000,000" and insert "\$300,000,000".

The revisions to paragraphs (a)(1), (a)(2), and (a)(3) increase civil penalty limits for violations of specified sections of such chapter or a regulation prescribed thereunder. These increased civil penalty limits ensure greater compliance with the chapter's requirements. In addition, the revision to paragraph (a)(1) to add the sentence given above to the end of the paragraph would make individuals who commit violations of specified sections of such chapter or a regulation prescribed thereunder, or who cause their companies to violate such sections of such chapter or a regulation prescribed thereunder, liable for civil penalties when they act willfully to cause or commit a violation of the chapter or a regulation prescribed thereunder.

**SEC. 3069. PORT INSPECTIONS; SAMPLES FOR EXAMINATION OR TESTING.**

This section amends section 30166 ("Inspections, investigations, and records") of chapter 301 ("Motor Vehicle Safety") of title 49, United States Code, by:

(1) revising paragraph (3)(A) of subsection (c) ("Matters that can be inspected and impoundment") to insert before the comma after the phrase, "held for introduction in interstate commerce," the following parenthetical: "(including at United States ports of entry)"; and

(2) inserting at the end of subsection (c) a new paragraph (4), directing the Secretary of Homeland Security to obtain without charge and deliver to the Secretary of Transportation ("the Secretary"), upon the Secretary's request, a reasonable number of samples of motor vehicle equipment being offered for import; and, 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 chapter 301 or a regulation prescribed or order issued thereunder, such motor vehicle equipment would be refused such admission.

The insertion of the parenthetical "(including at United States ports of entry)" in paragraph (3)(A) of subsection (c) clarifies that the Secretary's authority under section 30166 to enter and conduct an inspection or investigation extends to the nation's ports.

The insertion of a new paragraph (4) at the end of subsection (c), providing authority to take samples of motor vehicle equipment being offered for import into the United States

(comparable to the existing authority of the Consumer Product Safety Commission (CPSC) [Section 17(b) of the Consumer Product Safety Act; 15 U.S.C. § 2066(b)]) would assist the Secretary in detecting noncompliant and perhaps defective equipment before its introduction into interstate commerce.

### **SEC. 3070. MOTOR VEHICLE SAFETY RESEARCH AND DEVELOPMENT.**

Subsection (a) of this section amends chapter 301 ("Motor Vehicle Safety") of title 49, United States Code, and inserts a new subchapter, "Subchapter V--Motor Vehicle Safety Research and Development," as follows:

Section 30171 ("Policy") directs the Secretary to conduct research, development and testing on any area or aspect of motor vehicle safety necessary to carry out such chapter.

Section 30172 ("Powers and duties") contains four subsections.

Subsection (a) ("In general") contains seven paragraphs that direct the Secretary to: (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 such chapter or any other chapter of such 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 such 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 paragraph (7) of this subsection, the term 'Federal laboratory' is defined to include a government-owned, government-operated laboratory and a government-owned, contractor-operated laboratory.

Subsection (b) ("Use of public agencies") directs the Secretary, in carrying out such chapter, to use the services, research, and testing facilities of public agencies as appropriate to avoid duplication.

Subsection (c) ("Facilities"), with one exception, retains the authority of the Secretary, under section 30168(c) ("Facilities") of such chapter to plan, design, build or lease facilities, or modify existing facilities, or enter into an interagency agreement to acquire such facilities, to conduct research, development, or testing in any area of motor vehicle or highway safety. The one exception is an increase in the threshold expenditure amount from "of more than \$100,000" to "of more than \$1,500,000" for planning, design, or construction before approval is required 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 subsection directs the Secretary to submit to Congress, as section 30168(c) currently requires, a prospectus on the proposed facility. The requirements for such a prospectus, as currently required by section 30168(c), are also retained by the subsection.

Subsection (d) ("Increasing costs of approved facilities") retains the requirements currently required by section 30168(d) ("Increasing costs of approved facilities").

Subsection (e) ("Availability of information, patents, and developments") retains the requirements currently required by section 30168(e) ("Availability of information, patents, and developments"), except that it adds that all information, patents, and developments related to a research or development activity under such chapter in which the United States Government makes more than a minimal contribution are to be made available to the public "without charge."

Section 30173 ("Public health authority") provides that 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, includes 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.

NHTSA's primary mission is to prevent and reduce deaths, injuries and economic losses resulting from automotive travel on our nation's roadways. To accomplish this mission, NHTSA has statutory authority and, indeed, a congressional mandate, to collect crash injury data and conduct research and analysis of such data in the interest of public health (*see* existing authority under 49 U.S.C. § 30168(a)(1) and 23 U.S.C. § 403(a)(1)). As a recognized public health authority, as provided by this section, NHTSA would be in a better position to collect and analyze relevant medical data for transportation safety research purposes and support the Administration's efforts to prevent and reduce deaths, injuries and economic losses resulting from automotive travel on our nation's roadways.

Section 30174 ("Prohibition on certain disclosures") provides that any report of NHTSA or of any officer, employee, or contractor of NHTSA, relating to any highway traffic

accident or the investigation thereof conducted pursuant to this subchapter or to section 403 of title 23, United States Code, is to be made available to the public in a manner that does not identify individuals.

Subsection (b) of this section makes conforming changes to the analysis of chapter 301 of title 49, United States Code, and repeals section 30168 of title 49, United States Code, and the analysis of such chapter by striking the item related to section 30168.

#### **SEC. 3071. CONSUMER INFORMATION DEFINITION.**

This section amends section 32301 ("Definitions") of chapter 323 ("Consumer Information") of title 49, United States Code, to add a new definition at the end to define the term 'crash avoidance' to mean "preventing a crash."

#### **SEC. 3072. PASSENGER MOTOR VEHICLE INFORMATION PROGRAM.**

This section amends section 32302 ("Passenger motor vehicle information") of chapter 323 of title 49, United States Code, by: (1) revising subsection (a) ("Information program") to (A) clarify the scope of the passenger motor vehicle information program by inserting, in paragraph (2), before the period after "crashworthiness the following: "crash avoidance, and any other areas the Secretary determines will improve the safety of passenger motor vehicles."; and (B) repealing subsection (a)(4); (2) striking subsection (c), two provisions pertaining to insurance information requirements, and adding a new subsection (c) ("New Car Assessment Program Testing ") to require that all expenses for the New Car Assessment Program's crash tests are paid by the manufacturer of the motor vehicle tested by the program.

The passenger motor vehicle information program's New Car Assessment Program (NCAP) (commonly referred to as NCAP) is continually evolving. For a number of years, the program has been providing crash avoidance information on such subjects as antilock brakes. By amending the program's statutory authority to expressly include information on "crash avoidance, and any other areas the Secretary determines will improve the safety of passenger motor vehicles," this section clarifies that the scope of the program will be sufficiently broad to ensure that it provides relevant, new information to help consumers in making their purchasing decisions, and that the program will continue to encourage automakers to improve the safety of their vehicles.

The rationale for repealing section 32302(a)(4) and section 32302(c) is given, below, in the analysis of Section 3073 ("Repeal of Insurance Information Requirement"). Section 32302(a) ("Information program") directs the Secretary to include in the passenger motor vehicle information program, established by the subsection, the "insurance information obtained under section 32303 [discussed below]." Section 32302(c) ("Insurance cost information") directs the Secretary to prescribe regulations requiring dealers of passenger motor vehicles to distribute to prospective buyers the information the Secretary provides the dealers that compares insurance costs for different passenger motor vehicles based on damage susceptibility and crashworthiness.

The addition of a new subsection (c) ("New Car Assessment Program Testing"), which requires all expenses for NCAP's crash tests to be paid by the manufacturer of the motor vehicle tested by NCAP, will ensure that the affected manufacturers pay for the cost of testing their vehicles.

**SEC. 3073. REPEAL OF INSURANCE INFORMATION REQUIREMENT.**

This section repeals section 32303 ("Insurance information") of chapter 323 ("Consumer Information") of title 49, United States Code. Section 32303 provides that insurers of passenger motor vehicles make reports and supply the Secretary with specific and detailed information on: (1) accident claims, and (2) crashworthiness, damage susceptibility, repair and personal injury costs.

The publication of the insurance information obtained under section 32303 consists of data generated by the Highway Loss Data Institute, which ranks new cars by their relative collision loss payments by insurance companies. This information is provided to each new car dealer for customer reference in making purchase decisions. However, the data are rarely used and not useful because the differences in rates due to loss payments are overshadowed by differences in premiums due to driver demographics, geographic location and the relative prices of the vehicles. Though these rankings provide an indication that one model will have a higher collision insurance premium than another, a prospective buyer still must consult an insurance agent to determine how much the premium will differ according to that person's specific personal information (e.g., age, driving record, miles driven, home location). A prospective buyer does not need a brochure from the Federal government to obtain this information, since insurance agents are trained to provide advice on how model selection affects insurance premiums.

**SEC. 3074. ODOMETER REQUIREMENTS DEFINITION.**

This section amends section 32702 ("Definitions") of chapter 327 ("Odometers") of title 49, United States Code, to insert in paragraph (5) ("odometer") after "instrument" the following: "or system of components". Accordingly, this section would ensure that the definition of "odometer" will be sufficiently broad to cover any new odometer systems and related components.

**SEC. 3075. ELECTRONIC DISCLOSURES OF ODOMETER INFORMATION.**

This section amends section 32705 ("Disclosure requirements on transfer of motor vehicles") of chapter 327 ("Odometers") of title 49, United States Code, to add a new subsection (g) ("Electronic disclosures") to authorize the Secretary to permit, by rule, the electronic completion of all aspects of odometer disclosure. Such a rule would include sufficient safeguards against fraud and permit a sufficient trail of evidence to support prosecution in the event of fraud. The common availability of electronic systems used for recordkeeping purposes greatly limits any new recordkeeping burden that might result from this authority.



**SEC. 3076. AUTHORITY FOR ODOMETER FRAUD AGENTS TO MAKE ARRESTS AND CARRY FIREARMS.**

This section amends section 32706 ("Inspections, investigations, and records") of chapter 327 ("Odometers") of title 49, United States Code, by inserting, at the end of subsection (a), a sentence to authorize agents employed by the Secretary for purposes of conducting investigations under such chapter (many of which can be life-threatening to the agents) to make arrests and carry firearms in the performance of their duties.

**SEC. 3077. INCREASED CIVIL PENALTIES FOR ODOMETER FRAUD.**

This section amends section 32709 ("Penalties and enforcement") of chapter 327 ("Odometers") of title 49, United States Code, to revise paragraph (1) of subsection (a) ("Civil penalty") to: (1) strike "\$2,000" and insert "\$10,000"; and (2) strike "\$100,000" and insert "\$1,000,000". These increased civil penalty limits would ensure greater compliance with the chapter's requirements.

**SEC. 3078. INCREASED DAMAGES FOR VICTIMS OF ODOMETER FRAUD.**

This section amends section 32710 ("Civil actions by private persons") of chapter 327 ("Odometers") of title 49, United States Code, to revise subsection (a) ("Violation and amount of damages") to increase the limit on damages that victims of odometer fraud can recover from violators of the odometer law, from the current three times actual damages or \$1,500, whichever is greater, and reasonable attorney fees, to three times actual damages or \$10,000, whichever is greater, and reasonable attorney fees.

The Motor Vehicle Information and Cost Savings Act (Pub. L. 92-513) (codified in chapters 321, 323, 325, 327, 329, and 331 of title 49, United States Code, by Public Law 103-272) established the current limit on damages to victims of odometer fraud in 1972. In 1972, the average price of a used vehicle was far lower than it is today. Today, many vehicles with a rolled-back odometer can be sold for a price that exceeds the price of a similar vehicle with an accurate odometer reading by much more than the \$1,500 statutory damage amount. Experience also has shown that State attorneys general and private attorneys are more inclined to settle for the statutory damage amount rather than attempt to calculate the amount of actual damages sustained, particularly when numerous vehicles are involved. To provide a more equitable result for defrauded consumers, and to advance the national effort to eliminate odometer fraud, the dollar amount of damages should be raised to the greater of three times actual damages or \$10,000, plus attorney's fees.

**SEC. 3079. INSPECTION AUTHORITY UNDER AUTOMOBILE FUEL ECONOMY STATUTE.**

This section amends section 32910 ("Administrative") of chapter 329 ("Automobile Fuel Economy") of title 49, United States Code, to revise subsection (a) ("General powers") to

add a third paragraph to clarify that the Secretary may conduct an inspection or investigation necessary to enforce such chapter or a regulation prescribed or order issued under such chapter.

Currently, under section 32910, there is no mention of the Secretary's authority to conduct an inspection or investigation necessary to enforce the automobile fuel economy chapter or a regulation or order issued under the chapter. Further, under section 32907(b)(1), the Secretary's authority to inspect is limited to "automobiles and records" of a manufacturer, which arguably precludes inspections at dealerships. The Secretary needs the flexibility to conduct fuel economy inspections of automobiles at dealerships to the same extent as the Secretary is authorized to inspect motor vehicles at those locations under chapter 301 ("Motor Vehicle Safety") of title 49, United States Code (*see* current section 30166(c)(3)(A)).

**SEC. 3080. REPEAL OF INSURANCE REPORTS AND INFORMATION UNDER THE THEFT PREVENTION STATUTE.**

This section repeals section 33112 ("Insurance reports and information") of chapter 331 ("Theft Prevention") of title 49, United States Code, which requires certain insurers of motor vehicles, as well as companies that sell or lease motor vehicles, to file annual reports with the Secretary on various insurance-related matters including: any motor vehicle thefts and recoveries they have experienced over the past year; rating rules they used to establish premiums for comprehensive coverage; actions they took to reduce premiums for comprehensive coverage; and actions they took to reduce the theft of their insured vehicles. The Administration has no evidence that these annual reports by insurers of motor vehicles have in any way proved useful in preventing motor vehicle theft. It is clear that the annual report requirement imposed by section 33112 imposes a considerable paperwork and cost burden on these insurers and, indirectly, on the public, without a corresponding benefit.

**SEC. 3081. MONRONEY LABEL AMENDMENT TO PERMIT ADDITIONAL SAFETY RATING CATEGORIES.**

This section amends section 1232 ("Label and entry requirements") of chapter 28 ("Disclosure of Automobile Information") of title 15, United States Code [the "Automobile Information and Disclosure Act"], specifically subsection (g)(2) of section 1232 [commonly referred to as the "Monroney Label Requirements"], by inserting after "refers to" the following: "safety rating categories that may include, but are not limited to,".

Currently, the Monroney label requirements direct that manufacturers of new automobiles distributed in commerce must (prior to the delivery of the automobiles to a dealer, or at or prior to their introduction date or delivery to a dealer) securely affix a label to the automobiles that discloses certain information about them, including safety ratings that specifically refer to "frontal impact crash tests, side impact crash tests, and rollover resistance tests" assigned and formally published or released by NHTSA under

the agency's New Car Assessment Program (NCAP). However, because NHTSA is continually improving the NCAP program, it is essential that the safety ratings on the Monroney label reflect the improvements in the NCAP program. Accordingly, this section would ensure that the Monroney label reflects such improvements.

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

#### **SEC. 3101. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED STATES CODE.**

This section provides that Subtitle B of Title III of the bill may be cited as the Motor Carrier and Driver Safety Reauthorization Act of 2011.

### **Subtitle A—Commercial Motor Vehicle Safety**

#### **SEC. 3111. REINCARNATED CARRIERS.**

Section 3112(a) would restructure existing section 13905(d)(1) of title 49, United States Code, for clarity. In addition, two new subsections are proposed. Section 3112(a)(2)(C) would expressly authorize the Secretary to withhold, suspend, amend, or revoke a motor carrier's registration if on its application the carrier failed to disclose an adverse safety history or other material facts relevant to its past regulatory compliance. Section 3111(a)(2)(D) would grant similar authority where the Secretary finds that within the previous 5 years the carrier has been closely related to another motor carrier with a poor compliance history. It has become a common practice in the motor carrier industry in recent years for motor carriers to submit a new application for registration, often under a new legal name, following a determination by the Secretary that the carrier is not able to comply with the Federal Motor Carrier Safety Administration's (FMCSA) commercial motor vehicle safety regulations. Historically, when the motor carriers attempt to mask or conceal this history of non-compliance through "reincarnation" has been discovered the Secretary's authority to revoke or suspend the "new" registration based upon the compliance history of the predecessor motor carrier has been unclear. These two proposed provisions would bolster the Secretary's authority to prohibit unsafe motor carriers from operating.

#### **SEC. 3112. MOTORCOACH NEW ENTRANTS.**

Subsection (a) defines the term motorcoach as an "over-the-road-bus" excluding buses used in public transportation by a State or local government or a school bus, and the term "motorcoach service" as passenger transportation by motorcoach for compensation. These terms were not previously defined by statute, but have the same meaning as the terms "over-the-road bus" and "over-the-road bus operator or service provider."

Subsection (b) would raise the bar for entry into the market for motorcoach service providers. In recent years, unsafe motorcoach service operators have initiated operations with little to no regard for the safety of the travelling public. The Secretary's authority to

prevent these unsafe operators from entering the industry has been limited. This subsection would require the Secretary to conduct a pre-authorization safety audit before granting registration under section 13902 to any motorcoach service provider. In addition to the pre-authorization safety audit, each applicant motorcoach service provider would be required to complete successfully an interview examining safety management and a written examination designed by the Secretary.

Subsection (c) would require that the Secretary conduct pre-authorization safety audits on all motorcoach service providers in accord with section 13902 of title 49, United States Code. As a consequence, motorcoach service providers would be exempted from the requirement to undergo a safety review (new entrant safety audit) after registration is granted. Motorcoach service providers are not exempted from the 18 month safety monitoring period established by section 31144(g) of title 49, United States Code.

### **SEC. 3113. AUTHORITY TO CONDUCT EN ROUTE PASSENGER CARRIER INSPECTIONS.**

Current section 31102(b)(1)(X) of title 49, United States Code, sharply limits opportunities for inspections of motor coach vehicles en-route. Inspections at locations other than stations, terminals, border crossings, maintenance facilities, destinations, or other locations where the carrier has a planned stop are prohibited. The revised provision would enhance efforts to ensure the safety of passenger carriers, vehicles and drivers in interstate transportation by permitting en-route inspections of vehicles transporting passengers. Reasonable accommodation for passengers during the inspection would be required.

### **SEC. 3114. COMMERCIAL MOTOR VEHICLE DEFINED.**

This section would amend the definition of "commercial motor vehicle" in section 31101(1) of title 49, United States Code, for consistency purposes. The definition is revised to include all vehicles subject to the Secretary's safety jurisdiction. The current definition excludes a large number of passenger carriers otherwise subject to the Secretary's safety and commercial jurisdiction. The revised definition is substantially the same as the definition in 49 U.S.C. 31132(1).

### **SEC. 3115. DISQUALIFICATION FOR IMMINENT HAZARD.**

This section would broaden the term "imminent hazard" to encompass other dangerous hazards besides those dealing with hazardous materials. As a result, the Secretary will have the authority under section 31310 of title 49, United States Code, to disqualify any driver whose continued operation of a commercial motor vehicle substantially increases the likelihood of death, serious injury or illness, or a substantial endangerment to health, property, or the environment.

### **SEC. 3116. UNIFORM ELECTRONIC CLEARANCE FOR COMMERCIAL MOTOR VEHICLE INSPECTIONS.**

This section would authorize the Secretary to withhold a portion of FMCSA's Motor Carrier Safety Assistance Program grant funds from States that use an electronic commercial motor vehicle inspection selection system that does not employ a methodology FMCSA has approved. The section would also permit the Secretary to award subsequently withheld grant funds if he determines that a State comes into substantial compliance with the electronic commercial motor vehicle inspection selection system methodology requirement. The section is intended to increase safety on the Nation's roadways by ensuring that potentially unsafe motor carriers and commercial motor vehicles uniformly receive roadside inspections. The electronic system now in use by a majority of States employs a methodology that results in approximately 40,000 fewer carriers being selected for an inspection compared to FMCSA's Inspection Selection System. An FMCSA study showed that these 40,000 carriers had crash rates nearly twice the national average. A uniform electronic clearance system methodology also will ensure that inspection data are available for implementation of FMCSA's comprehensive new enforcement program, Compliance, Safety, Accountability (CSA).

#### **SEC. 3117. INSPECTION DEMAND AND DISPLAY OF CREDENTIALS.**

Subsection (a) would amend 49 U.S.C. 504(c) to clarify that the authority granted the Secretary under section 504(c) to inspect equipment and to inspect and copy records applies, in the case of a motor carrier, whether the demand and display of credentials is made in writing or in person. The revision thus would authorize representatives and contractors of the FMCSA to display credentials and issue demands for records remotely, without requiring travel to the motor carrier's business location or otherwise meeting the motor carrier in person. Increasing the number of motor carriers the agency subjects to safety reviews is a key element in FMCSA's comprehensive revised enforcement program, CSA. In order to complete these additional reviews efficiently, FMCSA and its contractors will need to conduct some investigations from agency offices, via document scanning, electronic mailing, and off-site review of motor carrier records. The revision would clarify that FMCSA's existing investigative authority applies under such circumstances.

Subsection (b) would amend 49 U.S.C. 5121(c) to clarify that an officer, employee, or agent acting under authority granted in section 5121(c) may, in response to a request for credentials, display the proper credentials in writing, as well as in person. The revision would authorize representatives of the FMCSA to display their credentials remotely, without having to travel to the motor carrier's location or otherwise meet the motor carrier in person. Increasing the number of motor carriers the agency subjects to safety reviews is a key element in FMCSA's comprehensive revised enforcement program, CSA. In order to complete these additional reviews efficiently, FMCSA will need to conduct some investigations from agency offices, via document scanning, electronic mailing, and off-site review of motor carrier records. The revision would clarify that FMCSA's existing investigative authority applies under such circumstances.

Subsection (c) would amend 49 U.S.C. 14122(b) to clarify that the authority granted the Secretary under section 14122(b) to inspect the lands, buildings, and equipment of a

carrier or broker, and to inspect and copy records of carriers, brokers, associations and person controlling, controlled by, or under common control with a carrier, applies regardless of whether the demand and display of credentials is made in writing or in person. The revision thus would authorize representatives of FMCSA to display credentials and issue demands for records remotely, without requiring travel to the motor carrier's business location or otherwise meeting the motor carrier in person. Increasing the number of motor carriers the agency subjects to safety reviews is a key element in FMCSA's comprehensive revised enforcement program, CSA. In order to complete these additional reviews efficiently, FMCSA and its contractors will need to conduct some investigations from agency offices, via document scanning, electronic mailing, and off-site review of motor carrier records. The revision would clarify that FMCSA's existing investigative authority applies under such circumstances.

Subsection (d) would clarify that the civil penalty for failing to allow promptly, upon demand, inspection and copying by the Secretary or the Secretary's designated employee in accordance with sections 504(c), 5121(c), and 14122(b) of title 49, United States Code, applies regardless of whether the demand is made in person or in writing. Increasing the number of motor carriers the agency subjects to safety reviews is a key element in FMCSA's comprehensive revised enforcement program, CSA. In order to complete these additional reviews efficiently, FMCSA and its contractors will need to conduct some investigations from agency offices, via document scanning, electronic mailing, and off-site review of motor carrier records. The revision would clarify that FMCSA's existing investigative authority, and the civil penalty that attaches for failing to allow exercise of that authority, applies under such circumstances.

Subsection (d) would also amend section 521(b)(2)(E) of title 49, United States Code, to improve the effectiveness of investigative demands by the Secretary on motor carriers domiciled outside of the United States that operate inside the United States. The provision would expressly authorize the Secretary to adopt by rulemaking procedures to place out of service, on a fleetwide basis, the commercial motor vehicles of foreign-domiciled motor carriers that fail or refuse to allow promptly the Secretary to inspect and copy any record or inspect and examine equipment, lands, buildings and other property. This amendment is critical to the goal of saving lives and reducing injuries by preventing and minimizing the severity of truck and bus crashes, as well as the goal of achieving a more efficient North American transportation system. Ensuring, to the extent permitted under international law, that the Secretary has practical authority to conduct investigations and proceedings where records are located outside of the United States improves enforcement of and compliance with Federal motor carrier statutes and regulations.

#### **SEC. 3118. INTRASTATE OPERATIONS OF INTERSTATE MOTOR CARRIERS.**

The amendments provided in this section would ensure that a vehicle, driver or employer prohibited from operating in interstate commerce because the vehicle, driver or employer violations pose an imminent hazard to safety is also prohibited from operating a

commercial motor vehicle in intrastate commerce. This provision would also ensure that an owner or operator prohibited from operating in interstate commerce because of a failure to pay a civil penalty is also prohibited from operating a commercial motor vehicle in intrastate commerce.

**SEC. 3119. MOTOR CARRIER AND OFFICER PATTERNS OF SAFETY VIOLATIONS.**

Section 3119(a) would amend section 31135(b)(1) of title 49, United States Code, to authorize the Secretary to suspend, amend, or revoke the registration of a motor carrier, employer, or owner or operator if the Secretary determines the company had engaged in a pattern or practice of avoiding compliance or concealing or masking non-compliance within the preceding sixty months.

Section 31135(b)(2) would authorize the Secretary to take steps, after notice and opportunity for proceeding, against individual persons serving as an officer, director, owner, chief financial officer, safety director, in any other position regardless of title, who exercised controlling influence over the operations of the motor carrier, employer or owner or operator. The Secretary will be required to demonstrate that an officer of a motor carrier, employer or owner or operator engaged in a pattern or practice of violating regulations on commercial motor vehicle safety or has assisted a motor carrier, employer, or owner in avoiding compliance or masking or otherwise concealing noncompliance. Sanctions against such individuals would include a prohibition on associating with other motor carrier companies. The sanctions could be subject to certain limitations but would include temporary or permanent suspension of any individual registration and temporary bar on association with any registered motor carrier. The sanctions would require a showing of intentional, knowing or reckless conduct.

Current subsection (c), adopted in section 4113 of SAFETEA-LU required the Secretary to establish by regulation standards to implement section 31135 of title 49, United States Code. Section 31135(c), as added by section 3119, would remove the regulatory standard setting requirement. Because corporate successorship and motor carrier management accountability determinations are highly fact specific, new section 31135(c) would permit a body of motor carrier administrative case law to emerge and would not require the Secretary to adopt by regulation further standards on corporate successorship, "avoiding compliance" or "masking otherwise concealing noncompliance." The replacement subsection (c) would provide statutory definitions for the terms "avoiding compliance" and "masking or otherwise concealing noncompliance" as applied to the actions of individual motor carrier officers. The provision would also incorporate the proposed new uniform federal standard on successorship set forth in section 3163 of this subtitle.

The premise behind the original SAFETEA-LU provision remains valid – the Secretary needs authority to identify and hold accountable individual motor carrier officers, directors and other persons who exercise controlling influence over company operations. Such authority must also extend to motor carriers’ closely related affiliates and successors of the company against which previous orders of the Secretary were issued.

## **SEC. 3120. ENFORCEMENT PERSONNEL.**

Section 3120(a) would amend section 504(c) of title 49, United States Code, to clarify that, in the case of motor carriers, authorized representatives of State agencies receiving grant funds under section 31102 of title 49, United States Code, have the same authority to conduct inspections for the purposes of enforcement as the Secretary.

Sections 3120(a)-(c) would amend sections 504(c), 14122(b) and 5121(c)(2), of title 49, United States Code, respectively, to provide explicit authority, in the case of motor carriers, for the demand and display of credentials off-site, through correspondence or other written presentation, as well as in person. As part of FMCSA's CSA initiative, investigations and reviews of records will take place that may be effectively conducted away from a motor carrier's place of business. This amendment removes any argument that an authorized investigator must appear at the carrier's place of business with credentials before a carrier need provide access to its records.

Finally, section 3120(d) would explicitly make applicable the penalties in section 521(b)(2)(E) of title 49, United States Code, to denials of access to records and other information requested pursuant to Secretary's general investigatory authority in sections 13301 and 31133 of title 49, United States Code.

## **SEC. 3121. BUS RENTALS AND DEFINITION OF EMPLOYER.**

This section would close a loophole in the Secretary's jurisdiction over certain small bus operations. The Secretary currently has jurisdiction over "employers," who, pursuant to section 31135(a) of title 49, United States Code, must comply with DOT regulations on commercial motor vehicle safety. "Employer" is currently defined in section 31132 of title 49, United States Code, as a person who (i) owns or leases a commercial motor vehicle in connection with a business affecting interstate commerce, or (ii) assigns an employee to operate such a vehicle. The definition of "commercial motor vehicle" does not include vehicles designed or used to transport nine to 15 passengers, however, unless the passengers are transported for compensation. The alternative basis for jurisdiction does not apply unless the would-be employer "assigns" an "employee" to operate the vehicle.

Companies that rent or lease small buses, but that do not "assign" drivers to operate the vehicles, therefore currently fall outside the Secretary's jurisdiction, even if they provide lists of possible drivers from which their rental customer may choose. These companies' customers – often small colleges, churches, scouting groups, civic clubs and the like, which rent the vehicles for their own use – may assume they are dealing with a charter bus company. Charter bus companies, however, are responsible for the proper maintenance of the vehicle, the physical qualification and drug testing of the driver, and other safety regulations, while vehicle rental companies are not. The customers do not intend to take on such safety duties themselves, nor are they often sufficiently trained or knowledgeable to so. The result is a dangerous gap in safety regulation.



This section would broaden the definition of "employer" to include companies that rent or lease vehicles – whether or not for-hire – if from the same location or as part of the same business the company provides names or contact information of drivers, or holds itself out to the public as a charter bus company.

**SEC. 3122. HIGH RISK CARRIER REVIEWS.**

This section would require the Secretary to ensure that safety reviews of motor carriers are completed for carriers that pose the highest safety risk. The provision carries forward the requirement in section 4138 of SAFETEA-LU, but it eliminates obsolete language in section 4138 referring to motor carriers "rated as category A or B." Under a previous FMCSA motor carrier safety scoring system, SAFESTAT, carriers with the worst roadside safety inspection data were categorized as A or B. As part of CSA, FMCSA's comprehensive revised enforcement program, the agency has discontinued use of SAFESTAT and the A and B categories.

**SEC. 3123. ENFORCEMENT OF SAFETY LAWS AND REGULATIONS.**

This section would authorize the Secretary to bring civil actions to enforce the laws and regulations on safe operation of commercial motor vehicles in interstate commerce. Currently section 14702 of title 49, United States Code, grants the Secretary this authority for enforcement of commercial statutes and regulations, but there is no counterpart in chapter 311 of title 49, United States Code, for enforcement of the Federal Motor Carrier Safety Regulations.

**SEC. 3124. DISCLOSURE TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.**

This section would provide explicit statutory authority to permit the Secretary to grant appropriate State employees access to FMCSA databases that contain CMV safety information and information relating to commercial driver license (CDL) holders. Presently, FMCSA allows appropriate State personnel access to CMV and CDL information as a routine use under the Privacy Act. This section would provide clear legal authority for authorized State employees to access to sensitive or personally identifiable information. Notably, the statute requires FMCSA to protect certain information from disclosure, such as employees of motor carriers who make complaints about alleged violations. The proposal would also permit FMCSA to maintain records and data that are privileged, including attorney-client privileged documents, in these databases without waiving the applicable privilege.

**SEC. 3125. CANADIAN SAFETY RATING RECIPROCITY.**

Section 3125 would authorize the Secretary to give effect within the United States to an out of service order issued in Canada and under Canadian law against a Canadian motor carrier, owner or operator by an authorized Canadian regulatory agency. The Secretary

would automatically place a Canadian motor carrier out of service in the United States and prevent it from operating commercial motor vehicles in interstate commerce within the United States, if a Canadian regulatory agency having jurisdiction over the carrier determines that it is unfit to operate within Canadian jurisdictions. Section 3125 would also authorize the Secretary to enter into future consultations and negotiations with an authorized Canadian regulatory agency to establish reciprocal recognition of each agency's motor carrier safety fitness rating determinations. Safety fitness rating determinations made by FMCSA and pertaining to United States domiciled motor carriers would be recognized by the Canadian Council of Motor Transport Administrators (CCMTA) in Canada. Safety rating determinations made by CCMTA pertaining to Canadian domiciled carriers would be recognized by FMCSA in the United States.

## **Part 2--Driver Safety Provisions**

### **SEC. 3131. COMMERCIAL DRIVER'S LICENSE REQUIREMENTS.**

Section 3131(a) would prohibit States from issuing commercial driver's licenses to individuals who would immediately be disqualified from operating a commercial motor vehicle upon the issuance of the license. This provision would only apply to disqualifications imposed as a result of offenses committed by the individual while operating a non-commercial motor vehicle.

Section 3131(b) would clarify that an individual may be subject to disqualification by removing the requirement that he or she hold a commercial driver's license at the time a disqualifying offense is committed.

### **SEC. 3132. COMMERCIAL MOTOR VEHICLE DRIVER INFORMATION SYSTEMS.**

This section would close an existing information gap. The Secretary is required to establish programs to improve commercial motor vehicle driver safety and to this end may access the safety data and driving records of drivers who hold a commercial driver's license. Drivers are required to hold a Commercial Driver's License (CDL) to operate vehicles weighing 26,001 pounds or more, designed to transport 16 or more passengers, or used to transport certain hazardous materials. Not all commercial motor vehicles require drivers to hold a CDL to operate them, however, and the Secretary is responsible for ensuring the safe operation of all commercial motor vehicles, including vehicles weighing less than 26,001 pounds and vehicles designed to transport fewer than 16 passengers. The Secretary therefore also needs authority to access safety data and driving records of non-CDL holders who operate CMVs. This section would require the States to share the necessary information with the Secretary to ensure all commercial motor vehicles are operated safely.

### **SEC. 3133. DISQUALIFICATIONS BASED ON NON-COMMERCIAL MOTOR VEHICLE OPERATIONS.**

This section would cure an enforcement gap. Pursuant to the existing statutory provisions the Secretary is not authorized to disqualify a commercial motor vehicle driver if the driver is discovered operating a commercial motor vehicle following a commercial driver's license revocation, suspension or cancellation, or following a disqualification, if the underlying prior offense occurred while the individual was operating a non-commercial motor vehicle. Under the revised provision, the Secretary would be required to disqualify an individual from operating a commercial vehicle for 1 year or life, respectively, if the individual is discovered operating a commercial motor vehicle after the individual's commercial driver's license has been revoked, suspended, or canceled based on offenses committed by the individual while operating a non-commercial motor vehicle. Likewise, the Secretary would be required to disqualify an individual if the individual is discovered operating a commercial motor vehicle after being disqualified based upon an offense committed while the individual was operating a non-commercial motor vehicle.

#### **SEC. 3134. DRIVER SAFETY FITNESS RATINGS.**

This section would clarify FMCSA's authority to determine the safety fitness of CMV drivers, based upon an assigned rating, and to prohibit unfit drivers from operating in interstate commerce. Subsections (a)-(g) of section 31144, title 49, United States Code, contain safety fitness provisions applicable to commercial motor vehicle (CMV) "owners and operators," but those provisions do not expressly apply to drivers. This section would strengthen FMCSA's ability to identify high-risk commercial drivers and remove them from service.

Under this section, the Secretary may by regulation adopt procedures for driver fitness determination. Such a regulation must contain a fitness determination methodology based on continually updated performance data, including a driver's inspection results, serious traffic offenses, and crash involvement. The regulation authorized under this section would require the Secretary to specify time frames within which the Secretary will determine whether a driver is fit. The regulation must also specify a prohibition period or periods, not to exceed one year, during which unfit drivers would be prohibited from operating CMVs in interstate commerce. Such prohibitions would take effect on the 46th day after the date of such fitness determination and continue until either the Secretary determines such driver is fit or the prohibition period expires. The authorized regulation would also contain procedures for administrative review and eligibility criteria for driver reinstatement.

A regulation on driver unfitness will address recommendations of the Government Accountability Office, the National Transportation Safety Board, and others that the agency do more to prohibit unsafe drivers from driving. A driver unfit determination will have the effect of disqualifying a driver from operating a CMV in interstate commerce and thus will remove from service high-risk drivers, leading to a reduction in CMV crashes and fatalities.

#### **SEC. 3135. FEDERAL DRIVER DISQUALIFICATIONS.**

Section 3135(a) would provide a definition of the term "disqualification" as it relates to commercial driver's license enforcement. Section 31310(b) through (g) of title 49, United States Code, enumerates specific disqualifying offenses, however, it does not define disqualification. Clarification is necessary because States are required to take certain actions against an individual's commercial driver's license if the individual has been disqualified from operating a commercial motor vehicle. This subsection would clarify when an individual will be deemed to be disqualified for purposes of commercial driver's license enforcement.

Section 3135(b) would clarify which disqualifications must be reported in the Commercial Driver's License Information System (CDLIS). Disqualifications imposed by the State issuing a commercial driver's license and those imposed by the Secretary must be reported in CDLIS.

Section 3135(c) specifies when States must impose a disqualification. Pursuant to section 31311 of title 49, United States Code, as a condition of receiving grant funds, States are required to disqualify an individual from operating a commercial motor vehicle when the State discovers any violations of section 31310(b)-(g). This section would also require the State to impose the disqualification if the Secretary has determined under section 31310(h) that the person is disqualified.

#### **SEC. 3136. FAILURE TO PAY CIVIL PENALTY AS A DISQUALIFYING OFFENSE.**

This section would add a new subsection to 31310(h) of title 49, United States Code, to require the Secretary to disqualify an individual from operating a commercial motor vehicle when that individual has not paid a civil penalty previously assessed by the Secretary. This section would also add a new section to chapter 311 of title 49, United States Code, to effect a like disqualification for drivers of vehicles between 10,001 and 26,000 pounds who do not hold a commercial driver's license. Disqualification authority will greatly assist in the enforcement of Agency regulations. This authority is extended to include compliance with the terms of any settlement agreement to which an individual agrees in lieu of payment of a civil penalty. This section does not apply to any person who is unable to pay a civil penalty because the person is a debtor in a bankruptcy case under chapter 11 of the Bankruptcy Code.

#### **SEC. 3137. STATE REPORTING OF FOREIGN DRIVER CONVICTIONS.**

This section would implement recommendations contained in a 2009 report of the Department of Transportation's Office of the Inspector General. At present, no statute requires States to report convictions of Mexican and Canadian drivers to the Secretary. As a result, State reporting has been voluntary and inconsistent. This new statutory authority will greatly assist in the collection of necessary data regarding the safety of foreign commercial drivers operating on the Nation's highways.

**SEC. 3138. ELECTRONIC NOTIFICATION OF COMMERCIAL DRIVER'S LICENSE VIOLATIONS.**

This section would add new section 31311(a)(22) to title 49, United States Code, to require States within one year from enactment of this Act to have implemented an exclusively electronic information exchange system. Although the capability for States to transmit commercial driver's license information electronically exists today, some States choose to send the data via paper. Hard copies cannot be easily edited for accuracy, however, and the transmission of paper shifts the data entry resource burden onto the receiving State. Most importantly, the delay in uploading from paper records into an accessible electronic database, and thus making violations appear on the driver record, creates a safety risk by allowing disqualified and other unsafe drivers to remain on the road.

**SEC. 3139. NATIONAL CLEARINGHOUSE FOR POSITIVE ALCOHOL AND CONTROLLED SUBSTANCE TEST RESULTS OF COMMERCIAL MOTOR VEHICLE OPERATORS.**

This section, in adding section 31306(a) to title 49, United States Code, would establish an electronic repository for records relating to alcohol and controlled substances testing of commercial motor vehicle operators. The intent of this section is to improve both commercial motor vehicle operators' and their employers' compliance with the Department of Transportation's alcohol and controlled substances testing program and to provide employers information about a driver before hiring him/her. The section is also intended to enhance safety and reduce the demand for illegal drugs.

This section would require the Secretary to develop secure processes for managing the security, access to and accuracy of the information in the clearinghouse. In addition to establishing protocols for access, this section also instructs the Secretary to consider developing a secure method to notify an employer electronically if information about his/her driver is entered into the database within 15 days of making an inquiry on that driver. The Secretary must also establish a system for archiving the records in the clearinghouse so that compliance and data integrity can be audited.

This section instructs the Secretary to consider the interoperability of the Department's existing data systems when establishing the clearinghouse. The Secretary is also instructed to determine whether changes to the current alcohol and controlled substance testing program are necessary in order to collect data for the clearinghouse.

The Secretary must develop forms for employers and other authorized users to use to request records, obtain consent from individuals, and notify individuals that test results and violations will be reported to the clearinghouse. The Secretary may collect fees from employers and other authorized users of the clearinghouse, but may not collect fees from individuals requesting information about their own records.

This section would prohibit an employer from hiring drivers unless he/she has determined that during the preceding three years those drivers: did not test positive in violation of the regulations at title 49, Code of Federal Regulations; and did not refuse a test under these regulations. If a driver did test positive in violation of the regulations, an employer may only hire him/her if he/she has completed the return-to-duty process as required by those regulations.

This section intends that all medical review officers, employers, service agents, and other appropriate persons submit records to the clearinghouse for any driver who refuses to take a controlled substance or alcohol test, or tests positive in violation of regulations. The Secretary is instructed to include all of this information in the clearinghouse.

This section would require the Secretary to notify individuals when the clearinghouse receives or releases any record pertaining to them. The Secretary also must modify or delete inaccurate information and notify the individual to whom the record pertains of any action, including the reasons for the modification or deletion. The Secretary may establish additional requirements to ensure timely submission and release of information as well as provide individuals with a cause of action when their information is used inappropriately.

This section would mandate that the Secretary require employers to review their employees' information annually, as well as on a pre-employment basis. No information may be released from the clearinghouse until the Secretary receives consent from the individual to whom the information pertains. Once the Secretary receives a request from an employer and consent from the individual, the Secretary is instructed to provide access to the authorized user as soon as possible. Employers must retain records of their queries for three years.

This section intends that clearinghouse records only be used to determine the qualifications of an individual for operating a commercial motor vehicle. Employers obtaining information from the clearinghouse must protect the privacy of the individual to whom the information pertains and ensure that the information is not divulged to anyone not directly involved in evaluating the individual's qualifications to drive a commercial motor vehicle.

This section would require that individuals be granted access to the clearinghouse to determine whether their own records exist; to verify that information in their records is accurate; to update information in the record; and to determine whether any requests have been made to access their records. The Secretary is instructed to establish a process to correct administrative errors in the records.

This section would grant the chief commercial driver's licensing official of each State access to information pertaining to drivers and prospective drivers in the official's State without obtaining prior consent from the individual. State officials obtaining information from the clearinghouse must protect the privacy of the individual to whom the information pertains and ensure that the information is not divulged to anyone not

directly involved in evaluating the individual's qualifications to drive a commercial motor vehicle.

This section would authorize civil and criminal penalties against any employer, employee, medical review officer or service agent who violates any provision of this section or violates provisions of the alcohol and controlled testing program established pursuant to section 31306 of title 49, United States Code. States are instructed to revoke, suspend or cancel the commercial driver's licenses of individuals who violate the Department's controlled substances and alcohol testing regulations until they complete the applicable rehabilitation process. Drivers who violate the Department's controlled substances and alcohol testing regulations three or more times will be disqualified from driving a commercial motor vehicle for life.

#### **SEC. 3140. AUTHORITY TO DISQUALIFY FOREIGN DRIVERS.**

This section clarifies that the Secretary has the authority to disqualify a driver licensed to operate a commercial motor vehicle by a jurisdiction outside of the United States. This authority is necessary to avoid controversy in cases where a foreign driver has committed a disqualifying offense, but the licensing jurisdiction fails to suspend or revoke the driver's license.

### **Part 3--Penalties**

#### **SEC. 3151. INCREASED PENALTIES FOR OPERATING WITHOUT REGISTRATION.**

This section would amend 49 U.S.C. 14901(a) to raise the minimum penalty per day for general reporting and recordkeeping violations from \$500 to \$1,000. This section would also change the minimum penalty for passenger carriers operating without the necessary registration under section 13901 of title 49, United States Code, from \$2,000 per violation, and \$2,000 for each subsequent day of violation, to a flat minimum penalty of \$25,000. This \$25,000 minimum penalty for passenger carriers is the same as the current minimum penalty for transporting household goods without operating authority registration. The same minimum penalty amount would apply to carriers domiciled in Canada or Mexico and transporting passengers while violating section 13902(c). The section would also single out operating without registration violations under sections 13901 and 13902(c) from the general reporting and recordkeeping penalty and proposes a new penalty of \$10,000 per violation. The current low penalty attached to operating without authority does not adequately deter motor carriers seeking to avoid the registration requirement. The section also proposes to amend section 14901(b) of title 49, United States Code, to increase to \$25,000 the existing \$20,000 penalty for transporting hazardous wastes without the necessary registration under section 13901. This increase harmonizes the penalties for transportation of hazardous waste, passengers, and household goods.

**SEC. 3152. OUT OF SERVICE PENALTY FOR DENIAL OF ACCESS TO RECORDS.**

This section would amend section 521(b)(2)(E) of title 49, United States Code, to create an additional penalty for motor carriers that refuse to provide access to their records in a timely manner. Authorized Federal motor carrier safety personnel have often been thwarted or delayed in the performance of compliance reviews and other investigations by motor carriers using delaying tactics. Under this section motor carriers failing to grant the Secretary access to inspect and copy records or inspect and examine equipment, lands buildings and other property would be subject to an operations out of service order in addition to the current civil penalty. This amendment would deter dilatory responses to requests for motor carrier records and would maximize the Secretary's investigative resources.

**SEC. 3153. PENALTIES FOR VIOLATION OF OPERATION OUT OF SERVICE ORDERS.**

This section would increase the maximum penalty the Secretary may assess against motor carriers for the serious safety violation of continuing to operate following a determination of unfitness pursuant to section 31144(a) of title 49, United States Code, and the resulting prohibitions on operation under section 31144(c). Current section 31310(i)(2) authorizes a \$25,000 penalty for violating an out of service order, but that penalty authority extends only to "violations of out of service orders by *individuals* operating commercial motor vehicles," not to violations by motor carrier companies. The Secretary's general civil penalty authority for violations of safety regulations at section 521(b)(2) of title 49, United States Code, is limited to \$11,000 after any adjustments for inflation. This section would clarify that the more severe penalty applies to violations of operations out of service orders by motor carrier companies as well as individuals.

Section 3153 also would raise to \$25,000 the penalty for violation of both hazmat and non-hazmat imminent hazard out of service orders. These out of service orders are issued only where the continued transportation presents a substantially increased likelihood of serious injury or death, and a motor carrier's violation of such orders obviously poses a grave safety risk. The current penalty, adjusted for inflation, is \$16,000.

**SEC. 3154. MINIMUM PROHIBITION ON OPERATION FOR UNFIT CARRIERS.**

This section would amend section 31144(c) of title 49, United States Code, to prohibit carriers from operating for at least ten days if the Secretary determines that a carrier failed to meet the safety fitness standard. At present, a carrier is allowed to resume operation once the Secretary determines that the carrier is fit. This provision would increase the consequences to motor carriers that allow their safety performance to deteriorate to the point of becoming unfit and will thus encourage carriers to address safety problems in a timely manner.



**SEC. 3155. MINIMUM OUT OF SERVICE PENALTIES.**

This section would amend section 521(b)(7) of title 49, United States Code, to explicitly authorize the secretary to establish by regulation minimum out of service periods as penalties. Such out of service periods may not exceed 90 days in duration. During the rulemaking the Secretary would consider the safety compliance effects and other benefits and costs of mandatory minimum out of service periods for violations of federal motor carrier regulations, including for regulations not now designated as out of service violations.

**Sec. 3156. REVOCATION OF REGISTRATION FOR IMMINENT HAZARD.**

This section would correct an anomaly by expanding the Secretary's authority to issue imminent hazard out of service orders. Currently, the Secretary is authorized to issue such orders against both property carriers and passenger carriers. However, the Secretary must revoke the operating authority registration only of passenger carriers, not property carriers, determined to be an imminent hazard. This amendment would authorize the Secretary to revoke the registration of any motor carrier determined to be an imminent hazard.

**SEC. 3157. REVOCATION OF FOREIGN MOTOR CARRIER OPERATING AUTHORITY FOR FAILURE TO PAY CIVIL PENALTIES.**

Currently, section 13905(d)(1) of title 49, United States Code, does not list foreign motor carriers and foreign motor private carriers among the persons whose section 13902 registration (operating authority) the Secretary may suspend, amend or revoke for regulatory non-compliance or failure to pay a civil penalty. This section would authorize the Secretary to suspend, amend or revoke the operating authority of such carriers under these circumstances.

**SEC. 3158. REVOCATION OF REGISTRATION AND OTHER PENALTIES FOR FAILURE TO RESPOND TO SUBPOENA.**

This section would increase the civil penalties for motor carriers, motor carriers of migrant workers and private motor carriers that disobey a subpoena or requirement of the Secretary to produce witnesses or records. It also adds new authority for the Secretary to suspend, amend or revoke the registration of a motor carrier, broker or freight forwarder for failing to obey an administrative subpoena. Notwithstanding the Secretary's clear subpoena authority under section 502(d) of title 49, United States Code, recalcitrant motor carriers and others who have received subpoenas have failed or refused to produce witnesses and records necessary for a thorough investigation. This section grants additional authority to promote compliance with properly issued subpoenas.

**SEC. 3159. IMPOUNDMENT AND IMMOBILIZATION OF COMMERCIAL MOTOR VEHICLES FOR IMMINENT HAZARD.**

This section would clarify the authority of the Secretary and authorized State grantee officials to impound or immobilize commercial motor vehicles. This provision is necessary because of numerous instances in which motor carriers have refused to comply with out of service orders, even where continued operation of the vehicle posed a grave safety risk to the vehicle's passengers, the traveling public, and the driver.

By adding new paragraph (15) to 49 U.S.C. 521(b), this section would grant the Secretary and authorized State grantee officials explicit authority to enforce imminent hazard out of service orders by taking temporary possession and control of a commercial motor vehicle subject to such order through towing and impounding. The Secretary or authorized State official may also place a "boot" or other locking device on the vehicle. Imminent hazard out of service orders are issued in response to only the most serious safety hazards, to mitigate the immediate likelihood of serious injury or death caused by the continued transportation. This section would require that affected carriers be given the opportunity to access the cargo and to make alternative arrangements for its transportation and would also require that the Secretary or authorized State official impounding or immobilizing a passenger carrying vehicle provide any passengers on board reasonable, temporary and secure shelter and accommodations. This section also would provide for administrative review of the impoundment or immobilization, in accordance with the Administrative Procedure Act, This review procedure would be consistent with reviews of imminent hazard out of service orders under current FMCSA regulations, e.g., 49 C.F.R. § 386.72(b)(4).

The section would be self-executing and effective upon enactment as to enforcement of imminent hazard out of service orders. The section would also authorize the Secretary to promulgate regulations which would extend the impoundment and immobilization authority to other out of service orders.

Finally the section would provide a definition of impoundment.

#### **SEC. 3160. INCREASED PENALTIES FOR EVASION OF REGULATIONS.**

This section would amend sections 524 and 14906 to increase the penalty for evading regulation under the Federal Motor Carrier Safety Regulations and the Federal Motor Carrier Commercial Regulations, and the statutes on which these regulations are based, and it would expand the scope of the penalty to apply to evasion of the Hazardous Materials Regulation and statutes. This additional penalty is necessary to deter rogue motor carriers and those who assist them from, for example, re-registering under a different identity after issuance of safety violations and enforcement orders or imposition of civil penalties.

#### **SEC. 3161. FLEETWIDE OUT OF SERVICE ORDE FOR OPERATING WITHOUT REQUIRED REGISTRATION.**

This section would authorize the Secretary to place out of service the operations of a motor carrier discovered operating vehicles without the required registration, or operating beyond the scope of the registration granted. Currently, the Secretary may place out of

service only individual vehicles, instead of issuing a single out of service order affecting the motor carrier's entire operations. The revised provision would save enforcement resources and improve safety by eliminating the need to generate separate out of service orders at roadside on a vehicle-by-vehicle basis.

**SEC. 3162. SETTLEMENT AUTHORITY.**

This section would add new subsection (h) to section 14901 of title 49, United States Code, and new paragraph (4) in section 14915(a) to authorize expressly the Secretary to structure settlements of civil penalties by accepting lesser amounts of money, suspension of penalties, payment of penalties over time or investment in training or other activities or equipment to improve regulatory compliance. Such strategies are additional tools that can be used to improve motor carrier safety and compliance with applicable rules, to promote the public interest and to respond with enforcement flexibility as justice requires.

**SEC. 3163. FEDERAL SUCCESSOR STANDARD.**

This section would authorize the Secretary to take broad enforcement and other action against successor companies of motor carriers, employers and owners or operators where the Secretary determined that the officers, financial arrangements, equipment, drivers, and general operations of the company were closely related to those of a former entity. The Secretary would be required to provide the successor company notice and an opportunity for a proceeding. The provision would apply notwithstanding other Federal or State law. This authority is needed to address the growing and serious safety problem of motor carriers avoiding the Secretary's regulatory authority by reincorporating and transferring their assets to a new corporate entity, while continuing essentially the same business. Without this provision, the Secretary lacks authority to prevent unscrupulous motor carriers in many States from using State corporations laws to avoid Federal penalties and out of service orders.

Section 31153(b) of title 49, United States Code, as added by this section, would codify in a uniform federal standard, for purposes of Federal motor carrier safety regulation, a series of factors and principles that have been articulated in judicial and administrative rulings on corporate successorship. Those factors and principles include consideration paid for assets purchased or transferred; dates of corporate creation and dissolution or termination of operations; commonality 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.

Section 31153(c) would authorize, but not require, the Secretary to establish additional standards for determinations of motor carrier successorship. Because corporate successorship determinations are highly fact specific, subsection (c) would permit a body of motor carrier administrative case law to emerge and would not require the Secretary to adopt further standards by regulation.

Section 31153(d) would clarify that this section applies to all future enforcement cases and other actions of the Secretary, regardless of when the violation or other acts giving rise to the case occurred.

Section 31153(e) would clarify that the section applies only to Federal laws and regulations on motor carrier safety. Nothing in this section would be deemed to affect State laws governing creditor/debtor rights, tort liability or taxes, for example, nor would it affect other rights between private parties.

#### **Part 4--Grants**

##### **SEC. 3171. COMPLIANCE, SAFETY AND ACCOUNTABILITY GRANTS.**

This section would amend section 31102 of title 49, United States Code, to establish the compliance safety and accountability program, which is proposed as an umbrella grant program consisting of newly authorized and current commercial motor vehicle safety enforcement programs authorized under SAFETEA-LU. Under this umbrella, section 31102 would preserve the fundamentals of the motor carrier safety assistance program, high priority activities, the new entrant grant program previously codified at section 31144(g)(5) of title 49, United States Code, and the border enforcement grant program previously codified at section 31107 of title 49, United States Code, and would establish new grant programs to provide financial assistance to State and local agencies and other entities to improve household goods enforcement activities, local governments' enforcement of requirements related to commercial motor vehicle and passenger vehicle safety and hazardous materials safety and security. The funding authorities for the CSA grant program are addressed in amendments to section 31104 of title 49, United States Code, in section 3172 of this Title.

The cornerstone of the CSA grant program is the Motor Carrier Safety Assistance Program (MCSAP). Section 31102(b) (2) would largely leave intact requirements for States to submit a commercial vehicle safety plan. However, this section would amend section 31102 to allow the States to inspect vehicles transporting passengers at a location that has adequate food, shelter and sanitation facilities for passengers during the inspection and subsequent required repairs.

This section also amends the requirement that States maintain expenditures for commercial motor vehicle enforcement programs at a level at least equal to the average level of that expenditure for Fiscal Years 2004 and 2005. This proposed change will stabilize the States' required level of participation, allowing them to budget, and removing the penalizing affect of a special safety initiative. Section 31102 would also

authorize the Secretary to waive the maintenance of effort requirements for a fiscal year due to exceptional or uncontrollable circumstances, such as a major natural disaster or a significant shortfall in the budgetary resources of the State MCSAP agency. The maintenance of effort amendments in section 31102(b)(4) address the fiscal realities facing States and would also encourage greater participation in commercial motor vehicle enforcement by allowing the States not to be continuously impacted by one time purchases of equipment or the establishment of a special safety initiative.

Section 31102 would incorporate the majority of the language codified in section 31103. The Federal share for MCSAP would be maintained at 80 percent. However, the Federal share for MCSAP funds awarded as incentive funds would continue to be 100 percent. Finally, the section would require the Department to file a report regarding the MCSAP program every two years rather than on an annual basis, as is currently required. This change would relax an administrative burden on the agency since the formula funding amounts do not change significantly from year to year. A biennial report would also enable the Department to report more accurately on any expenditure issues which cannot be reflected in an annual report as the funds under motor carrier safety assistance program are available for expenditure for 2 fiscal years.

With respect to the remaining CSA grant programs, the eligible recipients are State and local governments and other eligible recipients. Section 31102 would retain the 100 percent Federal share for the New Entrant Grant Program but would reduce the Federal share for the Border Enforcement grant program to at least 80 percent. The remaining CSA grant programs would require the Secretary to reimburse the States for at least 80 percent of the costs incurred for the programs.

**SEC. 3172. AUTHORIZATION OF APPROPRIATIONS.**

This section would amend 49 U.S.C. 31104 to provide the authority for funding in four significant ways: providing discretion to the Secretary to allocate the funds through the appropriations process; establishing an obligation period for longer than one year for two grant programs, establishing an administrative take down for each grant program and tying substantial compliance with three critical programs to State highway funding.

Discretion to Allocate Funds. Section 31104(a), as amended by this section, would authorize funding for three umbrella grant programs: the compliance, safety and accountability grant program, the safety data and technology grant program and the driver safety grant program. The authorization language would specify a minimum allocation for the primary grant program under each umbrella program: motor carrier assistance safety program under the compliance, safety and accountability grant program, performance and registration information system management program under the safety data and technology grant program and the commercial driver’s license improvement program under the driver safety grant program. The Secretary would develop criteria to allocate the remaining amounts among all the grant programs authorized under each umbrella program. Commercial motor vehicle enforcement and driver safety issues are dynamic and heavily influenced by changes in technology, research results and economic

conditions in States and local governments. Enforcement and driver safety initiatives are also impacted by a diverse and populous industry (there are at least 600,000 interstate motor vehicles regulated by the Federal government). These conditions mean that the most effective use of funds to increase safety may greatly vary from year to year. For example, an improvement in wireless technology may increase the effectiveness of the commercial vehicle information system network program, but in another year the States may require additional funds in the safety data improvement program to improve their reporting requirements. Economic growth may increase the number of motor carriers entering the industry and the States may need additional funds for new entrant grants. At the same time, the States may have maximized the use of funds for household goods enforcement. Based on expenditure rates and performance based measures, the Secretary could allocate more funds in the compliance, safety and accountability grant program to new entrant grants rather than household goods enforcement.

Section 31104(b)(5), as added by this section, proposes to allow the Secretary to reallocate funds awarded to a State to that same State if that State demonstrates satisfactorily the following: (1) the State is not able to expend the obligated funds during the last 12 months prior to expiration; (2) the State can effectively expend those funds under another grant; and (3) the State can expend those funds prior to their expiration.

Obligation and Reallocation Authorities. Section 31104(b)(3), as added by this section, would increase the time available for obligation of the safety data and technology grants from one year to three years, in light of the length of time it takes entities to develop effectively information technology proposals and identify matching funds. Section 31104(b)(4) would increase the time available for obligation for driver safety grant program from one year to two years. Driver safety programs are also dependent on information technology infrastructure programs generally at the States' department of motor vehicles. Given the length of time it takes to develop effective proposals for technology the obligation period needs to be lengthened. Section 31104(b)(5) would also authorize the Secretary to ensure that motor carrier safety assistance program funds are available for reallocation by permitting the Secretary to allocate the funds of the States that do not qualify under section 31102(b)(2) or that are not fully utilizing their funds to those States that do. The authorizing language proposes a date certain by when Secretary should make such a reallocation.

Administrative take-down. Section 31104(d), as amended by this section, would establish a set amount for administrative expenses to support each grant program. These funds can be used to support the information technology infrastructure that FMCSA maintains for State grantees and training of State and local employees.

Substantial Non-Compliance. Section 31104(g), as amended by this section, would authorize the Secretary to withhold up to 100 percent of the amounts a State is otherwise eligible to receive under MCSAP if it were to be found to be in substantial non-compliance with the performance and registration information system management program under section 31106 and section 31109(b), as added by section 3173, or the commercial driver's license program under section 31311. The Secretary had this

authority under SAFETEA-LU for the commercial driver's license program and found that it is an effective statutory tool in holding the States accountable for complying with established program and information system standards. This section would also enable the Secretary to restore amounts withheld from a State for substantial non-compliance with section 31102(b) of title 49, United States Code, if he subsequently determines that the State has subsequently complied with section 31109(b).

**SEC. 3173. DATA AND TECHNOLOGY GRANTS.**

This section would amend 49 U.S.C. 31109 to establish the data and technology umbrella grant program which consists of the performance registration information system management grant program, commercial vehicle information system network (CVISN) grant program authorized but not codified by Public Law 109-59, safety data improvement grant program (SaDIP) authorized but not codified by Public Law 109-59, and the safety technology development and carrier safety grants. The funding authorities for the Data and Technology Grant Program are addressed in section 31104 of title 49, United States Code.

The cornerstone of the Data and Technology Grant Program is the performance registration information system management (PRISM) grant program in which States are the only eligible entities. This section would amend section 31109 to require the State to participate in the PRISM program under section 31106. Because of the requirement, the Federal share for this program is authorized at 100 percent.

The section would also amend the commercial vehicle information systems and networks (CVISN) grant program. This amendment would eliminate the existing legislative caps on amounts to be awarded States for activities under this grant program. It also would raise the Federal share from 50 percent to at least 80 percent. The section also would establish Safety Technology Development and Carrier Safety Grant program to promote the use of new safety technologies for carriers, vehicles and drivers by providing funds to acquire, install, operate, maintain, and evaluate the equipment to provide the industry with fact based information about impacts to safety, business efficiencies and cost reduction. This program would provide universities, individual commercial carriers, owner operators, and technology developers financial assistance for the development or purchase of new safety systems for new or retrofitting existing trucks. Currently, there are only a limited number of safety technologies available for motor carriers and limited levels of market penetration of these proven onboard safety systems. It is the role of the federal government to foster development and use of these "life-saving" safety systems. This program is needed to advance development and deployment of new safety systems.

Finally, this program would also provide financial assistance for a new safety management systems/program and for advanced and defensive driver training programs. This grant program would require an 80/20 match with the carrier, owner operators or companies developing new technology. The program will be competitively awarded based on the safety benefit and company match. One of the requirements of this grant

program would be that carriers or owner operators provide data and report improvements in safety as a result of the technology, safety program or training.

**SEC. 3174. DRIVER SAFETY GRANTS.**

The section would amend section 31313 of title 49, United States Code, by establishing the Driver Safety Grant Program, which consists of the Commercial Driver’s License Program Improvement (CDLPI) Grant Program, High Priority Activities grants awarded under the CDLPI, the Commercial Motor Vehicle Safety Operator Grant Program, and the Electronic Notification System Grant Program. The funding authorities for the Driver Safety Grant Program are addressed in section 31104.

The cornerstone of the Driver Safety Grant Program is the CDLPI grant program in which States are the only eligible entities. The amendments would also modify the maintenance of efforts requirements, a significant issue for economically distressed States. The section would alter the requirement that States maintain expenditures for driver safety programs at a level at least equal to the average level of that expenditure for Fiscal Years 2004 and 2005. This change will stabilize the States’ required level of participation, allowing them to budget, and removing the penalizing affect of a special safety initiative. This section would also authorize the Secretary to waive the maintenance of effort requirements for a fiscal year in the event of a major natural disaster or a major budget shortage. These maintenance of effort amendments to section 31313 would address the fiscal realities facing States and would encourage greater participation in commercial motor vehicle enforcement by removing disincentives to States’ participation as a result of large increases in expenditures caused by States’ one time purchases of equipment or the their implementing a special safety initiative.

This section would also provide new authority to the Secretary to make grants specifically for the purpose of hiring commercial driver license coordinators. These dedicated positions would be responsible for the oversight of commercial driver license examiners to ensure that proper test procedures are used. In addition, the CDL Coordinator would also be responsible for coordinating all information technology issues involving the CDLIS system, including conviction and disqualification programming changes and code translations and be responsible for bringing the State into compliance with established timeframes for reporting convictions to CDLIS. The CDL Coordinator would also serve as a single point of contact for the state courts judiciary, CDLPI grant oversight and other actions needed to maintain the CDL program in the State in accordance with FMCSA requirements. To emphasize this priority with the States, the Federal share for CDL coordinators is 100 percent.

Finally, this section would amend section 31313 to establish the Electronic Notification System grant program, which is designed to provide financial assistance to States in notifying employers of an operator of a commercial motor vehicle in the event of a suspension or revocation of the operator’s commercial driver’s license.

**Part 5--Medical and Registration Provisions**



## **SEC. 3181. EFFECT OF DRIVING ON COMMERCIAL MOTOR VEHICLE OPERATORS.**

This section would amend the requirement of 49 U.S.C. 31136(a)(4) that safety standards prescribed for commercial motor vehicle drivers ensure that driving does not have a "deleterious effect on the physical condition of the operators." "Deleterious effect" is an overly broad term that could be read as requiring protection of drivers from every possible medical risk, even those unavoidably associated with their work, such as exposure to diesel (and other) exhaust particulates, noise and vibration. Although low-sulfur diesel fuel and better designed vehicles have reduced some of these health risks, motor carrier work inevitably takes a toll on vehicle operators. However, virtually all occupations have some "deleterious effect" on the physical condition of those so employed, and the effects of the job are often difficult to separate from the effects of personal behavior, aging or even genetic disposition. To enable the Secretary to update and expand the current physical qualification standards in the Federal Motor Carrier Safety Regulations without risking captious arguments over the exact meaning of "deleterious effect," this section requires that a commercial motor vehicle safety standard not have a "significantly adverse effect on the physical condition of the operators." While this amendment acknowledges that commercial motor vehicle drivers are affected by their work, it requires the Secretary carefully to avoid adopting motor vehicle safety standards that would make the physical impact of driving significantly worse.

## **SEC. 3182. ELECTRONIC FILING OF MEDICAL EXAMINATION CERTIFICATES.**

Section 3182(a) would amend the requirements for State participation in the commercial driver's license program by adding a requirement to develop and maintain the capacity to receive electronic copies of the medical certificates prepared by certified medical examiners for each holder of a commercial driver's license issued by that State who operates or intends to operate in interstate commerce. The availability in the State database of an electronic report prepared by the certified medical examiner will greatly reduce the incidence of fraudulent medical examination reports.

Section 3182(b) would make the effective date of the State requirement in subsection (a) the same as the date on which the national registry of certified medical examiners becomes operational. Because the registry and the transmission of medical examination reports to the States are parts of the same integrated national system, they should become operational at the same time.

Section 3182(c) authorizes the appropriation of \$1,000,000 in each of fiscal years 2013 and 2014 to help the States pay for the information technology improvements needed to receive medical examiners' reports. The funding is front-loaded to ensure that the States upgrade their driver information systems by the time the national registry of medical examiners and associated requirements become operational.

**SEC. 3183. WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS.**

Section 3183(a) would correct an anomaly in FMCSA's authority to grant exceptions to many of the Federal commercial motor vehicle safety regulations. Because exemptions under 49 U.S.C. 31315(b) require notice and comment before adoption, that provision is unsuited to dealing with emergencies. Yet, as currently drafted, 49 U.S.C. 31315(a) limits the issuance of short-term waivers to "nonemergency and unique events." The result is that situations which warrant an exception to the safety regulations sometimes cannot be addressed quickly precisely because of their emergency nature. Subsection (a) therefore would remove that limit. FMCSA, however, is expected to use this authority sparingly and to impose on the waiver whatever conditions may be needed to ensure that there will be no degradation in motor carrier and highway safety.

Section 3183(b) would amend the notice requirements in 49 U.S.C. 31315(b)(4) for publication of exemptions requested, granted, and denied by authorizing FMCSA to publish medical exemption notices on a website established to carry out the requirements of 49 U.S.C. 31149, including the National Registry of Certified Medical Examiners. Medical exemption requests must currently be published in the Federal Register, but their volume creates administrative and financial burdens for FMCSA and delays the processing of these requests. Publishing these notices on FMCSA's so-called MedEx website will be simpler and cheaper for the agency and, in most cases, produce quicker results for applicants.

Section 3183(c) would make the requirements of 49 U.S.C. 31315(b)(7) more specific by requiring FMCSA to provide State agencies funded by the MCSAP information on each exemption granted by FMCSA. States are also required, as a condition of accepting MCSAP funds, to transmit exemption information to their roadside enforcement staff. This will ensure that enforcement officers have the means to verify any exemption claimed by a driver stopped at roadside.

Section 3183(d) would allow FMCSA to publish descriptions of pilot programs either in the Federal Register, as currently required, or on the agency's official website. Publishing such notices on the agency's website will be simpler and cheaper for FMCSA and will enable the agency to expedite the development of pilot programs.

**SEC. 3184. USDOT NUMBER REGISTRATION REQUIREMENT**

Section 31134(a) would require all motor carriers that operate commercial motor vehicles in interstate commerce to apply for a USDOT number before beginning operations. Historically, there has never been an explicit statutory requirement for carriers to register for a USDOT number. Motor carriers that are subject to the Department's commercial jurisdiction, transferred from the Interstate Commerce Commission, are explicitly required to register with the Secretary under section 13901. These carriers receive a certificate of operating authority with an MC number.

Section 31134(b) would authorize the Secretary to refuse to issue a USDOT number if the Secretary determines that the motor carrier applicant is unfit or unwilling or unable to comply with the requirements of chapter 51 of title 49, United States Code, concerning transportation of hazardous materials, subchapter III of chapter 311, the Federal Motor Carrier Safety Regulations, or the Hazardous Material Regulations; or is, or was, a close affiliate or successor to such a carrier, as defined in section 31153.

Section 31134(c) would authorize the Secretary to revoke or suspend a USDOT number if the Secretary determines that the motor carrier is unfit, unwilling, or unable to comply with the requirements of chapter 51 of title 49, United States Code, concerning transportation of hazardous materials, subchapter III of chapter 311, the Federal Motor Carrier Safety Regulations, or the Hazardous Material Regulations; or is or was, a close affiliate or successor to such a carrier, as defined in section 31153. This provision would also authorize the Secretary to revoke or suspend a USDOT number if the motor carrier fails or refuses to submit to a new entrant safety audit as required by section 31144(g).

Section 31134(d) would require employers or motor carriers registered with the Secretary to update their registrations annually, as well as within 30 days of the change of certain essential information. This section does not require a rulemaking, but instead authorizes the Secretary to determine what periodic registration updates are necessary and to publish that determination in the Federal Register or on a Department of Transportation website. These provisions will authorize the Secretary to maintain more accurate records for registered entities and will be particularly helpful in preventing motor carriers from reregistering as a different entity in order to avoid civil penalties or out of service orders.

#### **SEC. 3185. REGISTRATION FEE SYSTEM.**

This section would authorize FMCSA to increase, by regulation, the maximum fee currently authorized by statute. The cost of processing a registration under chapter 139 of title 49, United States Code, including the cost of reviewing the safety fitness of the applicant, exceeds the current statutory maximum of \$300. The current requirement in 49 U.S.C. 13908 (d)(1) that the fee for new registrants "shall as nearly as possible cover the costs of processing the registration" would not be altered.

#### **SEC. 3186. REGISTRATION UPDATE.**

This section would add new provisions to sections 13902(a), 13903, and 13904 of title 49, United States Code, to require motor carriers, freight forwarders and brokers to update their registrations annually, as well as within 30 days of the change of certain essential information. This section would not require a rulemaking, but instead would authorize the Secretary to determine what periodic registration updates are necessary and to publish that determination in the Federal Register or on a Department of Transportation website. These provisions would authorize the Secretary to maintain more accurate records for registered entities and would be particularly helpful in preventing motor carriers from reregistering as a different entity in order to avoid civil penalties or out of service orders.

**SEC. 3187. REPEAL OF COMMERCIAL JURISDICTION EXCEPTION FOR BROKERS OF MOTOR CARRIERS OF PASSENGERS.**

This section would amend section 13506(a) of title 49, United States Code, to permit the Secretary to exercise jurisdiction over brokers for motor carriers of passengers. Currently, property brokers are the only brokers required to register with the Secretary. This provision will enhance the Secretary's ability to prevent unsafe motor carriers of passengers from reorganizing themselves as an unregulated business entity. Additionally, passenger carrier brokers will have more of a stake in ensuring motor carriers they work with are safe and authorized to operate in interstate commerce if they are required to comply with the Secretary's commercial registration requirements and are subject to enforcement actions.

**Part 6--Miscellaneous**

**SEC. 3191. FAILURE TO GIVE UP POSSESSION OF HOUSEHOLD GOODS.**

Subsection 3191(a) would amend the motor carrier statutes for which private litigants can seek injunctive relief associated with violations. Litigants would be authorized to seek judicial relief in order to obtain the return of household goods held hostage by unscrupulous moving companies.

Subsection 3191(b) would expand FMCSA's enforcement options in the event the agency finds that a motor carrier has held a household goods shipment hostage. Under current law, civil penalties levied by FMCSA are payable to the United States. The new authority would allow FMCSA to assign all or a portion of the penalties it receives to the aggrieved shipper(s). Moreover, the proposal would provide the agency with explicit statutory authority to order the return of goods held hostage. Such an order will be enforceable in Federal court under 49 U.S.C. 14702.

**SEC. 3192. MOTOR CARRIER SAFETY ADVISORY COMMITTEE.**

Section 4144 of SAFETEA-LU established the commercial motor vehicle safety advisory committee FMCSA. Subsection (a) would specifically provide for appointment of one or more individuals who are representatives who are affiliated with a nonprofit employee labor organization representing commercial motor vehicle drivers. Subsection (b) would extend the termination date of the advisory committee to September 30, 2017.

**SEC. 3193. UNIFIED CARRIER REGISTRATION PLAN.**

This section would amend section 14504a of title 49, United States Code, to restructure and to limit the Department of Transportation's participation in the administration of the

Unified Carrier Registration (UCR) Plan and Agreement. This amendment would require the UCR Plan to be operated as a not-for-profit corporation and clarifies that it is not a department, agency or instrumentality of the United States government. This amendment would also require all States to participate in the UCR plan and agreement and grants the currently non-participating States 3 years in which to submit a plan to come into compliance.

This proposal would remove the requirement that a representative from the Department of Transportation be a member of the UCR board and shifts the authority to appoint new members of the board, including the authority to appoint the chairman and the vice-chairman, from the Secretary of Transportation to the existing board members. To fill the vacancy left by the representative from the Department of Transportation, the amendment requires the board to appoint a sixth board member representing the passenger transportation industry.

This section would also extend the UCR board's existing contracting authority so that it may enter into contracts with the United States Government to perform administrative functions required under the UCR agreement. This section would remove the Secretary's authority to set annual fees and grants this authority to the board. It would also remove the Secretary's role in administering amended State plans or withdrawals from the UCR plan from the Secretary and grants full responsibility to the board. The amendment would clarify that amended section 14504a is not subject to the Administrative Procedure Act.

The amendment would permit the board to use revenues for administrative costs prior to collecting the full amount of entitled revenues, but would mandate that the board audit the use of administrative fees once every two years. Finally, the amendments would remove the Secretary's and the Attorney General's role in enforcement.

#### **SEC. 3194. SELF-INSURANCE FOR MOTOR CARRIERS REPEALED.**

Section 13906 of title 49, United States Code, sets forth requirements for financial responsibility of motor carriers, including the filing of a bond, insurance policy or other approved security with the Secretary in specified amounts. This section would eliminate the current option for motor carriers to submit proof of qualification as a self-insurer in lieu of the bond, insurance policy or other security. This section would also repeal the requirement that the Secretary adopt regulations governing the standards for approval of a self-insurer. FMCSA has determined that the self-insurance program does not add significantly, if at all, to the safety of motor carrier transportation. In addition, administration of the self-insurance program, which benefits fewer than 50 motor carriers, is disproportionately burdensome, invites litigation and is an inefficient use of agency resources.

#### **SEC. 3195. STATUTORY RECODIFICATION STUDY.**

Subsection 3195(a) would direct the Secretary to enter into an arrangement with the Transportation Research Board of the National Academy of Sciences to conduct a study on the feasibility and merits of a comprehensive recodification of motor carrier provisions in the U.S. Code. Specific statutory provisions for possible elimination include obsolete provisions from the former Interstate Commerce Commission, "operating authority" registration under 49 U.S.C. 13902 and other non-essential distinctions between for-hire motor carriers and private motor carriers and the distinction between exempt and non-exempt commodities. The study will also recommend changes to harmonize civil penalties and will attempt to simplify and reorganize motor carrier statutes and regulations generally.

Subsection (b) would require submission of a report to the oversight committees of the House and Senate, to include proposed draft legislation, within one year of the Secretary's arrangement with the Transportation Research Board.

Subsection (c) would authorize funds to be made available from section 31104(j) to carry out this section.

**SEC. 3196. PROFICIENCY EXAMINATION RULEMAKING.**

Section 210(b) of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) authorized the Secretary to consider a proficiency examination for new entrant motor carriers to "ensure applicant carriers are knowledgeable about applicable Federal motor carrier safety standards." This section would broaden the authority granted under MSCIA section 210(b) to include a proficiency examination that tests new entrant carriers' knowledge not only of safety regulations, but of applicable commercial regulations and regulations relating to accessibility for disabled persons. At present, passenger carrier non-compliance with the provisions of the Americans with Disabilities Act of 1990 and the Over-the-Road Bus Transportation Accessibility Act of 2007 is sometimes attributed to a lack of awareness that the provisions apply. Household goods movers are sometimes similarly unaware of the commercial regulations that apply to them. By granting the Secretary authority to develop an examination covering these areas to administer to applicant motor carriers, knowledge of and compliance with these regulations will be increased.

**SEC. 3197. UPDATE OF OBSOLETE TEXT.**

This section would amend various provisions in chapters 311 and 313 of title 49, United States Code, and one provision in SAFETEA-LU by deleting obsolete directions for the Secretary to promulgate regulations by specifically designated dates or within specified time frames. Although this section deletes dates specified in current codified provisions, it does not strike the underlying requirement for the Secretary to promulgate these regulations or standards in order to preserve the Secretary's authority to promulgate any necessary revisions in the future. These requirements to promulgate regulations or standards by specified deadlines have each been satisfied. The obsolete statutory

requirements that would be addressed by this amendment and their corresponding rulemaking/standards requirements and deadlines are as follows:

| <u>Provision</u>            | <u>Rulemaking/Standards Requirement</u>  | <u>Deadline</u> |
|-----------------------------|--|-----------------|
| 49 U.S.C. 31137(b)          | Brakes and brake systems maintenance   | Dec. 31, 1990   |
| 49 U.S.C. 31151(a)          | Inspection, repair, and maintenance of intermodal equipment  | Aug. 4, 2006    |
| 49 U.S.C. 31307(b)          | Minimum training requirements for operators of longer combination vehicles   | Dec. 18, 1994   |
| 49 U.S.C. 31309(e)(1)       | National plan to modernize the commercial driver's license information system  | Aug. 4, 2006    |
| 49 U.S.C. 31310(g)(1)       | Disqualification from operating a commercial motor vehicle for an individual convicted of a serious motor vehicle or drug or alcohol offense | Dec. 8, 2000    |
| SAFETEA-LU, Section 4123(f) | Performance of a baseline audit of the Commercial Driver's License Information System  | August 4, 2006  |

**SEC. 3198. CORRECTION OF INTERSTATE COMMERCE COMMISSION REFERENCES.**

This section would correct provisions of title 49, United States Code, that mistakenly refer to the former Interstate Commerce Commission (ICC) rather than the successor Surface Transportation Board (STB). In some cases, the provision or reference can be deleted entirely as obsolete because the ICC's statutory responsibility has been transferred to another agency.

Subsection (a) would delete 49 U.S.C. 307 (Safety information and intervention in ICC proceedings) from the Code as obsolete. Section 307 addresses DOT's role in ICC freight forwarder and other motor carrier licensing proceedings. The ICC Termination Act of 1995 (Pub. L. 104-88; Dec. 29, 1995) (ICCTA) transferred the responsibility for licensing these activities to DOT itself (see, e.g., 49 U.S.C. 13903). FMCSA already reviews the safety compliance record of license applicants under its jurisdiction, and specific statutory authority to provide itself with safety information is unnecessary.

Subsection (b) substitutes a correct reference to the STB where current law incorrectly refers to the former ICC.

Subsection (c) would correct a cross-reference to former section 24706(c) (which was repealed as of May 31, 1998) to reflect a point in time when it was effective.

Subsection (d) would move subsection (a)(2) of section 14704 (Rights and remedies of persons injured by carriers or brokers) to subsection (b) of that section, and designate it as the second paragraph of that subsection. This language appeared as subsection (b)(2) in both the House and Senate bills that became ICCTA, *see H.R. Rep. No. 104-311, 104th*

*Cong., 1st Sess.(1995), at 62 (House bill); 141 Cong. Rec. S17573 (daily ed. Nov. 28, 1995) (Senate bill), as well as in the prior law, see former 49 U.S.C. 11705(b)(3) (1995); H.R. Rep. No. 104-422, 104th Cong., 1st Sess. (1995), at 246 (table in Conference Report showing disposition in ICCTA of former provisions of the Interstate Commerce Act).*

There is no indication in the Conference Report of any intent to substantively alter this provision. *See H.R. Rep. No. 104-422, 104th Cong., 1st Sess. (1995), at 221.*

Furthermore, the change in placement to subsection (a) made certain cross-references invalid (see references to section 14704(b) contained in sections 14704(c)(1)-(2), (d)(1), and 14705(c) -- all of which were reenactments of identical references in the prior law. *See former 49 U.S.C. 11705(c)(1)- (2), (d)(1), and 11706(c)(2) (1995), referencing former 49 U.S.C. 11705(b) or 49 U.S.C. 11705(b)(3) (1995).*) A conforming change is also proposed to one of these cross-references.

Subsection (e) substitutes a correct reference to the STB where current law incorrectly refers to the former ICC.

### **SEC. 3199. PROHIBITION OF COERCION.**

This section would prohibit motor carriers, shippers, receivers and transportation intermediaries from coercing a driver to violate regulations based on the Hazardous Materials Transportation Act of 1975, the Motor Carrier Safety Act of 1984, and the Commercial Motor Vehicle Safety Act of 1986. These statutes and their implementing regulations form the core of FMCSA's safety program. Coercion is defined to include not only the threat of physical harm, but also the threat to withhold future business. The prohibition is not open-ended, however. For example, the agency must be able to demonstrate that a shipper threatened a driver with loss of future business if the driver did not agree to undertake an operation which the shipper knew the driver could not execute without violating one or more of the FMCSA safety regulations. A shipper, however, would not violate this provision merely by setting unrealistic delivery deadlines which required speeding or illegally long driving time. Drivers must reject trips that they cannot legally perform. But a shipper who, knowing of the driver's inability to meet the shipper's deadline, insists that the driver make the run anyway on penalty of being boycotted, has violated this provision and is subject to the civil penalties provided for in 49 U.S.C. 521(b).

### **SEC. 3199a. ACCESS TO THE NATIONAL DIRECTORY OF NEW HIRES.**

Section 3199a would amend section 653(j) of title 42, United States Code, to allow the Department of Transportation to access the National Directory of New Hires maintained by the Department of Health and Human Services (HHS). Access has previously been granted by statute to other Executive agencies, including the Departments of Education, Treasury, Housing and Urban Development, and Veterans Affairs.

This section would allow the Secretary to submit the name of any individual who is found, based on tests conducted and confirmed under 49 U.S.C. 31306, to have used



alcohol or a controlled substance in violation of law or regulation, for comparison to names in the National Directory of New Hires. This action would alert FMCSA to instances where a driver, previously prohibited from operating a commercial motor vehicle, has obtained employment as a driver with a different motor carrier.

This section would also improve FMCSA's ability to detect "reincarnated" or "chameleon" carriers. In some cases, a motor carrier that is subject to an out-of-service order, or a large civil penalty, may apply for registration with FMCSA as a different carrier with a different identity, but employing the same equipment, employees, and even location. This section would allow FMCSA to identify cases in which a carrier's employees migrate *en mass* to another, supposedly unrelated, motor carrier. This is one factor that could lead to denial of an application for registration under section 3111.

The restrictions that would be imposed on the Secretary by this section, as well as reimbursement required for HHS's services, are identical to those imposed on other Executive agencies by section 653(j).

### **Subtitle C--Hazardous Material Transportation Safety**

#### **SECTION 3201. SHORT TITLE.**

This section provides that the Act may be cited as the "Hazardous Material Transportation Safety Act of 2012," and references Title 49, United States Code.

#### **SECTION 3202. DEFINITIONS.**

PHMSA regulates the transportation of hazardous materials in commerce, including the loading and unloading hazardous materials incidental to transportation and the handling of hazardous materials during transportation commerce. Previously, through rulemaking, the agency attempted to clarify the applicability of the hazardous materials regulations to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation. However, the promulgated definitions failed to produce regulatory and jurisdictional clarity and exposed gaps in critical safety oversight of the transportation system.

Section 5102 is amended to clearly define the scope of the Secretary's regulatory authority by revising the definition of "transports or transportation." The revision expands the definition to specify that, for purposes of the Act, transportation includes all activities related to loading hazardous materials onto a transport conveyance, unloading hazardous materials from a transport conveyance, and storage from the time the hazardous material is loaded until it is unloaded at its destination. The revised definition also states that transportation includes handling activities necessary to prepare a hazardous material for transportation in commerce.

The purpose of the amendment is to minimize regulatory gaps and duplication, and promote jurisdictional certainty, consistency, and clarity. However, with respect to occupational safety and health, by virtue of its controlling statute, OSHA will retain

jurisdiction to prescribe and enforce occupational safety training requirements for employees exposed to hazardous material, including employees engaged in transportation activities. With respect to the environment, such as CERCLA and EPCRA requirements, EPA will retain jurisdiction to prescribe and enforce environmental requirements related to the transportation of hazardous material. Moreover, the Department will continue to work with OSHA and EPA to more clearly define each agency's jurisdiction.

This amendment, and the amendment to Section 5103, more clearly defines the Secretary's authority with respect to the loading, unloading, storage, and handling of hazardous materials in transportation and is consistent with PHMSA's existing authority.

### **SECTION 3203. GENERAL REGULATORY AUTHORITY.**

Section 5103 is amended to clarify the Secretary's general regulatory authority by including an explicit reference to loading, unloading, and handling hazardous materials in transportation in commerce. This amendment, and the amendment to Section 5102, clarifies the Secretary's authority with respect to the loading, unloading, and handling of hazardous materials in transportation and clarifies PHMSA's existing authority.

### **SECTION 3204. HAZARDOUS MATERIAL ENFORCEMENT TRAINING PROGRAM.**

New Section 5129 grants the Secretary authority to establish a hazardous materials enforcement training program to develop qualification guidelines, best practices and standards for hazardous materials investigator training building upon current training programs already developed by the modes; collect, analyze, and publish findings from incident investigations; and develop standard protocols for coordinating joint enforcement efforts among Federal, State, and local jurisdictions. The program would establish investigator qualification and training guidelines based on PHMSA's expertise in the area of hazardous materials packaging in order to ensure that regulated entities are complying with hazardous materials packaging regulations. The program will be multimodal in scope and as such, it will be mandatory for the Department's multimodal hazardous material inspectors and investigators. The program will also be mandatory for State employees who conduct federally funded compliance reviews, inspections or investigations. Additionally, the Secretary may make the standards, protocols, and findings of the training program available to other Federal, State, and local enforcement officials.

There is a deficiency in the amount of training available to investigators who enforce the hazardous materials packaging requirements. Packaging is a function area shared by all agencies and operations that are responsible for the safe transportation, handling, or storage of hazardous materials. The program would address the training deficiency by offering specific training materials to educate and guide PHMSA's government partners in this area. It would allow and offer federal, state, and local enforcement officials to enhance their understanding of the techniques used to inspect, test, verify, and validate hazardous materials package manufacturing, testing, requalification, certification, use and

shipment preparation. The program would offer a uniform level of training and ensure a consistent understanding of PHMSA’s enforcement program on packaging that would foster similar programs at the state and local level. Unilateral understanding of hazardous materials packaging requirements are vital to the development of effective and flexible agreements between enforcement officials at all levels of government. In addition, it would reduce industry burden by eliminating unnecessary and duplicative enforcement actions.

**SECTION 3205. PAPERLESS HAZARD COMMUNICATIONS PROGRAM.**

Section 5111 is amended to grant the Secretary the authority to assess current technological capability, and based on that assessment, institute a paperless hazard communication program. The program must consider technologies that allow shippers to exchange hazardous materials shipping information electronically with carriers, emergency responders, and enforcement personnel among fixed facilities, mobile platforms, and wireless devices. Furthermore, since the transportation of hazardous materials may utilize a single or multiple modal carriers while in the transportation stream, it shall be necessary to consult with the appropriate modal agencies in the development and implementation of the program. The paperless hazard communications program will enhance the effectiveness of communications during transportation incidents involving hazardous materials.

**SECTION 3206. PLANNING AND TRAINING GRANTS, MONITORING, AND REVIEW.**

The reporting requirement in Section 5116 is changed from an annual to a biennial cycle. Also, the cap on use of the funds for administrative expenses is raised from two (2) to four (4) percent.

**SECTION 3207. SPECIAL PERMITS, APPROVALS, AND EXCLUSIONS.**

Section 5117 is amended to better define the process and procedures used to manage the special permits, approvals, and exclusions program. It authorizes the Secretary, under procedures prescribed by regulation, to issue, modify, or terminate a special permit. It directs the Secretary to establish the criteria used to make an assessment of an equivalent level of safety and the process for evaluating the fitness of applicants and their safety performance.; Compliance audits and oversight of special permit and approval holders are increased, and accountability of those operating under the terms of special permits and approvals is enhanced. An assessment of the need to modernize the information technology (IT) system that supports the program will be conducted. Additionally, the Secretary may modify, suspend, or terminate a special permit or approval for noncompliance, such as failure to register, pay a civil penalty, comply with an order, or meet security requirements. Finally, it authorizes the Secretary to collect a reasonable fee for administration of the special permits and approvals programs. The Secretary, after providing notice and an opportunity for public comment, shall issue regulations to implement the new process and procedures.

**SECTION 3208. HAZARDOUS MATERIAL TECHNICAL ASSESSMENT, RESEARCH AND DEVELOPMENT, AND ANALYSIS PROGRAM.**

Section 5118 is amended to authorize the Secretary to develop and implement a technical assessment, research and development, and analysis program aimed at reducing the risk associated with the transportation of hazardous materials and identifying new technologies and methods for facilitating the safe, secure, and efficient transportation of hazardous materials. Research activities under this program will focus on high-risk hazardous materials transportation concerns identified by the National Transportation Safety Board or through Department initiatives (cargo tank rollovers, safe loading and unloading, wetlines, lithium batteries). In carrying out this section, the Secretary may work cooperatively with stakeholders.

**SECTION 3209. ADMINISTRATIVE.**

Section 5121 is amended to clearly indicate that a designated officer, employee, or agent of the Secretary has the authority to take enforcement action on a person who violates the regulations for the safe transportation, including security, of hazardous materials in commerce. As a result of this change any person who prepares or accepts a hazardous material for transportation in commerce is subject to enforcement action by the Department. This applies to pre-transportation functions even if the materials have not yet been provided to the carrier for transport in commerce. Ensuring that our investigators have the ability to mitigate unsafe conditions at ground level, before dangerous shipments enter the transportation system is a proactive approach to transportation safety.

**SECTION 3210. CIVIL PENALTY.**

Section 5123 is amended to increase the statutory maximum for a civil penalty from \$50,000 to \$100,000 for each violation. For violations that result in death, serious illness, or severe injury, the penalty is increased from not more than \$100,000 to not more than \$250,000. Additionally, Section 5123 is amended to grant the Secretary the authority to impose a penalty on a person who obstructs an inspection or investigation authorized by this chapter such as failure to allow entry or access to a facility. The provision imposes a prohibition on hazardous materials operations for nonpayment of penalties assessed under this chapter.

**SECTION 3211. REPORTING OF FEES.**

The reporting requirement in section 5125 that a State, political subdivision or Indian tribe that levies a fee must report on various aspects of the fee to the Secretary is changed from "upon the Secretary's request" to a biennial cycle.

**SECTION 3212. AUTHORIZATION OF APPROPRIATIONS.**

This section is revised to reflect the authorization of appropriations for fiscal years 2012 through 2017.

### **Subtitle D--Pipeline Safety Program**

#### **SEC.3301. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED STATES CODE**

This section provides that the Act may be cited as the “Strengthening Pipeline Safety and Enforcement Act of 2010,” and references Title 49, United States Code.

#### **SEC.3302. CIVIL PENALTIES.**

This section amends section 60122(a) to provide for increased administrative civil penalties for the most serious violations involving deaths, injuries, and major environmental damage. For these types of violations, it increases the caps from \$100,000 per violation day/\$1,000,000 series to \$250,000 per violation day/\$2,500,000 series. The maximum penalties for violations of the pipeline safety requirements have not been increased in almost 10 years. Adequate levels of penalties are necessary to achieve deterrence goals, particularly in serious cases involving injuries, fatalities, or substantial environmental damage. This section also amends section 60120(a) to confirm that the section 60122 caps on administrative civil penalties do not apply to judicial actions under section 60120. It would also clarify that civil penalties are applicable to obstruction of an investigation. Finally, this section adds the availability of judicial review of final enforcement orders in the Courts of Appeals. Judicial review in the Court of Appeals is preferable because it would be consistent with current judicial review of pipeline rulemakings and other orders and the 89 day period would provide certainty to pipeline operators about the filing deadline.

#### **SEC.3303. CLARIFICATIONS.**

This section: (1) removes the word “intrastate” from the first sentence of section 60108(a) to clarify that PHMSA’s authority to require operators to amend operating plans and procedures is not limited to intrastate pipeline facilities; (2) clarifies that PHMSA’s authority for purposes of enforcement is not limited to an entity that is both the owner and operator of a pipeline; and (3) clarifies that the limitation on enforcement against excavators until the specified prerequisites are completed does not apply to pipeline operators.

#### **SEC.3304. PIPELINE INFRASTRUCTURE DATA COLLECTION.**

This section amends section 60132 to include additional geospatial pipeline data not currently being collected via the National Pipeline Mapping System on existing pipelines and expand collection of design information on new pipeline construction projects. Geospatially accurate pipeline infrastructure data is critical to PHMSA’s ability to perform its regulatory and oversight functions. PHMSA needs to be able to collect all

necessary information beginning with the proposed construction phase to ensure that regulatory actions are taken where incident data shows they are needed.

**SEC.3305. INTERNATIONAL COOPERATION AND CONSULTATION.**

This section amends section 60117 to authorize PHMSA to engage in activities supporting efforts to exchange expertise on pipeline safety with other governments. The proposal would allow PHMSA to obtain expertise from counterpart pipeline safety agencies in other governments, and consult on the safety of cross-border pipeline operations with Canada and Mexico.

**SEC.3306. GAS AND HAZARDOUS LIQUID GATHERING LINES.**

This section amends section 60101(b) to eliminate the statutory exemptions for both gas and hazardous liquid gathering lines. It would facilitate the closing of regulatory gaps by requiring a review of the existing regulatory exemptions within two years of this proposal becoming law. It also includes express provision requiring PHMSA to collect data on unregulated gathering lines in the interim. Significant spills and incidents have occurred on gathering lines and this proposal would be consistent with PHMSA's longstanding effort to capture the remaining pipeline mileage that is unregulated. Production facilities would remain non-jurisdictional.

**SEC.3307. TRANSPORTATION-RELATED OIL FLOW LINES.**

This section amends sections 60101 and 60102 to authorize PHMSA to collect information on onshore transportation-related oil flow lines regardless of whether they are currently regulated to determine whether there is any need for future regulation. A number of spills have occurred on (unregulated) onshore transportation-related oil flow lines and PHMSA needs to better understand the extent and condition of these lines. The operation of oil flow pipeline systems can impact the safety and reliability of downstream lines. Production-related oil flow lines would remain non-jurisdictional.

**SEC.3308. ALASKA PROJECT COORDINATION AND COST RECOVERY.**

This section provides for enhanced coordination with Alaska, the Joint Pipeline Office, and other agencies and organizations on inspector training programs and oversight of pipeline construction and expansion projects as well as repair and operation of existing lines. PHMSA needs to remain an effective partner to ensure the safety of major repair projects on existing systems and PHMSA will have major responsibilities regarding anticipated construction projects involving natural gas pipelines in Alaska. It would include authority for cost recovery for pipeline projects including, but not limited to, a natural gas project in Alaska as defined in Section 102 [15 U.S.C. 720] or 108 [15 U.S.C. 720f] of P.L. 108-324 Division C. Such cost recovery will ensure that the operator(s) involved incur the costs.

**SEC.3309. COST RECOVERY FOR DESIGN REVIEWS.**

This section amends section 60117(n) to authorize PHMSA to receive compensation from project applicants for design review, consulting, and field support that the agency performs for new pipeline construction projects over 10 miles in length. It includes a requirement for project applicants to notify PHMSA at least 120 days before construction is scheduled to begin. Currently through user fees, all pipeline operators share the expenses associated with time-consuming design reviews conducted by PHMSA for pipeline project applicants. The proposal would place the associated financial burden on the applicant who stands to realize the benefits from the proposed project.

**SEC.3310. SPECIAL PERMITS.**

This section amends section 60118 to set forth general requirements for special permits to ensure they are not issued to operators with poor safety records. It would also authorize a filing fee for special permit applications; and authorize PHMSA to receive compensation for technical studies or environmental analysis from special permit applicants. The applicant who stands to benefit from the project should pay for this service.

**SEC.3311. CLASS LOCATION AND INTEGRITY MANAGEMENT.**

This section authorizes a review of current rules to determine whether class location requirements should be revised or phased out in favor of more sophisticated risk-based approaches for gas pipelines. This would include a review to determine whether risk management principles should now be applied beyond high consequence areas to entire pipelines. The goal of prioritizing high consequence area (HCA) mileage has largely been achieved since baseline assessments and repairs have largely been completed. In addition, class location may not be the most effective mechanism for risk ranking. Therefore, PHMSA needs to determine whether risk management principles should now be applied to entire pipelines and if so whether it would mitigate the need for class location requirements.

**SEC.3312. BIOFUEL PIPELINES.**

This section amends section 60101(a)(4) to expressly include all biofuels. While ethanol and other biofuels that are only transported in a form blended with petroleum products are jurisdictional, it is not clear that certain pure biofuels that are not blended with petroleum products are. This will potentially be an issue with B100 (biodiesel) which some argue is non-toxic and non-flammable. It is the intent of this section to clarify that all biofuels transported by pipeline are subject to transportation safety regulations

**SEC.3313. CARBON DIOXIDE PIPELINES.**

This section amends section 60102(i) to include carbon dioxide transported as a gas. While carbon dioxide transported in a supercritical fluid state is currently regulated as a hazardous liquid, carbon dioxide transported as a gas is not. New clean energy carbon sequestration projects may involve pipelines transporting carbon dioxide as a gas.

**SEC.3314. STUDY OF NON-PETROLEUM HAZARDOUS LIQUIDS TRANSPORTED BY PIPELINE.**

This section authorizes a study on the extent to which pipelines are currently being used to transport non-petroleum hazardous liquids (e.g., chlorine). Currently anhydrous ammonia pipelines and liquid carbon dioxide pipelines are the only non-petroleum lines that are regulated by PHMSA. To date, any such lines are thought to be relatively short lines located entirely on the grounds of chemical plants and refineries, but the potential existence of longer lines that leave the grounds of such facilities is not well understood.

**SEC.3315. AUTHORIZATION OF APPROPRIATIONS.**

This section authorizes appropriations for Fiscal Years 2012–2017.

**Subtitle E--Public Transportation Safety Program**

**SEC. 3401. PUBLIC TRANSPORTATION SAFETY PROGRAM.**

This section would establish a Public Transportation Safety Program, within the U.S. Department of Transportation, as section 5329 of title 49, United States Code. This new section 5329 would replace the current section 5329, which addresses the investigations of safety hazards and security risks.

Subsection (a) of this section establishes a Public Transportation Safety Program, within the U.S. Department of Transportation, as section 5329 of title 49, United States Code. This new section 5329 would replace the current section 5329, which addresses the investigations of safety hazards and security risks.

Section 5329(a) would require the Secretary, as soon as practicable, to establish and implement a Public Transportation Safety program to improve the safety of rail fixed guideway public transportation systems in design, construction, or revenue service that receive Federal financial assistance under chapter 53 of title 49. Section 5329 would not apply to fixed guideway public transportation systems subject to regulation by the Federal Railroad Administration (FRA) under subtitle V of title 49, United States Code, and the Rail Safety Improvement Act of 2008. Paragraph (3) requires the Secretary, to the extent practicable, to take into consideration the recommendations of the National Transportation Safety Board.

Subsection (b) would give the Secretary the option to establish and implement a Public Transportation Safety program for bus public transportation systems that receive Federal financial assistance under chapter 53.

Subsection (c) would require the Secretary to promulgate notice and comment regulations and issue orders for rail fixed guideway public transportation systems not already regulated by FRA to ensure the safe operation of the systems. Paragraph (1) of subsection (c) states that, as a part of the regulatory process, FTA would be required to establish a certification program for employees and contractors who carry out a State public transportation safety program in compliance with the section and oversee the



performance of employees and contractors responsible for performing safety activities identified in the State's program.

Paragraph (2) would ensure that the Department of Homeland Security consults with the Secretary of Transportation before prescribing a security regulation or issuing a security order that affects the safety of public transportation design, construction or operations. Paragraph (3) of subsection (c) would allow the Secretary to waive compliance with any part of a regulation or order if it were in the public interest. The Secretary would be prohibited from issuing a waiver and must immediately revoke the waiver if the waiver would be inconsistent with the goals and objectives of this section. The Secretary would have to publish the reasons for granting or revoking the waiver.

Subsection (d) deals with preemption. Paragraph (1) of subsection (d) would allow a State to adopt or continue in force a law, regulation, or order related to public transportation safety until the Secretary prescribes a regulation or issues an order covering the subject matter of the State requirement. Regardless, a State could adopt or continue in force an additional or more stringent law, regulation, or order related to public transportation safety when the law, regulation, or order that has a safety benefit. However, the State directive must not be incompatible with a law, regulation, or order of the United States Government and must not unreasonably burden interstate commerce. Paragraph (2) of subsection (d) states that this section does not preempt a State action commenced pursuant to its laws seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with the Federal standard of care established by the Secretary through a regulation or order with respect to public transportation safety matters; or has failed to comply with a State's own program, rule, or standard that it created pursuant to a regulation or order issued by the Secretary; or has failed to comply with a State law, regulation, or order that is additional to, or more stringent than, Federal public transportation safety laws, but yet not inconsistent with those Federal laws. Paragraph (3) would provide that this would apply to all State law causes of action arising from events or activities occurring on or after the enactment of this section. Paragraph (4) states that this section would not create a Federal cause of action on behalf of an injured party or confer Federal question jurisdiction for such State law causes of action.

Subsection (e)(1) would authorize the Secretary to take certain actions the Secretary deems necessary. This includes 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 or delegating these functions to a public entity or other qualified person. It also authorizes the Secretary to make reports, issue subpoenas, require the production of documents, take depositions, and prescribe recordkeeping and reporting requirements with respect to public transportation safety regulation compliance.

Paragraph (1) of subsection (e) would also allow the Secretary to make grants, or enter into agreements for research, development, testing and training of every area of public transportation safety and also to assist a delegated public entity or qualified person in carrying out the safety program activities authorized under this subsection.

Paragraph (2) of subsection (e) clarifies that the Secretary or State may engage in safety activities, including for purposes of accident and incident prevention and investigation.

The Federal share of research and safety activity grants or agreements could be up to 100 percent under paragraph (3) of subsection (e).

Paragraph (4) of subsection (e) clarifies that an officer or employee of the Secretary, or agent designated by the Secretary, may enter and inspect public transportation equipment, facilities, rolling stock, operations, and relevant records at reasonable times and in a reasonable way. When requested, the officer or employee of the Secretary, or agent designated by the Secretary, would be required to display proper credentials. During an inspection, the officer, employee, or designated agent of the Secretary qualifies as an employee of the United States Government for purposes of tort claims procedures under 28 U.S.C. Chapter 171.

Paragraph (1) of subsection (f) provides for State participation. Under this paragraph, a State may, at its choosing, establish and implement a State public transportation safety program that requires, at a minimum, compliance with the Federal laws and the regulations and policies related to public transportation safety. A State program would not be limited to rail fixed guideway public transportation systems.

Paragraph (2) of subsection (f) would authorize the Secretary to make grants to carry out a Public Transportation Safety program established by a State, including to train employees necessary to administer and manage a Public Transportation Safety program, data reporting and analysis, and to enforce Federal and State public transportation safety laws, regulations and orders. Paragraph (3) would make grants contingent on employees responsible for oversight of the performance of safety functions under the State program meeting the safety certification criteria established through regulations prescribed by the Secretary. In order to receive a grant, a State would have to submit its Public Transportation Safety program to the Secretary for review and written approval prior to implementing the program, and also submit any amendment to its program to the Secretary for review and written approval at least 60 days before the amendment becomes effective. The amendment would be deemed approved absent a written response from the Secretary by the end of the 60-day period.

Paragraph (3) of subsection (f) provides Public Transportation Safety program methodologies when a single public transportation authority operates in more than one State. In this case, the affected States must establish and implement a program jointly to ensure uniform safety standards and enforcement procedures that would have to be, at a minimum, in compliance with Federal public transportation safety law, regulations and policies. Alternatively, the States could designate an entity (other than the public transportation authority) to perform safety activities on the States' behalf.

Paragraph (4) of subsection (f) deals with potential conflicts of interest. First, a State would be prohibited from allocating funds awarded in a grant to carry out a State Public Transportation Safety program to a State agency or local entity that operates a public transportation system. Second, a State could not allow a State agency or local entity operating a public transportation system to provide funds to a State agency or another entity designated to have responsibility for the safety functions by the State. Last, a State agency or local entity that operates a public transportation system would be prohibited from having a role in overseeing a State Public Transportation Safety program.

Paragraph (5) of subsection (f) would authorize up to a 100 percent share in Federal assistance. The Secretary through regulations issued under this section would be required to establish a schedule of reimbursable costs that the Secretary must use to assist a State

in defraying its costs of developing, implementing and enforcing a State Public Transportation Safety program. To help defray the costs of developing, implementing and enforcing a State program, a State would submit to the Secretary a voucher that does not exceed the amount identified on the schedule of reimbursable costs for an eligible activity. The Secretary would be required to pay the State an amount not more than the Federal Government's share of costs incurred as of the date of the voucher.

Reimbursement to the State would be in an amount not more than the Federal Government's share of costs incurred as of the date of the voucher.

Paragraph (6) requires the Secretary to ensure that the State is carrying out the State Public Transportation Safety program in compliance with Federal law. If the Secretary finds, after notice and opportunity to comment, that the State program previously approved is not being followed or has become inadequate to ensure enforcement of the regulations or orders, the Secretary must withdraw approval of the program and notify the State. Once the State receives the notification, the State Public Transportation Safety program will no longer be in effect. A State receiving notice of the withdrawal of approval may seek judicial review of the Secretary's decision under chapter 7 of title 5, United States Code (Administrative Procedure Act). Notwithstanding the withdrawal, a State would 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. If a State program approval is withdrawn, the Secretary would apply Federal enforcement and oversight.

Subsection (g) authorizes the Secretary to enforce compliance with the public transportation safety program. Under paragraph (1) of this subsection, the Secretary could establish, impose and compromise a civil penalty for a violation of a public transportation safety regulation prescribed or order issued in accordance with this section or for a violation of the alcohol and controlled substances testing provisions under 49 U.S.C. 5331. The Secretary could request an injunction for such violations. Under paragraph (2), civil penalties collected by the Secretary would be deposited into the General Fund of the United States Treasury. The Secretary would notify the Attorney General when the Secretary received evidence of a possible criminal violation under paragraph (5) of this subsection, which is described below.

Paragraph (3) of subsection (g) would allow the Secretary to request that the Attorney General bring a civil action for injunctive relief, to collect a civil penalty, or to enforce the Secretary's subpoena, request for admissions, request for production of documents or other tangible things, or request for testimony by deposition. Under paragraph (4), the action could be brought in U.S. District Court in any State in which relief is sought. The court, based on evidence, would be required to issue a temporary restraining order or preliminary or permanent injunction. The injunction could order a public transportation agency receiving Federal transit assistance to comply with the Federal Public Transportation Safety program laws and regulations.

Paragraph (5) of subsection (g) would authorize criminal penalties when a person is found to have knowingly violated the section or a public transportation safety regulation or order issued under the section. The person would receive a fine consistent with title 18, United States Code, imprisoned for not more than 5 years, or both; except that the maximum amount of imprisonment is 10 years in any case in which the violation results in death or bodily injury to any person. A person acts knowingly when the person has

actual knowledge of the facts giving rise to the violation; or a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. 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.

Subsection (h) provides the Secretary with authority to issue an order mandating restrictions or prohibitions without regard to the rulemaking and hearing process that may be required under 5 U.S.C. 553 and 554, when through testing, inspection, investigation or research, 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 order must describe the condition or practice, or a combination of conditions and practices, that causes the emergency situation and prescribe standards and procedures for obtaining relief from the order. The Secretary has the discretion to maintain the order in effect for as long as the emergency situation exists. After issuing an order under subsection (h), the Secretary must provide an opportunity for review of the order pursuant to the adjudication provisions under 5 U.S.C. 554. 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 unless the Secretary decides in writing that the emergency situation still exists.

**Paragraph (4) of subsection (h) permits an employee of 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 emergency order, or the employee's authorized representative, to bring a civil action against the Secretary in a U.S. district court to compel the Secretary to issue an order. The action must 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 emergency order can be reviewed only under the Scope of Review provisions set forth in 5 U.S.C. 706.**

Subsection (i) would prohibit the Secretary from prescribing regulations or issuing orders related to employee qualifications, unless the qualifications are specifically related to safety. In addition, this subsection would not prohibit collective bargaining agreements between public transportation agencies and public transportation employees or their representatives, including agreements related to employees' qualifications that are not inconsistent with regulations and orders issued under this section.

Subsection (j) clarifies that the public transportation employee protection provisions of 6 U.S.C. 1142 (administered by the Department of Labor) apply to direct and indirect recipients of Federal transit assistance funds.

Subsection (k) would provide for judicial review under the section. A person adversely affected or aggrieved by the final action of the Secretary involving the imposition of a civil penalty for violating this section, the issuance of a regulation or order under this section, the violation of the alcohol and controlled substances testing provisions of 49 U.S.C. 5331, or the issuance of a regulation or order under 49 U.S.C. 5331, may file a petition for review of the final action in the U.S. 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. The petition must be filed not more than 60 days after the Secretary's action becomes final. The clerk of the court is required

to immediately send a copy of the petition filed to the Secretary. The Secretary must file with the court a record of any proceeding in which the final action was issued as provided in Judiciary and Judicial Procedures for Record on Review and Enforcement of Agency Orders prescribed under 28 U.S.C. 2112. The court may consider an objection to the Secretary’s final action 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.

Subsection (b) of this section provides for a conforming amendment and provides for a repeal of existing law. It would amend the chapter analysis to reflect the new heading of section 5329 of title 49, United States Code as the “Public Transportation Safety Program.” It would also repeal 49 U.S.C. 5330, “State Safety Oversight,” three years after the effective date of final regulations issued by the Secretary under section 5329 of title 49, as amended by the Act.

**Subtitle F--Other Safety Authorities**

**SEC. 3501. PROTECTION OF VOLUNTARILY SUBMITTED INFORMATION.**

This section adopts and broadens the applicability of a long-standing authority in aviation that allows the withholding of voluntarily submitted safety information where a determination is made by the Federal Aviation Administrator that the information aids in fulfilling safety responsibilities, is not inconsistent with safety responsibilities, and its disclosure would inhibit the flow of this type of information. The same authority would be lodged in the Secretary and made applicable across all the safety authorities of the Department. The proposal is restricted as necessary to not interfere with existing authority, such as the Federal Aviation Administration authority at 49 U.S.C. 40123.

**SEC. 3502. INTEGRATED ROADWAY SAFETY PROGRAMS.**

This section would set forth a vision to move toward zero fatalities on all public roads through integration, coordination and collaboration among the Federal Highway Administration, the Federal Motor Carrier Safety Administration, the National Highway Traffic Safety Administration, and the Research and Innovative Technology Administration. Although many strategies, programs, and activities appear in the individual agency proposals, the nation will benefit from cross-modal collaboration and coordination of the agencies’ respective key safety initiatives consistent with the following overarching themes:

- Performance Management and Evaluation: to establish an outcome based approach to develop and achieve national roadway safety performance goals
- Strategic Planning: to encourage development and implementation of coordinated roadway safety plans
- Data Coordination: to coordinate cross-modal safety data collection and analysis for improved decision-making
- Grant Streamlining: to continue efforts to provide flexibility and simplification in guidance and administration of programs

Section 335(a) would establish the vision of zero fatalities.

Section 335(b) would emphasize the need to address the continuing national tragedy of more than 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. This section would also highlight 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 would encourage cooperation of Federal, State, and local governments, carriers, labor, and other interested parties to achieve further roadway safety improvements;

Section 335(c) would identify actions the Secretary should take to achieve essential roadway safety gains and underscore a heightened level of cross-modal collaboration and coordination including:

1. Ensuring a coordinated outcome-based focus to develop and achieve national roadway safety performance goals, consistent with the established national target;
2. Encouraging development and implementation of coordinated roadway safety plans, including the Highway Safety Plan, the Commercial Vehicle Safety Plan, the Intelligent Transportation Systems Plan, and the annual activities of the Highway Safety Improvement Program;
3. Coordinating 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. Developing a process to achieve a single annual roadway safety report; and
5. Continuing 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.

Section 335(d) would describe how the Secretary would provide a summary to the public on the activities undertaken in developing and implementing integrated motor vehicle and highway traffic safety programs and on moving toward the national roadway safety vision of zero deaths.

## **TITLE IV—AMENDMENTS TO THE INTERNAL REVENUE CODE**

### **SEC. 4001. AMENDMENT OF 1986 CODE**

This section would establish that, except as expressly provided, all references to amendments in this title are amendments to the Internal Revenue Code of 1986.

#### **Subtitle A—Trust Fund Reauthorization**

### **SEC. 4101. EXTENSION OF HIGHWAY RELATED TAXES.**

Subsection (a) would extend through September 30, 2019 the imposition of excise taxes currently dedicated to the Highway Trust Fund. The extension would be at the current

rates for taxes on fuel (gasoline, diesel fuel, and a variety of other fuels) and taxes on the use of heavy vehicles, the retail sale of heavy trucks and trailers, and truck tires.

Subsection (b) would extend without change exemptions from the highway taxes that would otherwise expire.

**SEC. 4102. EXTENSION OF PROVISIONS RELATED TO THE SPORT FISH RESTORATION AND BOATING TRUST FUND.**

Subsection (a) would extend the authority to make expenditures from the Sport Fish Restoration and Boating Trust Fund through September 30, 2017. This period is consistent with the years for which the Act authorizes funds for surface transportation programs. Continued expenditures after that date, except to pay prior obligations, would trigger the cessation of transfers to the Trust Fund.

**SEC. 4103. TRANSPORTATION TRUST FUND.**

This section replaces restates section 9503 of the IRC.

Subsection (a) of section 9503 of establishes a new Transportation Trust Fund (TTF) as a successor to the Highway Trust Fund.

Subsection (b) of section 9503 provides for the appropriation of the proceeds of certain taxes and penalties to the TTF. The taxes transferred are the same taxes currently dedicated to the Highway Trust Fund plus the proceeds of a [new tax]. Taxes would be deposited in the TTF for liabilities incurred through FY 2019. The subsection also provides for the continued appropriation of certain IRS penalties related to the fuel tax to the TTF.

Subsection (c) of section 9503 provides for the payment of floor stock refunds from the TTF as provided in section 6412 of the IRC. These refunds would be triggered if the highway taxes were allowed to expire (or in the case of some fuel taxes be reduced to a minimal level).

Subsection (d) of section 9503 would extend transferring the proceeds from taxes on fuel used in motorboats and small engines to the Sport Fish Restoration and Boating Trust Fund through September 30, 2019. It would also continue the requirement for \$1 billion per year of such taxes to be further transferred to the Land and Water Conservation Fund. It would continue the transfer of taxes on fuel initially taxed at the highway rate, but later found to have been used in aviation, to the Airport and Airway Trust Fund.

Subsection (e) of section 9503 would establish the Mass Transit Account of the TTF. The language is substantially the same as the current Mass Transit Account language. The transfer of tax receipts provided in current law would continue with the Mass Transit Account receiving the same portions of the highway fuel taxes. It would also receive a portion of the new tax dedicated to the TTF. The authority to make expenditures would

be extended through September 2017. Continued expenditures after that date, except to pay prior obligations, would trigger the cessation of transfers to the Mass Transit Account.

Subsection (f) of section 9503 would establish the Highway Account of the TTF. The transfer of tax receipts provided in current law would continue with the Highway Account receiving the same portions of the highway fuel taxes plus the proceeds of the nonfuel highway taxes, certain IRS penalties, and motor carrier fines and penalties. It would also receive a portion of the new tax dedicated to the TTF. The authority to make expenditures would be extended through September 2017. Continued expenditures after that date, except to pay prior obligations, would trigger the cessation of transfers to the Highway Account.

Subsection (g) of section 9503 would establish the Passenger Rail Account of the TTF. The Account would also receive a portion of the new tax dedicated to the TTF. The authority to make expenditures would be through September 2017. Continued expenditures after that date, except to pay prior obligations, would trigger the cessation of transfers to the Passenger Rail Account.

Subsection (h) of section 9503 would establish the Infrastructure Bank Account of the TTF. The Account would also receive a portion of the new tax dedicated to the TTF. The authority to make expenditures would be through September 2017. Continued expenditures after that date, except to pay prior obligations, would trigger the cessation of transfers to the Infrastructure Bank Account.

Subsection (i) of section 9503 is identical to subsection (f) in current law.

Subsection (j) of section 9503 is the solvency test commonly referred to as the Byrd Test or Byrd Amendment. The test would be continued as in current law for the Highway and for the Mass Transit Account. The test would compare outstanding authorization (unobligated balances and unpaid obligations) to the cash on hand and the projected receipts to the Account for the next 24 month period (current law has a 48-month outlook). If the test is triggered, apportionments from the triggering Account must be reduced until the test is no longer triggered. Withheld funds would be restored when the Account balance and future receipts can accommodate the restoration without triggering the Test. The subsection continues the existing quarterly calculation and reporting requirements.

Subsection (b) includes conforming amendments.

#### **SEC. 4104. EFFECTIVE DATE.**

Section 4103 would make the amendments made by subtitle A effective upon enactment.

### **Subtitle B-- Other Revenue Provisions**



**SEC. 4202. EXPANSION OF PRIVATE ACTIVITY BOND PROGRAM.**

Section 4202 would broaden the meaning of the phrase “qualified highway or surface freight transfer facilities,” as it relates to the tax-exempt financing of facilities, to include any high-performance passenger rail project which receives Federal assistance under chapters 241, 244, [246] or 261 of title 49, United States Code, as of the date of the enactment of the Transportation Opportunities Act. This section would also remove the national limitation on the amount of tax-exempt financing available for facilities, currently an aggregate amount not to exceed \$15,000,000,000. This section would exempt facility bonds for qualified highway or freight transfer facilities (including high-performance passenger rail projects) from certain limitations on use for land acquisition and the acquisition of existing property. The exemptions would permit the use of more than 25% of bond proceeds for real property acquisitions and would allow the purchase of existing infrastructure not in need of rehabilitation. Lastly, this section calls for the modification of Treasury regulations to exempt qualified projects from certain requirements that prohibit the deferral of payments on interest if the amount deferred exceeds 5% of the proceeds of the bond.

**SEC. 4203. PROMOTION OF AMERICA’S MARINE HIGHWAYS.**

Expanding the use of waterborne transportation, or “America’s Marine Highway,” is an effective way to help mitigate highway and railroad gridlock and reduce emissions, while providing relief from our national dependence on oil. However, the HMT represents a substantial impediment to this approach, since trucking and rail are not subject to this tax. As such, the HMT imposes a double taxation on shippers if they import commercial cargo to a U.S. port and then transship it by water to a second U.S. port under section 4462 of the Internal Revenue Code of 1986. It is proposed that there be an amendment eliminating the HMT on commercial cargo other than bulk cargo that is loaded at 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 loaded at a port in Canada located in the Great Lakes Saint Lawrence Seaway System, and unloaded at a port in the United States located in the Great Lakes Saint Lawrence Seaway System. (The term ‘Great Lakes Saint Lawrence Seaway System’ means the waterways encompassing the five Great Lakes, their connecting channels, the Saint Lawrence Seaway, and the Saint Lawrence River.) This exemption would eliminate an impediment to using the America’s Marine Highway to transport commercial cargo other than bulk cargo.

**TITLE V--RESEARCH AND EDUCATION**

**Subtitle A - Funding**

**SEC. 5101. AUTHORIZATION OF APPROPRIATIONS.**

This section would authorize funds for the highway research and development program, the technology and innovation deployment program, a variety of programs related to training and education, intelligent transportation systems research, the competitive university transportation center consortia, the Bureau of Transportation Statistics, the

multimodal innovative research program, and university transportation center multimodal competitive research grants.

### **Subtitle B – Research, Technology, And Education**

#### **SEC. 5201. RESEARCH, TECHNOLOGY, AND EDUCATION.**

This section would amend Section 501(a) of title 23, U.S.C., by adding the definition of innovation lifecycle. This definition is included to emphasize that the Research, Technology, and Education (RT&E) program covers the full-range of research, development, and technology transfer activities, from agenda setting to the deployment of technologies and innovations.

#### **SEC. 5202. SURFACE TRANSPORTATION RESEARCH, DEVELOPMENT, AND TECHNOLOGY.**

This section would amend section 502(a) of title 23, U.S.C., to update the basic principles governing research and technology investments. Additionally, this section would clarify the Federal role in funding and conducting research and technology transfer activities and shaping the RT&E program. This section would also highlight the proposal's increased emphasis on livability, performance-based management of programs, and national coordination of research and development, and provide additional authority for technical support activities such as marketing, communications, and impact analysis in support of the RT&E program.

This section would amend section 502(b) which provides the Secretary with the general authority to carry out research, development, and technology transfer activities. This section would clarify that the Secretary may carry out research, development, and technology transfer activities with respect to all phases of the "innovation lifecycle," which is defined in Section 5201 to include "identification of needs and research scope, agenda setting, conduct of research, development, deployment, testing of technologies and innovations, and impact evaluation." This section would further amend 502(b) to include a new provision which authorizes the Secretary to transfer funds among States or to the Federal Highway Administration for the purpose of funding research, development, and technology transfer activities of mutual interest on a pooled fund basis. This amendment would provide for the appropriate amount of FHWA involvement in financial transactions with states in regard to pooled fund projects, thereby avoiding unnecessary transactions and paperwork. This section would also give the Secretary the authority to carry out a prize program to award competitive prizes for innovations in the area of surface transportation. The prize program would serve as a useful and economical method for discovering technological breakthroughs, encouraging innovation, and generating public interest in science and technology.

This section would amend section 502(c) to modify the Federal share matching requirement for the entire chapter, unless otherwise determined by the Secretary or expressly provided, to be 80 percent.

## **SEC. 5203. RESEARCH AND TECHNOLOGY DEVELOPMENT AND DEPLOYMENT.**

This section would amend section 503 of title 23, U.S.C. This section addresses the two main phases of the innovation lifecycle: research and development activities and technology and innovation deployment activities.

The modified section 503(a) of title 23 U.S.C., would provide general authorization for research, development, and deployment activities.

The modified Section 503(b) of title 23 U.S.C., would authorize a highway research and development program to carry out activities in the following core areas:

1. Improving Highway Safety
2. Improving Infrastructure Integrity
3. Strengthening Transportation Planning and Environmental Linkages
4. Reducing Congestion, Improving Highway Operations, and Enhancing Freight Productivity
5. Assessing Policy and System Financing Alternatives
6. Exploring Next Generation Solutions, Capitalizing on the Turner-Fairbank Highway Research Center, Aligning National Challenges, and Disseminating Information. Research performed in these areas would include international scans, exploratory advanced research, asset management, and livability.

This program would provide for the research and development of solutions which are needed to meet current challenges and foresee future needs, addressing them proactively and effectively, and collaborating with partners to define the direction needed to achieve desired results. Program contents, research topics, and execution procedures are made with consideration of recommendations from the Transportation Research Board's Research and Technology Coordinating Committee (RTCC) in their Special Report 295: "The Federal Investment in Highway Research 2006-2009" and by other stakeholders and customers.

The modified section 503(c) of title 23 U.S.C., would authorize a technology and innovation deployment program to test, evaluate, and accelerate the delivery and deployment of technologies ready to be implemented or in the last stages of development. This would include technologies and innovations developed under the Highway Research and Development program described above, those developed under the Future Strategic Highway Research Program (FSHRP), those previously eligible for the Highways for Life program, and other sources of technologies and innovations.

The section would provide the necessary authority and resources to conduct a robust program for dissemination of research results to state, local, and tribal governments, and eliminate the often excessive delays in innovation delivery by promoting the rapid adoption of proven, market-ready technologies. The program would ensure that

successful research results, innovative solutions and technologies are delivered, disseminated, and deployed to the field, covering the full innovation lifecycle.

#### **SEC. 5204. TRAINING AND EDUCATION.**

This provision would provide for several modifications to the existing section 504 of title 23, U.S.C., to clarify the intent of the program and to coordinate and provide a focus for transportation workforce development.

Section 504(b) would be amended to allow 504(e) core funds and State Planning and Research (SP&R) funds to be used to support the Local Technical Assistance Centers cost share. This would clarify a well-established, on-going practice authorized by earlier legislation that was obscured by language in SAFETEA-LU.

Section 504(c) would be amended to require funding provided for Eisenhower grants to be used by institutions of higher education in direct support of student expenses associated with their transportation studies. This would clarify existing practice and prevent educational institutions from drawing upon limited funds for institutional overhead that can sometimes exceed 50 %. Such charges significantly reduce funding for students and compromise the effectiveness of the program.

Section 504(e) would be modified to include the following additional examples of eligible uses of workforce development, training, and education funds: meetings of transportation professionals that include education and professional development, activities delivered by the National Highway Institute, and Local Technical Assistance Programs. These additional examples are necessary due to questions concerning eligibility.

Section 504(h) would be added to establish five Regional Surface Workforce Development Centers within existing non-profit institutions of higher learning to provide for a skilled, technically competent transportation workforce. These Regional Centers will 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. This would provide for a coordinated and unified effort in the transportation workforce development area in order to effectively leverage resources and share best practices.

#### **SEC. 5205. STATE PLANNING AND RESEARCH.**

Currently, the State Planning and Research (SP&R) program is authorized under section 505 of title 23 to be a take-down of seven federal-aid highway programs. Since this proposal includes substantial changes to the Federal-aid program, the SP&R section would be modified accordingly to be a take-down of five of the proposed Federal-aid programs (Highway Infrastructure Performance Program, Flexible Investment Program,

Highway Safety Improvement Program, Highway Safety Data Improvement Program, and the Livable Communities Program).

**SEC. 5206. INTERNATIONAL HIGHWAY TRANSPORTATION PROGRAM.**

This section would amend section 506 of title 23 to expand the authority to conduct research in collaboration with international partners in all areas of research, as well as implement recommendations resulting from research conducted in foreign countries. This would allow FHWA to leverage its research with other international organizations that have similar initiatives, and thus gain greater value out of those research investments.

**SEC. 5207. SURFACE TRANSPORTATION ENVIRONMENTAL COOPERATIVE RESEARCH PROGRAM.**

This section would repeal the Surface Transportation Environmental Cooperative Research Program in section 507 of title 23 as a stand-alone program. Research areas previously covered by this program would be included as eligible research, development, and deployment activities under the modified section 503(b) of title 23, U.S.C.

**SEC. 5208. NATIONAL COOPERATIVE FREIGHT RESEARCH PROGRAM**

To support the Research And Innovative Technology Administration (RITA) goal of research coordination and to increase efficient use of resources, this section would require that the National Academy of Sciences coordinate research agendas, research project selections and competitions across all transportation-related cooperative research programs.

**SEC. 5209. UNIVERSITY TRANSPORTATION CENTERS PROGRAM.**

The University Transportation Centers (UTC) Program has been a successful program for the Department, meeting its mission of advancing U.S. technology and expertise in the many disciplines comprising transportation through the mechanisms of education, research and technology transfer at University Transportation Centers. However, it is clear from experience that more effective and coordinated research, technology and education activities in support of Departmental goals could be realized if the program were operated on the well-recognized research principles of full and open competition, and peer review. It has also become clear that collaboration between UTCs with similar research themes enhances the research and technology results and better leverages the intellectual capital created through the Federal investment in the important work of the universities. Additionally, there is a need to enable high-priority cross-modal research to support the Secretary's Strategic Goals and to address system-level transportation issues, which is enabled through consortia efforts. To support the University Transportation Centers Program, the draft bill would direct the Secretary to make grants to eligible nonprofit institutions of higher learning to establish and operate up to twenty university transportation center consortium in the amount of \$4,000,000 in each fiscal year 2012

through 2017. A total of \$80,000,000 per fiscal year 2012 through 2017 would be available to carry out the program. The role of the consortia would be to advance transportation expertise and technology and provide a critical transportation knowledge base outside the Department. Interested institutions would submit an application to the Secretary. Each consortium would include at least two nonprofit institutions of higher learning. Grants would be made through a competitive process on the basis of demonstrated ability, research, technology and education resources, leadership, multi-modal research capability, commitment to transportation workforce development programs, ability to disseminate results and spur implementation, the use of peer review, and the strategic plan of the applicant. The grantee would provide a 100 percent match for allowable costs of the grant activities. The Secretary would coordinate the research, education, and technology transfer activities to insure that workforce needs are met, programmatic targets are realized, and that funds are being effectively invested. Each competitively selected consortium would receive annual funding consisting of \$4,000,000, subject to funds availability and obligation limitations. The program is jointly funded through the Highway Account (\$92,000,000) and the Transit Account (\$8,000,000).

**SEC. 5210. UNIVERSITY TRANSPORTATION MULTIMODAL RESEARCH GRANTS.**

This section establishes a targeted multimodal research grants program for high priority needs and topics, as determined by the Secretary, and is to be funded at \$20,000,000 from the Highway Account. This competitive grant program would allow Departmental offices and administrations access to the nation's top academic researchers and university-based laboratories to address specific cross-modal research priorities in the areas of safety, state of good repair, economic competitiveness, livable communities and environmental sustainability. Additionally, the program would allow all offices and administrations to fund cross-modal research needs, unanticipated issues, and quick-response problems on an annual basis, for which UTCs may compete. Eligible recipients of these awards would be any of the universities participating in the competitively-selected UTC consortia. The initial competition would be conducted following completion of the competitive selection of the UTC consortia.

**SEC. 5211. MULTIMODAL INNOVATIVE RESEARCH PROGRAM.**

The Multimodal Innovative Research Program would fund a set of collaboratively outlined long-term research priorities. University Transportation multimodal research grants would be made by the Secretary to those nonprofit institutions of higher learning that are selected to operate or participate in an university transportation center consortia in an amount to be determined by the Secretary. Of amounts available under the Act, \$20,000,000 would be made available for each fiscal year 2012 through 2017. The grantees would address specific cross-modal research priorities in the areas of transportation safety, state of good repair, economic competitiveness, livable communities, and environmental sustainability. No non-Federal share would be required. The Secretary would coordinate the activities of the grant recipients, through the

Administrator of the Research and Innovative Technology Administration. This would improve program performance and advance research, technology and workforce development priorities through baseline funding for university-based transportation education, consortia research and technology transfer, along with a new competitive cross-modal research component. This competitive grant program would allow Departmental offices and administrations access to the nation's top academic researchers and university-based laboratories to address specific cross-modal research priorities in the areas of safety, state of good repair, economic competitiveness, livable communities and environmental sustainability. This program is to be funded at \$20,000,000 from the Highway Account.

The program would fund a set of collaboratively outlined long-term research priorities. Competitively-solicited proposals for the research will be open to bid by industry, university or state-based stakeholders. The program would 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 (23 USC 508).

The program may address: issues affecting policy; cross-modal concerns such as efficient and intermodal goods and passenger movements; development of advanced vehicle technologies; application of existing technologies. Research products and results from this initiative would provide: transportation system applications of advanced transportation technologies, methodologies, policies and decisions; best practices in planning, operations, design and maintenance of transportation and related systems; and 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. Successful projects would support U.S. DOT strategic goals by applying state-of-the-art advanced technology solutions to multimodal transportation issues. The program would focus on research to result in 'quick turnaround' products – applied vs. basic technology development including methodologies, policy guidelines, planning tools, and prototypes/pilot products for practical application. The Secretary shall expend not more than 1.5 percent of amounts made available to carry out program coordination.

## **SEC. 5212. BUREAU OF TRANSPORTATION STATISTICS.**

This section would transfer (from 49 U.S.C. 111) and enhance the authorities of the Bureau of Transportation Statistics, to be set forth in a new Chapter 65 of title 49, United States Code. Under new section 6502 of title 49, as under current law, the Secretary of Transportation would appoint the Director, whose duties would be serve as the Secretary's senior advisor on data and statistics. The responsibilities of the Director would be set forth under new section 6503 of title 49. The ability to make data-driven decisions concerning safety across all modes of transportation is a top priority of the Department. The proposed changes in Section 6503(a)(2) would clarify that the Bureau of Transportation Statistics (BTS) responsibilities cover multimodal safety data by adding a section granting BTS authority to conduct a Safety Data and Analysis Program. This

clarification will help enable BTS to effectively integrate safety data across modes and to address gaps in existing USDOT safety data programs. Changes in Section 6503(b) would give BTS the authority to create and manage a collaborative safety data program for the Department. SAFETEA-LU mandated a set of statistics be collected that reached well beyond the available capabilities of both the Bureau of Transportation Statistics (BTS) and the Department and simultaneously limited the capability of BTS and the Department to deploy resources available to address the highest-value data sets.

Therefore, the proposed language would delete the list defining the required set of statistics, and replace it with a list of high-priority data collections and analyses in support of planning, decisionmaking, and program assessment and evaluation.

The ability to have standard statistical, modeling, economic assessment and performance assessment guidelines across all modal administrations is essential to allow comparison of relative merits of investment and other decisions across the Department, as well as to have baselines against which system and program performance may be assessed and evaluated. Thus, in Section 6503(8), BTS is given the authority to issue guidelines for the Department addressing statistical and economic modeling and assessment, cost/benefit analyses, and program and system performance assessments and evaluations.

The authority for BTS to maintain a transportation database for all modes is contained in Section 6503(c) which restates existing statutory authority. The authority for a National Transportation Library (NTL) would be set forth under new section 6504 of title 49. The National Transportation Library has grown in importance nationally in meeting the strategic knowledge and information management needs of the transportation community. The revision to this section would designate NTL as a fully functioning national library, equivalent to other Federal national libraries, and enhance usefulness to the Department by designating the NTL as the central repository for Departmental research and technical reports. Of particular importance is that the NTL be able to establish agreements with other transportation libraries and information centers, both public and private, to facilitate national transportation knowledge network (NTKN) development as described in the Transportation Research Board's (TRB) policy study on information management for the 21st century and the follow-up National Cooperative Highway Research Program report on a business plan for implementing the NTKN.

The NTKN is a coordinated group of regional and topical transportation information consortia—with membership from the public, private, non-profit, and academic arenas—partnering to develop standards, tools, training, and services to improve the accessibility, exchange, discoverability, and permanence of high quality transportation information and data that support operations, policy development, and decision-making.

Existing statutory authority establishing the Advisory Council on Transportation Statistics would be set forth under new section 6505 of title 49. The Bureau of Transportation Statistics (BTS) has found that the list of required individual ranges of expertise required for the Advisory Council on Transportation Statistics significantly constrains the already-limited available pool of eligible individuals to serve on the



Council. It has been difficult to complete a diverse slate of candidates to provide to the Secretary for selection, in part due to the detailed list of expertise ranges listed in this section. This proposal would delete the list of expertise requirements.

Existing SAFETEA-LU authorities concerning transportation statistical collection, analysis and dissemination would be set forth under new section 6506 of title 49. The section of SAFETEA-LU continued previously-enacted limits on the authority of the Director of the Bureau of Transportation Statistics (BTS) in requesting or obtaining data, statistics or assistance from other holders of data and statistical information within and outside the Department. This limitation inhibits the ability of BTS to coordinate data across modal administrations in support of providing transportation data to support informed planning and decisionmaking, runs counter to the Administration's Open Government principles. Under this proposal, this section would be struck, and replaced with a statement affirming the authority of the Director of BTS to ensure that all transportation statistical collection, analysis and dissemination is carried out in a coordinated manner, with a requirement for other agencies to furnish information, data and reports to BTS as required to address high-priority Departmental goals.

The subject of furnishing of information, data or reports by Federal Agencies would be set forth under new section 6507 of title 49. Bureau of Transportation Statistics analyses have been constrained in effectiveness by the unwillingness of other Federal statistical and data-owning agencies to share transportation and transportation-related information. To grant greater data access, in support of the President's Open Gov principles and the development of statistics and analyses to support transportation decision making, the draft bill would require an assumption of data and information sharing across Federal agencies, guaranteeing the use of all appropriate data sharing safeguards.

The subject of "Prohibition on Certain Disclosures" would be set forth under new section 6508 of title 49. This provision maintains protections against unauthorized data disclosures.

The subject of "Data Access" would be set forth under new section 6509 of title 49. BTS analyses have been constrained in effectiveness by the unwillingness of other Federal statistical and data-owning agencies to share transportation and transportation-related information. In support of the President's Open Gov principles and the development of statistics and analyses to support transportation decisionmaking, this proposal would require an assumption of data and information sharing across Federal agencies, guaranteeing the use of all appropriate data sharing safeguards. Title 13 limitations would be retained.

Existing authorities concerning proceeds of data product sales would be set forth under new section 6510 of title 49. This proposal continues existing statutory authority.

The subject of "Information Collection" would be set forth under new section 6511 of title 49. As a matter of policy, independent Federal statistical agencies, such as the Bureau of Transportation Statistics (BTS), must be free to work directly with the Office of Management and Budget (OMB) concerning approval of statistical and other

informational collections approvals. This is in support of OMB's "Guidance on Agency Survey and Statistical Information Collections," OMB's 1997 Confidentiality Order (62 FR 35044 and 72 FR 33362) and of effective implementation of 44 USC 3501, including the authorities stated in the "Confidential Information Protection and Statistical Efficiency Act of 2002" (44 USC 3501 note). Therefore we are requesting language be added that affirms BTS' status as an independent Federal statistical agency, with the authority to work directly with OMB on matters pertaining to implementation of 44 USC 3501.

The subject of a "National Transportation Atlas Database" would be set forth under new section 6512 of title 49. The provision would direct the Director to develop and maintain a national transportation atlas database comprised of geospatial databases that is able to support intermodal network analysis. This proposal continues existing statutory authority.

The subject of a "Limitation on statutory construction" would be set forth under new section 6513 of title 49. It establishes that nothing in the chapter could be construed to authorize the Board to require any other department or agency to collect data or to reduce the authority of any other officer of the Department to collect and disseminate data. This proposal continues existing statutory authority.

The subject of "Research and development grants" would be set forth under new section 6514 of title 49. Research and development grants to public and nonprofit entities would be authorized to encourage research and development of new data collection methods, demonstration programs, development of electronic clearinghouses, and improvements in methods of sharing geographic data. The Director would be required to submit to the President and Congress an annual report on methods used to obtain statistics and the quality of the statistics collected as well as recommendations for improving transportation statistical information. This proposal continues existing statutory authority.

The subject of the "Transportation Statistics Annual Report" would be set forth under new section 6515 of title 49. This provision requires the submission of an annual report by the Director to the President and Congress. This proposal continues existing statutory authority.

Existing authorities on mandatory response authority for freight data collection would be set forth under new section 6516 of title 49. Bureau of Transportation Statistics (BTS) surveys have been constrained in effectiveness by limited response to various survey instruments, limiting the data available for analysis to support planning and decisionmaking. This proposal would revise this section to: strengthen mandatory response authority for freight data collection; broaden mandatory response authority for freight data collection to include households; and provide mandatory response authority for passenger travel surveys. As stated in the current statutory language, fines of not more than \$500 are authorized, except in the case of an individual who willfully gives a false answer to a question, the fine may be up to \$10,000.

**SEC. 5213. 5.9 GHz VEHICLE-TO-VEHICLE AND VEHICLE-TO-INFRASTRUCTURE COMMUNICATIONS SYSTEMS DEPLOYMENT.**

One of the Administration’s priorities for authorization is the multimodal deployment of Intelligent Transportation Systems (ITS) technologies and research results flowing from the ITS Research Program. A key enabling technology for ITS vehicle safety applications is Dedicated Short Range Communications (DSRC), for which the Federal Communications Commission has allocated spectrum, and for which an implementation path needs to be defined.

This section requires the Secretary to issue a report defining a DSRC implementation within three years of enactment. The report will include guidance concerning the relationship of the proposed DSRC deployment to the ITS National Architecture and Standards.

**SEC. 5214. ADMINISTRATIVE AUTHORITY.**

**Promotional Authority:**Other agencies have shown that one of the elements of a successful research and technology collaboration and outreach program, including successful recruiting, technology transfer and commercialization programs, is the ability to participate in promotional activities. One authority required by the RITA Administrator to conduct these efforts is specific authority to purchase reasonable promotional items.

**Program Oversight and Evaluation:**Much of RITA’s research and technology funding is extramural, going out to external parties on various types of agreements. Historically, however, limited civil service staffing has been made available to RITA to conduct the vital and necessary functions of program and project coordination, grants and contracts administration, program and project oversight and evaluation, and promotion of research results, including technology transfer and commercialization. Following the successful example of the University Transportation Centers (UTC) Program, the proposal would grant the RITA Administrator authority to expend not more than 1.5 percent of amounts made available through this Act and other authorizations to carry out these program coordination and evaluation functions.

**Collaborative Research and Development:**The need to develop cross-modal and multi-modal agreements to advance research and technology transfer throughout the transportation enterprise requires the Administrator to have the full range of procurement and collaboration mechanisms. Experience throughout Federal science and technology agencies shows that agreements of all sorts are necessary to partner effectively with the multiple industry, university, non-profit, association, other Federal laboratory and agency, and state and local agencies to bring the best possible human and technical resources to addressing difficult research challenges. Likewise, multiple partnerships allow the most effective platforms for successful technology transfer and commercialization, and for effective workforce development and training programs.

The proposal would grant authority for the Administrator to enter into various forms of agreements with multiple stakeholders.

**SEC. 5215. PRIZE AUTHORITY.**

The Administration's Open Government initiative has proven the value of prizes and competitions to address specific and difficult policy and technical problems, by allowing open competition and unfettered collaboration across the innovation community and the general public. However, the Department does not have specific authority to conduct competitions and award prizes, making difficult the use of this tool to promote innovation and technology deployment. This authority would be granted to the Department as a whole to provide this valuable tool to innovation in the transportation area.

**SEC. 5216. TRANSPORTATION RESEARCH AND DEVELOPMENT STRATEGIC PLANNING**

This section amends the requirements of Transportation Research and Development Strategic Plan to:

- Place "safety" as the top priority;
- Remove "security," as security research is no longer a DOT responsibility; and
- Include sections for livability and sustainability as DOT strategic goals.

**SEC. 5217. USE OF FUNDS FOR ITS ACTIVITIES.**

The hard cap on use of Intelligent Transportation Systems (ITS) Research funds for outreach severely limits the work of the ITS Research Program in assisting ITS technology and research results application and deployment. This section will allow the ITS Research Program be enabled to spend funding as needed to conduct reasonable and necessary levels of outreach to meet program goals as defined in the Act. This section applies to ITS Program funding only, and encompasses no other funding authorized by this Act.

One of the Administration's priorities for authorization is the multimodal deployment of Intelligent Transportation Systems (ITS) technologies and research results flowing from the ITS Research Program, to enhance transportation investments, and return on those investments. This section authorizes the Secretary to develop and implement incentives to accelerate deployment of ITS technologies and services within all funding programs authorized by this Act for ITS.

In order to make incentives available, the Secretary shall develop a comprehensive plan detailing how ITS deployment incentives may be applied through the existing deployment activities of the surface transportation modal administrations.

**TITLE VI-- MISCELLANEOUS**

**SEC. 6001. AMENDMENTS TO THE MARINE HIGHWAYS INITIATIVE.**

This section would amend the existing statute to reflect broader expected marine highway benefits beyond surface congestion reduction by including reduction of greenhouse gases, and other benefits.

These changes will allow the agency to consider proposals from non-contiguous states, as well as from Hawaii. Also, the changes would reflect the intent of the original legislation.

**SEC. 6002. GOVERNMENT-WIDE REGULATIONS FOR PROGRAMS ESTABLISHED UNDER 5 U.S.C. 7905 FOR TRANSIT PASSES AND TRANSIT BENEFITS.**

**Background:** DOT's Transit Benefit Program was established in 1991 when the Federal Transit Administration (FTA) began pilot testing a program, which provided up to \$21 per month in transit fare media to its employees. In 1993, as part of a national effort to improve air quality and to reduce traffic congestion, the Federal Employees Clean Air Act (FECAA, Pub. L. 103-172) was signed into law permanently authorizing Federal participation in the Transit Benefit Program. The FECAA provides for the establishment of programs that encourage Federal employees to commute by means other than single-occupancy motor vehicles. On April 21, 2000, President Clinton signed Executive Order 13150, Federal Workforce Transportation Fringe Benefit, which sought to reduce Federal employees' contribution to traffic congestion and air pollution. The Executive Order called upon DOT, the Environmental Protection Agency, and the Department of Energy to implement a nationwide program, specifically a "transit pass" transportation fringe benefit program to ascertain, among other things, its effectiveness in reducing single occupancy vehicle travel and local area traffic congestion. In a 2003 final report to the Office of Management and Budget, DOT reported that the interagency group found the transit benefit to be successful in reducing Federal employees' contribution to traffic congestion and air pollution, and expanding their commuting alternatives. The report estimated that the Transit Benefit Program resulted in over 15,000 fewer single occupancy vehicles on the roads, saving 8 million gallons of gasoline, and eliminated emissions of almost 40,000 tons of carbon dioxide from the air, as well as reduced other tailpipe emissions. In 2005, Section 3049(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) codified Executive Order 13150 and required Federal agencies to implement Transit Benefit Programs for all eligible employees in the National Capital Region. The DOT program is currently undergoing a transition to providing fare media benefits electronically via a debit card system, which will improve internal controls and also improve the accounting and tracking of Federal funds.

**Proposal to Establish DOT as the Lead Agency for Issuing Regulations for Transit Pass and Transit Benefits and Clarifying Tax Exclusion for Electronic Fare Media:**

Designating the Department of Transportation (DOT) as the lead executive agency for issuing regulations on transit passes and transit benefits addresses an important regulatory gap as well as mitigates a potential internal controls issue. The intent of the proposed legislation is to enable other agencies, with Presidential

designation, to continue to issue regulations regarding other portions of 5 U.S.C. 7905, with the exception of transit passes and other transit benefits. Currently, DOT is managing the provision of transit pass benefits for many different Federal agencies. DOT is performing these services in the absence of any official designation as a primary managing agency or provider for Federal transportation fringe benefit programs. This not only creates confusion when coordinating with OMB and other agencies as to the Federal agency with the policy leadership role for these programs, but it creates difficulties when communicating with Congress and the Inspector General on internal controls issues. As discussed in the U.S. Government Accountability Office (GAO) Report from April 2007 (GAO-07-724T) on the transit benefit program, GAO identified weaknesses in the design of program controls for transit benefits programs at numerous Federal agencies. In examining such weaknesses, the GAO Report noted that “[e]ach of these agencies has its own process for management and oversight; there are no government policies or standards establishing internal controls for the Federal transit benefits program.” The GAO Report states that such weaknesses in program controls at each agency may contribute to fraud and abuse. DOT has taken many of the corrective actions identified in the GAO Report, but requesting that DOT be formally designated as the Government-wide managing agency for the Federal transportation fringe benefit program and other programs providing transportation fringe benefits to Federal employees will enable DOT to more effectively lead the effort against fraud and abuse involving transit benefit subsidies. Additionally, in order to accommodate the transition of the program to electronic fare media, including debit cards (as discussed above), this legislation clarifies that employee commuting benefits provided in an electronic media approved by the Secretary will be excluded from employee income so that employees will not be taxed on such benefits as fringe benefits added to their income. The taxation of these benefits, which are only available to an employee if eligibility verification requirements are met, would undermine the important policy objectives served by the transition from vouchers to electronic payment methods.

**Proposal to Amend the DOT Working Capital Fund Statute (49 U.S.C. 327):** The working Capital Fund at DOT currently provides administrative services to many other Federal agencies in order to provide those agencies with fare media and services pertaining to their transit pass transportation fringe benefit programs through its TRANServe office under the general authority of the Economy Act (31 U.S.C. 1535). The amendment would provide specific authority to the WCF to provide such services. This would help to eliminate confusion over the accounting practices required by the Economy Act in contrast to those required by the WCF.

**SEC. 6003. SEC. 6003. APPLICATION OF SEP-15 PROGRAM  
DEPARTMENT-WIDE.**

The Federal Highway Administration has applied its Research, Technology, and Education authority under chapter 5 of title 23, United States Code (Highways), to implement the Special Experimental Project 15 (SEP-15), to encourage tests and experimentation in the entire development process for transportation projects, with emphasis on increased project management flexibility, more innovation, improved

efficiency, timely project implementation, and new revenue streams. Under this program, identified provisions of Federal highway law and regulation may be waived, while non-highway authorities, such as the National Environmental Policy Act, may not.

[successes]

The statutory grounding for the SEP-15 program is limited to highway programs authorized by title 23. It would be beneficial to place the same type of experimental authority in the Secretary of Transportation, so that experiments could be conducted across the range of infrastructure grant programs, including transit programs and airport improvements. This would be especially valuable in shaping innovative intermodalism projects.

It is noted that the Secretary already exercises comparable "exemption authority" in the case of certain air-carrier and foreign-air-carrier statutory requirements (see 49 U.S.C. 40109(c)) and has done so without controversy since 1985. This demonstrates that properly shaped exemption authority can benefit transportation programs without undercutting national transportation policy and requirements.

**SEC. 6004. FISCAL YEAR 2012 AVIATION INFRASTRUCTURE FUNDING.**

**\*\*[NEED ANALYSIS]**

**SEC. 6005. NATIONAL INFRASTRUCTURE INVESTMENTS.**

This section proposes a National Infrastructure Investments program leverage federal dollars in Fiscal Year 2012 and focus on investments of national and regional significance. Under this authority, funds would be provided to State and local governments and transit agencies for capital investments in the Nation's surface transportation infrastructure, including roads and highways, public transportation facilities, freight and passenger rail, and port infrastructure. The Secretary would be authorized to award these funds on a competitive basis, and select merit-based projects that make a significant impact on the Nation, a metropolitan area, or a region. Up to \$200 million would be available for planning purposes.

The new authority would continue the successful criteria of the "TIGER Grants" awarded in 2009 and 2010, to ensure an equitable geographic distribution of funds and an appropriate balance in addressing the needs of urban and rural communities. Not less than \$300 million would be available for rural areas. The Secretary would give priority to projects that require a contribution of Federal funds in order to complete an overall financing package, and set minimum and maximum grant sizes and a limitation on the amount of funding that may be awarded to projects in any individual State. Not more than 25 percent of the funds made available would be awarded to a single state.

The projects funded would be judged on their ability to provide important transportation improvements. Criteria are aimed at bringing existing infrastructure to a state of good

repair and increasing economic competitiveness, creating and supporting livable communities, ensuring the sustainability of our transportation system and the environment, and improving safety.

Investment decisions would be based on clear analytical measures of performance, competing projects against each other to determine which will produce the greatest benefit. The process would allow DOT to objectively and transparently rank projects based on a single composite measure and then select a suite of projects for funding that demonstrates competitive and positive return on investment from a broad public benefits standpoint for each funded project.

The authority would provide up to \$ 250 million of the funds be available to provide TIFIA credit assistance to eligible projects. Supplementing grant funds with TIFIA credit assistance allows the Department to maximize the value of its investments and tailor Federal assistance to the particular needs of each project that is selected for funding.

Increasing the economic competitiveness of the Nation is a compelling objective for transportation and the proposed authority, with its unique ability to invest in the full range of transportation infrastructure options - highway, transit, rail, and port facilities – would support solutions that no other program at the Department can offer.