

# **THE SAFE, ACCOUNTABLE, FLEXIBLE, AND EFFICIENT TRANSPORTATION EQUITY ACT OF 2003**

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.** This section provides that the bill may be cited as the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA), and provides a table of contents.

**SEC. 2. DEFINITIONS.** This section defines terms that are used in the bill.

### **TITLE I – FEDERAL-AID HIGHWAYS**

#### **SUBTITLE A -- FUNDING**

##### **SEC. 1101. AUTHORIZATION OF APPROPRIATIONS.**

This section authorizes sums out of the Highway Trust Fund (other than Mass Transit Account) for, the Interstate maintenance program, the National Highway System, the bridge program, the surface transportation program, the congestion mitigation and air quality improvement program, and other programs. New programs include a core apportioned program, the Highway Safety Improvement Program, and an Infrastructure Preservation and Maintenance Program that would promote projects with immediate benefits for highway system condition and operation.

##### **SEC. 1102. OBLIGATION CEILING.**

Section 1102 establishes limitations on obligations for Federal-aid highway and highway safety construction programs authorized by this Act, and provides the way in which these obligation limitations would be administered. This section is similar to section 1102 of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21).

Subsection (a) sets forth the obligation limitation amounts for fiscal years 2004 through 2009 for Federal-aid highway and highway safety construction programs.

Subsection (b) provides exceptions from the obligation limitations established in subsection (a). Paragraphs (1) through (8) are repeated from TEA-21. Paragraph (9) is added to address 3-year obligation authority (OA) made available under TEA-21 for research programs and “no-year” OA made available for certain programs and projects under TEA-21 or in subsequent appropriations acts.

The 3-year OA for research programs under section 1102(e) of TEA-21 that was made available for FY 2002 would remain available through 2004, and the OA for FY 2003 would remain available through FY 2005.

Section 1102(g) of TEA-21 made the OA for high priority projects, the Appalachian development highway system, funding for the Woodrow Wilson Memorial Bridge Authority

Act, and \$2 billion of minimum guarantee funds available until used. Under TEA-21, the OA for these specified funds remains available in addition to any obligation limitation imposed on obligations for Federal-aid highway and highway safety construction programs in future fiscal years. The appropriations bills for fiscal years 1999 through 2003 also provided no-year OA for these specified programs and certain other programs and projects.

Subsection (b)(9) would exempt the “no-year” obligation authority and the 3-year research obligation authority made available in prior years from the annual obligation ceiling for Federal-aid highways and highway safety construction programs. The purpose of this addition is to clarify that this obligation authority continues past the term of the authorization bill and is not subject to any obligation limitation set for a succeeding fiscal year in the reauthorization bill.

Subsection (c) differs from the TEA-21 provision. Under TEA-21, in years when the total obligation limitation is less than the total new authorizations, the authorizations for these allocated programs are reduced to the amount of limitation they receive. The authorizations that are removed or "lopped off" from these programs are then distributed to the States as additional funding that can be used on STP-eligible projects. This section would repeal the "lop off" provisions. In this Act, the repeal of the "lop off" provisions would not have a significant impact because the obligation limitation set in this section would exceed the contract authority subject to the limitation authorized in this Act.

There are two additional changes to the distribution of obligation authority provision. First, the proposed infrastructure performance and maintenance program would be added to the programs, listed in paragraph (1), that receive 100 percent obligation authority. Second, high priority projects and the Woodrow Wilson Memorial Bridge Authority Act funds would be deleted from the provision in paragraph (2) granting “no-year” obligation authority because this bill does not provide an authorization for either of these programs.

Subsections (d), (e), and (f) are substantively unchanged from the TEA-21 provisions.

Subsection (g) dealing with the obligation authority adjustment for revenue aligned budget authority (RABA) would be modified by substituting the term "adjustment" for the term "increase" each place that it appears.

Subsection (h) sets forth the obligation limitation for administrative expenses for fiscal years 2004 through 2009.

The Disadvantaged Business Enterprise program is addressed in section 1811 of the bill.

### **SEC. 1103. APPORTIONMENTS.**

Subsection (a) of this section would amend 23 U.S.C. 104(a) to change the Federal-aid highway program administrative takedown percentage from 1-1/16 to an amount not to exceed 1.4 percent of the specified programs.

Subsection (b) would: (1) clarify from which title 23 programs, including the minimum guarantee program, metropolitan planning funds are to be set aside; (2) clarify that one percent of funding, not a lesser percentage, shall be deducted for metropolitan planning from the specified programs; (3) move a provision, which allows a metropolitan planning organization to make unused planning funds available to the State to be used for statewide planning, from section 134(n) of title 23 to section 104(f)(3); and (4) move a provision concerning matching funds from section 104(f)(3) to new paragraph (6) for clarity.

Subsection (c) would repeal the definition of "State" under section 1103(n) of TEA-21. In TEA-21, "State" was defined to include only the 50 States and the District of Columbia for purposes of apportioning funds under sections 104, 105, 144, and 206 of title 23. This definition excluded Puerto Rico. By repealing this section, the definition of "State" for purposes of apportioning funds under sections 104, 105, 144, and 206 of title 23, would be the definition under section 101(a)(32) of title 23, which includes Puerto Rico. Thus, Puerto Rico would be included in formula apportionments and minimum guarantee.

Subsection (d) would provide funding from the Surface Transportation Program for the preferred option determined by a study for highway access near the Executive Office complex.

Subsection (e) would extend the funding from the National Highway System (NHS) program for the Alaska Highway. The funding would be extended from 2004 through 2009.

#### **SEC. 1104. MINIMUM GUARANTEE.**

This section would continue the TEA-21 provision (23 U.S.C. 105) authorizing additional funds (such sums as necessary) for allocation to ensure that a State's percentage of total apportionments is at least 90.5 percent of its percentage contribution to the Highway Trust Fund.

Subsection (a) provides that only those States listed in subsection (b) would receive a minimum guarantee apportionment through the minimum guarantee formula. It would also provide that one million dollars is the minimum amount any State listed in subsection (b) would receive through the minimum guarantee formula. The new infrastructure performance and maintenance program, described below, would be added to the list of programs included in the minimum guarantee calculation.

Current law excludes Puerto Rico from the determination of the guaranteed percentage shares and the minimum guarantee formula computation. A special rule would be added to provide Puerto Rico \$1 million per year of minimum guarantee funding. This treatment is consistent with the change proposed in section 1103(b) of this bill to use the title 23 definition of State, which includes Puerto Rico, in order to include Puerto Rico in formula apportionments.

One-half of the total amount to be apportioned under this section would be apportioned to the States for Interstate Maintenance, NHS, STP, bridge, CMAQ, and Highway Safety Improvement in amounts proportional to each program's share of the total apportionments to each State for all such programs for each fiscal year. The funds would be added to each State's section 104

formula apportionment for such program. The remaining 50 % of minimum guarantee funds would be allocated to the States for the flexible uses provided under section 133, the STP.

New subsection (f)(4) would provide that a State's percentage return shall be obtained through a calculation that excludes funds apportioned to Puerto Rico.

#### **SEC. 1105. REVENUE ALIGNED BUDGET AUTHORITY (RABA).**

This provision would amend section 110 of title 23, U.S.C., to extend the RABA provision through FY 2009. It would amend section 110 to provide that if the RABA adjustment in a fiscal year is negative, the amount of contract authority apportioned to the States for that year shall be reduced by an amount equal to the negative RABA. Under TEA-21, negative adjustments were delayed until the succeeding fiscal year.

This provision would add the proposed highway safety improvement program to the list of programs for which States would receive funds made available for apportioned programs under RABA.

This provision would also make technical corrections to section 110, including striking subsections that have already been carried out.

### **SUBTITLE B – NEW PROGRAMS**

#### **SEC. 1201. INFRASTRUCTURE PERFORMANCE AND MAINTENANCE PROGRAM.**

This section would establish a new Infrastructure Performance and Maintenance Program (IPAM) within the Federal-aid Highway Program. The program would provide States with \$1 billion for each of fiscal years 2004-2009, and would focus on projects that preserve existing highway facilities or alleviate traffic chokepoints. The program seeks to promote projects that result in immediate benefits for highway system condition and performance while avoiding long-term commitments of funds.

Only highway projects for system preservation, preventative maintenance, or operational improvement that are already eligible under the Interstate Maintenance Program, the National Highway System Program, and the Surface Transportation Program would be eligible for funding under this new program. Operational improvements would only be at points of recurring highway congestion (i.e., bottlenecks) and would include intelligent transportation system initiatives. Projects could also include limited physical alteration of existing facilities such as interchange ramp improvements, short sections (i.e., no more than about one mile) of added through lanes, and intersection modernization.

The program is structured to promote the types of projects that can be undertaken and completed within a short timeframe. Funds under this program could not be transferred to another Federal agency or any other program, notwithstanding sections 104 and 126 of title 23.

Funds would be apportioned to the States (including the District of Columbia and Puerto Rico) using the same formula that is currently used to apportion STP funds. Although funds apportioned under this program would be available for obligation as though they were apportioned under chapter 1 of title 23 (contract authority), they would not be subject to any deduction or set-aside requirement that might otherwise apply under such chapter. The Federal share payable would be determined in accordance with the provisions of section 120 of title 23, based on the type of project funded.

The funds would be subject to the overall obligation ceiling for the Federal-aid highway program, but States would receive obligation authority for funds under this program in an amount equal to the amount of contract authority apportioned.

The funds would have to be obligated by a State within six months of apportionment or the Secretary would withdraw the funds and accompanying obligation authority and redistribute the funds and authority to States that have fully obligated their initial apportionment under this program and demonstrated that they are able to obligate additional funds before the end of the fiscal year. All funds apportioned in a fiscal year would have to be obligated before the end of that fiscal year or they would lapse.

#### **SEC. 1202. CLARIFY FEDERAL-AID ELIGIBILITY FOR CERTAIN SECURITY PROJECTS.**

This provision would amend the definitions of “construction” and “maintenance” in 23 U.S.C. 101 to include transportation-related homeland security projects. These security projects would include those for detecting potential attacks, preventing actual attacks, protecting the highway infrastructure against attacks and resulting damages, ensuring emergency preparedness, and developing the ability for quick response and recovery. The projects would be subject to countermeasures to reduce the identified security vulnerabilities and would be identified through the regular transportation planning process (as required by a related amendment to 23 U.S.C. 120).

#### **SEC. 1203. INTERSTATE HIGHWAY SYSTEM.**

This section would change the declaration of policy in section 101 of title 23, United States Code, to update the section to reflect the change in emphasis on the Interstate System from initial construction to reconstruction and preservation. The change would also delineate the critical importance of the Interstate System to the current and future economic vitality, national security, and general welfare of the Nation.

#### **SEC. 1204. MILITARY VEHICLE ACCESS (OVERSIZE AND OVERWEIGHT VEHICLES; RELIEF FROM TOLLS).**

This section would authorize the Secretary of Transportation, in consultation with the Secretary of Defense and the Secretary of Homeland Security, to issue orders and procedures to expedite the highway movement of marked military vehicles and convoys. These procedures may include the establishment of temporary expanded vehicle size, weight, and oversize/overweight permit

requirements, and provisions for exempting such vehicles from the payment of tolls and expedited movement through toll facilities. This section would preempt inconsistent State and local laws and regulations, and would exempt such procedures and orders from compliance with the requirements of prior notice and opportunity to comment under the Administrative Procedure Act (5 U.S.C. § 553).

## **SEC. 1205. FREIGHT TRANSPORTATION GATEWAYS; FREIGHT INTERMODAL CONNECTIONS.**

In the interests of international freight security, quality of life in and around key freight gateways, and in recognition of the expected increase in congestion in these same areas, the Nation's surface transportation system and its intermodal connectors must be prepared to accommodate expected traffic increases in an efficient and safe manner. Federal, State, local, and private sector partnerships are key to achieving success in maintaining and advancing the quality of the Nation's intermodal freight transportation network to support productivity, national security, and safety, while balancing environmental impacts.

The purpose of the Freight Gateways Program, through a combination of eligibility changes, innovative finance emphasis, and targeted investment, is to enable systemic, intermodal improvements for freight movement into and through major trade transport gateways and hubs, and improvements to the transportation infrastructure that connects these gateways to the Nation's mainline transportation networks. The definition of "gateway" is broad, allowing for wide-ranging discussion between States and freight stakeholders to determine the scope and scale of initiatives needed to enhance freight movement to, from, and through a gateway.

In new section 325 of title 23, States would be directed to ensure that intermodal freight transportation needs are integrated into the project development process, including transportation planning. States and localities would be encouraged to adopt innovative financing strategies for freight gateway improvements, including new user fees and private sector investment. In addition, States would be directed to create a freight transportation coordinator position to coordinate public and private collaboration in regional solutions to freight transportation and freight gateway problems.

This section also would amend section 133 of title 23, to make Intermodal Freight Transportation Projects eligible for funding under the Surface Transportation Program. This proposal would allow funding of publicly owned intermodal transfer facilities or intermodal access to such facilities and would be limited to transportation infrastructure modifications necessary to facilitate intermodal access to, from, and within ports. Intermodal ITS projects would also be encouraged.

This section also would amend section 103(b) of title 23, to set aside dedicated funding for intermodal freight and Strategic Highway Network (STRAHNET) connectors from funds apportioned for the NHS. The amount of such funding would be determined by the proportion of freight/STRAHNET connector miles in a State compared to the total NHS mileage in the State, or 2% of funds apportioned for the NHS in a fiscal year, whichever is greater. A State may be

exempted from the required set-aside by showing that connectors in the State are in good condition and providing an adequate level of service.

The intent of these provisions is to direct use of Federal-aid dollars: (1) for intermodal freight movement to relieve congestion related to existing (and future) high levels of truck traffic at major gateways and hubs; and (2) to facilitate the movement of military vehicles and equipment.

A 90% Federal share would be authorized for projects on intermodal and STRAHNET connectors. Most connectors are in local ownership, and the match is often a problem for local jurisdictions.

Section 1304 of this bill would amend section 181 of title 23 to include "a public or private freight rail facility" in the definition of "project" for purposes of the Transportation Infrastructure Finance and Innovation Act (TIFIA).

All of these initiatives are designed to provide program incentives to States and local officials to expand the ability of existing programs to address emerging gateway needs and to encourage the voluntary adoption of new funding and financing strategies to leverage additional State/local/private investment in these critical areas.

In regard to the Department of Defense, changes throughout this section would support mobilization of military vehicles and improvements to STRAHNET connectors in the interests of national security.

This section, in combination with proposed amendments to TIFIA under section 1304 of the bill, would broaden the flexibility of States and metropolitan planning organizations to support Freight Gateway projects and other major freight transportation improvements and to implement innovative public-private solutions to complex freight challenges important to our economy, economic competitiveness, and security.

#### **SEC. 1206. AUTHORITY FOR ALTERNATIVE TIMESAVING PROCEDURES FOR CRITICAL TRANSPORTATION SECURITY PROJECTS.**

Critical, time-sensitive highway and public transportation security projects are projects that are necessary to address an imminent threat to a transportation facility or to repair damage to a transportation facility caused by a terrorist attack against the United States. Examples of such projects include: structural hardening, relocation of roads from underneath critical structures, property acquisition to create secure zones, or repairing or replacing a bridge or tunnel that has been damaged or destroyed by a terrorist attack. The types of projects that are included in this definition will be more specifically defined in regulations issued by the Secretary. Any critical, time-sensitive security project shall be identified by the Secretary in consultation with the owner-operator of the transportation facility. Threats to transportation facilities will be assessed in consultation with the Department of Homeland Security.

This section would direct the Secretary of Transportation to develop and implement expedited procedures to advance critical, time-sensitive highway and mass (public) transit security projects,

including expedited procedures for planning, environmental review, public involvement, acquisition of right-of-way, and contracting. Environmental reviews include any environmental reviews, analysis, opinion, or issuance of an environmental permit, license, or approval required pursuant to Federal law. The procedures will be developed with the concurrence of other affected Federal agencies whose authorities will be affected by the procedures and in consultation with any other Federal agencies that the Secretary determines have an interest in the procedures. For the limited purpose of expediting interim measures needed to address the threat of imminent harm to a transportation facility, the Secretary may provide that these procedures are exclusive of any other statute relating to planning, environmental reviews, public involvement, acquisition of right-of-way, and contracting, and therefore they may be inconsistent with such other statutes, or, in effect, “waived” for purposes of these procedures. However, the Secretary may exercise this authority only if he or she determines that such measures are necessary for the protection of the public and receives the concurrence of any other Federal agency responsible for administering the relevant parts of such statutes.

Recognizing the importance of these projects, the other agencies will work closely with the Secretary of Transportation in developing expedited procedures for critical, time-sensitive security projects and will assist in drafting regulatory provisions to be issued by the Secretary of Transportation to implement any procedures upon which they have concurred. The procedures to be developed under this section shall be established by rules to be issued by the Secretary no later than one year after the enactment of this law. We anticipate that other agencies would make any conforming changes expeditiously in their regulations, as appropriate.

## **SUBTITLE C -- FINANCE**

### **SEC. 1301. FEDERAL SHARE.**

Section 120 of title 23 would be amended to: (1) simplify the calculation of the sliding scale applicable to all projects; (2) remove the requirement, currently in (b)(2), for a State electing the increased Federal share to enter into an agreement; and (3) require a revision to the rates as needed. In addition, the term “public domain lands” would be replaced with “public lands” because of the difficulty in obtaining the information on public domain lands.

The provisions that allow for a lower Federal share in subsections (a)(2) and (b)(2) would be removed because the authority for a lower Federal share is contained in section 120(i).

### **SEC. 1302. TRANSFER OF HIGHWAY AND TRANSIT FUNDS.**

This provision would clarify that title 23 funds may be transferred by the Secretary to the Federal Transit Administration for other than a transit capital project, provided such project is eligible for assistance under title 23. This amendment would also permit funds derived from the Highway Account of the Highway Trust Fund to be transferred by the Secretary to another Federal agency if that agency has expertise with regard to the type of project to be funded and the Secretary determines that the agency should administer the funding. Such transfers would accelerate project delivery for those unique kinds of projects.



The Secretary could, at the request of a State, transfer funds apportioned or allocated to that State that are authorized or administered under this title, along with an equal amount of obligation authority, to another State or to the Federal Highway Administration. The funds transferred could be used for the same purpose and in the same manner for which they were authorized. Such transfer would have no effect on any apportionment formula used to distribute funds to the States under sections 104, 105, or 144 of title 23.

The provision described in paragraph (4) would allow a State to request a transfer of its apportioned funds to another State or to FHWA. A transfer would simplify the process for administering a project that is jointly funded by two or more States. Concurrence by the metropolitan planning organization would be required to transfer Surface Transportation Program funds that are suballocated to urbanized areas over 200,000 population. This means, for example, that a single FHWA account could be established annually for the National Cooperative Highway Research Program (NCHRP). When commitments are received from the States, the funds would be transferred to a single account, and bills from the Transportation Research Board would be paid from that account. This would eliminate the labor-intensive requirement of distributing each bill back to the State accounts. This change would encourage pooling of funds to avoid duplication of effort, to examine projects of mutual interest, and to address issues of regional or national significance.

### **SEC. 1303. STATE INFRASTRUCTURE BANK PILOT PROGRAM.**

This section authorizes a new State Infrastructure Bank pilot program. The proposed pilot program would limit participation to no more than five States, including States that entered into a cooperative agreement under the State Infrastructure Bank pilot program authorized by the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21). States interested in participating in the pilot program would be required to submit an application to the Secretary. This section would require the Secretary to evaluate the applications based on criteria the Secretary establishes, provided that the criteria would include: the State's ability to provide non-Federal funds to capitalize the bank; the existence of State enabling legislation that clearly allows for full State Infrastructure Bank participation; the State's strategy for encouraging non-Federal repayment sources from project sponsors; the amount of Federal funds the State will commit to the State Infrastructure Bank as a percentage of its Federal-aid apportionments; the State's eligibility under TEA-21; and the State's past experience with a State Infrastructure Bank, including the TEA-21 pilot program, or comparable financing mechanisms.

A State selected by the Secretary would enter into a cooperative agreement with the Department. If a selected State does not fund its State Infrastructure Bank within 90 days of the execution of the cooperative agreement, the Secretary would have the authority to terminate the cooperative agreement with that State and select another State for inclusion in the pilot program. If the Secretary determines that a selected State is not implementing the State Infrastructure Bank in accordance with the cooperative agreement, the Secretary would have the authority to prohibit a State from contributing additional Federal funds to its State Infrastructure Bank.

Under TEA-21, in addition to funds from certain transit programs and rail programs, States could transfer to an infrastructure bank the total amount of funds apportioned to it under the National Highway System program, Surface Transportation Program (except for funds allocated for safety programs and the transportation enhancements program), Interstate Maintenance program, minimum guarantee, and bridge program. Under the proposed pilot program, funding would be derived only from the highway and transit programs, with the amount of apportioned funds transferred to the infrastructure bank limited to 10 percent. Experience has shown that States contribute less than 10 percent of the eligible funds to their State Infrastructure Bank. This limitation would also prevent a State from putting an entire category of funds in the State Infrastructure Bank. The proposal also would establish highway and transit accounts within the State Infrastructure Banks.

The TEA-21 pilot program limited Federal disbursements from a State Infrastructure Bank to an annual rate of not more than 20 percent of the amount designated by the State for the infrastructure bank's capitalization. TEA-21 also required the Secretary and the State to revise a cooperative agreement entered into under the National Highway System Designation Act of 1995 (Pub. L. 104-59). This pilot program would eliminate both of these requirements. The limitation on Federal disbursements has no practical application under this pilot program. The elimination of the requirement to revise the cooperative agreement would clarify that States that created a State Infrastructure Bank under the National Highway System Designation Act of 1995 could continue to operate under the requirements of that Act and would not be required to amend their State Infrastructure Bank agreement to comply with this pilot program. However, a State operating a State Infrastructure Bank under the National Highway System Designation Act of 1995 could not add new Federal funds to the infrastructure bank.

Another change from TEA-21 is that the State Infrastructure Banks would be required to report annually, instead of biennially, to the Secretary. This section also would make some changes to the definitions section.

The remaining provisions remain substantively unchanged from the TEA-21 pilot program, including the application of Federal requirements to projects financed from repayments to an infrastructure bank from projects assisted by the bank.

#### **SEC. 1304. TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT (TIFIA) AMENDMENTS.**

Section 1304 would amend sections 181 through 189 of title 23.

The proposed change to section 181(3) conforms the existing language to conventional capital markets terminology.

The proposed elimination of existing section 181(7) reflects the Department's decision not to use local servicers to perform the enumerated duties on behalf of the Secretary. Using a local servicer for any particular TIFIA credit facility would mean using multiple servicers for the

program. The Department believes that ongoing servicing of TIFIA loans should be managed by a single entity, and it has contracted directly with a major banking firm to service the complete portfolio of TIFIA credit instruments.

The proposed change to section 181(8)(D), as redesignated, expands the definition of freight-related projects eligible for TIFIA assistance. The provision would also make eligible a group of such related projects, each of which separately might not meet the threshold requirements, to apply for TIFIA credit assistance. The cost of freight transportation improvements is borne by both the public and private sectors. Limited funds available from either sector demand consideration of innovative ways to fund critical projects of national, regional, and local economic significance.

The proposed change to section 182(a)(1) simplifies the provision regarding statewide and metropolitan planning requirements. The existing provision contained needlessly specific language that could be interpreted to constrain TIFIA assistance in the case of a project with a construction timetable that extended beyond the typical three-year approved State Transportation Improvement Program (STIP).

The proposed change to section 182(a)(2) eliminates the reference to a local servicer (see discussion above) and clarifies that a State, local government, public authority, public private partnership or any other legal entity may submit an application.

The proposed change to section 182(a)(3) lowers the threshold cost for eligible projects from \$100 million to \$50 million.

The proposed change to section 182(a)(4) clarifies that the revenues dedicated to repay the TIFIA credit instrument must also secure the senior project obligations. The purpose of this modification is to prevent a project applicant from securing the TIFIA credit instrument with a revenue source of a lesser quality than that used to secure the senior debt. One of TIFIA's key financial disciplines is the requirement that a project's senior debt be rated in the investment grade category, but this offers security to DOT only if the same repayment source is being pledged to both the senior debt obligations and the subordinate TIFIA credit instrument. In such a structure, the investment grade rating for senior debt helps DOT evaluate its credit risk as a subordinate lender; although the TIFIA instrument itself may be sub-investment grade, the higher rating on the senior debt indicates that the project's overall risk profile is manageable.

The proposed change to section 182(b)(1) clarifies the distinction between the program's threshold requirements and project selection criteria.

The proposed change to section 182(b)(2)(B) clarifies that it is possible for the TIFIA credit instrument to be the senior obligation. Experience implementing the program has shown that certain projects may not issue debt obligations senior to the TIFIA credit instrument. In those cases, the TIFIA lien will be senior and thus will have to be investment grade.

The proposed change to section 183(a)(1)(A) clarifies the purpose of loan proceeds.

The proposed change to section 183(a)(4) codifies a DOT regulation that requires the project's senior obligations to receive an investment-grade rating in order to execute a secured loan agreement. This change eliminates the possibility of any funds being disbursed prior to the receipt of an investment grade rating.

The proposed change to section 183(b)(2) ensures that the amount of the TIFIA credit instrument may not exceed that of the senior project obligations. TIFIA is intended to be a minority project investor who benefits, via an investment grade rating on the senior debt, from the discipline of the capital markets. If the amount of senior debt is substantially smaller than the TIFIA loan, however, the debt might obtain an investment grade rating on the basis of a speculative revenue source unlikely to cover total debt service, and thus the senior rating would not reflect the relative creditworthiness of the TIFIA loan. In order to manage the risk in this situation, DOT's response has been to require that TIFIA assistance not exceed the amount of senior debt.

The proposed change to section 183(b)(3) has the same purpose as the change to section 182(a)(4).

The proposed change to section 183(b)(4) removes the ambiguity concerning the meaning of the word "marketable."

The proposed elimination of section 183(c)(3) deletes the description of sources of repayment funds because the subject is already covered in section 183(b)(3).

The proposed changes to section 184(a)(2) clarify the individual purposes for which line of credit proceeds can be made available.

The proposed changes to section 184(b)(3) would ease the restrictions on funding draws on a line of credit in order to help a borrower avoid a payment default. The line of credit is intended to benefit the rating on senior debt by acting as a contingent revenue source for the purpose of pro-forma calculations of senior debt service coverage. However, the current requirement that all project reserve funds be depleted before accessing the line dilutes this effectiveness, since bond indentures typically treat unrestored draws upon an issuer's reserve accounts as a technical default. The line of credit, therefore, is available too late in the flow of funds to provide a meaningful credit rating benefit. Having the ability to draw upon the line to avoid a technical default would improve its usefulness.

The proposed changes to section 184(b)(4) conform the interest rate setting mechanism for the line of credit with that for secured loans. A borrower that utilizes both a secured loan and a line of credit for the same project could, if the relative interest rates on these instruments vary significantly, be motivated to manipulate its use in the event of a revenue shortfall. The proposed change would allow the DOT to execute both such agreements on the same date at the same interest rate.

The proposed change to section 184(b)(5) has the same purpose as the proposed changes to sections 183(b)(3) and 182(a)(4).

The proposed changes to section 184(c)(2) clarify language regarding the scheduling of principal and interest repayments.

The proposed elimination of section 184(c)(3) deletes the description of sources of repayment funds because the subject is already covered in section 184(b)(5)(A)(i).

The proposed changes to sections 185(a), 185(b), and 185(c) have the same purpose as the proposed elimination of existing section 181(7), and clarify that the Secretary may establish fees to cover the cost of servicing TIFIA credit instruments.

The proposed change to section 185(d) clarifies that the program may retain outside counsel to assist in the underwriting and servicing of TIFIA credit instruments.

The proposed changes to section 188(a)(1) would maintain the program's annual funding authorization at the \$130 million level established in TEA-21 for fiscal year 2003. The proposed authorization level represents 5 percent of the program's credit limitation, consistent with the TEA-21 authorization level.

The proposed new section 188(a)(2) would increase the limitation on annual administrative costs from \$2 million to \$3 million, to be drawn from program appropriations.

The proposed change to section 188(c) would maintain the program's annual loan limitation at the \$2.6 billion level established in TEA-21 for fiscal year 2003. The proposed loan limitation is consistent with the proposed funding level and an assumed 5 percent subsidy rate.

The proposed elimination of section 189 reflects the fact that the Department has fulfilled this requirement.

#### **SEC. 1305. INTERNATIONAL REGISTRATION PLAN AND INTERNATIONAL FUEL TAX AGREEMENT FACILITATION.**

The International Fuel Tax Agreement (IFTA) and the International Registration Plan (IRP) are agreements among the U.S. States and Canadian Provinces that facilitate the efficient collection and distribution of fuel use taxes and apportioned registration fees among each member jurisdiction. Under both programs, each motor carrier designates its home State or Province as its "base jurisdiction," and that base jurisdiction is responsible for collecting the fuel use taxes and registration fees for itself and all other member jurisdictions in which its motor carriers operate. With the implementation of the North American Free Trade Agreement (NAFTA) and the anticipated liberalization of access for Mexican carriers into the United States, the participation in these programs by Mexican carriers is expected. Currently, the Mexican government imposes and collects fuel taxes and registrations fees differently than the U.S. States and Canadian Provinces.

Participation by Mexican states in the IRP and IFTA programs is currently being evaluated by U.S. States and Canadian Provinces under the aegis of the National Governors Association. In the interim, it would be necessary for Mexican motor carriers to use individual U.S. States or

Canadian Provinces as their base jurisdictions. States have expressed the concern that augmenting their systems to accommodate Mexican carriers could entail some incremental costs that would be burdensome. This section would allow the Secretary to provide assistance to States to help with administrative needs resulting from serving as a base jurisdiction for motor carriers from Mexico.

#### **SEC. 1306. COMMERCIALIZED REST AREA PILOT PROJECTS.**

This section would allow States to conduct pilot projects on Interstate Highways that would permit commercial operations at existing or new rest areas. Such commercial operations include providing goods, services, and information that are of interest to the traveling public, State promotional or tourism-oriented items, and commercial advertising and displays (visible only in the rest areas). The State could permit private operators to run the projects.

To participate in a pilot project, States would have one year from the date of enactment to submit proposals to the Secretary. Proposals would describe the types of goods, services, and information to be provided at the rest area and include a plan for evaluating the results of the pilot projects. In addition, States would have to demonstrate that the proposed projects help implement the strategies developed in the “Study of Adequacy of Parking Facilities” prepared pursuant to section 4027 of TEA-21, and proposals would have to contain a review and update of the State's action plan for addressing commercial truck parking shortages. The Secretary would have to determine that the proposed projects conform to safety standards for passenger and commercial vehicles including lighting, security, and safe access to the Interstate roadway.

The States would be required to use the net income derived from the commercial operations for projects eligible under title 23. If vending machines are a part of the rest area, the provisions of the Randolph-Sheppard Act would apply.

#### **SEC. 1307. HIGHWAY USE TAX EVASION PROJECTS.**

The Highway Use Tax Evasion program supports State and Federal efforts to enhance motor fuel tax enforcement. To make the program more effective, this provision would amend section 143 of title 23 to: (1) dedicate funding for intergovernmental enforcement efforts; (2) allow projects for identification of tax evasion in the area of foreign imported fuel; (3) assist States and Indian Tribes in addressing issues related to the collection of State motor fuel taxes; and (4) provide for annual reporting on examinations, criminal investigations, and audits by the States and the Internal Revenue Service (IRS).

The provision would further amend section 143 to require the Secretary of Transportation to enter into three memoranda of understanding with the Commissioner of the IRS -- one for the purpose of completing, maintaining, and operating the excise summary terminal activity reporting system (ExSTARS); the second for the purpose of developing, operating, and maintaining a registration system for pipelines, vessels, and barges, and their operators, that make bulk transfers of taxable fuel; and the third for the purpose of establishing, operating, and

maintaining an electronic database of heavy vehicle highway use tax payments. The IRS would be required to report twice a year on the status of the three projects covered by the memoranda of understanding.

Funding allocated under this program would supplement State highway use and fuel tax enforcement programs; enable the IRS to complete, operate, and maintain ExSTARS; and enable the IRS to establish and maintain the registration system and the electronic database.

#### **SUBTITLE D – PROGRAM EFFICIENCIES AND IMPROVEMENTS -- SAFETY**

##### **SEC. 1401. NATIONAL HIGHWAY SAFETY GOAL; NATIONAL BLUE RIBBON COMMISSION ON HIGHWAY SAFETY.**

The social and economic costs of highway accidents are estimated at more than \$230 billion each year. In 2001, there were more than 42,000 fatalities and 3 million injuries. To reverse this trend, the highway safety community must work together to significantly reduce highway fatalities and injuries.

This section would establish a national goal of reducing highway fatalities. Identification of a national safety goal has been very successful in helping European countries achieve excellent safety results, including low levels of highway crashes, fatalities, and injuries.

Section 1401(a) would amend section 101 of title 23 by adding a declaration that it is in the national interest to reduce the number of deaths related to traffic accidents and authorize a national initiative targeted at saving lives through improved engineering, education, enforcement, and emergency response.

Section 1401(b) would establish the National Blue Ribbon Commission on Highway Safety. The Commission would have 15 members, including the Secretary of Transportation or his or her delegate; the Administrators of FHWA, FRA, NHTSA, and FMCSA, or their delegates; and 10 members representing State and local government, law enforcement, the safety community, and public health, appointed by the Secretary from nominees submitted by the Senate Committee on Environment and Public Works and the Senate Committee on Commerce, Science, and Transportation, and by the House Committee on Transportation and Infrastructure.

The purpose of the Commission would be to identify a realistic national goal for reduction of highway fatalities, develop a consensus within the highway safety community and the public in support of the goal, recommend a comprehensive plan with specific strategies for achieving the goal, and provide such legislative recommendations as the President judges necessary and expedient. Seven million dollars in funding, allocated over fiscal years 2004-2009, would be authorized for the Commission and study.

## **SEC. 1402. HIGHWAY SAFETY IMPROVEMENT PROGRAM.**

This provision would authorize a new “core” Federal-aid funding program for highway safety, under new section 150 of title 23, replacing previous title 23 provisions that required that States “set aside” a minimum of 10% of their Surface Transportation Program (STP) funding for safety purposes. The creation of a new safety “core” program greatly reinforces the importance of safety as an integral part of the Federal-aid highway program. It also reflects the importance of highway safety to our social and economic health and future productivity. The National Highway Traffic Safety Administration (NHTSA) estimates that highway fatalities and injuries cost society more than \$230 billion every year.

Elevating safety to the status of a “core” funding program within the Federal-aid highway program also recognizes that, as a Nation, we should not accept the fact that 42,000 of our citizens are killed and over 3 million are injured annually on the highway system. The Highway Safety Improvement Program is designed to reduce these fatalities, reinforce FHWA’s safety partnerships, and complement NHTSA’s and the Federal Motor Carrier Safety Administration’s (FMCSA) safety programs.

Section 150(a) would direct the Secretary to establish and implement a highway safety improvement program. In order to receive funds, under section 150(b)(1) States must have a process in place that analyzes highway safety problems and opportunities and produces a program of projects for funding based on this analysis (the State’s Highway Safety Improvement Program (HSIP)). The statewide program would identify hazardous locations, sections, and elements, including roadside obstacles and unmarked or poorly marked roads that may constitute a danger to motorists, bicyclists, pedestrians, and other highway users. States would also have crash data systems and the ability to perform safety problem identification and countermeasure analysis. This provision would require the Secretary to formulate programmatic guidelines for the States’ use, which should include, at a minimum, the following components:

(1) Strategic and Performance-based Goals for the HSIP. State programs would adopt strategic and performance-based goals that address safety problems and opportunities on all public roads within the State, including Tribal roadways, focus resources on areas of greatest need, and complement programs developed under section 402 of title 23.

(2) Data Improvement. States would advance their capabilities in traffic records data collection, analysis, and integration with other sources of safety data, such as roadway inventories. The data program would include all public roads, including Tribal roads, and improve the identification of highway locations, sections, and elements that may constitute a danger to motorists, pedestrians, and bicyclists. Expenditures on State data programs would be complementary to the data improvement programs supported by sections 412 and 402.

(3) Program of Improvements. The proposed program would provide States with the flexibility to address potential as well as existing highway safety problems. States would determine the priorities for correcting hazardous roadway locations, sections, and elements, including railway-highway crossing improvements, based on crash data analysis. Priorities would also include opportunities for preventing the development of hazards. Based on these priorities, States would schedule and implement projects for hazard correction and prevention.



(4) Evaluation. States would be required to establish an evaluation process to assess the results of safety improvement projects carried out under this section and use the results to set priorities for future projects.

Under this provision, States could obligate HSIP funds for safety infrastructure improvement projects that correct or improve hazardous roadway locations or features, including railway-highway crossing improvements, or proactively address highway safety problems on any public road or publicly owned bicycle or pedestrian pathway or trail. The proposed Federal share for projects carried out under this section would be 90%.

Under this provision, beginning in fiscal year 2005 and for each fiscal year thereafter, 10 percent of the funds available to a State to carry out the highway safety improvement program established in accordance with this section would be required to be obligated for projects under section 402, unless by October 1 of the fiscal year in which funds become available to a State, the State has enacted a primary safety belt law or the State demonstrates that the safety belt use rate in that State meets or exceeds 90 percent. Activities carried out under this section would be required to be consistent with a strategic highway safety plan described in proposed new section 151 of title 23. If a State has not already adopted such a plan, it would be required to do so if subject to the proposed safety belt incentive provision.

An additional new section would be added to title 23: Section 151-Flexibility for safety initiatives. This proposal would provide additional flexibility to States to use section 150 funds for public awareness, education, and enforcement activities, not otherwise eligible under section 150, where such activities and projects are consistent with a strategic State highway safety plan and comprehensive safety planning process. This provision is included as an incentive for States to develop and implement comprehensive, data-driven, performance-based, strategic highway safety plans that address the engineering, education, enforcement, and emergency services elements of highway safety.

The proposed new section specifies that a State strategic highway safety plan must be based on a collaborative process that includes major State, local, and Tribal safety stakeholders (including the Governor's Representative for Highway Safety, State DOT safety and planning offices, persons responsible for administering section 130 at the State level, State traffic records coordinating committee, local transportation agencies, State emergency medical services program, State motor carrier safety program, State and local law enforcement, and Operation Lifesaver); and is certified by the Secretary, through FHWA and NHTSA, as based on a comprehensive, collaborative process and effective analyses of State crash data. In developing a plan, a State should consider the results of existing State transportation and highway safety planning processes. Activities must be consistent with the State strategic highway safety plan to qualify for the flexible use of funds available under sections 150 and 402(k).

This provision would clarify that the development of a State strategic highway safety plan would not require changes in the planning processes, plans, or programs of other State transportation or

highway safety agencies. To qualify for the additional funding flexibility, State agencies are only required to participate in a collaborative process to share information and assist in the analysis of safety data to produce a strategic highway safety plan.

The provision specifies that funding transfers between section 150 (the new FHWA core Highway Safety Improvement Program) and section 402 could not exceed 50 percent of the funds authorized for section 150 or for section 402(k) (Performance Grants, including the safety belt use law incentive grants program).

The provision makes conforming amendments to title 23 to reflect repeal of the section 152 hazard elimination program and elimination of the section 133(d)(1) set-aside of apportioned funds for safety.

#### **SEC. 1403. OPERATION LIFESAVER.**

This section would amend section 104 of title 23 to increase the set-aside from STP funds for Operation Lifesaver from \$500,000 to \$600,000 for each fiscal year.

#### **SEC. 1404. HIGHWAY SAFETY PROGRAMS; CERTIFICATION OF PUBLIC ROAD MILEAGE.**

Section 1404 would eliminate the requirement that only the Governor can certify a State's public road mileage, which is one of the factors used to determine the funding each State receives for its highway safety program. This change would provide increased flexibility to the State, by allowing a State department of transportation to certify the public road mileage.

### **SUBTITLE E – PROGRAM EFFICIENCIES AND IMPROVEMENTS -- PLANNING**

#### **SEC. 1501. METROPOLITAN PLANNING.**

The highway and transit metropolitan planning provisions would be combined and relocated to chapter 52 of title 49, U.S.C. See title VI of this bill for the substantive provisions.

#### **SEC. 1502. STATEWIDE PLANNING.**

The bill would amend the statewide planning provisions currently located at section 135 of title 23, U.S.C., and provide a common statewide planning section for both the Federal Highway Administration and the Federal Transit Administration in chapter 52 of title 49, U.S.C. See title VI of this bill for the substantive provisions.

#### **SEC. 1503. STATE PLANNING AND RESEARCH.**

This section would move State planning and research (SPR) from section 505 (in Chapter 5) of title 23 to section 104 in Chapter 1. Chapter 5 addresses research, development, and technology (RD&T) funds available to the Secretary, whereas the SPR program is part of the States' apportioned funds and more appropriately belongs in Chapter 1.

As amended, this section increases the SPR set-aside by 1/2 percent to 2-1/2 percent to fund improved data collection by the States and indicates that SPR funds are also set aside from the minimum guarantee program under section 105.

This section clarifies that freight planning, safety planning, transportation systems management and operations-related planning activities, transportation-related land use planning, and transportation-related growth management activities within the metropolitan and statewide planning processes are eligible for SPR funds. In addition, planning capacity building activities and asset management activities are eligible for SPR funds. Transportation systems management and operations related planning activities include support for regional operations collaboration and coordination activities, as defined in proposed section 165 of title 23 (see section 1701) that are associated with regional improvements such as traffic incident management, technology deployment, emergency management and response, traveler information, and regional congestion relief. This section also adds the term “local” to “public transportation” for consistency throughout the section and makes other changes in wording for clarity.

This section changes the mandatory percent of SPR funds for RD&T activities from 25 to 20, but does not change the amount of funds for RD&T because of the 1/2 percent increase in total funds. This section establishes a new “mandatory” use of SPR funds for improved data collection to provide information needed by the various levels of government for fact-based decisionmaking, but allows the use of such funds for other activities eligible for SPR funds if a State’s data collection activities meet quality assurance guidelines.

Elsewhere in this proposal are individual proposals for State action, such as participation in the highway safety improvement program. In addition to other funds, SPR funds are available for these undertakings.

#### **SEC. 1504. CRITICAL REAL PROPERTY ACQUISITION.**

This section provides that, in certain limited circumstances, title 23 funds may participate in a State’s costs incurred in acquiring parcels of real property, considered to be critical for any project proposed for funding under title 23, prior to the completion of environmental reviews for property acquisition. The Secretary’s approval would be required for the acquisition of each parcel before Federal funds could participate in its cost and the number of critical acquisitions on any given project would be limited, so as not to significantly affect alternatives. Prior to acquisition approval, the Secretary must determine that the property is offered for sale on the open market and that acquisition is critical because the property value is increasing significantly, there is imminent threat of development of the property, or the property is necessary for implementation of the project's stated goals.

The acquisition of a critical parcel would also be considered an exempt project for purposes of the transportation conformity regulations.

This section would enable States to use Federal funds to acquire expeditiously a limited number of parcels that are potentially needed for future transportation purposes, and are threatened by

future economic development. “Critical parcels” are typically those with a high probability of use for transportation purposes. The early acquisition of such parcels would maintain viable transportation options.

Environmental reviews and approvals would be required before physical construction, demolition, or clearing could occur. States could not retain the Federal-aid share of the proceeds if a parcel was sold or leased. This section would give States the opportunity to reserve future alignment alternatives while allowing timely and cost-saving acquisitions.

#### **SEC. 1505. PLANNING CAPACITY BUILDING INITIATIVE.**

This section establishes a planning capacity building initiative to strengthen metropolitan and statewide transportation planning under Chapter 52 of title 49, and to enhance Tribal capacity to conduct joint transportation planning under Chapter 2 of title 23. Priority would be given to planning practices and processes that support homeland security planning, performance based planning, safety planning, operations planning, freight planning, and integration of environment and planning. The initiative would be administered by the Federal Highway Administration in cooperation with the Federal Transit Administration and funded from the Surface Transportation Program at \$20 million per year.

### **SUBTITLE F – PROGRAM EFFICIENCIES AND IMPROVEMENTS -- ENVIRONMENT**

#### **SEC. 1601. CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM (CMAQ).**

Section 149 of title 23 would be amended to more clearly specify that “maintenance of a national air quality standard” means that, for purposes of this section, any CMAQ-funded project must contribute to air quality maintenance by reducing emissions through new or enhanced transportation facilities or services, rather than merely maintaining existing transportation facilities or services.

Subsection (b) is clarified to specify that funded projects or programs in nonattainment and maintenance areas must provide emission reductions that contribute to the attainment or maintenance of the National Ambient Air Quality Standard (NAAQS) for the given pollutant. Projects that reduce emissions of the pollutant or precursor that provides the greatest likelihood of contributing to attainment or maintenance of the associated criteria pollutant would receive priority for CMAQ funds. The metropolitan planning organization or State is encouraged to consult with the State air quality agency with respect to whether reductions in nitrogen oxide (NO<sub>x</sub>) emissions or reductions in VOC emissions provide a greater benefit in reducing ambient ozone concentrations; or whether reductions in directly emitted particulate matter or reductions of emissions of a precursor provide the greatest benefit in reducing ambient PM-10 or PM-2.5 concentrations.

Subsection (b) is also amended to remove the outdated paragraph allowing projects to reduce any type of emission instead of emissions related to their nonattainment or maintenance status and to remove the prohibition on funding voluntary programs to remove from use pre-1980 cars and light trucks.

An addition is made to subsection (b)(3) of the same section to include specific eligibility for projects or programs to reduce emissions per vehicle. This clarification would emphasize the CMAQ eligibility of technology-based projects and programs to reduce vehicle emissions, such as anti-idling equipment and heavy-duty diesel retrofits.

A technical correction is made to subsection (c) of the same section to include maintenance areas as well as nonattainment areas in the titles of the two subparagraphs.

A new subsection (f) is added to the section to encourage review of estimated emissions reductions by State and local air agencies to provide perspective on which proposals would be the best candidates with respect to reducing emissions. States, MPOs, and transit agencies, in consultation with State and local air quality agencies, are encouraged to work cooperatively to develop criteria for project selection and to make decisions over which projects and programs to fund under the CMAQ program.

A new subsection (g) is added to the section to provide for a national program of evaluation and assessment. Section 104 of title 23 is amended by adding new subsection (o), authorizing the Secretary to use 0.5 percent each year from the annual CMAQ apportionments to carry out the program. DOT, in consultation with EPA, would use these funds to conduct appropriate assessments and develop other evaluation data to provide information regarding effectiveness at reducing emissions and relieving congestion. Assessment results will be shared with State and local transportation and air quality agencies prior to release. It is intended that this national evaluation will lead to better project selection by States and metropolitan planning organizations.

The CMAQ apportionment formula in section 104(b)(2) is changed to include nonattainment and maintenance areas for fine particulate matter (PM-2.5) and for ozone under the new 8-hour standard. EPA is expected to designate these areas as nonattainment in 2004, which is expected to represent a large expansion in the number of U.S. citizens living in nonattainment areas.

The weighting factor for ozone (under both the old one-hour standard and the new eight-hour standard), carbon monoxide, and PM-2.5 maintenance areas is set at 1.0 (previously 0.8) to reduce the funding loss that one-hour ozone and carbon monoxide areas face as they redesignate from nonattainment to maintenance status. Under this new weighting factor of 1.0, maintenance areas will still get less CMAQ funding than they did as nonattainment areas in all cases except "marginal" areas under the one-hour ozone standard, which will get the same amount, holding all other variables constant.

The factor for submarginal areas has been dropped since there are no longer any submarginal areas under the one-hour ozone standard. The only one has now been redesignated as a maintenance area.

The weighting factor for the eight-hour ozone nonattainment areas is set at 1.0 to reflect that these areas will have lower design values when compared to areas designated as nonattainment under the 1-hour standard. Specifically, an eight-hour nonattainment area, or any portion thereof, which is not also a one-hour ozone area, will have a weighting factor of 1.0. Where the one-hour standard is still in effect, those weighting factors previously provided under title 23 and left unchanged would still govern.

Areas designated nonattainment under the new PM-2.5 standard are provided a weighting factor of 1.2 to reflect the relatively greater impact on mortality and health of fine PM pollution when compared with ozone and carbon monoxide.

This section would also be changed to focus CMAQ funding on those counties that are actually part of a designated nonattainment area for CO. Based on holdover language contained in ISTEA and not fully addressed by TEA-21, an additional weighting factor had previously been applied to entire ozone nonattainment or maintenance areas when only a small portion was also designated as nonattainment or maintenance for carbon monoxide. In effect, current legislative language apportions some funds for counties that have no carbon monoxide problem. This change would correct that oversight.

The provision for CO maintenance areas in subparagraph (C)(ii), which provided an additional weighting factor of 1.1, has been removed. In its place, subparagraph (C) is amended to provide an additional weighting of 1.2 for areas that are in nonattainment or maintenance status for CO and nonattainment or maintenance for ozone.

Subparagraph (D) provides an additional weighting of 1.2 for areas that are in nonattainment or maintenance status for fine PM and nonattainment or maintenance for either ozone or CO. It also provides that PM-2.5 nonattainment and maintenance areas that are nonattainment or maintenance for both ozone and CO will receive an additional weighting factor of 1.2 over and above the additional weighting factor of 1.2 provided for in subparagraph (C).

## **SEC. 1602. EFFICIENT ENVIRONMENTAL REVIEWS FOR PROJECT DECISIONMAKING.**

This section revises previous section 1309 of the Transportation Equity Act for the 21<sup>st</sup> Century to make it more effective in achieving environmental streamlining on highway construction projects. This is accomplished through the following changes.

First, the changes would clarify that this section has a dual purpose of expediting project delivery and protecting the environment. In addition, the changes would encourage the use of the “Enlibra” principles as initially developed by the Western Governors Association and adopted by the National Governors Association (Policy Statement NR-1) to the extent practicable in the development of highway construction and public transit projects. Used together, these principles establish a sound basis for interaction among Federal, State, and local governments and tribes in developing policies and making decisions with respect to the environment.

Second, the changes would amend the current requirement in section 1309 regarding

coordinated environmental reviews by clarifying that such reviews may apply to a particular project or may apply to an entire class of projects or to a program. It would also clarify that local agencies and Federally recognized tribes, in addition to Federal and State agencies, may participate in memoranda of understanding, where appropriate, to establish cooperatively developed time periods for review.

Third, the changes would clarify that the project sponsor has the authority for initiating the coordinated environmental review process for projects. In addition, while time periods would be established by the Secretary and the affected agencies, the establishment of time periods would occur only when requested by the project sponsor. This change gives more of a role to project sponsors in developing the time periods. In addition, since negotiating time periods can itself take a substantial amount of time, it provides project sponsors with the flexibility to ask for establishment of time periods only where they would be most effective. These changes also clarify that the Secretary may extend the time for review upon any good cause shown. This would include project delays that may not have been due to environmental reviews. The Department of Transportation will continue to track and report the amount of time that it takes to complete the environmental review process on Federally assisted highway construction and public transit projects.

Fourth, changes will be made to clarify the law regarding the preparation of environmental documents under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). These changes are intended to address the uncertainty created by the Tenth Circuit's decision in *Utahns for Better Transportation v. U.S. Department of Transportation*, 2002 U.S. App. LEXIS 19055, which held that an environmental impact statement may not be prepared by a State for a highway project requiring Federal approval but for which no Federal funding was to be used. These changes are also intended to address the Second Circuit's decision in *Sierra Club v. U.S. Army Corps of Engineers*, 701 F.2d 1011 (1983), in which the Court held that the Corps of Engineers could not adopt an environmental impact statement that was prepared by a State department of transportation, even though it was independently reviewed and evaluated by the Federal Highway Administration before it was issued and approved. These proposed changes, incorporated as a new subparagraph (d), confirm the long-standing practice under regulations issued by the Council on Environmental Quality and by the Federal Highway and Federal Transit Administrations that permit State and local governments to be joint lead agencies with the U.S. Department of Transportation in preparing environmental documents. As a joint lead agency, the State or local government will be allowed to prepare the environmental document, so long as the U.S. Department of Transportation furnishes guidance and participates in such preparation, and independently evaluates the document. The document must be approved and adopted by the Secretary prior to the Secretary taking any action or making any approval based on such document. The provisions of this subparagraph apply regardless of whether the Secretary's approval or action results in Federal funding. The Secretary will ensure that the project sponsor complies with all design and mitigation commitments made in such a document, or that the document is appropriately supplemented if changes to the project become necessary. Any document prepared in accordance with this section will be

considered a Federal environmental document that may be adopted by another Federal agency, subject to any conditions imposed under regulations issued by the Council of Environmental Quality or any other Federal agency.

NEPA section 102(2)(D) allows a State agency that has statewide jurisdiction to prepare an EIS for a project funded under a Federal program of grants to States. Transit agencies whose projects are financially assisted by FTA are State or local governmental authorities as defined in 49 USC 5302(a)(6), but the overwhelming majority of them are not State agencies of statewide jurisdiction, and they are not assisted by an FTA program of grants to States. The FTA grant programs that fund major projects provide funding directly to transit agencies, not to the States. Therefore, the public agencies that plan, develop, construct, maintain, and operate metropolitan transit systems do not enjoy the authorities provided by NEPA Section 102(2)(D). Most public transit agencies responsible for transit projects are technically "cooperating agencies" in the preparation of FTA environmental documents, though, of necessity, the transit agencies perform a de facto co-lead role in NEPA reviews. The proposed provision would recognize the role of State and local transit agencies in planning their own projects and would allow them to serve as joint lead agencies with FTA in NEPA reviews without the threat of litigation concerning that role. This would be consistent with the practice currently permitted under the CEQ regulations relating to the roles of lead and cooperating agencies (40 CFR Part 1500).

Fifth, the changes would clarify the dispute resolution process by giving authority to initiate dispute resolution procedures to State Governors in addition to the Secretary of Transportation or to the head of any Federal agency subject to the time period under this subsection.

Sixth, editorial changes are being made to the last sentence in the subsection on State agency participation to clarify that participation by all State agencies with jurisdiction by law is intended to be a condition of a State's participation, unless the Secretary determines that such participation is not in the public interest. With respect to quasi-independent agencies within the State, the Secretary may find that their participation is not "in the public interest" if the State does not have the authority to compel their participation. Further, to eliminate confusion regarding State participation, this section does not include the TEA-21 definition of "Federal agency" that included a State agency. Instead, a corresponding addition is being made to subsection (g)(1) to clarify that Federal assistance can be provided to State agencies (in addition to State departments of transportation) that are participating in the coordinated environmental review process. Also, to eliminate confusion, section (h)(1) is being revised to remove the reference to State courts, since there are no circumstances under which any final Federal agency action taken under this section could be reviewed by a State court.

Seventh, the changes would clarify that the Department of Transportation and Federally recognized tribes are included in the category of affected Federal agencies that may receive funds to help expedite reviews, and that funds available for the Federal Lands Highway Program may also be used for this purpose. Changes would also clarify that funds would be available for programmatic measures that might expedite the



environmental review of classes of projects or programs.

Eighth, the changes would establish a new statute of limitations of one hundred eighty days for legal challenges to Federal agency decisions made in connection with the issuance of permits, licenses, or approvals for highway construction or public transit projects. Under current law, there is no uniform statute of limitations that applies to all decisions of Federal agencies made in connection with highway construction or public transit projects. By default, in circumstances where there is no specific applicable statute of limitations, courts usually have applied the general six-year statute of limitations that applies for challenges to actions under the Administrative Procedure Act for legal challenges relating to highway construction or public transit projects. This long window of opportunity for filing lawsuits has at times created uncertainty regarding project advancement. In addition, it has given plaintiffs the ability to file lawsuits well after a project is underway and well after they were aware of a cause of action. The new statute of limitations is intended to provide a reasonable amount of time for plaintiffs to raise legal challenges to highway construction or public transit projects while at the same time eliminating the risk of a project being delayed or enjoined by litigation after it is well underway and significant investment has been made in it. By its terms, this statute of limitations does not apply to a challenge that no permit, license, or approval has been obtained. It also does not apply to a claim that a permit, license, or approval has been violated. Nor does this statute of limitations lengthen an existing shorter time within which review must be sought pursuant to the judicial review provision in a statute under which the agency action is taken.

Finally, a number of editorial changes have been made for clarification and consistency.

### **SEC. 1603. ASSUMPTION OF RESPONSIBILITY FOR CATEGORICAL EXCLUSIONS.**

Section 138 of title 23, "Preservation of parklands" would be eliminated and replaced with a new section that deals with assumption of responsibility for categorical exclusions. "Preservation of parklands," which was applicable only to actions by the Federal Highway Administration, would be removed to eliminate the redundancy of having two statutes that are essentially duplicates of each other (section 303 of title 49 has slightly differing wording but is substantively the same). Section 303, which is applicable to the entire Department of Transportation, including the Federal Highway Administration, would remain as the only "section 4(f)" reference, as amended by this bill in section 1604.

For the purposes of the National Environmental Policy Act (NEPA), a "categorical exclusion" is defined in regulations as "a category of actions which do not individually or cumulatively have a significant effect on the human environment..." 40 CFR 1508.4. Most surface transportation projects qualify as categorical exclusions (e.g., over 91% of Federal highway construction projects are classified as categorical exclusions). These kinds of projects present a low risk of harm to the environment. This section would allow some of the Department's responsibilities relating to these kinds of projects to be assumed by the State. This would streamline the environmental review process, thereby expediting project delivery, without any substantial risk

to the environment.

Current regulations identify certain types of actions that may be treated as categorical exclusions if the Department determines that specific conditions or criteria are satisfied and that significant environmental effects will not result. 23 CFR 771.117(d). Subsection (a) would allow States to assume responsibility for determining whether these types of actions, or other types of actions designated by the Secretary, may be treated as categorical exclusions.

Even when an action is classified as a categorical exclusion, environmental laws other than NEPA might still apply and impose additional requirements on the Department for review, consultation, and decisionmaking. Subsection (b) would allow the Secretary to assign the Department's responsibilities (except responsibilities relating to Federally recognized tribes) under any such law to the State. Under this subsection, the State would assume full responsibility for complying with such laws and, consequently, full liability for any failure to comply. This would include defending any legal challenges arising from the assigned responsibilities and being liable for any judgment, order, or fees imposed by a court in connection with legal challenges.

Subsection (c) provides for the execution of a memorandum of understanding between the Secretary and the State that would set forth the terms and conditions of an assignment and assumption of responsibility under this section. Such a memorandum of understanding would need to be renegotiated every three years. The Secretary would monitor the State's compliance with the memorandum of understanding, as well as the effectiveness of the delegation, and, to the extent possible, would use the renegotiation process as a mechanism to ensure compliance and to correct problems. Under subsection (d), the Secretary could terminate an assignment of responsibility to a State if it is not adequately carrying out its responsibilities.

#### **SEC. 1604. SECTION 4(f) POLICY ON LANDS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES.**

Section 138 of title 23, "Preservation of Parklands," which was applicable only to actions by the Federal Highway Administration, would be replaced by a new section 138 that deals with the assumption of responsibility for categorical exclusions (see section 1603 of this bill). Existing section 138 would be removed to eliminate the redundancy of having two statutes setting environmental requirements that are essentially duplicates of each other (with slightly differing wording). The other provision (49 U.S.C. 303), which is applicable to the entire Department of Transportation, including the Federal Highway Administration, would remain as the only "section 4(f)" reference. Former section 4(f) was originally enacted as part of the Department of Transportation Act of 1966 and is now codified at 49 U.S.C. 303, but is still commonly referred to as "section 4(f)".

Section 303 of title 49, Policy on lands, wildlife and waterfowl refuges, and historic sites, would be amended to streamline its use and, where there is agreement, remove duplication with the process dictated by section 106 of the National Historic Preservation Act. It would retain the existing statutory language and would apply it to the same sites now covered, but would add language to clarify the factors that the Secretary must use in making determinations under it and

improve the “section 4(f)” evaluation process. This would not limit the protection of “section 4(f)” resources, but it would facilitate the process by taking into consideration court decisions affecting the applicability of “section 4(f)” and codifying those factors that would more efficiently allow a prudent decision.

Section 4(f) was enacted in 1966 during the peak of the Interstate highway construction program. Many interstate highways threatened major urban parks and historic districts. Much of the case law on “section 4(f)” was decided on cases involving these major new highways. This prompted some strict interpretations of “section 4(f),” beginning with the Supreme Court’s seminal decision in *Overton Park v. Volpe*, 401 U.S. 402 (1971). In *Overton Park*, the Supreme Court set a high bar for rejecting an avoidance alternative, stating in dicta that an avoidance alternative must always be selected unless there are “unique problems or unusual features associated with it, or that the cost, social, economical, or environmental impacts, or the community disruption resulting from such alternatives reach extraordinary magnitudes.”

Today’s highway program is oriented much more toward system preservation and modernization, in which existing facilities are the focus. The rigid rules for applying “section 4(f)” spawned from the early court decisions are often an awkward fit for the majority of situations faced today, where consequences to “section 4(f)” properties are usually not as extreme. In response, some later court decisions injected greater flexibility in interpreting “section 4(f)” and the Supreme Court’s decision in *Overton Park*. For example, in *Eagle Foundation v. Dole*, 813 F.2d 798 (7<sup>th</sup> Cir. 1987), the Court of Appeals for the Seventh Circuit sanctioned a balancing approach to determine whether an alternative was prudent and feasible, even though quoting from the Supreme Court’s decision in *Overton Park*. In *Eagle Foundation*, the plaintiffs challenged the routing of a segment of highway through a wildlife reserve and a historic farm. The Seventh Circuit held that, in determining what is prudent, the Secretary’s “inquiry calls for judgment, balancing, and for the practical settlements of disputes on which reasonable people will disagree,” and that a “prudent judgment is one that takes into account everything important that matters.” The Court noted that the Supreme Court’s use of the term “unique” was merely for emphasis, and was not intended to replace “prudent.” The Court further concluded that the harm caused by an alternative could be aggregated in determining whether it is prudent: “It would be prudent to build around the park if the Secretary were convinced that the aggregate injuries caused by doing so exceeded those caused by reducing the size of the park.” The Court agreed with the Secretary that the aggregate costs of the alternatives—including safety concerns, endangerment of eagle roosting sites, and an additional cost of at least \$8 million—were sufficient reason to find them imprudent.

The Court of Appeals for the Fourth Circuit made a similar analysis in *Hickory Neighborhood Defense League v. Skinner*, 910 F.2d 159 (4<sup>th</sup> Cir. 1990), a case in which plaintiffs challenged a highway-widening project in North Carolina. Following the Seventh Circuit’s reasoning in *Eagle Foundation*, the Fourth Circuit agreed that the Secretary must show a compelling reason for rejecting an avoidance alternative, but that an express finding of a “unique” problem was not necessary. The Fourth Circuit also agreed that it was appropriate to consider aggregate impacts in determining whether or not an alternative was prudent, and upheld the Secretary’s decision that the cumulative adverse impacts of the alternatives—i.e., impeding access to two hospitals, routing through a quiet residential neighborhood, traffic operational difficulties due to sharp

turns and inadequate cross-walks—made it imprudent.

However, other courts continue to strictly construe “section 4(f),” requiring an express demonstration of “unique problems” or “unusual factors” before an alternative can be found imprudent. For example, in *Louisiana Environmental Society v. Coleman*, 537 F.2d 79 (5<sup>th</sup> Cir. 1976), the Fifth Circuit made clear that the use of a park did not have to be substantial for “section 4(f)” to apply: “Any park use, regardless of its degree, invokes Section 4(f).” The Court went on to suggest that a delay of ten years in the construction of the highway and displacement of up to 1500 persons would not be a sufficient reason to find an alternative imprudent. The Court of Appeals for the Eleventh Circuit followed a similar line of reasoning in *Druid Hills Civic Association v. FHWA*, 772 F.2d 700 (11<sup>th</sup> Cir. 1985), emphasizing that an alternative that minimized harm to a park must be selected unless there are truly unusual reasons for rejecting it as imprudent. In *Stop H-3 Association v. Brinegar*, 740 F.2d 1442 (9<sup>th</sup> Cir. 1984), the Ninth Circuit also emphasized the need for the Secretary to demonstrate “truly unusual factors” or “costs or community disruption [reaching] extraordinary magnitude” before rejecting an alternative as “imprudent.” The Court found that three of the reasons upon which the Secretary rejected an avoidance alternative—a significant number of displacements, including the dislocation of 31 residences, three businesses and a church; increased noise, air quality and visual impacts to residents; and an additional cost of \$42 million—were insufficient to support the Secretary’s decision. The Court found the fourth reason, “safety considerations,” to be more compelling, but in the end also concluded that the record was inadequate to show that the adverse safety impacts of the avoidance alternative were of such magnitude as to overcome the paramount importance given to the protection of parkland in *Overton Park*.

The disparity in these court decisions has made it difficult to find a workable national standard to use in reaching determinations of whether an alternative is prudent and feasible. In order to establish more national uniformity, and consistent with the changed impacts of the highway program, this provision would clarify factors the Secretary shall consider in making section 303 determinations.

In particular, subsection (c) would explicitly extend the definition of “prudence” to include weighing the relative values of the nature of the proposed use with the significance of the resource, the views of the official with jurisdiction, the severity of impacts, and opportunities for mitigation, taking into account any anticipated impacts on other resources. This change would be consistent with more recent court decisions such as *Eagle Foundation* and *Hickory Neighborhood*, which have adopted a “balancing” approach to determining whether an alternative is “prudent.” In making these decisions, the Secretary shall consider the views of the officials with jurisdiction over the land. For Federal lands on which the Secretary of Transportation approves a transportation program or project under section 303, direction in the applicable land management plan would be considered in the Secretary’s determination of prudence and during project coordination. Land management plans include, for example, Land and Resource Management Plans under the Forest and Rangeland Renewable Resources Planning Act of 1974, 16 U.S.C. 528-531, National Park Management Plans under section 1a-7(b) of title 16, U.S.C., and Bureau of Land Management land use plans under section 1712 of title 43, U.S.C.

Subsection (d) of this section sets out those cases where “section 4(f)” would not be applicable (including those previously included in subsection (c)). This section would accomplish the following goals:

- Add refuge roads to the existing categories of those transportation improvements that are exempt from consideration under section 303 as these projects are usually carried out for the benefit of the refuge;
- Exempt from consideration a highway project on land administered by an agency of the Federal Government, when the purpose of the project is to serve or enhance the values for which the land would otherwise be protected under this section, as jointly determined by the Secretary and the head of the appropriate Federal land managing agency.

Subsection (e) would use the National Historic Preservation Act consultation process as the means of complying with section 303 for a historic site (other than a National Historic Landmark) where it has resulted in an agreement on its treatment by participating parties.

The amendment would eliminate the duplication of the section 303 and section 106 processes where section 106 has arrived at a negotiated solution. To ensure appropriate safeguards for historic properties, the Secretary is directed to develop administrative procedures, in consultation with the Advisory Council on Historic Preservation, to ensure that the section 106 process as applied to transportation projects is conducted in a manner consistent with the goals and objectives of the National Historic Preservation Act (16 U.S.C. 470f). These procedures will provide for programmatic oversight of actions taken under proposed subsection (e) and, under appropriate circumstances, will provide for a process by which to reconsider the agreed-upon treatment of an historic property when a key participant has raised a concern regarding the integrity of the section 106 process with respect to such actions with the Department of Transportation.

A new subsection would be added to allow Federal-aid highway funds available under chapter 1 of title 23, U.S.C., to be used to pay for resources, including staff and administrative expenses, for State historic preservation offices, Tribal historic preservation offices, or the Advisory Council on Historic Preservation, to be used to expedite the historic review and consultation process for Federally funded highway projects.

The above amendments would provide protection for the resources to which section 303 is considered applicable, while introducing greater procedural efficiency.

## **SEC. 1605. NATIONAL SCENIC BYWAYS PROGRAM.**

Subsections (a) and (b) of section 162 would be amended to recognize that the Secretary already is promoting the collection of National Scenic Byways and All-American Roads as “America’s Byways.” “America’s Byways” was identified as the marketing umbrella for promotion based on market research completed by FHWA in consultation with State and byway representatives. The intent is to continue the two types of designations and use “America’s Byways” as the marketing umbrella for the collection. If State and byway representatives reach consensus on establishing a single designation category, then these amendments would provide the Secretary

with the authority to use any of the three terms – National Scenic Byways, All-American Roads, or America’s Byways – as the single designation.

Subsection (c)(4) would be amended to delete “passing lane.” This would make adding passing lanes to designated scenic byways no longer eligible for scenic byways funding under this subsection. Passing lanes are eligible for funding under other Federal-aid highway programs, such as the Surface Transportation Program and the National Highway System. The primary purpose of the National Scenic Byways Program is to increase travelers’ awareness and appreciation of the qualities associated with a byway’s designation, as well as promote preservation, economic development, and tourism.

A new subsection (d) would be added that would authorize the Secretary to form public-private partnerships to carry out research, technical assistance, marketing, and promotion with respect to State scenic byways, National Scenic Byways, All-American Roads, or America’s Byways. The National Scenic Byways and All-American Roads currently are promoted collectively as America’s Byways. This subsection would make the Center for National Scenic Byways in Duluth, Minnesota, eligible for funding under the National Scenic Byways program. The Center was established in 1998 to provide technical communications and network support for nationally designated scenic byway routes.

Subsection (g) (former subsection (f)) allows the Federal share to be up to 100 percent for projects or activities for research, technical assistance, marketing, and promotion associated with byways.

## **SEC. 1606. RECREATIONAL TRAILS PROGRAM.**

Subsection (a) amends 23 U.S.C. 104(h), the Recreational Trails Program (RTP) apportionments, to clarify how the Department may use RTP administrative funds. It specifically allows training. It deletes reference to the National Recreational Trails Advisory Committee, which officially terminated on September 30, 2000.

Subsection (b) amends the RTP to improve program delivery. Subsection (b)(1) amends the State Recreational Trails Committee requirement to strengthen the role of the committee and to assure enhanced representation and public participation. This change is proposed because a few States have token committees. This proposal expands the RTP’s concept of 30-percent minimum motorized and nonmotorized funding to the committee membership, clarifies the meaning of “once per fiscal year,” and establishes a more formal role for the committees. This will improve the public involvement process for the RTP.

Subsection (b)(2) amends section 206(d)(2) of title 23 concerning the permissible uses of funds apportioned to States for the RTP. Eligible categories are added to permit trail assessment for accessibility and maintenance, and to hire trail crews or youth conservation or service corps to perform recreational trails activities. These amendments clarify existing practice in several States, and promote enhanced accessibility for all trail users, especially for people who have disabilities. Also added are activities eligible for RTP educational funds: non-law enforcement trail safety and trail use monitoring patrols, and trail related training. A Bureau of Land

Management survey found there is an expanding need for trail training among Federal, State, local, and private trail managers, workers, and volunteers. Expanding training will help improve trail safety and environmental protection. However, the RTP is not intended to support routine law enforcement.

Subsection (b)(3) eliminates the authority of a State recreational trail advisory committee to waive the requirement that 30 percent of a State's apportionment for a fiscal year be used for uses relating to motorized recreation and another 30 percent be used for uses relating to nonmotorized recreation. Because this provision applies to apportionments, not obligations, States retain the flexibility to carry over funds for projects in future fiscal years. This subsection is replaced by a provision to strengthen the RTP's connection with youth conservation and service corps, as first proposed in section 1112(e) of TEA-21. This subsection would direct the States to spend not less than 10 percent of their RTP funds for grants, cooperative agreements, or contracts with qualified youth conservation or service corps to perform recreational trails program activities. The qualifications for youth conservation and service corps are found in 42 U.S.C. 12572 and 12656. This subsection does not conflict with the 30-30-40 shares for motorized, nonmotorized, and diverse trail use; it is intended to be met simultaneously with the 30-30-40 requirements. This provision would benefit low income, minority, and at-risk youth by providing enhanced employment opportunities through youth corps programs.

Subsection (b)(5) simplifies the determination of Federal share for RTP projects by changing the RTP's normal Federal share from a strict 80 percent to the sliding scale share used in the Federal-aid highway program. This will especially benefit States with large amounts of Federal lands. The RTP will continue to allow Federal agency project sponsors to provide additional Federal funds, and will continue to allow funds from other Federal programs to be used as matching funds. The RTP's current legislation allows any other Federal funds to be used to match RTP funds. However, the reverse is not true: the RTP does not have specific authority to allow RTP funds to be used to match other Federal program funds, such as allowing RTP funds to match transportation enhancement or scenic byways funds. Subsections (b)(7)(D) through (F) make conforming amendments, and insert language to allow RTP funds to be used to match other Federal funds, based on existing language from section 206(f)(3) of title 23.

Subsection (b)(6) allows pre-approval planning and environmental compliance costs to be credited toward the non-Federal share for RTP projects, limited to costs incurred less than 18 months prior to project approval. Many States require RTP sponsors to complete their environmental compliance documentation prior to applying for RTP funds. Many RTP sponsors have found these costs to be very high compared to the amount of funds received under the RTP, sometimes more than half the total cost. Because RTP sponsors must complete compliance documentation prior to project approval, they are not eligible costs. This amendment will provide some relief to project sponsors and allow pre-approval costs to be counted toward the non-Federal share. In some cases, this may satisfy the entire non-Federal share. The costs are limited to costs incurred within the previous 18 months to assure that the planning and environmental documentation work is in fact related to the current project, and to assure that the documentation is up-to-date.

Subsection (b)(7) relieves the RTP of several requirements, which, while appropriate for large highway projects, are excessively burdensome for small trail projects. State trail administrators requested an exemption, and the Department agrees they are excessively burdensome for this program. At present, the RTP is exempted from “section 4(f)” requirements (codified at 23 U.S.C. 138 and 49 U.S.C. 303), because RTP projects are intended to enhance recreational opportunities, and should be expected to take place on park and recreation land.

The RTP is administered by a State resource agency in almost all States. The total RTP funding in each State averages only \$1 million per year, which is smaller than many individual highway projects. Most States select RTP projects from among competitive proposals on an annual basis. Most States are funding 10 to 20 RTP projects per year. Therefore, RTP projects are much smaller than highway projects, and should not be treated as if they were highway projects. They also have a much shorter timeframe than highway projects from project concept to implementation. Subsection (b)(9) proposes exemptions for:

- Sections 112, 113, and 114 of title 23 deal with highway contracting requirements and requirements for Federal-aid highways, which create a conflict for many State RTP programs. Many RTP projects are awarded based on project merit to particular trail organizations or to local governments, where the work force is intended to be local government workers and even volunteers. The highway contracting requirements are unworkable for most RTP projects.
- Section 116 is intended to ensure maintenance of the Federal-aid highway system by State DOTs, and should not apply to recreational trails administered through State resource agencies.
- Sections 134 and 135 of title 23 deal with metropolitan and statewide transportation planning requirements. No State has found any significant value added by including RTP projects in statewide or metropolitan transportation improvement programs (STIPs or TIPs). Instead, there is an excessive burden on the State resource agencies, the State DOTs, and the MPOs by requiring small value RTP projects to be included in much larger scale transportation plans and TIPs. RTP projects usually are selected by State resource agencies on an annual basis, requiring MPOs and States to amend their TIPs.
- Section 217 of title 23 is specific to nonmotorized bicycle transportation and pedestrian walkways. Section 217 has some requirements and restrictions, which are incompatible with the RTP. The RTP is intended to benefit both motorized and nonmotorized recreational trail users; section 217 has transportation purpose and motorized restriction sections.
- Section 301 of title 23 deals with highway tolls. RTP projects are not highway projects. Many States and localities depend on trail user fees to maintain trails. RTP funds may be used for trails on private property where user fees are needed for ongoing maintenance and operation.

#### **SEC. 1607. EXEMPTION OF THE INTERSTATE SYSTEM.**

This section would establish an exemption from consideration under both the section 303 and section 106 processes for the Interstate Highway System as an historic resource. If it were designated as an historic property, it is conceivable that every action taken to maintain, improve, or upgrade the Interstate System could be considered an undertaking



subject to review under section 303 and section 106 of the National Historic Preservation Act. As such, compliance with these statutes could unnecessarily burden the States and Divisions as they work to implement sorely needed improvements. Actions that could affect properties other than the Interstate System would still need to comply with the respective processes as usual.

## **SEC. 1608. MODIFICATIONS TO NHS/STP FOR INVASIVE SPECIES, WETLANDS, BROWNFIELDS, AND ENVIRONMENTAL RESTORATION.**

### Proposed Changes to section 103(b)(6) of title 23, U.S.C., Eligible Projects for the National Highway System

Two modifications of the existing statutory language are proposed. First, this provision would make two technical corrections to the existing language so that the eligibility provision refers to the latest Water Resources Act amendments enacted by Congress. Second, the proposal would insert new language to clarify the responsibility of the State in using this eligibility provision for mitigation banks. The proposal would revise the language in the eligibility provisions to indicate that the State department of transportation (and FHWA through approval processes) has sole discretion regarding the practicability of banking to establish the eligibility of a project's wetland or natural habitat mitigation costs for Federal-aid funding.

This provision would also establish eligibility for pollution abatement and environmental restoration projects under the National Highway System (NHS). Current authority under TEA-21 provides this eligibility only to projects under the Surface Transportation Program (STP), and this would establish an identical provision as in the STP for eligible projects. The measures must mitigate impacts caused by a project funded under title 23, but they need not be proposed as part of another project. If the measures are part of a project to reconstruct, rehabilitate, resurface, or restore an NHS facility, then the pollution abatement and environmental restoration work must not exceed 20% of the total project cost.

This provision would establish NHS eligibility of Federal-aid funds for invasive species control efforts related to projects funded under title 23. Participation in statewide inventories is an included eligible item. Contributions to measures to control exotic and invasive plant species, which are increasing in the United States, may precede project construction if such measures are consistent with Federal law and State transportation planning processes.

This provision would establish NHS eligibility of Federal-aid funds for remediation activities associated with the construction of a project funded under this title on a brownfields site.

### Proposed Changes to section 133 of title 23, U.S.C., Surface Transportation Program

Two modifications of the existing language are proposed. First, this provision would make two technical corrections to the existing language so that the eligibility provision refers to the latest Water Resources Act amendments enacted by Congress. Second, the proposal would insert new language to clarify the responsibility of the State in using this eligibility provision for mitigation banks.

The proposal would revise the language in the eligibility provisions to indicate that the State DOT (and FHWA through approval processes) has sole discretion regarding the practicability of banking to establish the eligibility of a project's wetland or natural habitat mitigation costs for Federal-aid funding.

This provision would also modify existing eligibility for pollution abatement and environmental restoration projects under the STP. It would extend eligibility to any STP project, beyond the current eligibility for only projects undergoing reconstruction, rehabilitation, resurfacing, or restoration (4R projects). The measures must mitigate impacts caused by a project funded under title 23, but they need not be proposed as part of another project. If the measures are proposed as part of a project to reconstruct, rehabilitate, resurface, or restore an STP facility, then the current limitation of pollution abatement and environmental restoration work not exceeding 20% of the total project cost would remain in place.

This provision would establish STP eligibility of Federal-aid funds for invasive species control efforts related to projects funded under title 23. Participation in statewide inventories is an included eligible item. Contributions to measures to control exotic and invasive plant species, which are increasing in the United States, may precede project construction if such measures are consistent with Federal law and State transportation planning processes.

This provision would establish NHS eligibility of Federal-aid funds for remediation activities associated with the construction of a project funded under this title on a brownfields site.

#### **SEC. 1609. STANDARDS.**

This section would amend 23 U.S.C. 109, Standards. The changes to section 109 are made to provide greater emphasis on and clarity to the need to consider the preservation of human and natural resources as a part of the decisionmaking process in developing highway projects. The impacts of highway projects have been effectively addressed a part of the design process for many years. However, the transportation community, the traveling public, and communities have been demanding improvements in project delivery and in the make-up of the product that is delivered. Compatibility with the surrounding context, or environment, and improved safety for the motorist and the pedestrian are critical. The changes to this section address the need to see that highway projects meet all of these goals by having a project sponsor consider community preservation and community concerns. Projects that have considered these context-focused elements have had a much greater success rate at moving projects to completion, thereby streamlining the delivery process.

Subsection (a) of section 109 would be amended to add a third item specifying that the Secretary shall ensure that the plans and specifications for proposed highway projects have considered preservation, historic, scenic, natural environment, and community values. States can use existing processes for demonstrating that they have considered the subject factors.

Subsection (p) of section 109 currently allows the Secretary to approve a project that might not meet all the requirements of subsections (b) and (c) related to geometric and construction standards, so long as the project meets certain specified objectives relating to scenic and historic

values. This subsection has been revised to affirmatively encourage the incorporation of these objectives into the design of all Federally funded projects. Further, these objectives would be broadened by adding additional objectives consistent with the philosophy of Context Sensitive Design and subsection (p) would be renamed Context Sensitive Design. Specifically, the term “community” would be added to the list of values in subsection (p)(1). This will help make the subsection consistent with the modifications to other portions of section 109. In addition, a new item would be inserted as a subsection (p)(1)(C) to add consideration of locality context. It is added to reflect further the consideration of context and is consistent with language on locality in subsection (a).

## **SEC. 1610. USE OF HIGH-OCCUPANCY VEHICLE (HOV) LANES.**

This section would amend section 102(a) of title 23, U.S.C., to clarify existing law and provide more flexibility to State and local agencies for effective management of HOV facilities. The proposed addition of “other responsible local agencies” in subsection (a)(1) is an editorial change to clarify that the provisions pertain to State departments of transportation and other local agencies that may be responsible for the implementation, management, operation, and maintenance of HOV lanes. This change is consistent with how State departments of transportation and local agencies are referred to in the FHWA Program Guidance on HOV lanes issued on March 28, 2001.

The proposed removal of motorcycles and bicycles in subsection (a)(1) would clarify the current language and improve safety. Section 163 of the Surface Transportation Assistance Act of 1982 does not contain any reference to bicycles and pertains entirely to motorcycles. The presence of bicycles on all freeway and most surface street HOV facilities would create potential operational and safety hazards. Subsection (a)(2)(C) proposes to provide agencies the option of allowing bicycles on surface street HOV facilities when there is insufficient space within the roadway or public right-of-way to establish and designate a bicycle-only lane.

Subsection (a)(2) would be added to clearly identify the types of vehicles that are exempt from meeting the minimum occupancy requirements for HOV facilities. This provision would also identify the possible options that responsible agencies may select from and use as operational strategies to maximize the use of existing and planned future HOV facilities and highway capacity, mitigate congestion, and reduce fuel consumption. Subsection (a)(2)(A) would provide that motorcycles shall not be considered single-occupant vehicles and shall be allowed to use HOV facilities, consistent with the provisions of section 163 of the Surface Transportation Assistance Act of 1982.

Existing subsection (a)(2), which allows States to permit a vehicle with fewer than two occupants to operate on HOV lanes if the vehicle is certified as an inherently low-emission vehicle (ILEV), would be deleted. Under the current statute, ILEVs are the only types of low-emission and energy-efficient vehicles that States may permit to use HOV facilities if they do not meet the required minimum occupancy requirement. EPA no longer supports programs that focus on providing incentives to individuals that purchase and use ILEVs, and in any event, this provision will expire on September 30, 2003. However, proposed subsection (a)(2)(B) discussed below would still provide responsible agencies the option of allowing low-emission and fuel-

efficient vehicles (which would include ILEVs) to use HOV facilities, under the conditions specified in section (a)(2)(B)(i).

Subsection (a)(2)(B) would be added to provide responsible agencies with the option of allowing low-emission and fuel-efficient vehicles to use HOV facilities even if they do not meet the minimum occupancy requirements. This paragraph also identifies the types of vehicles that State transportation departments may elect to allow on HOV facilities along with the associated provisions that must be followed to ensure that these vehicles do not seriously degrade the operation of an HOV facility or system.

Subsection (a)(2)(B)(i) would define a “low-emission and energy-efficient” vehicle as one that can both meet EPA’s Tier II standards for light-duty vehicles and that has an EPA fuel efficiency rating of 45 miles per gallon or higher on the highway.

Subsection (a)(2)(B)(ii) would require the responsible agencies that allow low-emission and energy-efficient vehicles to use HOV facilities to create a program that defines how such qualifying vehicles are selected and certified. The creation of such a program is critical to ensuring that there are requirements for properly labeling these vehicles and that there are procedures for enforcing these requirements. It is important to continuously monitor, evaluate, and report on the performance of these facilities and establish procedures to limit or restrict the use of such vehicles, if necessary, to ensure that the performance of individual facilities or the entire HOV system does not become seriously degraded.

Subsection (a)(2)(D) would be added to provide responsible agencies with the option of charging vehicles a toll for each use of an HOV facility if these vehicles do not meet the minimum occupancy requirements, and if the requirements of section 129 of title 23, U.S.C. are met. This ensures consistency with the provisions that have been proposed for allowing tolling to manage congestion and improve air quality in section 129 of title 23, U.S.C. This subsection also identifies the associated provisions that must be followed with establishing a program that addresses how vehicles can enroll and participate, and the other required provisions that must be satisfied. The creation of such a program is critical to ensure that the vehicles are properly tolled; fees collected; violations enforced; demand is managed in an efficient and safe manner; operation of these facilities continuously monitored, evaluated, and reported; and procedures established that limit or restrict the use of such vehicles as necessary, to ensure that the performance of individual facilities or the entire system does not become seriously degraded.

Subsection (a)(2)(E) would be added to allow designated public transportation vehicles that are deadheading or not currently in service to use HOV facilities if they do not meet the established occupancy requirement. Designated public transportation vehicles are defined as those providing designated public transportation, as defined under section 12141 of title 42, and that are owned or operated by a public entity or that are operating under contract to a public entity. This definition would prohibit privately owned vehicles, public school transportation vehicles, nonprofit organizations, taxicabs, or other similar types of services from using HOV facilities without the requisite number of passengers. This provision would also establish the conditions that must be met to use HOV facilities when the designated public transportation vehicle does not meet the occupancy requirements. These conditions include requiring and

enforcing the labeling of vehicles, continuously monitoring, evaluating, and reporting on performance, and establishing the policies and procedures that would limit or restrict the use of such vehicles as necessary, to ensure that the performance of individual HOV facilities or the entire system does not become seriously degraded.

Subsection (a)(3) would be added to identify the requirements a responsible agency must follow when it permits any of the exceptions specified in subsection (a)(2). Subsection (a)(3)(A) would require the responsible agency to establish, manage, and support a performance monitoring, evaluation, and reporting program if it permits any of the exceptions specified subsection (a)(2). The program would be required to continuously monitor, assess, and report on the impacts that any of these excepted vehicles may have on the operation of individual HOV facilities and the entire HOV system. The FHWA Program Guidance on HOV lanes would be revised to provide guidance on how the responsible local agencies should work with the FHWA Division Offices to monitor, evaluate, report, and make changes based on the performance of specific HOV facilities and the entire HOV system.

Subsection (a)(3)(B) would require responsible agencies to limit or discontinue permitting any of the exceptions specified in subsection (a)(2), if the presence of any of these excepted vehicles seriously degrades the operation of individual HOV facilities or the entire HOV system. For purposes of this section, “seriously degraded” would mean that an HOV facility located on a freeway, or similar type of roadway, fails to maintain a minimum average operating speed of at least 45 miles per hour 90 percent of the time over a consecutive six-month period during weekday peak travel periods. For HOV facilities on other types of roadways, the minimum average operating speed, performance threshold, and associated time periods would be established based on the conditions unique to each roadway and agreed to by the responsible agencies.

The proposed restriction in subsection (a)(3)(B) is necessary to ensure that, if any of the excepted vehicles becomes a sufficiently popular consumer choice to fill the available HOV facility capacity, the responsible agency would be required to discontinue such exceptions to preserve the travel time savings and travel time reliability that HOV facilities must deliver to be viable, continue to encourage ridesharing, and support the efficient operation of transit vehicles.

The FHWA Program Guidance on HOV lanes will be revised to provide guidance and additional information on the how the responsible local agencies will be required to work with the FHWA Division Offices to monitor, evaluate, report, and make changes based on the actual performance of both specific HOV facilities and the entire HOV system. The Program Guidance will also be revised to define freeway as a facility that provides full access control, provides for high levels of safety, and efficiently moves large volumes of traffic at high speeds.

## **SEC. 1611. BICYCLE TRANSPORTATION AND PEDESTRIAN WALKWAYS.**

Subsection (a) of this section would make minor amendments in 23 U.S.C. 217.

- The amendment to subsection (a) of section 217 would explicitly allow STP and CMAQ funds to be used for nonconstruction pedestrian safety programs. Current law only mentions

bicycle safety.

- The amendment to subsection (e) would explicitly mention pedestrian use on bridges. Current law only mentions bicycle use.
- The amendment to subsection (f) would clean up existing language and remove the term “highway project” from this section. This language has been a problem because a highway project is not defined in the law, and defining it would not accomplish the intent of this clause, which is to make bicycle and pedestrian projects subject to the same Federal/non-Federal matching shares as other projects.
- The new subsection (k) would explicitly allow an ongoing practice of charging user fees for shared-use paths. The user fees would have to be used for the maintenance and operation of shared use paths within the State. This new subsection would restrict the fee to shared-use paths not within a highway right-of-way, and would not extend to sidewalks or bicycle lanes.

New subsection (l) would reauthorize the national bicycle and pedestrian clearinghouse first authorized in section 1212(i) of TEA-21, and provide funding and contract authority for fiscal years 2004 through 2009.

Subsection (b) of this section would provide that the bicycle and pedestrian safety grants are to be funded by a set-aside from the Surface Transportation Program.

## **SEC. 1612. TRANSPORTATION, ENERGY, AND ENVIRONMENT.**

This section creates an energy and climate change program at DOT to study the relationships between transportation, energy, and climate change, and provides dedicated funding for these activities. While limited research on these topics is currently being undertaken within some operating administrations, there are inadequate resources to implement a thorough program in this area. This proposal would provide funding of \$19 million over a six-year authorization period. Further, because energy and climate change issues relate to multiple modes of transportation, the proposed legislation provides a mechanism for coordinated research across operating administrations.

The activities conducted under this program would enable DOT to participate constructively in national efforts to ensure energy security and reduce greenhouse gas emissions. Specific program activities would be selected by an internal steering committee with representatives from DOT operating administrations to ensure a comprehensive, multi-modal focus and avoid fractionalization. Research would be conducted on transportation strategies to improve energy efficiency and reduce greenhouse gas emissions from transportation sources. Research would also be conducted to assess the impacts of climate change on transportation infrastructure, safety, and operations, and on strategies to avoid or mitigate these risks through appropriate transportation planning, investment, and management. Subsection (d) allows DOT research to be conducted in collaboration with that of other Federal agencies and other research programs to encourage effective coordination with related research activities on energy and climate change.

### **SEC. 1613. IDLING REDUCTION FACILITIES IN INTERSTATE RIGHTS-OF-WAY.**

This section would create an exception to the prohibition on the placement of commercial establishments in rest and recreation areas, and in safety rest areas, constructed or located on rights-of-way of the Interstate System. The purpose of this exception would be to allow States (either directly or through contracts) to place electrification or other idling reductions facilities in rest areas that could be used to provide heating, air conditioning, electricity, and communication to motor vehicles used for commercial purposes. Through these facilities, operators of such motor vehicles would be able to receive these services without turning on their engines, thereby reducing vehicle emissions. States, other public agencies, and private entities that are already allowed to operate on the Interstate System, would be allowed to charge for the services provided under this authority.

### **SEC. 1614. APPROPRIATION FOR TRANSPORTATION PURPOSES OF LANDS OR INTEREST IN LANDS OWNED BY THE UNITED STATES.**

This proposed change would amend and clarify the process by which the Federal Highway Administration (FHWA) acquires right-of-way over Federal lands on behalf of State transportation departments, under 23 U.S.C. 317.

Proposed section 317(a) updates several aspects of the current law. First, it clarifies that all adverse environmental impacts to the Federal land must be mitigated. Second, it clarifies that the authority may be used to acquire Federal land for any project eligible for Federal-aid funding. Third, it clarifies that if the land is ever not needed for transportation purposes, the land will revert at the discretion of the prior owning agency, in which case the land must be restored to its former condition. These clarifications are consistent with current FHWA transportation policies. This section would retain the authority of the Secretary of the Federal agency supervising lands proposed to be appropriated, to certify that the appropriation is contrary to the purpose for which the lands or materials were reserved.

Proposed section 317(b) adds a new provision clarifying that lands cannot be forever barred from use for projects eligible under title 23 just because other Federal funds were spent on their acquisition at some time in the past. If the land is needed for transportation purposes, and appropriate mitigation and environmental coordination has taken place, the acquisition and use of right-of-way needed for the project would be allowed under this provision.

### **SEC. 1615. TOLL PROGRAMS.**

This section establishes and modifies two toll programs. First, this section amends the Interstate System Rehabilitation and Reconstruction Pilot Program established under section 1216(b) of TEA-21. These minor modifications are intended to ease the eligibility criteria for participation in the pilot program. The strict financial analysis requirement, that the State must show that collecting tolls is the only way to improve the facility, is replaced by a requirement that the State must show that financing the improvements to the facility through tolls is the most efficient, economical, or expeditious way to advance the project. Most of the original provisions have

been retained, including the number of pilots permitted, the limitation on the use of toll revenues, and the restriction on the use of Interstate Maintenance funds while the facility is being tolled.

Second, this section proposes a variable toll pricing program. The purpose of this program is to enable the use of variable toll pricing on congested facilities in order to increase mobility and improve air quality. Congestion continues to be a major concern on our nation's transportation system. Congestion not only makes our highways inconvenient and less safe, but it also increases transportation costs for American businesses, and adversely affects air quality. Under this proposal, the Secretary may permit a State or public authority to toll any highway, bridge, or tunnel, including facilities on the Interstate System, to manage existing high levels of congestion or reduce emissions in a nonattainment area or maintenance area. For each facility for which a variable toll pricing program is established, the State or public authority with jurisdiction over the facility, would enter into an agreement with the Secretary providing for certain conditions, such as variable tolling by time of day, high occupancy vehicle (HOV) requirements, and certain toll-revenue use restrictions. Upon the decision of the State or public authority to discontinue a variable toll pricing program, the tolls would be removed unless the facility qualifies for tolling under other applicable authority, such as 23 U.S.C. 129. However, if the facility has any outstanding debt attributable to the implementation of a variable toll pricing program, then the State or public authority may continue to toll the facility under the terms of its agreement until the debt is retired. To be eligible to participate in this program, the State would provide to the Secretary a description of the congestion and air quality problems sought to be addressed and the goals sought to be achieved.

This section would repeal the value pricing pilot program established in section 1012(b) of the Intermodal Surface Transportation Efficiency Act of 1991, as amended by section 1216(a) of the Transportation Equity Act for the 21st Century. Additionally, this section would permit any State or public authority currently operating under the authority of a cooperative agreement under the value pricing pilot program to continue operating under the terms of that agreement and would make it clear that any State or public authority shall be allowed to continue tolling under that authority.

#### **SEC. 1616. OZONE STANDARDS, PARTICULATE MATTER STANDARDS, AND REGIONAL HAZE PROGRAM.**

This section would revise current air quality requirements found in sections 6101 and 6102 of TEA-21.

##### Revised section 6101 of TEA-21. Findings and Purpose

The findings in Section 6101 would be updated to reflect activities that have occurred since 1998. To enable the States and Indian Tribes to coordinate planning and implementation of the PM-2.5 standards and the regional haze program, the language in section 6101 is revised to establish a single date for PM-2.5 designations, which would permit submission of plans for both programs on the same schedule.

The Environmental Protection Agency (EPA) anticipates having 3 years of PM-2.5 monitoring data by the end of 2003. Given the health benefits of reducing PM-2.5, it is important to move



forward expeditiously on the designation process and implementation of the standards. The findings also note the importance of continued funding for the PM-2.5 monitoring program to support the overall implementation process.

#### Revised section 6102. Particulate Matter and Regional Haze Programs

Section 6102 would be amended in order to establish specific dates by which States must provide recommendations to EPA, and by which EPA must promulgate designations. By having specific dates, it should streamline the designation process, facilitate coordination among States, and make it easier for States to coordinate implementation plans for the PM-2.5 program and for the regional haze program.

- The revised language in subsection (c)(1) would call for State recommendations for PM-2.5 designations to be submitted to EPA by September 30, 2003. This date should give the States time to take the 2000-2002 data into account.
- The revised language in subsection (c)(2)(A) would require State plans for regional haze to be submitted within 3 years of the date that PM-2.5 areas are designated in the State. Thus, statewide regional haze plans and PM-2.5 plans will be due at the same time, allowing for better coordination of strategies for each program.
- The revised language in subsection (c)(2)(B) would provide that the requirements in subsection (c)(2)(A) do not preclude nine Western States from submitting regional haze plans in 2003 to implement regional haze requirements based on the 1996 recommendations of the Grand Canyon Visibility Transport Commission.

The revised language in subsection (d) would establish a date of December 31, 2004, by which EPA is to promulgate designations for PM-2.5. Current TEA-21 language could otherwise result in some areas being designated in July 2004 and others in July 2005, making it more difficult for States to coordinate technical analysis and the implementation of strategies designed to reduce pollution regionally. Setting this date for designations should facilitate regional coordination among States and provide for expeditious action toward attaining the standards.

#### **SEC. 1617. INDEMNIFICATION ON CERTAIN RAILBANKED PROJECTS.**

Under a variety of programs (e.g., the Recreational Trails Program, the Transportation Enhancements Program, the Congestion Mitigation and Air Quality Improvement Program, Surface Transportation Program), the Department of Transportation provides funds to States to acquire, develop, construct, and maintain trails. States may use these funds to make grants to local governments and private organizations ("project sponsors") for trail projects. Such projects include trails established pursuant to the National Trails System Act Amendments of 1983, 16 U.S.C. 1247(d) ("Rails to Trails Act"), located on a railroad right-of-way.

Where the railroad or project sponsor's ownership interest in the right-of-way would not allow for railbanking and interim trail use under applicable State law but for the operation of the Rails-to-Trails Act, the United States has been held liable by the Federal courts

under the Fifth Amendment to pay just compensation. The result in these instances is that the United States can be said to pay twice for the same trail corridor -- first through funds provided by DOT, and then a second time as the result of a just compensation award to property owners who abut the trail corridor and who are found by the court to hold the underlying fee interest.

This section adds an indemnification requirement for States involved in railbanking. If a Federal court determines that property owners are entitled to just compensation in a corridor where Federal-aid highway funds have been used after the date of enactment to acquire right-of-way interests or develop a trail that is located on a railroad right-of-way under the Rails to Trails Act, then the State would have to pay the United States the lesser amount of the judgment awarded (including attorneys' fees) or the Federal-aid highway program money received in connection with that railroad right-of-way.

## **SUBTITLE G – PROGRAM EFFICIENCIES AND IMPROVEMENTS -- OPERATIONS**

### **SEC. 1701. TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.**

This section would amend title 23 so that transportation systems management and operations (TSM&O) programs and projects are integrated into and facilitated through the capital planning and construction processes. This proposal adds both a new section to title 23 and a definition of "transportation system management and operations" in the general definitions section. These amendments would establish a specific foundation for TSM&O, differentiate it from construction provisions in title 23, provide a clearer mandate, alleviate ambiguities that inhibit deployment and implementation of TSM&O activities, and establish procurement flexibility that State and local agencies need to increase their ability to take advantage of advanced operational practices and advanced technology.

This proposal amends the current definition of "construction." The examples cited in the current definition of "construction" are driven by traditional procurement methodologies, such as competitive bidding. Since the enactment of TEA-21, the transportation industry has indicated that the requirements surrounding these traditional procurement methodologies are too cumbersome for operational efforts, such as traffic control systems. The amendment of the definition of construction, coupled with the new procurement language proposed in the new section on transportation system management and operations, would result in greater procurement flexibility. Also, this proposal makes other technical changes to ensure internal consistency and to make improvements to transportation system management and operations an eligible activity under the congestion mitigation and air quality improvement program. Also, regional transportation operations collaboration and coordination would be added to the list of eligible activities under the Surface Transportation Program.

A new section 165, entitled Transportation Systems Management and Operation would be added to title 23 to improve regional transportation systems management and operation. As envisioned, regional operations collaboration and coordination is a deliberate, continuous, and sustained activity that takes place when transportation agency managers and public safety officials responsible for day-to-day management and operations work together at a regional level to solve

problems, improve system performance, and communicate better with one another. The result of this activity would be defined to include, at a minimum, the following: (1) developing a regional concept of operations that defines a shared strategy for how the region's transportation systems will be managed, operated, and measured; (2) sharing information among multiple operators, service providers, and public safety officials as well as the general public; (3) guiding the implementation of regional transportation systems management and operations initiatives such as traffic incident management, emergency management and response, regional traveler information services and communications networks, roadway weather services, and electronic payment services. This activity is considered to be essential to the planning for transportation systems management and operations.

## **SEC. 1702. REAL-TIME SYSTEM MANAGEMENT INFORMATION PROGRAM.**

This section is intended to encourage the deployment of systems to monitor the status of condition of key surface transportation (highway and transit) facilities.

Subsection (a) describes the goals and purposes of the proposed real-time system management information program. The goal of the program is to provide the nationwide capability to monitor, in real-time, the traffic and travel conditions of our Nation's major highways and to widely share that information to improve the security of the surface transportation system, address congestion problems, support improved response to weather events, and facilitate national and regional traveler information. This program would result in a nationwide system of basic real-time information for managing and operating our surface transportation system; help identify longer range real-time highway and transit monitoring needs and develop plans and strategies for meeting those needs; and provide the capability and means to share that data with State and local governments, and the traveling public.

Subsection (b) would require the Secretary to establish data exchange formats within one year of enactment of this bill. Disseminating the data provided by highway and transit monitoring systems to the public and private sector is critical to this program. Unless that data is in some sort of standard format, the benefits of this data would be lost.

Subsection (c) would require each State to establish a statewide incident reporting system within two years of enactment of this bill. Several of these systems already exist and they are relatively inexpensive.

Subsection (d) would require State and local governments to explicitly address real-time highway and transit needs and the systems needed to meet those needs including coverage, monitoring systems, data fusion and archiving, and methods of information sharing and exchange within their intelligent transportation system regional architecture. This subsection would also encourage States to incorporate explicitly the data exchange formats developed by the Secretary.

Subsection (e) specifies that activities related to the planning and deployment of real-time monitoring elements would be eligible for Surface Transportation Program and National

Highway System funds. This subsection also would allow a State to obligate State Planning and Research funds for activities related to the planning of real-time monitoring elements.

### **SEC. 1703. INTELLIGENT TRANSPORTATION SYSTEMS PERFORMANCE INCENTIVE PROGRAM.**

This section would establish an intelligent transportation systems (ITS) performance incentive program, to provide funding to States based on progress in achieving specific milestones directly related to operational performance.

Subsections (a) through (d) would establish the program, define key terms, and provide for the goals and purpose of the program.

Subsection (e) would require the Secretary to issue regulations that establish a funding formula for the program. This subsection would also establish the criteria upon which the funding formula shall be based. The Secretary would be required to establish an effective date for the funding formula in the regulations and to phase in the funding formula over a 3-year period. The funding formula would be established by regulation in order to engage the affected parties in the development of that formula.

Subsection (f) would provide contract authority for the program funding. Additionally, the 80 percent Federal share and its exceptions under section 120(b) of title 23, U.S.C., would apply.

Subsection (g) provides that the funds would be apportioned according to the National Highway System formula until the fiscal year established by the regulation.

Subsection (h) describes the use of the funds received under this program. The intent is to limit the use of this funding to projects involving planning, deployment, integration, and operation of ITS systems.

### **SEC. 1704. COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS DEPLOYMENT.**

This section is intended to complete the core deployment of Commercial Vehicle Information Systems and Networks and to encourage the expanded deployment of Commercial Vehicle Information Systems and Networks by providing grants to States.

Subsection (a) provides general direction to carry out the Commercial Vehicle Information Systems and Networks Deployment Program.

Subsection (b) describes the overall purpose of the Commercial Vehicle Information Systems and Networks Deployment.

Subsection (c) would require the Secretary to make grants of up to \$2.5 million for the core deployment of Commercial Vehicle Information Systems and Networks. A State that has previously received funding for the core deployment of Commercial Vehicle Information

Systems and Networks would receive a grant that has been reduced by the amount of funds previously received funding for CVISN core deployment. States that have not previously received funding for CVISN core deployment would receive a grant of \$2.5 million. To be eligible for a core deployment grant, a State must have a program plan and top-level system design, must certify that its Commercial Vehicle Information Systems and Networks activities are consistent with National Intelligent Transportation Systems and Commercial Vehicle Information Systems and Networks architectures and available standards, and must agree to execute a successful interoperability test. The use of grant funds would be limited to core deployment activities.

Subsection (d) would authorize the Secretary to make grants to States for the expanded deployment of Commercial Vehicle Information Systems and Networks. The amount of the grants would be determined by the amount of funds that remain after the core deployment grants have been made and by the number of States that request an expanded deployment grant. The maximum expanded deployment grant that may be given to a State in a fiscal year would be \$1 million. A State that has completed core deployment would be eligible for an expanded deployment grant.

Subsection (e) provides that the Federal share of grant funds under this section would be 50 percent. The Federal share for funds used for Commercial Vehicle Information Systems and Networks from other eligible sources would be 80 percent.

## **SUBTITLE H – PROGRAM EFFICIENCIES AND IMPROVEMENTS – FEDERAL-AID STEWARDSHIP**

### **SEC. 1801. SURFACE TRANSPORTATION SYSTEM PERFORMANCE PILOT PROGRAM.**

This section would establish a surface transportation system performance pilot program. This pilot program is intended to test the concept of a performance-based management approach in the obligation of Federal funding under the Federal-aid highway program. Under this pilot program, up to five States would be encouraged to manage their programs on a systematic, performance basis across the programmatic lines by which the Federal-aid program is normally structured. This pilot would be devised in order to determine the feasibility, effectiveness, and impacts of this approach on program design and management.

One benefit of this program is that it would increase the flexibility provided to States to obligate their Federal funds made available under certain specified highway programs in title 23 in accordance with their own needs and priorities. This program would assist States in making effective investment by focusing on program outcomes rather than program categories. This program would facilitate management of the categories to address needs in accordance with established goals. States could choose under this program to advance individual projects solely with Federal funds. However, a State would have to agree to maintain its total (State and Federal) program expenditures at least at the average level of the three previous fiscal years.

Another benefit of this program is that it would authorize the Secretary to assign, and a State to assume, some or all of the Secretary's responsibilities under any Federal law or requirement,

except for responsibilities relating to Federally recognized Tribes. The State would be deemed to be a Federal agency to the extent the State is carrying out the Secretary's responsibilities under the National Environmental Policy Act, title 23 of the United States Code, or any other Federal law. A State department of transportation or other State agency carrying out a responsibility of the Secretary would be subject to Federal laws to the same extent a Federal agency would be subject. Additionally, when assuming the responsibilities of the Secretary, this section would require a State to certify that it has laws and regulations necessary to carry out the responsibilities assumed by the State, and laws and regulations that are comparable to the Freedom of Information Act and that are reviewable by a court of competent jurisdiction.

From its inception, the Federal-aid highway program has fostered the development and growth of State transportation departments by requiring them to have adequate powers and be suitably equipped and organized to be able to comply with all Federal-aid requirements. In addition, many States have enacted legislation that is consistent with the requirements contained in title 23. Thus, in some States, it may be desirable to eliminate Federal controls that are duplicative to facilitate a more orderly and efficient execution of the Federal-aid highway program. This program would test whether the State can deliver these projects, consistent with Federal policies and objectives.

Up to five States could participate in the pilot program. States wishing to participate in the pilot program would be required to submit an application that would provide detailed information on their transportation goals and proposed performance measures to determine progress toward meeting those goals. This proposed pilot program also would require a State to provide, to the public, notice and opportunity to comment on the State's participation in the pilot program at least 20 days prior to submitting its application to the Secretary. The Secretary would evaluate each submission by determining how well those goals address national security, interstate commerce, mobility, safety, and environmental stewardship.

Each year, a State would identify certain goals it wishes to achieve with its funds under the program as well as certain performance measures by which to gauge the State's success in achieving its goals. The goals and performance measures would be mutually established by both the State and the Secretary. Although this program is intended to provide a great deal of flexibility to the States in determining where and how it wishes to spend its Federal funds, the Secretary must be able ensure that the State's goals and priorities are aligned with any areas of national strategic importance. A State's participation in the pilot program would be terminated if that State failed to achieve the established performance for two consecutive years.

Pilot States would be required to submit certain information to enable the Secretary to judge the success of the pilot program. States would be able to use their own record-keeping systems with information on the location of the expenditures, improvement types, and functional systems. This would include how much progress the State was making in the important national interest areas. Each year, information concerning how well the States had done to achieve established targets would be submitted by the pilot States and evaluated by the Secretary. The overall program would have a limited life and would sunset if not extended in statute.

Nothing in this section would relieve the Secretary from any of the Secretary's responsibilities under title VI of the Civil Rights Act of 1964, the major project requirements under section 106(h) of title 23, the statewide and metropolitan planning requirements under sections 134 and 135 of title 23, or the Secretary's rulemaking authority under any Federal law. Nothing in this section would relieve a project from the requirements of the National Environmental Policy Act. Additionally, nothing in this section is intended to relieve the Secretary from any of the Secretary's responsibilities concerning critical, time-sensitive highway and public transportation security projects under section 1206 of this Act.

## **SEC. 1802. STEWARDSHIP AND OVERSIGHT.**

This section includes several proposals to improve oversight of Federal-aid highway projects.

This section includes a provision that would require the Secretary to establish an oversight program to monitor the effective and efficient use of funds authorized under title 23, with a specific focus on financial integrity and project delivery. Under this provision, the Secretary must perform annual reviews that address elements of States' financial management systems and project delivery systems. As part of the financial integrity oversight, the Secretary is required to develop minimum standards for estimating project costs, and to evaluate periodically States' practices for estimating project costs, awarding contracts, and reducing project costs. States are required to determine that subrecipients of Federal funds have sufficient accounting controls and project delivery systems.

Under current law, projects under title 23 with an estimated total cost of \$1 billion or more are required to submit an annual financial plan to the Secretary. This section would add a requirement to submit a project management plan. The project management plan would document the procedures and processes in place to provide timely information to the project decision makers to effectively manage the scope, costs, schedules, and quality of the Federal requirements of the project and the role of the agency leadership and management team in the delivery of the project.

This section would require a recipient of Federal financial assistance to prepare an annual financial plan for projects that receive \$100,000,000 or more in Federal financial assistance and that are not subject to the requirements for major projects. These annual financial plans would be available for the Secretary's review upon the Secretary's request.

This section would mandate debarment of contractors who have been convicted of fraud related to Federal-aid highway or transit programs, and mandate the suspension of contractors who have been indicted for offenses relating to fraud. This would codify the debarment of convicted contractors, which under current DOT regulations is a discretionary measure. The Secretary would have the authority to waive suspension and debarment actions to address circumstances relating to non-affiliated subsidiaries of an indicted contractor, and national security concerns.

This proposal would help States and project grantees to fund additional transportation programs and increase oversight activities. This section would require that portions of monetary judgments won in Federal criminal and civil cases against contractors pertaining to Federal-aid

highway and transit program fraud be shared with the State or local transit agency that was injured by the fraud. The amount of the cost-share would be determined by the Attorney General and the Secretary, and would be used to fund additional infrastructure and oversight programs authorized under titles 23 and 49. The funds shared with the State or local transit agency would be considered as Federal funds. The mandatory cost-share would not be in effect if the State or local transit agency was involved or negligent in the fraudulent activity.

This section would also make other conforming and technical amendments to title 23 for consistency with the oversight responsibilities provided for in this section.

### **SEC. 1803. EMERGENCY RELIEF.**

This section would increase the amount authorized to be obligated in any one fiscal year for emergency relief under section 125 from \$100,000,000 to \$200,000,000. Funding needs are routinely far in excess of the authorized funding level of \$100,000,000. Doubling the authorization level to \$200,000,000 would enable emergency relief funding to flow to State and local transportation agencies much more quickly in keeping with emergency relief needs.

### **SEC. 1804. FEDERAL LANDS HIGHWAYS PROGRAM.**

Subsection (a) would amend 23 U.S.C. 101 to include a new definition for “recreation roads” and “public forest service roads,” and change the definitions of “Federal lands highways,” “forest development roads and trails,” and “forest road or trail” to reflect current U.S. Forest Service definitions and a new class of Federal lands highways. It also would delete, as redundant, one of the two current definitions for “public lands highways” in section 101. Eligible recreation roads are public roads under the jurisdiction of the Bureau of Land Management, the Bureau of Reclamation, the Department of Defense, the Forest Service, or the Army Corps of Engineers, and that are owned by the United States.

Subsection (b) would amend 23 U.S.C. 120(k) and (l) by expanding the ability of Federal land managing agencies to pay the non-Federal share of any Federal-aid project funded under 23 U.S.C. 104 to all title 23 Federal-aid highway programs and the Federal transit program funded under Chapter 53 of title 49.

Subsection (c) would amend 23 U.S.C. 132 to allow direct transfers of apportioned funds to Federal agencies, including the Federal Lands Highways program, upon State request.

Subsection (d) would amend the Federal Lands Highways program allocation section, 23 U.S.C. 202, to: (1) eliminate the Public Lands Highways Discretionary category; (2) retain the forest highway subcategory; (3) revise the date on which the Indian Reservation Road fund distribution formula regulation is published, from April 1999 to April 2004, and the year in which the new formula is implemented, from October 1999 to October 2004; (4) clarify which title 23 funds (limited to Chapter 2 and emergency relief funds) are available to Indian tribes under this subsection and what is the relationship between the FHWA-approved Indian reservation road transportation improvement program and the obligation of funds for Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) contracts and agreements; and (5)



allow the use of Indian Reservation Road Bridge funds to be used for design as well as construction.

Subsection (e) would amend the Federal Lands Highways program section, 23 U.S.C. 204, to: (1) allow the Secretaries to enter into agreements as well as contracts, and (2) expand the use of refuge road funds to be used for interpretive signage, maintenance of public roads in National Fish hatcheries, payment of the non-Federal share of Federal-aid highway and transit projects, and maintenance and improvement of recreational trails. Funding used for trails would be limited to 5 percent of available funding per fiscal year.

Subsection (f) would create a safety funding category to provided 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 402 of title 23.

Subsection (g) would create a recreation roads funding category to provided dedicated funds for improvement projects for public roads under the jurisdiction of the Bureau of Land Management, Bureau of Reclamation, Forest Service, Department of Defense, and Army Corps of Engineers, and that are owned by the U.S. Government.

Subsection (h) would provide conforming amendments for consistency with the definition changes made in this section.

#### **SEC. 1805. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM.**

This section prescribes how funds made available for the Appalachian development highway system would be apportioned to the States in the Appalachian region. The latest cost estimate would be used as the basis for apportionments. This section also provides that funding would be available for obligation for the Appalachian development highway system in the same manner as other funding apportioned under chapter 1 of title 23, with the exception of the period of availability. The funding would remain available until expended and the Federal share would be as delineated in section 201 of the Appalachian Regional Development Act of 1965. This section would also prohibit the use of toll credits on the Appalachian development highway system. This would reduce the Federal cost of that system and would likely expedite its completion.

#### **SEC. 1806. MULTI-STATE CORRIDOR PLANNING PROGRAM.**

This section would establish a Multi-State Corridor Planning Program to replace the National Corridor Planning and Development Program under section 1118 of TEA-21. Changes include: narrowing eligibility; reducing the Highway Trust fund share and establishing a set of selection criteria. The program would provide an opportunity for States and regional agencies to jointly plan for a variety of geographic areas in addition to traditional metropolitan or State areas. The principal objectives of the program would be to address the gap created by formula programs

(formula programs do not provide specific funds for multi-State, multimodal, and multi-jurisdictional decisionmaking on corridors) and to implement the direction by Congress to streamline the project development process.

Eligible activities would be restricted to multi-State planning studies. This section would clarify that projects must be consistent with the existing “continuing, cooperative, and comprehensive” planning process required by law in metropolitan areas and statewide. The section would provide a statutory emphasis on multi-jurisdictional efforts for multi-modal planning and planning for operational alternatives that improve mobility, freight productivity, access to major marine ports, safety, and security.

Some of the selection criteria in section 1118 of TEA-21 required data that is generally not available and do not relate to the validity of individual projects. The selection criteria in this proposal are based on criteria from TEA-21 and on other considerations identified in the process of implementing TEA-21.

The total Federal share payable for a study would be limited to 80 percent, but the maximum share of funds from the Highway Trust Fund (other than the Mass Transit Account) for a study could not exceed 50 percent of the total cost of such study. This would ensure a strong commitment from all parties, leverage additional funds, and facilitate implementation of multimodal plans.

#### **SEC. 1807. BORDER PLANNING, OPERATIONS, AND TECHNOLOGY PROGRAM.**

This section would establish a Border Planning, Operations, and Technology Program to replace the Coordinated Border Infrastructure Program under section 1119 of TEA-21. Improvements would include: emphasizing bi-national planning; modifying existing eligibility for clarity; adding language clarifying when physical construction in Canada and Mexico is eligible; adding language clarifying when and in what manner funds authorized for this program may be transferred to the General Services Administration; and establishing a set of selection criteria. These improvements to the prior program would enhance coordination among project stakeholders and enhance opportunities for improving border area air quality, planning, safety, and security, as well as operations. An individual project whose scope is limited to information exchange could receive a maximum of \$500,000 in a single year; \$47 million would be set aside in 2004 for construction of State border infrastructure facilities in designated States.

Projects would have to be consistent with the existing “continuing, cooperative, and comprehensive” planning process required in metropolitan areas by 23 U.S.C. 134 and statewide by 23 U.S.C. 135. Also, this section would clarify that regionally significant projects must already be included in the transportation plans and program at the time application is made for a grant under this section. Priority would be given to activities at the northern or southern borders of the United States that improve safety, security, freight movement, operations, or access to rail, marine, or air services.

Selection criteria for this program are based on criteria in TEA-21 and on other considerations identified in the process of implementing TEA-21. Multi-jurisdictional organizations with

Federal representation have been established for both the Mexico/US border and the Canada/US border and it would be appropriate to use the consolidated expertise of these organizations in selection.

Because of the need to place physical facilities in Canada and Mexico to accommodate trade with the United States, language is included to clarify that such projects would be eligible. This provision would make clear that the Secretary may approve a request by one or more States to provide funds for construction projects in Canada and Mexico where such projects are limited to the improvement and efficiency of vehicle and cargo movements at international gateways and ports of entry at land border crossings. Funds for such projects would be provided to border States, and projects would require the cooperation of both the border State and Canada or Mexico, or a political subdivision of Canada or Mexico. Before funding such projects, the Secretary would have to obtain assurances from Canada, Mexico, or the appropriate political subdivision responsible for the project, that the project will be maintained and used over the useful life of the facility only for the purpose for which Federal funds were allocated to the project.

This section would also require that a portion of the fiscal year 2004 funding for the program be used for the construction of State border safety infrastructure facilities in Arizona, California, New Mexico, and Texas. This is the final year of funding in a 3-year effort to improve State border safety inspection infrastructure at the southern border.

The Department does not propose funding for marine port-related projects under this program, notwithstanding the fact that such projects may be important and worthwhile, because this program is designed to address issues at the land borders with Canada and Mexico.

In addition, this section would provide for transfer of funds allocated for a specific project or projects to the General Services Administration for administration, where the Secretary and the State receiving the allocation deem such transfer necessary or where the Secretary determines that such a transfer is necessary to effectively carry out the program

#### **SEC. 1808. TERRITORIAL HIGHWAY PROGRAM AMENDMENTS.**

The Territorial Highway Program (THP) was first established by section 112 of the Federal-Aid Highway Act of 1970, Pub. L. 91-605, 84 Stat. 1713, Dec. 31, 1970. Current provisions of law have not been modernized to reflect the maturity of the program. This provision would update and consolidate as much as possible in one place (section 215) the statutory provisions in title 23 governing the territorial highway program.

Subsection (a) would add a definition of the program to title 23. The intent of this amendment is to increase the visibility of the THP by recognizing it along with other Federal assistance programs that are defined in title 23.

Subsection (b) would maintain the current funding level for the program at \$36,400,000 per fiscal year. Subsection (c) would amend 23 U.S.C. 103 to: (1) refer to section 215, which contains a comprehensive listing of all permissible uses of funds apportioned for the territorial

highway program, including projects eligible for assistance under 23 U.S.C. 133; and (2) eliminate the use of funds apportioned for the National Highway System for airports and seaports.

Historically, funding for the THP was set at 1% of the Federal-aid Primary program and, under ISTEA, 1% of the NHS program. However, under TEA-21, the funding was fixed at the current level, which is significantly lower than the levels that would have been available under the 1% formula. As a consequence, the funding levels for the THP have not kept pace with the rest of the Federal-aid highway program. The limited funding available for the THP should be focused on addressing the growing highway needs of the territories.

Subsection (d) would revise 23 U.S.C. 215 to modernize terms to reflect the current operations and needs of the program. Many of the provisions in section 215 are outdated, do not recognize changes in funding authorization, and do not reflect the development of the program. The changes to section 215 include:

- expanding the areas of technical assistance to be provided to territorial governments to include environmental evaluations (an important aspect of transportation project development);
- requiring a delineation in the agreement between the Secretary and the territorial government of the kind of technical assistance to be provided;
- requiring that a statement on the role and responsibilities of the territorial government and the Secretary for oversight be included in the agreement;
- requiring the execution of new agreements within 12 months after the effective date of this bill;
- requiring the re-evaluation of agreements every two years;
- identifying in the agreement the provisions of Chapter 1 of title 23 that apply to the particular territorial government. In exercising the authority granted by section 215, the Secretary should recognize that each of the territories has different levels of transportation technical expertise, forms of land ownership, governmental structures, taxing authorities, topographic constraints, levels of traffic congestion, population densities, transportation needs, and other important characteristics that may warrant different treatment;
- eliminating the current prohibition on the imposition of toll charges;
- clarifying the permissible use of funds for ferry boats and related facilities, subject to the restrictions of sections 129(b) and (c);
- codifying the current funding eligibility of preventative maintenance activities consistent with the criteria set forth in section 116;

- eliminating existing funding set-asides for certain projects/activities; and
- clarifying that Federal-aid projects may not be undertaken on local roads.

#### **SEC. 1809. FUTURE INTERSTATE SYSTEM ROUTES.**

Under current law, the Secretary may designate a highway as a “future Interstate System route” upon the Secretary’s determination that the highway “would be a logical addition or connection to the Interstate System” and would qualify as an Interstate System route upon meeting all the standards for designation as an Interstate System route. The law further requires a written agreement between the Secretary and the State or States in which the highway is located that the highway will meet the Interstate System standards within 12 years of the agreement. However, the law requires the Secretary to revoke a future Interstate System route designation if the State or States in which the highway is located do not substantially complete construction within the 12-year time limit.

This section would replace the 12-year limit with a 25-year limit to provide States ample opportunity to substantially complete construction of the highways designated as future Interstate System routes, before the States must forfeit future Interstate designation status. This section would also extend the time limitation contained in existing agreements from 12 years to 25 years.

#### **SEC. 1810. DONATIONS AND CREDITS.**

This revision would simplify and broaden 23 U.S.C. 323 by deleting subsection (e) and adding a reference to local government employees in subsection (c). This would expand section 323 to include the value of donated services provided by local government employees, as already allowed for services donated by a person, to be credited to the non-Federal share for projects funded under title 23 funds. This provision would give States and local governments additional flexibility to match Federal funds and expedite project implementation.

#### **SEC. 1811. DISADVANTAGED BUSINESS ENTERPRISES.**

This section continues authorization of the Disadvantaged Business Enterprise (DBE) Program. Under the DBE program, not less than 10 per cent of the funds provided to FHWA, FTA, and Transportation Research pursuant to titles I, III, and V shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals, except to the extent the Secretary of Transportation determines otherwise.

The proposed section restates the current authorization, with one exception. The provision of current law requiring a review of the program by the Comptroller General of the United States has been eliminated. The Comptroller General completed the required review in June 2001.

This proposal is made in recognition of the fact that two cases addressing this provision are currently pending in the Federal courts of appeals, along with other cases addressing

related issues up to the level of the Supreme Court. The Department will continue to monitor developments in this area, and will be prepared to propose appropriate legislative changes or to make any appropriate adjustments in the administration of this program in light of clarification by the courts of the constitutional parameters for such programs.

## **SEC. 1812. HIGHWAY BRIDGE PROGRAM.**

This section proposes several amendments to section 144 of title 23. First, the change in the section title removes the emphasis on the bridge program as being focused on replacement and rehabilitation.

Subsection (a) of section 144 would be amended by deleting the words “replacement and rehabilitation” and adding the words “improve the condition of their bridges through replacement, rehabilitation and systematic preventative maintenance on” after “the Several States to.” These changes allow the use of bridge funds for preventative maintenance activities consistent with the section 116(d) of the NHS Designation Act.

To clarify that all qualifying bridges are eligible for funding under section 144, subsection (a) would be further amended by deleting the words “is significantly important and” after bridge.

Subsection (d) would be amended to allow section 144 funds to be used for scour countermeasures without regard to eligibility. More bridges fail due to scour than any other cause.

Subsection (e) of section 144 would be amended by deleting the words “constructed under subsection (m) in such State, relating to replacement of destroyed bridges and ferryboat services, and.” This provision has been difficult to track and is no longer needed. To set a date that correlates to the amendments being proposed to section 144, subsection (e) would be further amended by replacing 1997 with the year 2003. Also, the obsolete reference to “the Federal-aid primary system” would be replaced by “Federal-aid highways.”

The effectiveness of the discretionary bridge program has diminished over the years and work under that program is eligible using funding apportioned under section 144. Apportioning all of the section 144 funds by formula allows States, in cooperation with local governments, to select the most urgently needed projects in their respective States. Accordingly, section 144 would be amended to eliminate the discretionary bridge fund formerly in subsection (g).

New subsection (g), formerly section 144(g)(3), would delete the words “nor more than 35 percent”; change 1987 to 2004 and change 2003 to 2010 to correspond to the years funding would be provided under these amendments; add the words “perform systematic preventative maintenance” after rehabilitate and delete the word “paint.” This would correct an issue when a State has needs for its off-system bridges greater than 35% of the apportioned funds. Some States have more off-system bridge needs than on-system. This section would also allow for bridge funds to be used for preventative maintenance on off-system bridges.

The amendment to subsection (n) would clarify that “standards” are general engineering standards.

Subsection (o)(4), Historic Bridge Program, would be amended by adding the words “200 percent of” after “amount not to exceed,” and striking the word “title,” replacing it with “section.” This would correct a conflict with the use of transportation enhancement funds for bridge preservation and increases the allowable limits under the Highway Bridge Program.

Finally, new subsection (r) would be added to section 144 to preclude highway bridges from being treated as “water resources projects” under the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287). The Wild and Scenic Rivers Act prohibits Federal agencies from funding water resources projects if the Department of the Interior determines the project would adversely affect a river listed or proposed for listing on the wild and scenic rivers system. This section would clarify that a highway bridge constructed with title 23 funds is not a water resources project under the Wild and Scenic Rivers Act. Highway bridges are designed to convey floodwaters with minimal disruption and are not intended to control the free flow of a National Wild and Scenic River.

#### **SEC. 1813. DESIGN-BUILD.**

During the rulemaking process for the design-build regulation required by section 1307 of TEA-21, which also amended 23 U.S.C. 112, FHWA received several comments regarding the restrictive nature of the “qualified project” definition with respect to the project cost threshold. Approximately 85% of the design-build projects that have been evaluated under the FHWA experimental contracting program (Special Experimental Project No. 14 (SEP-14) – Innovative Contracting) are too small to meet the definition of “qualified project.” Based on the FHWA’s experience with design-build projects under SEP-14, there is no need to limit design-build projects to those costing more than \$5 million in the case of a project that involves installation of an intelligent transportation system and to those costing more than \$50 million in the case of any other project.

#### **SEC. 1814. INTERNATIONAL FERRIES.**

This section would amend 23 U.S.C. 129, to allow a territory of the United States to undertake a ferry boat project using Federal funding even though there may be international waters between the islands comprising the territory.

#### **SEC. 1815. ASSUMPTION OF RESPONSIBILITY FOR TRANSPORTATION ENHANCEMENTS, RECREATIONAL TRAILS, AND TRANSPORTATION AND COMMUNITY AND SYSTEM PRESERVATION PROGRAM PROJECTS.**

The transportation enhancements and recreational trails programs, established under ISTEA and continued under TEA-21, and the transportation and community and system preservation program, established under TEA-21, will be continued. Projects under these programs present a low risk of harm to the environment, and, in fact, are often beneficial. They typically have broad support from the community as well as transportation stakeholders. However, these projects are governed by all of the same environmental and other Federal requirements that apply to all

Federal-aid highway projects. This section would allow some of the Department's responsibilities relating to these types of projects to be assumed by the State. This would streamline the review and approval process, thereby expediting project delivery for these non-controversial projects, without substantial risk of harm to the environment. This section would add a new section 166 to title 23.

Subsection (a) of section 166 would allow the Secretary to assign to a State some or all of the Department's responsibilities (except responsibilities relating to Federally recognized tribes) under Federal law that are applicable to transportation enhancements, recreational trails, and transportation and community and system preservation program projects. Under this subsection, the State would assume full responsibility for complying with such laws and, consequently, full liability for any failure to comply. This assumption would include defending any legal challenges arising from the assigned responsibilities and being liable for any judgment, order, or fees imposed by a court in connection with such legal challenges. The State would also assent to the jurisdiction of Federal courts with respect to its assumed responsibilities. The assignment could be made with respect to responsibilities for new projects or for unfulfilled responsibilities for projects already underway.

Subsection (b) would provide for the execution of memoranda of understanding between the Secretary and the State that would set forth the terms and conditions of an assignment and assumption of responsibility under this section. Such memoranda of understanding would need to be renegotiated every three years. The Secretary would be required to conduct compliance reviews to ensure that a State is complying with the terms and conditions of the memorandum of understanding and with any laws for which it is assigned responsibility under the memorandum of understanding. Such compliance reviews would be conducted on an annual basis for the first three years of the agreement, and then on a periodic basis to be determined by mutual agreement between the State and the Secretary, but no less frequently than every three years. Under subsection (c), the Secretary could terminate any assignment of responsibility to a State if it is not adequately carrying out its responsibilities.

Subsection (d) would clarify that, with respect to recreational trails, the assignment of responsibility to a State must be made through the agency or agencies designated by the Governor to be responsible for administering apportionments under the recreational trails program. Subsection (e) would clarify that this section is not intended to limit any requirements under any applicable laws providing for the consideration and preservation of the public interest, including public participation and community values in transportation decisionmaking.

#### **SEC. 1816. TRANSPORTATION, COMMUNITY, AND SYSTEM PRESERVATION PROGRAM.**

TEA-21 authorized a Transportation and Community and System Preservation pilot program, a comprehensive initiative of research and grants to investigate the relationships between transportation and community and system preservation and private sector-based initiatives. This section would add a new section 167 to title 23 to authorize the Transportation, Community, and System Preservation (TCSP) program. Under the proposed TCSP program, the Secretary would facilitate the planning, development, and implementation of strategies by States, Metropolitan



Planning Organizations, Federally recognized tribes, and local governments to integrate transportation, community, and system preservation plans and practices that improve the efficiency of the transportation system; reduce the impacts of transportation on the environment; reduce the need for costly future investments in public infrastructure; provide efficient access to jobs, services, and centers of trade; and examine development patterns and identify strategies to encourage private sector development patterns which achieve these goals.

The proposed program would be funded by a \$26,000,000 set-aside from the Surface Transportation Program. Under TEA-21, the Transportation and Community and System Preservation pilot program awarded funding to individual projects undertaken by States, Metropolitan Planning Organizations, and local governments. The proposed TCSP program would apportion program funding to States by formula. Each State, the District of Columbia, and Puerto Rico would receive \$500,000 in TCSP funds each fiscal year for fiscal years 2004 through 2009. The proposal also would require States to make these funds available to Metropolitan Planning Organizations, Federally recognized tribes, and local governments, in a manner and amount to be determined by the States.

#### **SEC. 1817. PROGRAM EFFICIENCIES -- FINANCE.**

Section 115 of title 23, Advance construction, would be amended to remove the restriction that a State must obligate all funds apportioned or allocated to it under sections 104(b)(2), 104(b)(3), 104(f), 144, or 505 of title 23, or demonstrate that it will use all obligation authority allocated to it for Federal-aid highways and highway safety constructions prior to approval of advance construction projects. The revisions would also clarify that advance construction procedures can be used for all categories of Federal-aid highway funds, and that when a project is converted to a regular Federal-aid project, any available Federal-aid funds may be used to convert the project. This section would further modify section 115 to remove the requirement that the Secretary must first approve an application of the State prior to authorizing the payment of the Federal share of the cost of the project when additional funds are later apportioned or allocated to the State. The new provision would allow the Secretary to obligate the Federal share or a portion of the Federal share of cost of the project by executing a project agreement.

### **SUBTITLE I – TECHNICAL CORRECTIONS TO TITLE 23, U.S.C.**

#### **SEC. 1901. REPEAL OR UPDATE OF OBSOLETE TEXT.**

Letting Of Contracts: Section 112 of title 23 (Letting of Contracts) contains an obsolete requirement concerning an exemption for the "secondary system" in the context of "certification acceptance" (concepts that no longer exist). This amendment would delete the obsolete exception.

Fringe And Corridor Parking Facilities: Section 137 of title 23 contains the basis for funding fringe and corridor parking facilities, but the section refers to an obsolete aspect of Federal highway law: "Federal-aid urban system." The amendment would substitute a meaningful reference for the obsolete term.

Repeal of Obsolete Sections of Title 23: This subsection would repeal, as obsolete, the following sections of title 23: Priority Primary Routes (23 U.S.C. 147); Development of a National Scenic and Recreational Highway (23 U.S.C. 148); and Access Highways to Public Recreational Areas on Certain Lakes (23 U.S.C. 155).

**SEC. 1902. CLARIFICATION OF CERTAIN DATES.**

This section would restate, as a calendar date, a date in title 23 that currently is expressed as a reference to a date of enactment of law, making it difficult to understand. No change in the actual date would be made.

**SEC. 1903. INCLUSION OF REQUIREMENTS FOR SIGNS IDENTIFYING FUNDING SOURCES IN TITLE 23.**

Section 154 of the Federal-Aid Highway Act of 1987 (23 U.S.C. 101 note; 101 Stat. 209) establishes the basis for erecting signs at Federally assisted highway projects identifying the source and amounts of funding being used. This section would transfer the provision to 23 U.S.C. 321 and make a needed conforming amendment.

**SEC. 1904. INCLUSION OF "BUY AMERICA" REQUIREMENTS IN TITLE 23.**

Section 165 of the Highway Improvement Act of 1982 (Pub. L. 97-424; 96 Stat. 2136) sets forth the "Buy America" provisions governing funds authorized to carry out title 23. This section would transfer the provision and redesignate it as 23 U.S.C. 321, make non-substantive, conforming amendments to the text needed because of the transfer, simplify the text, and delete an executed report requirement.

**SEC. 1905. TECHNICAL AMENDMENTS TO 23 U.S.C. 140 – NONDISCRIMINATION.**

This section would make technical amendments to section 140 of title 23, U.S.C., to eliminate gender-based language; clarify that funding made available to carry out this section has the same broad availability as the source from which the funds are made available (a takedown from STP); remove the \$2.5 million funding cap on highway construction and technology training programs established for fiscal year 1976 as no longer necessary; correct a typographical error; and clarify the purpose and intent of subsection (d) by modifying the title to remove the reference to Indian contracting.

**SEC. 1906. FEDERAL SHARE PAYABLE FOR PROJECTS FOR ELIMINATION OF HAZARDS OF RAILWAY-HIGHWAY CROSSINGS.**

This section would codify in title 23 a provision now in section 2604 of Pub. L. 106-246, which provides 100% Federal funding for "projects involving the elimination of hazards of railway-highway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings."

## TITLE II—HIGHWAY SAFETY

### SEC. 2001. HIGHWAY SAFETY PROGRAMS.

Subsection (a) of this section would amend subsection (k) of section 402 (“Highway safety programs”) of title 23, U.S.C., by revising the subsection to provide, in addition to other grants authorized by section 402, two separate grants to the States based upon the performance of their highway safety programs -- general performance grants under subsection (k)(1) and safety belt performance grants under subsection (k)(2). Both performance grants would be funded under section 2005 of this Act. Funds authorized to carry out subsection (k) in a fiscal year would be subject to a deduction not to exceed 5 percent for the necessary costs of administering the subsection.

Subsection (k)(1) would establish general performance grants. On or before December 31, 2003, and on or before each December 31 thereafter through December 31, 2008, the Secretary would be required to make grants to States based upon the performance of their highway safety programs in a calendar year in three categories: (1) motor vehicle crash fatalities; (2) alcohol-related crash fatalities; and (3) motorcycle, bicycle, and pedestrian crash fatalities.

The Secretary, through a rulemaking, would determine the measures for calculating and scoring performance in each of the three categories. These measures would use the data for the most recent calendar year for which the data are available from (i) fatality data provided by the National Highway Traffic Safety Administration (NHTSA) ; and (ii) vehicle miles traveled determined by the Federal Highway Administration (FHWA). The Secretary would set separate goals in each category for achievement and annual progress that reflect the potential of each goal to save lives, and also establish a weighting system for all of the goals that reflects the relative potential of each goal to save lives.

A State’s achievement would be determined by comparing the State’s performance in each of the three categories in a calendar year to levels that represent high achievement, as determined by the Secretary in rulemaking. A State’s annual progress would be determined by comparing the State’s performance in each of the three categories in a calendar year to its performance in those categories for the prior calendar year. For each of the three categories, the same measure would be used to assess both achievement and annual progress. Within each of these categories, a State may qualify for either an achievement or an annual progress award, but not both. A State would receive whichever award is of greater benefit to the State.

The Secretary would determine the amount of funds available to a State in a fiscal year for grants under subsection (k)(1) based on the State’s achievement or annual progress in each of the categories, using the measures, goals and weighting system established under the subsection, the amount appropriated to carry out the grants for such fiscal year, and the ratio that the funds apportioned to the State under section 402(c) of title 23, U.S.C., for such fiscal year bears to the funds apportioned under section 402(c) for such fiscal year to all the States that qualify for a grant for such fiscal year.

Subsection (k)(2), safety belt performance grants, would establish a program to: (1) encourage States to adopt and enforce primary safety belt laws, and (2) increase the rate of safety belt use.

The Department strongly believes that enforcement of safety belt laws without restrictions, generally known and understood as primary safety belt laws, is one of the most effective ways for a State to reduce the loss of life on its highways and to protect its citizens against impaired drivers. Currently, 18 States, the District of Columbia, and Puerto Rico have primary safety belt laws. Thirty-two States have secondary enforcement laws and one State has no adult safety belt use law.

Safety belts are the most effective tool we have to mitigate the effects of motor vehicle crashes. These safety devices reduce the chance of fatal injury by half, and save an estimated 13,000 lives each year throughout the United States. In a May 2002 study, "The Economic Impact of Motor Vehicle Crashes," based on calendar year 2000 data, the Department highlighted the vital importance of safety belt use. In addition to the lives they save, safety belts also prevent an estimated 325,000 serious injuries each year, and save \$50 billion in medical care, lost productivity, and other injury-related costs. Conversely, the study showed that the failure of crash victims to wear safety belts leads to an estimated 9,200 unnecessary fatalities each year and 143,000 avoidable injuries, costing society \$26 billion.

Safety belt use is much higher, on average, in States that provide for primary safety belt laws. In States with "secondary" safety belt laws, a motorist may be ticketed for failure to wear a safety belt only if there is a separate basis for stopping the motorist, such as the violation of a separate traffic law. This restriction hampers enforcement of the law. In States with primary laws, a citation can be issued solely because of a failure to wear safety belts.

The Department's analysis of NHTSA's data on restraint use among occupants of motor vehicles shows that primary enforcement is the most important aspect of a safety belt law affecting the rate of safety belt use. For virtually all States with a primary law, statistically significant increases associated with the presence of such a law were detected using several different methods. The analysis suggests that the increase in use rates attributable to the enactment of a primary law is at least 10-15 percentage points. This increase in safety belt use translates into a 5.9 percent decline in fatalities in a State that authorizes primary enforcement. In California and Louisiana -- States that upgraded their laws to allow for primary enforcement -- safety belt use increased by 13 and 17 percentage points, respectively. This is important because every 1 percent increase in nationwide safety belt use translates into a savings of about 250 lives, the mitigation of 4,200 serious injuries, and a saving to the American economy of \$800 million each year in economic costs.

Subsection (k)(2)(A)(i) would provide that, for fiscal years 2004 and 2005, the Secretary must make a grant to each State that enacted, and is enforcing, a primary safety belt use

law for all passenger motor vehicles that became effective by December 31, 2002. In addition, subsection (k)(2)(A)(ii) would provide that, for each of fiscal years 2004 through 2009, the Secretary, after making the previous grants, must make a one-time grant to each State that either (i) enacts for the first time after December 31, 2002, and has in effect a primary safety belt use law for all passenger motor vehicles, or, (ii) in the case of a State that does not have such a primary safety belt use law, has a State safety belt use rate in the preceding fiscal year of at least 90 percent, as measured under criteria determined by the Secretary.

Subparagraph (k)(2)(A)(iii) would provide that, of the funds authorized for grants under subsection (k), \$100 million in each of fiscal years 2004 through 2009 would be available for grants. The amount of a grant available to a State in each of fiscal years 2004 and 2005 under subsection (k)(2)(A)(i) would be equal to one-half of the amount of funds apportioned to the State under subsection (c) of section 402 for fiscal year 2003. The amount of a grant available to a State in fiscal year 2004 or in a subsequent fiscal year under subsection (k)(2)(A)(ii) would be equal to five times the amount apportioned to the State for fiscal year 2003 under subsection (c) of section 402. Notwithstanding subsection (d) of section 402, the Federal share for grants under subsection (k)(2)(A)(iii) would be 100 percent. If the total amount of grants under subsection (k)(2)(A)(ii) for a fiscal year exceeds the amount of funds available in the fiscal year, grants would be made to each eligible State, in the order in which its primary safety belt use law became effective or its safety belt use rate reached 90 percent, until the funds for the fiscal year are exhausted. A State that does not receive a grant for which it is eligible in a fiscal year would receive the grant in the succeeding fiscal year so long as its law remains in effect or its safety belt use rate remains at or above 90 percent. If the total amount of grants under subsection (k)(2)(A)(iii) for a fiscal year is less than the amount available in the fiscal year, the Secretary shall use any funds that exceed the total amount for safety belt use rate grants under subsection (k)(2)(B).

Subsection (k)(2)(B) would provide that, on or before December 31, 2003, and on or before each December 31 thereafter through December 31, 2008, the Secretary must make grants to States based upon their safety belt use rate in the preceding fiscal year.

Under subsection (k)(2)(B)(i), the Secretary, through a rulemaking, would determine measures for calculating and scoring the performance for safety belt use rates, using data for the most recent calendar year for which data are available from observational safety belt surveys conducted in accordance with criteria established by the Secretary.

Under subsection (k)(2)(B)(ii), of the funds authorized for grants under subsection (k), \$25,000,000 for fiscal year 2004, \$27,000,000 for fiscal year 2005, \$28,000,000 for fiscal year 2006, \$31,000,000 for fiscal year 2007, \$34,000,000 for fiscal year 2008, and \$37,000,000 for fiscal year 2009 would be available for safety belt use rate grants. The Secretary would determine the amount of funds available to a State in a fiscal year based on the State's achievement or annual progress in its safety belt use rate, the amount appropriated to carry out the grants for such fiscal year, and the ratio that the funds apportioned to the State under section 402(c) for such fiscal year bears to the funds

apportioned under section 402(c) for such fiscal year to all the States that qualify for a grant for such fiscal year. Notwithstanding subsection (d) of section 402, the Federal share payable for safety belt use rate grants would be 100 percent.

Subsection (k)(2)(C) would provide that, for the purposes of subsection (k)(2), passenger motor vehicle means a passenger car, pickup truck, van, minivan, or sport utility vehicle, with a gross vehicle weight rating of less than 10,000 pounds.

Subsection (k)(3) would provide that a State allocated an amount for a grant under subsection (k)(1)(A) must use the amount for activities eligible for assistance under section 402, except that it may use up to 50 percent of the amount for activities eligible under section 150 of this title and consistent with the State's strategic highway safety plan under section 151 of this title that are not otherwise eligible for assistance under section 402. A State allocated an amount for a grant under subsection (k)(2)(A) may use the amount for activities eligible for assistance under section 402 or for activities eligible under section 150 of this title and consistent with the State's strategic highway safety plan under section 151 of this title that are not otherwise eligible for assistance under section 402. A State allocated an amount for a grant under subsection (k)(2)(B), including any amount transferred under subsection (k)(2)(A), must use the amount for safety belt use programs eligible for assistance under section 402, except that it may use up to 50 percent of the amount for activities eligible under section 150 of this title and consistent with the State's strategic highway safety plan under section 151 of this title that are not otherwise eligible for assistance under section 402.

Subsection (b) of this section would amend section 402 of title 23, U.S.C., to add a new subsection (l) that directs the Secretary to design and implement a discretionary impaired driving grant program. In addition to other grants authorized by section 402 and subject to the provisions of subsection (l), the Secretary would be required to develop, demonstrate, and evaluate comprehensive State programs to reduce impaired driving in States with a high number of alcohol-related fatalities and a high rate of alcohol-related fatalities relative to vehicle miles traveled and population. These impaired driving grants would be funded under section 2005 of this Act.

Alcohol-impaired driving remains the most intractable behavioral problem in highway safety. In 2002, an estimated 17,970 people were killed in alcohol-related traffic crashes, a figure that represents 42 percent of all traffic fatalities for that year. The Department of Transportation's May 2002 study, "The Economic Impact of Motor Vehicle Crashes," underscores the huge economic cost associated with alcohol-related crashes. In 2000, these crashes cost the Nation \$50.9 billion in economic losses. Alcohol-related crashes account for 22 percent of all crash costs.

The Department believes that to reduce impaired driving significantly a State must have a comprehensive impaired driving countermeasures program. Since the components of such a program include prevention, public education, legislation, enforcement, partnerships, treatment, program management and evaluation, the States must use the best information and best practices in a focused way to deal effectively with such diverse

matters. The program established by this subsection would develop comprehensive State programs that can lead to significant gains in the Nation's effort to reduce impaired driving.

The subsection would direct the Secretary to design and implement a comprehensive State program to reduce impaired driving in States with a high number of alcohol-related fatalities and a high rate of alcohol-related fatalities relative to vehicle miles traveled and population. The Secretary would also be directed to establish a procedure for submitting grant applications under the subsection, and to select from among the applicants, the States that would participate in the program.

Grants could be used by a State only to carry out the State's program for which the grant is awarded. Funds authorized to be appropriated to carry out this subsection in a fiscal year would be subject to a deduction of not more than 10 percent for the costs of evaluating the programs and administering the provisions of the subsection.

The Federal share payable for a grant under the subsection would be: (1) 100 percent in the first and second fiscal years in which the State receives a grant; (2) 75 percent in the third and fourth fiscal years in which the State receives a grant; and (3) 50 percent in the fifth and sixth fiscal years in which the State receives a grant.

## **SEC. 2002. HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.**

NHTSA's highway safety research and development program, section 403 of title 23, U.S.C., supports State highway safety behavioral programs and activities. It does this by developing and demonstrating innovative safety countermeasures, and by collecting and disseminating essential data on highway safety. The results of our section 403 research provide the scientific basis for highway safety programs that States and local communities can tailor to their own needs, ensuring that precious tax dollars are spent only on programs that are effective. The States are encouraged to use the successful programs for their ongoing safety programs and activities.

Highway safety behavioral research focuses on human factors that influence driver and pedestrian behavior and on environmental conditions affecting safety. The program addresses a wide range of safety problems through various programs, initiatives, and demonstrations, such as: impaired driving programs, drug evaluation and classification (DEC) programs, including the Drug Recognition Expert (DRE) initiative, safety belt and child safety seat programs and related enforcement mobilizations, pedestrian, bicycle, and motorcycle safety initiatives and related law enforcement strategies, enforcement and justice services, speed management, aggressive driving countermeasures, emergency medical services, fatigue and inattention countermeasures, and data collection and analysis efforts. All of these efforts have produced a variety of useful results.

Section 2005 of this bill would fund Section 403 activities.

This section would amend subsection (a) of section 403 of title 23, U.S.C., to provide, in addition to the Secretary's general authority under subsection (a), specific express authority with respect to emergency medical services, international highway safety activities, and a national motor vehicle crash causation survey. In the emergency medical services area, it is important to note that the "Public Health Security and Bioterrorism Preparedness and Response Act of 2002" (Pub. L. 107-188; June 12, 2002; Section 108(a)(1)(L)) affirmed NHTSA's role in coordinating State, local, and community-based emergency medical services.

The first provision would add a new paragraph (4) under section 403(a). In addition to the Secretary's general authority under subsection (a), this provision would provide that the Secretary may use funds appropriated to carry out section 403 to enhance coordination among Federal agencies involved with State, local, Tribal, and community-based emergency medical services. In exercising this authority, paragraph (4) provides that the Secretary may coordinate with State and local governments, the Bureau of Indian Affairs on behalf of Indian Tribes, private industry, and other interested parties; collect and exchange emergency medical services data and information; examine emergency medical services needs, best practices, and related technology; and develop emergency medical services standards and guidelines, and plans for the assessment of emergency medical services systems.

Section 2005(b)(1) of this bill would fund these emergency medical services activities.

The second provision would add a new paragraph (5) under section 403(a). In addition to the Secretary's general authority under subsection (a), this provision would provide that the Secretary may use funds appropriated to carry out section 403 to participate and cooperate in international activities to enhance highway safety. In exercising this authority, paragraph (5) provides that the Secretary may exchange safety information; conduct safety research; and examine safety needs, best practices, and new technology. This paragraph would not confer any independent authority to negotiate binding agreements with foreign nations on behalf of the United States.

Section 2005(b)(2) would fund these international cooperative traffic safety program activities.

The third provision would add a new paragraph (6) under section 403(a). In addition to the Secretary's general authority under subsection (a), this provision would provide that the Secretary may use funds appropriated to carry out section 403 to develop and conduct a nationally representative survey to collect on-scene motor vehicle crash causation data.

To substantially reduce highway fatality and injury rates, more needs to be done to find ways to prevent crashes from occurring. NHTSA's National Automotive Sampling System (NASS) collects data for the system days—or even weeks—after a crash. While acceptable for crashworthiness research, effective primary prevention demands timely, on-scene collection of detailed physical evidence of crash causation. Nearly 30 years have passed since the last on-scene motor vehicle crash causation survey was conducted



(the Indiana Tri-Level Study). Accordingly, NHTSA's current crash causation database, which is so critical to understanding the complex events that cause and contribute to highway crashes, is woefully inadequate. A new on-scene data collection survey is urgently needed to obtain "fresh" data from real-time observations and interviews. Real-time data are essential to understanding crash causation and defining and developing effective countermeasure programs.

The new on-scene motor vehicle crash causation survey would allow NHTSA's crash avoidance program to be based on reliable, real-world data. As new crash avoidance technologies continue to emerge, NHTSA needs relevant data to guide the design, development and evaluation of these new technologies. FHWA and the Federal Motor Carrier Safety Administration (FMCSA), private industry, and public interest groups also would benefit greatly from a new on-scene data collection survey.

To have sustained value in a rapidly changing environment, the survey would be continuous in the same manner as the NASS Crashworthiness Data System (CDS). The on-scene methodologies and procedures developed for the Large Truck Crash Causation Study (LTCCS), currently being conducted by NHTSA as part of the NASS CDS, would be used in the national motor vehicle crash causation survey.

Section 2005(b)(3) would fund the national motor vehicle crash causation survey.

### **SEC. 2003. EMERGENCY MEDICAL SERVICES.**

This section would amend section 407 of title 23, U.S.C., to establish a program to improve Federal coordination and support of emergency medical services (EMS) and 9-1-1 systems, consistent with the President's focus on reinforcing the Nation's emergency preparedness and first response capacity.

For the past 20 years, Federal support for EMS has been both scarce and uncoordinated. As a result, the capacity of this critical public service has seen little growth. Since the last major Federal EMS infrastructure investment, the Emergency Services Systems Act of 1973 (Pub. L. 93-154, repealed on August 13, 1981, by Pub. L. 97-35), support for EMS has been spread among a number of agencies, including NHTSA, the Department of Health and Human Services' Health Resources and Services Administration, the Centers for Disease Control and Prevention, the Department of Homeland Security's Director, Preparedness Division, Emergency Preparedness and Response Directorate, and the United States Fire Administration, Emergency Preparedness and Response Directorate, and the Centers for Medicare and Medicaid Services. Most of the support offered by these agencies has focused only on specific system functions, rather than on overall system capacity, and has been inconsistent and ineffectively coordinated.

In 2001, the General Accounting Office (GAO) cited in its report, "Emergency Medical Response: Reported Needs Are Wide-Ranging, With Lack of Data A Growing Concern," the need to increase coordination among Federal agencies as they address the needs of regional, State, or local emergency medical services systems. According to GAO, these

needs, including personnel, training, equipment, and more emergency personnel in the field, vary between urban and rural communities.

The Department believes that Federal support for EMS and 9-1-1 systems should be enhanced and coordinated. The enactment of this section would result in comprehensive system support for EMS, 9-1-1 systems, and improved emergency response capacity nationwide.

The Department believes that the need for Federal support and coordination is especially critical with the increasing burden placed on State and local EMS systems by homeland defense and security issues. In a mass casualty event, communities rely on their EMS system to provide front line medical care for the first 12 to 24 hours, before Federal resources become available. Yet many local systems lack the skills and resources needed to detect, respond to, and manage mass casualty incidents. Without adequate preparation, local systems are likely to become quickly incapacitated, leaving the community with no EMS coverage for even routine emergencies such as motor vehicle crashes and cardiac arrests.

EMS systems across the Nation also require substantial development to realize their potential as our communities' emergency medical safety net. A number of sources of information are available to identify specific strengths and weaknesses in EMS systems. These include the Statewide EMS Assessments conducted by NHTSA in 48 States between 1988-2001, the 1996 *EMS Agenda for the Future*, a survey of State EMS Directors conducted in 2000 by the Office of Rural Health Policy in the Department of Health and Human Services, and a 2001 General Accounting Office Report on Emergency Medical Response.

These sources consistently indicate shortcomings in the Nation's EMS system in several critical areas, including emergency communications, trauma system development, EMS information systems, and rural EMS. EMS communications systems are a particular weak point. For example, no State has yet fully implemented wireless E9-1-1, a shortcoming that prevents emergency responders from automatically locating people who call 9-1-1 from wireless phones. Communication among emergency providers is also lacking, especially in rural areas where nearly three quarters of EMS systems lack the ability to reliably communicate among dispatchers, ambulances, and hospitals.

Trauma system development is critically needed, with 61 percent of States lacking triage protocols for transporting patients to specialty care facilities, such as trauma centers, burn centers, and pediatric centers. EMS information systems are another weakness, with over 90 percent of States lacking critical components of the comprehensive data systems needed to efficiently manage EMS resources, respond to daily emergencies, and provide adequate surveillance to detect acts of terrorism such as chemical, nuclear, or biological events. Other shortcomings identified by these studies include EMS medical direction, recruitment and retention of EMS personnel, and EMS research.

The Department of Transportation, through NHTSA, seeks to help States address these shortcomings through a formula grant and technical assistance program.

Subsection (a) of this section would direct the Secretary of Transportation and the Secretary of Homeland Security through the Under Secretary for Emergency Preparedness and Response, in consultation with the Secretary of Health and Human Services, to establish a Federal Interagency Committee on Emergency Medical Services to provide intergovernmental coordination of emergency medical services. The Committee would be required to: (i) assure coordination among the Federal agencies involved with State, local, Tribal, or regional emergency medical services and 9-1-1 systems; (ii) identify State, local, Tribal, or regional emergency services and 9-1-1 system needs; (iii) recommend new or expanded programs, including grant programs, for improving State, local, Tribal, or regional emergency medical services and implementing improved EMS technologies, including wireless E9-1-1; (iv) identify ways to streamline the process through which Federal agencies support State, local, Tribal, or regional emergency medical services; (v) assist State, local, Tribal, or regional emergency medical services in setting priorities based on identified needs; and (vi) advise, consult with, and make recommendations on matters relating to the implementation of the coordinated State emergency medical services program that would be established under subsection (b) of this section.

Membership of the Interagency Committee on EMS would consist of the following officials, or their designees: NHTSA Administrator; Director, Preparedness Division, Emergency Preparedness and Response Directorate, Department of Homeland Security; Administrator of the Health Resources and Services Administration; Director of the Centers for Disease Control and Prevention; Administrator of United States Fire Administration, Emergency Preparedness and Response Directorate, Department of Homeland Security; Director of the Center for Medicare and Medicaid Services; Undersecretary of Defense for Personnel and Readiness, Department of Defense; Assistant Secretary for Public Health Emergency Preparedness, Department of Health and Human Services; Director, Indian Health Service, Department of Health and Human Services; Chief, Wireless Telecom Bureau of the Federal Communications Commission; and representatives of any other Federal agency identified by the Secretary of Transportation or the Secretary Homeland Security through the Under Secretary for Emergency Preparedness and Response, in consultation with the Secretary of Health and Human Services, as having a significant role in the purposes of the Interagency Committee on EMS.

NHTSA, in cooperation with the Director, Preparedness Division, Emergency Preparedness and Response Directorate, Department of Homeland Security, would provide administrative support to the Committee, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports. The members of the Committee would select the Committee's chairperson every year, and the Committee would meet whenever the chairperson determined a meeting to be necessary. Finally, the Committee would be required to prepare an annual report to Congress on the Committee's activities, actions, and recommendations.

Subsection (b) of this section would establish a State formula grant program to support the coordination of EMS systems development, including implementation of 9-1-1 systems. The program would be administered through the EMS Offices of the States. An administrative deduction of 10 percent of the funds for the program would be used for independent evaluation and administrative operations of funded projects. A more detailed description of subsection (b) is provided below.

Subsection (b)(1) would authorize and direct the Secretary of Transportation, through the NHTSA Administrator, to cooperate with other Federal departments and agencies, and to assist State and local governments and EMS organizations, both fire-based and otherwise, private industry, and other interested parties, to ensure the development and implementation of a coordinated nationwide emergency medical services program designed to strengthen transportation safety and public health and to implement EMS communications systems including 9-1-1. The term ‘State,’ under the section, would mean any one of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Secretary of the Interior on behalf of Indian Tribes.

Subsection (b)(2) would require each State to establish a program, approved by the Secretary, to coordinate the emergency medical services and resources deployed throughout the State, so as to ensure improved EMS communication systems including 9-1-1, utilization of established best practices for system design and operations, implementation of quality assurance programs, and incorporation of data collection and analysis programs that facilitate system development and data linkages with other systems and programs useful to emergency medical services.

Subsection (b)(3) would provide that the Secretary may not approve a State’s program under this subsection unless the program--

- provides that the Governor of the State is responsible for the administration of the program through a State office of emergency medical services that has adequate powers and is suitably equipped and organized to carry out such program and coordinates such program with the highway safety office of the State; and
- authorizes political subdivisions of the State to participate in and receive funds under such program, consistent with the goal of achieving statewide coordination of emergency medical services and 9-1-1 activities.

Subsection (b)(4) would provide that the funds authorized to be appropriated to carry out subsection (b) shall be used to aid the States in coordinating emergency medical services and 9-1-1 programs. These funds would be subject to a deduction not to exceed 10 percent for the necessary costs of administering the provisions of subsection (b), and the

remainder would be apportioned among the States. The apportionment of these funds would incorporate the exact formula for the apportionment of highway safety funds under section 402(c) of this chapter.

Subsection (b)(5) would provide contract authority for the program.

Subsection (b)(6) would provide that the Federal share of the cost of a project or program funded under subsection (b) would be 80 percent.

Subsection (b)(7) would identify the Secretary of the Interior as the Governor of the State, for the purposes of application of the emergency medical services program to Indian Tribes, and defines Indian Country.

Section 2005 of this Act would provide funds out of the Highway Trust Fund to carry out this section. The funds proposed each fiscal year for this section would be an important catalyst to encourage the States to ensure greater coordination among the various elements of their EMS and 9-1-1 programs. In its 2001 policy paper, "Domestic Terrorism: Issues of Preparedness," the National Association of State EMS Directors concluded: "For EMS services across the nation, funding of \$583 million is needed immediately to: create the infrastructure; train personnel; obtain needed equipment; integrate with other public safety services, public health departments, and healthcare structures; and create a comprehensive EMS information system." The Department believes that the seed funds proposed by this section are necessary to accelerate the Nation's efforts to coordinate State EMS and 9-1-1 systems.

#### **SEC. 2004. STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.**

This section would amend chapter 4, Highway Safety, of title 23, U.S.C., to establish a State traffic safety information system incentive grant program under a new section 412. Section 2005 of this Act would provide funds out of the Highway Trust Fund to carry out this section.

The State highway safety data improvement grant program under section 411 of title 23, U.S.C., has afforded the States the opportunity to make needed improvements in their Traffic Safety Information Systems. Components of these traffic records systems include crash, driver licensing, vehicle registration, citation and court records related to traffic violations and convictions, emergency medical services information, and data on roadway characteristics. Despite the improvements that States have made in these areas with the help of section 411 grants, major deficiencies persist. For example, the traffic records data of many States are not timely, accurate, complete, uniform, integrated with other State data systems or easily accessible. Accordingly, more funding support is needed at the Federal level to promote continued improvements in State traffic safety information systems.

Improvements in State traffic safety information systems would benefit local, State, and national transportation and a number of different State and Federal transportation-related agencies, such as State Offices of Highway Safety and State Departments of Transportation, and the U. S. Department of Transportation's Bureau of Transportation Statistics, FHWA, NHTSA, and FMCSA. By improving the availability of more timely, accurate, complete, uniform, integrated and accessible traffic safety data, these State and Federal agencies would be better equipped to identify local, State, and national transportation safety problems and to evaluate their programs and countermeasures.

Subsection (a) of this section would direct the Secretary to make grants to States that adopt and implement effective programs to (1) improve the timeliness, accuracy, completeness, uniformity, integration and accessibility of the safety data of the State that is needed to identify priorities for national, State, and local highway and traffic safety programs; (2) evaluate the effectiveness of efforts to make such improvements; (3) link these 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. The States could use the grants only to implement these programs.

In addition, subsection (a) would direct the Secretary, in consultation with States and other appropriate parties, to determine the model data elements necessary to observe and analyze State and national trends in crash occurrences, rates, outcomes, and circumstances. In order to become eligible for a grant under the section, a State must certify to the Secretary that the State has adopted and is using such model data elements.

To receive a grant in a fiscal year under the section, a State must enter into such agreements with the Secretary to ensure that the State will maintain its aggregate expenditures from all other sources for highway safety data programs at or above the average level of such expenditures in the 2 fiscal years preceding the enactment of this bill.

Finally, subsection (a) would provide that the Federal share of the cost of a State program may not exceed 80 percent.

Subsection (b) would provide for first-year grants and their amounts. To be eligible for a first-year grant in a fiscal year, a State must demonstrate to the satisfaction of the Secretary that it has (1) established a highway safety data and traffic records coordinating committee with a multidisciplinary membership that includes among others, managers, collectors, and users of traffic records and public health and injury control data systems; and (2) developed a multiyear highway safety data and traffic records system strategic plan that addresses existing deficiencies in the State's highway safety data and traffic records system and is approved by the highway safety data and traffic records coordinating committee and (i) specifies how existing deficiencies in the State's highway safety data and traffic records system were identified; (ii) prioritizes, based on the

identified highway safety data and traffic records system deficiencies, the highway safety data and traffic records system needs and goals of the State, including but not limited to the activities under subsection (a)(1); (iii) identifies performance-based measures by which progress toward those goals will be determined; (iv) specifies how the grant funds and any other funds of the State will be used to address needs and goals identified in the multiyear plan; and (v) includes a current report on the progress in implementing the multiyear plan that documents progress toward the specified goals.

Subsection (b) would also provide that the amount of a first-year grant to a State for a fiscal year shall equal an amount determined by multiplying (1) the amount appropriated to carry out the section for such fiscal year; by (2) the ratio that the funds apportioned to the State under section 402 of this chapter for fiscal year 2003 bears to the funds apportioned to all States under section 402 for fiscal year 2003; except that no State eligible for a grant under the section would receive less than \$300,000.

Subsection (c) would provide for succeeding-year grants and their amounts. A State would be eligible for a grant in a year succeeding the first fiscal year in which the State receives a grant, if the State, to the satisfaction of the Secretary (1) submits an updated multiyear plan that meets the requirements for the multiyear plan for the first-year grant; (2) certifies that its highway safety data and traffic records coordinating committee continues to operate and supports the multiyear plan; (3) specifies how the grant funds and any other funds of the State will be used to address needs and goals identified in the multiyear plan; (4) demonstrates measurable progress toward achieving the goals and objectives identified in the multiyear plan; and (5) includes a report on the progress in implementing the multiyear plan.

Subsection (c) would also provide that the amount of a succeeding-year grant to a State for a fiscal year shall equal the amount determined by multiplying (1) the amount appropriated to carry out the section for such fiscal year; by (2) the ratio that the funds apportioned to the State under section 402 for fiscal year 2003 bears to the funds apportioned to all States under section 402 for fiscal year 2003; except that no State eligible for a grant would receive less than \$500,000.

Subsection (d) would provide that the funds authorized to be appropriated to carry out the section in a fiscal year would be subject to a deduction not to exceed 5 percent for the necessary costs of administering the provisions of the section. Subsection (e) would provide contract authority for the program.

## **SEC. 2005. AUTHORIZATION OF APPROPRIATIONS.**

Subsection (a) of this section would authorize funds out of the Highway Trust Fund (other than the Mass Transit Account) for NHTSA's highway safety programs, as follows:

For the State and Community Highway Safety Program under section 402 of title 23, U.S.C., except for subsections (k) and (l), \$162 million would be provided for fiscal year

2004, \$167 million for fiscal year 2005, \$172 million for fiscal year 2006, \$177 million for fiscal year 2007, \$183 million for fiscal year 2008, and \$189 million for fiscal year 2009.

For the performance grant programs under subsection (k) of section 402 of title 23, U.S.C., \$175 million would be provided for fiscal year 2004, \$179 million for fiscal year 2005, \$183 million for fiscal year 2006, \$189 million for fiscal year 2007, \$195 million for fiscal year 2008, and \$201 million for fiscal year 2009.

For the impaired driving grant program under subsection (l) of section 402 of title 23, U.S.C., \$50 million would be provided for each of fiscal years 2004 through 2009.

For the Highway Safety Research and Development program under section 403, \$88.452 million would be provided for fiscal year 2004, \$90 million for fiscal year 2005, \$92 million for fiscal year 2006, \$94 million for fiscal year 2007, \$96 million for fiscal year 2008, and \$99 million for fiscal year 2009.

For the emergency medical services grant program under section 407, \$10 million would be provided for each of fiscal years 2004 through 2009.

For the State Traffic Safety Information System Improvements program under section 412, \$50 million would be provided for each of fiscal years 2004 through 2009.

For the National Driver Register program under chapter 303 of title 49, United States Code, \$3.6 million would be provided for fiscal year 2004, and \$4 million for each of fiscal years 2005 through 2009.

Subsection (b) of this section provides that, out of amounts appropriated for the Highway Safety Research and Development program under section 403, allocations are to be made of \$2.226 million in each fiscal year for emergency medical services activities under paragraph (4) of section 403(a), \$.20 million in each fiscal year for the international cooperation activities under paragraph (5) of section 403(a), and \$10 million in each fiscal year for the national motor vehicle crash causation survey under paragraph (6) of section 403(a).

Subsection (c)(1) of this section provides that amounts made available for the highway safety research and development program under section 403 would be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23.

Subsection (c)(2) provides that, notwithstanding section 402(d) of title 23, the funds authorized under the section for Consolidated State Highway Safety Programs (State and community highway safety grants, performance grants, and impaired driving grants) that are apportioned or allocated in a State would remain available for obligation in that State



for a period of two years after the last day of the fiscal year for which the funds are authorized. Any amounts so apportioned or allocated that remain unobligated at the end of that period would lapse.

#### **SEC. 2006. REPEAL OF OBSOLETE PROVISIONS OF TITLE 23.**

This section repeals two expired authorities, section 406 (school bus driver training) and section 408 (alcohol traffic safety programs) of title 23, U.S.C. Both programs were originally enacted many years ago, funded many years ago, and the funds for the programs have been completely expended. NHTSA has never requested new authorizations for the programs, nor has Congress provided any.

Congress enacted section 406 (School bus driver training) in 1975, and provided an authorization of \$7.5 million for Fiscal Year (FY) 1976 to carry it out (out of the funds authorized for the section 402 highway safety program for that fiscal year). In 1976, Congress authorized \$7 million for section 406 (again out of the funds authorized for the section 402 program) for each of FYs 1977 and 1978. That was the last authorization for section 406, and the funds authorized have been exhausted.

Congress enacted section 408 (alcohol traffic safety programs), NHTSA's first alcohol incentive grant program, in 1982, and provided authorizations for each of FYs 1982-1984 to carry it out. That was the last time section 408 was authorized, and the funds authorized have been exhausted. In 1988, Congress effectively replaced the section 408 program with the section 410 (drunk driving prevention programs) incentive grant program.

### **TITLE III – FEDERAL TRANSIT ADMINISTRATION PROGRAMS**

#### **SEC. 3001. SHORT TITLE.**

The Federal transit program has grown far beyond the original orientation of “urban renewal” in the 1960’s Great Society initiatives. Today, this program also embraces rural and other non-urban constituencies. The title of this bill is meant to reflect this evolution by referring to “public” transportation instead of “mass” transportation.

#### **SEC. 3002. UPDATED TERMINOLOGY; AMENDMENTS TO TITLE 49, UNITED STATES CODE.**

To further reflect the change in emphasis expressed in section 3001, beginning with section 5301 and throughout the rest of chapter 53, the term “mass transportation” would be replaced, where appropriate, with “public transportation.” “Public” is broader by definition and is the term more commonly used by the transit industry.

### **SEC. 3003. POLICIES, FINDINGS, AND PURPOSES.**

Section 5301(a) currently states that it is in the national interest to encourage and promote the development of transportation systems that embrace various modes of transportation and efficiently maximize the mobility of individuals and goods in and through urbanized areas and to minimize transportation-related fuel consumption and air pollution. As amended, the provision would highlight the positive impact on the nation's economy when the development and revitalization of public transportation systems, which minimize environmental impacts and reliance on foreign oil, is fostered.

Currently, section 5301(e) requires that a special effort be made to preserve the environment and important historical and cultural assets when carrying out capital programs funded under sections 5309 and 5310. These principles should apply to all chapter 53 public transportation programs. Therefore, this bill would amend section 5301(e) to reflect this objective.

### **SEC. 3004. DEFINITIONS.**

Section 3037 of TEA-21 authorized the Job Access and Reverse Commute Grants (JARC) program. This section would codify this program in chapter 53 of title 49, U.S.C., at section 5308. Therefore, definitions for the terms "access to jobs project," "reverse commute project," and "welfare recipient" would be added to section 5302.

Capital costs for crime prevention and security are allowable as formula grant expenditures. The Federal Transit Administration (FTA) recognizes that grantees are in need of non-capital security training and drilling, which is currently not authorized for Federal funding. The definition of "capital project" under section 5302(a)(1a) would be amended to include capital security needs, training, and drilling. However, the term would not include the funding of operation costs, such as police on the beat. In addition, "capital project" would be expanded to include a debt service reserve for the reasons stated in the analysis for section 3020 of the bill. Also, "capital project" would be amended to include a project for remediation associated with construction of a capital project as described in section 5302(a)(1a) on a brownfields site as defined in 42 U.S.C. 9601, since public transportation improvements are often critical to the redevelopment of contaminated properties.

Section 5307 would be amended to allow the Secretary to also make urbanized area public transportation formula grants for "mobility management." Therefore, section 5302, "Definitions," would be amended to define the term "mobility management." For purposes of chapter 53, "mobility management" would mean an activity or project that addresses public transportation customer needs, tailors public transportation services to specific markets, manages demand for public transportation, and involves land use compatibility issues. Such goals could be accomplished by coordinating transportation service provider strategies and enhancing ridership growth in a cost-effective and efficient manner. Mobility management functions would involve managing public transportation travel logistics and would focus on resolving consumer mobility issues.

The term would not include the direct provision of transportation service. Mobility managers could serve as transportation travel agents, consumer advocates, and service coordinators. Urbanized formula funds would be available to cover expenses incurred for mobility management staff, planning and transportation coordination activities, and the information technology and other support activities associated with the mobility management function.

The definition of “urbanized area” would be revised to better reflect the Department of Commerce's role in designating urbanized areas.

Currently, specific capital grant making authority for crime prevention and security is only found in section 5321 of title 49, U.S.C. This section, which was added in 1987 in response to growing crime on New York City subways, has never received direct appropriations and, therefore, would be repealed.

### **SEC. 3005. METROPOLITAN PLANNING.**

The Department of Transportation is proposing to consolidate the metropolitan planning provisions currently at 23 U.S.C. 134 and 49 U.S.C. 5305 into one chapter, that is, a new chapter 52 of title 49, U.S.C. (See 49 U.S.C. 5203, as proposed.) For ease of reference, section 5303 would be amended to reflect that grants made under sections 5307-5311, 5316, and 5317 are to be carried out in accordance with chapter 52. See Title VI of the bill.

### **SEC. 3006. STATEWIDE PLANNING.**

The Department is proposing to amend the statewide planning provisions currently at 23 U.S.C. 135, which is cross referenced at 49 U.S.C. 5323(l), and provide a common statewide planning section (section 5204) for both FTA and the Federal Highway Administration (FHWA) in a new chapter 52 of title 49, U.S.C. For ease of reference, section 5305 of title 49, U.S.C., would be amended to reflect that grants made under sections 5307-5311, 5316, and 5317 are to be carried out in accordance with chapter 52. See Title VI of the bill.

### **SEC. 3007. PLANNING PROGRAMS.**

The term "State" would be defined in section 5305(a)(1) more narrowly than in the otherwise applicable general definition in order to exclude territories. This would correct a re-codification error, since the programs do not provide funds to the territories.

Section 5305(a)(2) would define "Planning Emphasis Area" (PEA) for the first time. Periodically, FTA identifies PEAs for special emphasis by States and Metropolitan Planning Organizations in the upcoming year's use of planning program funds. The PEAs are not mandatory but seek to provide general emphasis from the Federal level. The PEAs have been identified now for over 20 years and the proposed definition conforms to the accepted understanding of the term.

Current subsection 5303(g) would move to subsection 5305(b) and would be changed from “Transportation Plans and Programs” to “General Authority” for consistency with FTA’s other program subsections. Language would be added for transportation plans and programs since these are the primary products of the Federally funded transportation planning process. Section 5305(b)(3) would explicitly authorize eligibility for peer exchanges and activities related to peer reviews. Subsection 5303(h) would move to subsection 5305(c) and be renamed from “Balanced and Comprehensive Planning” to “Purpose.” (Note: Existing section 5303(h)(4) would be eliminated since it is obsolete with the addition of new urbanized areas in the 2000 decennial census of population).

Section 5303(d)(2) would be moved to section 5305(h)(2), and modified by directing States to promptly make allocations of planning funds to MPOs and eliminating any direct Department role. FTA would retain flexibility with respect to an administrative formula for areas over 1 million population (currently added in the apportionments to States on a per capita basis).

Section 5305(e) would move the existing State planning and research program from 49 U.S.C. 5313(b). The amendment would not change the formula for apportionments and would consolidate the formula planning programs in section 5305.

Section 5305(f) would establish a Capacity Building program to support and fund innovative practices and enhancements in transportation planning. The program would promote activities that support and strengthen the planning processes required under 49 U.S.C. 5203 and 5204. The program would be implemented in two ways. First, incentive grants would be made available to States, metropolitan planning organizations, and transportation operators to be used to plan, develop and implement innovations and enhancements of planning practices that support and strengthen the planning processes required under sections 5203 and 5204. Second, the Secretary would conduct research, engage in program development, collect and disseminate information, and provide technical assistance in connection with metropolitan and statewide planning processes.

The Secretary could conduct these activities independently or carry them out by making grants or entering into contracts or cooperative agreements. Funds to carry out this program would be provided in section 5338(a) and (b) and allocated in accordance with section 5305(h)(1). Subsection (h)(1) would allocate \$5 million for capacity building, and of the remainder, 82.72% would be available for metropolitan planning under subsection (d), and 17.28 percent to carry out the general authority under subsection (b) and the statewide planning and research program under subsection (e). A counterpart highway program would be funded at \$15 million, for a total of \$20 million in program funding. FTA and FHWA would cooperatively administer the two programs. The 82.72% and 17.28% split is identical with the split authorized in TEA-21.

Existing section 5303(h)(5) would move to a new section 5305(g), "Government’s Share of Costs," and would apply to both planning programs.

Section 5305(i) would provide the period of funding availability that is identical to current funding availability under section 5303.

#### **SEC. 3008. PRIVATE ENTERPRISE PARTICIPATION.**

The section 5306 heading would be revised to better emphasize the scope within which private enterprise participation is encouraged.

#### **SEC. 3009. URBANIZED AREA PUBLIC TRANSPORTATION FORMULA GRANTS PROGRAM.**

Section 5307(d)(1)(I), which requires grantees to have “a locally developed process” to solicit public opinion before raising a fare or substantially reducing service, would be deleted. Because Urbanized Area Formula dollars cannot be used for operating expenses, FTA does not have the fiscal justification or policy basis for intruding into local operations matters, such as how a grantee determines its fares.

Currently, subsection 5307(j) requires that grantees submit annual reports on sales of advertising and concessions. This subsection would be deleted because it is redundant with a similar requirement of the National Transit Database

Subsection 5307(k) dealing with “transit enhancement activities” would be mainstreamed into a new subparagraph (J) in section 5307(d)(1). Currently, that subsection allows for a one percent set aside for transit enhancements, requires a report listing the projects carried out during the preceding years with transit enhancement funds, and provides for the reapportioning unobligated funds after three years. Under new subparagraph (J), a recipient with at least a population of 200,000 in its urbanized area would be required to certify that one percent of its section 5307 funds would be expended on transit enhancements. Reporting would be required under FTA's normal grant management procedures. Such a provision would relieve FTA from making separate one-percent apportionments for transit enhancement activities, *e.g.*, for three years, FTA had to track, separately, then reapportion, a mere \$68,000 of \$20 million made available in the fiscal year 1998 apportionment of Urbanized Area Formula dollars.

Currently, the Urbanized Area Formula program allows the local match to include revenues from advertising and concessions. However, these matching revenues are limited to those made in excess of revenues earned in 1985. By striking this 1985 baseline in section 5307(e), aggressive local financing, particularly by systems experiencing growth, would be fostered.

Section 5307(i) would be redesignated as section 5307(h) and amended to give the Secretary discretion to require annual audits rather than mandate them. There would remain an audit requirement pursuant to the Single Audit Act (Office of Management and Budget (OMB) Circular A-133), which requires an annual audit of all Federal grantees receiving Federal grants exceeding \$300,000 (constituting about 83 percent of all section 5307 grants). Auditing small grants under \$300,000, which are exempted by A-133,

would be discretionary, but based on FTA's annual risk assessment process. This amendment would relieve large grantees of a duplicative audit process and would relieve small grantees, who satisfy FTA's risk assessment analysis, of the audit requirement.

Under current law, section 5307(n)(1) states that 18 U.S.C. 1001, regarding false or fraudulent statements, only applies to certificates or submissions provided pursuant to section 5307, "Urbanized Area Formula Grants." That paragraph would be moved to section 5323, General Provisions on Assistance. Under section 5223, 18 U.S.C. 1001 would apply to any Federal public transportation grant program. See sections 3009(i) and 3020.

The Clean Fuels Formula Grant program was established in TEA-21 and codified at 49 U.S.C. 5308. Subsequently, Congress precluded the availability of funds for this program through later enactments of law. Regardless, the purpose of this program has long been fulfilled through capital grants for buses. In fact, 40 percent of buses procured with Federal transit assistance use alternative fuels. Therefore, the Department is proposing that the Clean Fuels Formula Grant program be replaced with the Job Access and Reverse Commute (JARC) program.

#### **SEC. 3010. FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.**

Section 5311(a) would define an eligible recipient and subrecipient of other than urbanized area program funds.

Section 5311(b) would allow other than urbanized area formula grants to be used for capital transportation projects, or operating assistance projects, including the acquisition of transportation services, provided the projects are contained in a State program of public transportation service projects (including agreements with private providers of public transportation services).

Under current law, recipients of grants and contracts to carry out transportation research, technical assistance, training, and related support services (the Rural Transportation Assistance Program (RTAP)) have to compete annually for scarce National Planning and Research funds. Section 5311(b)(3), as redesignated, would provide up to two percent of section 5311 funds to carry out RTAP activities. Such an amendment would better correlate with the amount of rural service available, thereby stabilizing the program. If the formula funding level for rural transit increases, a proportionate level of funding for training and technical assistance delivered at the State level would be available. In short, as the rural program grows, more funds would be required for increased training needs; however, FTA expects that no more than the current two percent of the amount available to carry out section 5311 would be needed for RTAP expenses in future fiscal years. New paragraph (4) would allow the Secretary to use up to 15 percent of the two percent to sustain ongoing national project activities such as the National Transit Resource Center, production training modules, and occasional rural transit research projects of national interest.

New section 5311(c) would provide for an “incentive program.” Pursuant to new section 5311(c)(2)(A), of the amounts that would be apportioned under the incentive program, the Secretary could use a portion to make grants to establish data collection systems capable of collecting the data necessary to determine whether there have been increases in public transportation patronage. As indicated in section 5311(c)(2)(C), these data are essential to the determination of whether a State may receive funds under the incentive program. In order to allow sufficient time to establish these data systems, the Secretary may use 100 percent of the amount apportioned in 2004, i.e., \$2.5 million; \$1.5 million in 2005; and \$0.5 million in 2006. Section 5311(c)(2)(D) would also allow the Secretary to consider how well increases in public transportation patronage have been accommodated without reducing the efficiency of transit service. The provision would allow the performance awards to be varied depending on the changes in service provision efficiency, while still emphasizing that the performance incentives are based primarily on improving the outcomes of the Federal transit assistance programs by focusing first on public transportation patronage.

The basic section 5311 program amount apportioned to States would be distributed pursuant to the same formula currently being used and now set forth in section 5311(c)(3), as follows:

The total remaining amount to be apportioned in each fiscal year under 5311(c)(1)(A) would be multiplied by a ratio equal to the population of a State's non-urbanized areas divided by the population of all non-urbanized areas in the United States, as shown by the most recent Federal government decennial census of population.

Section 5311(f) would be amended to strike “after September 30, 1993,” since that date has passed. Section 5311(f)(2) would require the State to consult with affected intercity bus service providers before certifying that the State’s intercity bus service needs are being met adequately. Such consultation would help to ensure the State’s awareness of any intercity bus service needs.

Subsection 5311(g) would retain the Federal share for any capital project at 80 percent or less of the net costs of such a project, as determined by the Secretary. Also retained would be the Federal share for operating assistance at 50 percent or less of the net costs of an operating project, as determined by the Secretary. Consistent with current law, the remainder would not include revenues from the operation of public transportation systems. Rather, the remainder could be provided from a variety of other sources including undistributed cash surpluses or from amounts appropriated or made available for transportation from any other Federal department or agency other than the Department of Transportation, except for Federal Lands Highway funds. Current section 5311(e)(2), which prohibits a State from limiting the level or extent of the Government’s share for operating expenses, would be moved to section 5311(g)(2) under the heading “Government’s Share of Costs.”

Current subsection (h), which allows section 5311 funds to be used for operating assistance, would be included under the General Authority provision at subsection (b). A

new section 5311(h) would create an Indian Reservation Rural Transit program under which States would provide grants to Indian tribes to operate, maintain, and establish rural transit programs on reservations or other land under the jurisdiction of the Indian tribes. Of the \$10 million available to carry out this subsection in fiscal years 2004 through 2009, \$9.5 million would be available to States based on the formula, and \$500,000 would be available to the Secretary to provide technical assistance, including best practices and outreach, to the States and Tribes through grants, contracts, or other arrangements. Any remaining funds available three years following the fiscal year in which they were apportioned would be reapportioned to the States.

Section 5311(i), "Relationship to other laws," would codify existing Department of Labor practice of using a Special Warranty that provides a fair and equitable arrangement to protect the interests of employees without referring the application for negotiation. It also would authorize the Secretary to waive the Special Warranty for private non-profit subrecipients on a case-by-case basis as currently authorized under the section 5310 program.

### **SEC. 3011. NEW FREEDOM PROGRAM.**

Seventy percent of persons with disabilities are unemployed due in part to transportation barriers. A new section 5317 authorizing the New Freedom Initiative program under Chapter 53 of title 49, U.S.C., would significantly reduce these barriers, thus allowing persons with disabilities the opportunity to contribute to the Nation's economic vitality.

Other specialized programs that provide funding for additional transportation services are not sufficient to meet the specific employment transportation needs of persons with disabilities. For instance, while Job Access and Reverse Commute grants provide funding for new and expanded transportation service for job-seekers from low-income areas, persons with disabilities are found throughout communities. The New Freedom program addresses the needs of persons with disabilities at all income levels.

Subsection (b)(1) would authorize grants to States (the recipients under this program) for new transportation services and alternatives that integrate persons with disabilities into the workplace. Alternative transportation solutions would include programs that provide loans to purchase or lease accessible motor vehicles, funding for making motor vehicles accessible through technology modifications, and other innovative programs that enhance the transportation mobility of persons with disabilities to and from jobs and employment support services. Subsection (b)(2) would permit a recipient to use up to 15 percent of the amounts it receives to administer, plan, and provide technical assistance for projects funded under this section. The Secretary would apportion funds to recipients under a formula the Secretary would administer. The recipient could transfer these funds to the urbanized or other than urbanized formula programs provided that the funds were used only for eligible projects authorized under this section. The benefit to the recipient would be the ability to transfer funds at any time. It also would allow the recipient to include funds for this program in a transaction that provided for urbanized or other than urbanized formula funds.



According to subsection (d), 49 U.S.C. 5333(b) would apply to the New Freedom program the same way as it would apply to section 5311, namely, using a Special Warranty. The recipient would also be required to certify that it has distributed program funds to subrecipients on a fair and equitable basis.

Subsection (e) would require recipients to solicit applications from public bodies, public transportation entities, and private entities engaged in public transportation for funds to carry out this program. Applicants would be selected on a competitive basis. The Secretary would be authorized to use not more than one percent of the funds made available under section 5338(a)(2)(H) for oversight of these authorized activities as provided in section 5327(c).

Subsection (f) would require the Secretary to coordinate these program activities with related program activities of other Federal departments and agencies. Also a recipient that transfers funds to Urbanized Area Formula program would have to certify that the project for which the funds are requested had been coordinated with private non-profit providers of these program services. A recipient would also be required to certify that projects selected were derived from a locally developed, coordinated public transit-human services transportation plan and that the plan was developed through a process that included representatives of public, private, and non-profit transportation providers and participation by the public.

Subsection (g) would authorize up to an 80 percent Federal share of net capital cost of a project, and not more than a 50 percent Federal share of the net operating cost of a project. The remainder of the funds could be derived from the same variety of sources described in the analysis for the Formula Grants program for other than urbanized areas authorized under section 3010 of the bill.

## **SEC. 3012. MAJOR CAPITAL INVESTMENT PROGRAM.**

The Department is proposing to limit section 5309 to a new starts program. The Department also is proposing to include non-fixed guideway improvements to encourage, among other things, consideration of bus rapid transit options. All projects under the program would be subject to a criteria and evaluation process. The provision would provide grants for capital costs incurred when coordinating public transportation with other transportation, the costs of introducing new technology, through innovative and improved products, into public transportation, and the development of corridors to support public transportation. Grants for fixed guideway rail modernization and bus and bus-related equipment and facilities would be provided pursuant to formula under section 5307. As proposed, references to “capital investment loans” would be deleted from section 5309 since, historically, only capital investment grants have been awarded pursuant to this section. Section 5309(a)(1)(A) currently allows for the financing of alternatives analysis with capital investment grants. This provision would be deleted since alternatives analysis should be carried out as part of the planning process.

Before making an award under section 5309, the Secretary must find that applicants have (1) complied with statutory planning and private enterprise provisions, (2) the legal, financial and technical capacity, (3) satisfactory continuing control of use and capability, and (4) a willingness to maintain project property. The amendment to section 5309(b) would permit the Secretary to rely on a section 5307 applicant's certification containing the same project attributes when applying for section 5309 funds. It would also clarify that the term "technical capacity" includes the safety and security aspects of a transit project.

Section 5309(c)(2)(A)(ii), (currently 5309(e)(1)(B)), would be amended to add transit-supportive policies and existing land use to the criteria used for awarding major capital investment grants on projects of \$75 million or more. Also, in an effort to ensure local financial commitment, section 5309(c)(2)(A)(iii) (currently 5309(e)(1)(C)) would require the grantee to demonstrate that it has sufficient resources to maintain and operate its entire system including any extension thereto. Under current law, the Secretary must evaluate and rate the project as "highly recommended," "recommended," or not recommended." In response to the General Accounting Office's recent suggestion that FTA develop an approach to better distinguish projects, it is proposed that the ratings be changed to "high," "medium-high," "medium," "low-medium," or "low." This would enable FTA to better manage the pipeline of projects, educate grantees, and distinguish the merits of projects. (See section 5309(c)(3)).

Currently, section 5309 limits applicability of fixed guideway criteria to projects with a Federal share of less than \$25 million. Subsection (d) would increase this amount to less than \$75 million and subject such projects to the same criteria for projects with a Federal share of \$75 million or more, but only to the extent the Secretary deems appropriate.

Section 5309(g)(1)(B), redesignated as section 5309(f)(1)(B), would reduce the number of days from 60 to 30 in which the Secretary must notify Congress of FTA's intention to issue a letter of intent or enter into a full funding grant agreement (FFGA). This would expedite grant execution in an increasingly crowded pipeline, particularly for the many non-controversial projects. Should Congress have concerns about a proposed FFGA, Congress could request that the Secretary delay its execution beyond 30 days.

Because demand currently exceeds funding, section 5309(g) would limit the Federal share of new start projects to fifty percent, enabling FTA to award a greater number of FFGAs and accommodate additional projects in the pipeline. FTA has alerted all new starts project sponsors with which it is negotiating of the 50 percent limitation, which was included in the Administration's fiscal years 2003 and 2004 budget proposal. Due to the competitive nature of this program, FTA has long encouraged project sponsors to overmatch the statutory minimum local share, and has weighted a sponsor's overmatch as part of FTA's evaluation of the statutory criterion for local financial commitment.

Currently, section 5309 requires that the Secretary consider the fiscal capacity of other State and local governments when giving priority to funding projects offering more than the statutory minimum share. New subsection 5309(h) would allow the Secretary to

negotiate an FFGA for a project sponsored by an applicant that lacks the means to overmatch its local share. Current law allows use of up to eight percent of the amounts available in each fiscal year for fixed guideway pre-final design and construction activities, which include alternatives analysis and preliminary engineering. As amended, section 5309, at subsection (i), would limit the use of such funds to preliminary engineering, which marks the first substantive stage of a project.

Reference to 23 U.S.C. 103(e)(4) in section 5309 would be deleted since subsection 103(e) was repealed by section 1106 of TEA-21.

The Department is proposing to change the new starts reporting to one annual funding report and three status reports as reflected in section 5309(l). Currently, rating all projects for the annual report requires grantees not eligible for funding to rush their studies, frequently degrading their quality, so that information can be produced for the report.

As proposed, the annual report would describe only projects receiving funding based on evaluations and ratings and on existing commitments and anticipated funding levels for the next 3 years. Every four months a report would be released with FTA ratings of only those projects with significant changes in their summary rating or some other key feature, or those that recently have entered preliminary engineering or final design. Every report would contain a table with summary rating information for all projects currently in the new starts pipeline.

With this change, FTA would evaluate fewer projects for the annual report, allowing time for more thorough evaluations of other projects not in the report. Grantees would benefit from this change since studies could progress at a pace that makes sense locally rather than being dictated by submission of information for the annual report. Information on projects would be considerably more current at a time when Congress is deliberating funding.

The more frequent reporting on new starts would diminish the desire to rush project development so as not to lose another year. This would address the concern that FTA programs not drive grantee decisions, permitting grantees to make the best decision based on local needs.

### **SEC. 3013. RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.**

Currently, section 5312 does not address deployment of emerging technologies, and inappropriately includes training. As amended, section 5312 would authorize public transportation service planning, and research, development, demonstration, and deployment projects, and would move the training provisions at subsections (b) and (c) to section 5322.

Throughout the Federal Government, the term “other transactions” is used to provide executive branch agencies with broad discretion to enter into project agreements under terms that would encourage private parties to participate in Federally assisted projects. Since the term “other agreements” in section 5312(b)(2), as redesignated, provides the same authority, this section would be amended to replace that term with “other transactions,” for consistency. Subsection 5312(b)(3), as redesignated, would be amended to increase the Federal share for the Joint Partnership Program (JPP) from 50 percent to 80 percent. FTA has had difficulty attracting interest in this program at the 50/50 share level, since most FTA funds (formula funds) are available at 80/20, and research funding has traditionally been provided at up to 100 percent Federal share. Potential consortia partners often include companies that work with small profit margins and public agencies with small research budgets and this, in combination with the large non-Federal contribution requirement, precludes successful use of the JPP. One recent example has been in the development of bus rapid transit (BRT) systems. Bus manufacturers and transit agencies have approached FTA about research funds that would enable them to catch up with or surpass the European manufacturers that currently dominate the market. Without greater financial leverage of their limited research dollars, however, U.S. BRT efforts will likely be limited to the role of customer for European manufacturers.

Currently, the International Mass Transportation program requires FTA to deposit revenues paid by any cooperating organization or person into the Mass Transit Account of the Highway Trust Fund. As a result, FTA needlessly deposits general resources into the trust fund account and then moves those resources to general fund accounts. Amending section 5312(c)(3), as redesignated, would allow FTA to deposit the revenues directly into the general fund account.

Currently, section 5312 does not address deployment of emerging technologies, and inappropriately adds training concepts. As amended, section 5312 would add special studies involving planning to the research, development, demonstration, and deployment projects provision, and would move the training provisions at subsections (b) and (c) to section 5322. Subsections (d) and (e) would then be redesignated as (b) and (c).

#### **SEC. 3014. COOPERATIVE RESEARCH GRANT PROGRAM.**

Amendments to section 5313 would provide the correct funding authorization citation. Also, subsection (b) would be mainstreamed into section 5305(e).

#### **SEC. 3015. NATIONAL RESEARCH PROGRAMS.**

Section 5314 would be amended to delete the word “Planning” from the heading, since the focus of the section is on research, and planning has been provided for elsewhere in chapter 53. Amendments to section 5314(a)(1) would provide the correct funding authorization citation and reflect the fact that the university transportation centers program in existing section 5317 would be moved to section 5505 of title 49. Subsection (a)(2) would continue provide at least \$3,000,000 for Project Action, which is designed to

help ensure that mass transportation-related assistance, programs, research, education, and other activities comply with the Americans with Disabilities Act of 1990.

Operational demonstration projects involving public transportation have had to comply with the Department of Labor's transit employee protection requirements under section 5333(b). These new technologies are being tested for short periods of time on single vehicles rather than on entire fleets. In such situations, compliance with section 5333(b) has created unwarranted delays and risks that have had a chilling effect on the development and deployment of new technology. Moreover, these types of operational projects do not create an employee protective risk, the purpose for which section 5333(b) was enacted. Therefore, section 5314(a)(3) would be amended to relieve this compliance requirement. Also, section 5314(a)(4)(B) requires FTA to establish an Industry Technical Panel composed of transportation suppliers and others involved in technology development. This provision would be deleted, as such a panel is unnecessary given FTA's continuing working relationship with all facets of the transit industry.

#### **SEC. 3016. NATIONAL TRANSIT INSTITUTE.**

Existing section 5315(b) requires the Secretary to delegate to the National Transit Institute (NTI) the authority to develop and conduct educational and training programs pertaining to public transportation. NTI already has sufficient authority to conduct any type of educational or training program, and therefore, this section would be deleted.

#### **SEC. 3017. BUS TESTING FACILITY.**

Section 5318(a) requires that the Secretary establish one testing facility for new bus models. To reflect that the facility has already been established, this section would be amended to require that the Secretary maintain the facility. Subsection (e), which requires the Secretary to establish a revolving loan fund for expenses related to operating and maintaining the facility, would be deleted, because the bus testing facility relies on State resources to pay for those costs, and has never requested a loan. The provision in section 5323(c) concerning acquisition of new bus models would be moved to section 5318(e) for clarity.

#### **SEC. 3018. BICYCLE FACILITIES.**

Section 5319 would be amended to make technical corrections.

#### **SEC. 3019. SUSPENDED LIGHT RAIL TECHNOLOGY PILOT PROJECT.**

Section 5320, which authorizes a suspended light rail system technology program, would be repealed because it has proved to be infeasible and has not implemented.

## **SEC. 3020. GENERAL PROVISIONS ON ASSISTANCE.**

The provisions of section 5323(b) would be edited to mesh the statutory requirements of Federal transit law more closely with current FTA practice under the National Environmental Policy Act (NEPA). FTA does not depend on the "certificate of the applicant" that the environmental review was properly performed. Rather, NEPA makes consideration of a proposed project's environmental record a direct Federal responsibility. Accordingly, FTA participates directly in the environmental process for a proposed project and reviews the final environmental record before accepting it.

Methods for providing public comment have broadened considerably since the language regarding a public hearing was enacted in section 5323(b). This section would be amended to provide the same consideration to comments submitted by mail or electronic means, as the consideration given to comments transcribed at a hearing. In addition, non-English speaking persons or hearing-impaired persons are provided the opportunity to comment through special arrangements, and those comments should receive equal consideration.

This section would also eliminate the two-step process for announcing a hearing. Under the current process, the applicant announces the opportunity for a hearing and then waits for a response. The amendment would provide that a hearing be held whenever the project affects significant social, economic, or environmental interests in the community, regardless of whether one has been requested.

Section 5323(c), which allows the obligation or expenditure of funds to acquire a new bus model only if a bus of the model has been tested, is already provided for in section 5318. Therefore, existing section 5323(c) would be amended to allow grants for new technology, including the integration of innovative techniques, subject to the requirements of section 5309, but only to the extent the Secretary deems appropriate. Federal grant requirements, particularly in the case of major capital projects, are often difficult and burdensome when imposed on the introduction of new technology. Revised subsection (c) would strengthen and leverage private sector participation by permitting the Secretary to establish appropriate terms and conditions for projects involving the integration of new innovative or improved products, techniques, or methods. Such discretion would facilitate new and improved public transportation resources, as well as benefit the public and private sectors.

Section 5323(e) requires the Secretary to issue a bus passenger seat functional specification based on a finding by State and local governments of "local requirements for safety, comfort, maintenance, and life cycle costs." Industry has adopted an effective standard, the Secretary has issued a specification, and if the need were to arise again, the National Highway Traffic Safety Administration would be the more appropriate agency to address the matter. Therefore, this subsection would be deleted.

Section 3011(a) of TEA-21 allows a recipient of an urbanized area public transportation formula grant under section 5307 or a major capital investment grant under section 5309

to use proceeds from the issuance of revenue bonds as a local match. Since this provision has been beneficial to transit operators, it would be codified in section 5323(f)(1).

Section 5323(f)(2) would provide transit grantees with an additional innovative financing tool. Typically, only a small portion of public transportation investment is financed with municipal bonds. Currently, a recipient deposits bond proceeds in a debt service reserve to ensure timely payment of principal and interest on the municipal bonds supporting the transit project. Regardless, the municipal bonds are typically rated below "AA" because they are secured by variable revenue streams and thus demand a higher rate of interest. Under section 5323(f)(2), the Secretary could allow a recipient to use section 5307 or 5309 dollars to reimburse it for deposits made to the debt service reserve. Because Federal transit funds are typically viewed as higher creditworthy revenues, transit bond ratings would be strengthened and interest costs reduced. As a result, State and local investment would increase, and there would be improved capital planning, lower costs, and speedier project development.

Section 5323(h)(1), which prohibits a grant or loan from being used to pay ordinary governmental or non-project operating expenses, would be deleted. The same prohibition appears in OMB Circular A-87, and has been incorporated in 49 CFR Parts 18 and 19. Section 5323(h)(2), which prohibits a grant or loan from being used to support a procurement that uses an exclusionary or discriminatory specification, appropriately belongs in section 5325, where it would be moved. Subsection (h) would be revised to provide for the transfer of lands or interests in lands owned by the United States. The Department of Defense regulations (32 CFR Parts 90 and 91) provide for the disposition of surplus land resulting from the Defense Base Closure and Realignment Act to be transferred free to "grantees" that have Federal sponsors with Federal land transfer statutes. Most Departments have such statutes. However, within the Department of Transportation, only the Federal Highway Administration and the Federal Aviation Administration have such authority. By amending chapter 53 to include a Federal land transfer statute under section 5323(h), FTA grantees would be eligible to receive surplus government land for authorized public transportation projects, under certain terms and conditions, but at no cost.

The Buy America statute requires that steel, iron, and manufactured products bought with FTA transit funds be of U.S. origin. There is confusion in the industry and among FTA grantees concerning how the Buy America requirements apply to manufactured products, that is, how the steel and iron requirements apply in conjunction with the manufactured products requirements, especially when involved with construction contracts. Grantees also have difficulty distinguishing between components and end products. Misapplication of the requirements has resulted in certain grantees becoming ineligible for FTA funds. Recognizing these facts, the requirements for manufactured products, except rolling stock, would be eliminated from section 5323(j). The statute would apply to steel, iron, and rolling stock, and components and subcomponents of rolling stock. This change would result in a more uniform Buy America standard within the Department, significant cost savings for grantees, more uniform application of the standard throughout the industry, as well as allow FTA to stretch grant dollars further.

Reference to the Intermodal Surface Transportation Efficiency Act of 1991 in subsection (j)(4) is obsolete, and the provision would be amended accordingly.

Section 5323(l), which indicates that the planning and programming requirements of 23 U.S.C. 135 apply to grants made under 49 U.S.C. 5307-5311, would be deleted because Statewide Planning, under new section 5204 (see section 7001 of this bill), would include those requirements. Subsection (l) would then be used to provide for the applicability of 18 U.S.C. 1001, dealing with false or fraudulent statements, to Federal transit programs. Currently, section 1001 only applies to certificates or submissions provided pursuant to section 5307, "Urbanized Area Public Transportation Formula Grants."

Section 5323(m) provides that an independent pre-award review and a post-delivery review must be conducted when a grantee purchases rolling stock. These reviews must show compliance with the Buy America requirements, the motor vehicle safety requirements, and the bid specifications. In addition to reviewing and documenting the origin of each component and subcomponent and the location and cost of final assembly, the grantee must use an on-site inspector when it purchases more than 10 vehicles. This means that the grantee must have someone on site at the assembly plant to review and observe the actual manufacture of the vehicle. This is costly and burdensome, especially on smaller grantees that may not have the staff or sophistication to devote to such audits. Therefore, section 5323(m) would be amended to eliminate these requirements for private non-profits organizations and grantees serving areas fewer than one million people. All manufacturers and suppliers would have to continue to certify compliance with Buy America during the bidding process, and they would remain bound by their original certification. However, this small percentage of grantees would not have to certify twice in order for the vehicles to comply with Buy America. Further, the vast majority of vehicles purchased would still undergo the audits. It would not benefit manufacturers to somehow to take advantage of this change for such a small share of their overall vehicle sales.

## **SEC. 3021. SPECIAL PROVISIONS FOR CAPITAL PROJECTS.**

Currently, section 5324 contains relocation program requirements as a condition of receipt of Federal assistance. The Secretary must make an affirmative finding that two of the numerous conditions contained in the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Act), 42 U.S.C. 4601 et seq., have been fulfilled. All State agencies, defined in the Act as covering entities that would be FTA grantees, must comply with these two provisions of the statute to be eligible for Federal transit assistance. Therefore, in order to ensure that grantees are complying with the applicable requirements, section 5324(a) would be amended to directly reference the relevant sections of the Act.

Proposed section 5324(b) would continue to allow protective and hardship acquisitions as defined in 23 CFR 771.117, but it would also allow advance acquisition where the strict requirements associated with a protective acquisition are not met. At present, a protective acquisition is permitted only if the development of the property is imminent as



evidenced by concrete steps taken by a developer to build, subdivide, or otherwise develop the land. This requirement is too restrictive. Allowing a developer to carry the development plans that far only to have the parcel acquired for transportation purposes is unfair. Further, it increases the cost of the property to the public when it is finally acquired for transportation purposes. Outside market forces that do not respect transportation project schedules for environmental review unduly influence the sale and development of real property. It is in the public interest to allow the acquisition when market forces dictate, and thereby avoid multiple transactions on the same property and the associated escalation in cost. A strictly limited number of such advance acquisitions could be allowed without prejudice to the consideration of alternative locations or alternative projects, because the resale of a few parcels if a different alternative is selected is feasible and presents little or no burden to the transportation agency.

Congress has sometimes recognized the public interest in keeping railroad corridors available for long-term transportation use by earmarking funds for the acquisition of a particular railroad right-of-way (ROW) by a transit agency. More recently, Congress generalized this practice by expanding the list of eligible activities in section 5309(a)(1)(H) to include "the development of corridors to support fixed guideway systems, including protecting rights of way through acquisition...." (Note: Section 5309(a)(1)(H) would be moved to section 5309(a)(1)(D) and amended by changing "fixed guideway systems" to "public transportation" as proposed in section 3012 of this bill.)

Proposed section 5324(c) would address FTA's current practice of allowing the acquisition of pre-existing railroad ROW in advance of any specific project decisions on how the ROW will be used. In some cases, a firm project proposal and the associated environmental review may still be years away at the time of the acquisition, but the commercial railroad that owns the ROW seeks to liquidate the asset through its sale, and its preservation as a transportation ROW can only be assured through its acquisition. In urbanized areas, existing railroad corridors are widely viewed as an appropriate location for rail transit projects. FTA experience over the years in considering alternative locations for major capital investment rail projects indicates that, when an existing rail ROW is one of the options under consideration, it is often the environmentally preferable location for the project. Railroad ROWs have abutting land uses that developed over time with the railroad in place, so those land uses are generally compatible with the railroad use of the ROW. The protection of such ROWs for future transit use through acquisition is an action that does not change the fundamental use of the ROW in question. It merely changes the ownership of that land from private ownership by a commercial railroad to public ownership by a public transit agency. Any changes in the use of the railroad ROW would be subject to appropriate environmental review prior to the change. The purposes of other Federal laws regulating railroads (e.g., those governing the abandonment of rail ROW) would not be compromised by this provision.

The minor edits proposed to existing section 5324(b), which would be redesignated as section 5324(d), would mesh the statutory requirements of Federal transit law more closely with current FTA practice under NEPA, and 49 U.S.C. 303 (commonly called

"section 4(f)", and other environmental laws. Of the Secretaries listed in current transit law, only the Secretary of the Interior frequently has an interest in FTA projects and routinely consults with FTA on those projects. Reference to the Secretaries of Agriculture, Health and Human Services, and Housing and Urban Development would be removed since these agencies rarely have any interest in transit projects and the requirement for routine consultation with their Departments is not productive. FTA grant applicants are required by NEPA regulations to identify the Federal interests and parties affected by a proposed transit project, and in the very rare case that a transit project does affect one of the Departments that would be removed from the list or any other agency of the Federal Government, FTA would consult with that Federal agency on the effects of the project and cooperate with that agency in resolving any issues that may arise.

The Council on Environmental Quality has delegated its routine project review responsibilities to the Environmental Protection Agency (EPA). In addition, EPA is required by Section 309 of the Clean Air Act to review every environmental impact statement of every other Federal agency. Federal transit law should be consistent with current delegations of responsibilities and with other Federal law. The proposed amendments would delete CEQ and substitute the Administrator of EPA.

Methods for providing the public with adequate opportunity to present views have broadened considerably since the original language about a public hearing transcript was enacted. At present, FTA practice is to give full consideration to every public comment on the project, whether that comment was transcribed at the formal public hearing, was received in written form through the mail or by email, or, in some cases, was transcribed from a telephone voice mail service established for this purpose. Federal transit law should not single out the hearing transcript for greater attention than other valid forms of public comment on the project. Therefore, section 5324(b), which would be redesignated as section 5324(d), would be amended accordingly.

FTA has not used the existing authority to hold its own separate hearing on a project proposed for FTA funding. The local transit agency that is planning the project and that would construct, own, and operate the project, and be directly accountable to the public affected and served by the project, must take responsibility for the public involvement process and must consider the public comments in deciding its course of action. FTA should not substitute its judgment in these local matters. Furthermore, the other provisions of section 5324 give FTA the authority to withhold a grant until FTA is satisfied that an adequate opportunity to present views was given to all parties with a significant social, economic, or environmental interest. The authority to hold a separate FTA hearing is therefore unnecessary.

## **SEC. 3022. CONTRACT REQUIREMENTS.**

Section 5326, "Special Procurements," would be consolidated with section 5325, "Contract Requirements," since the provisions of section 5326 fall within the scope of section 5325.

Existing section 5307 requires the use of competitive procurement as defined or approved by the Secretary in carrying out procurement under that section. Section 5325(a) would be amended to expressly require the use of competitive procurement procedures for any procurement carried out under Chapter 53. This amendment would strengthen competition standards and would stretch procurement dollars in third party contracting.

The revised language in redesignated section 5325(b) would clarify that program management is limited to architectural, engineering, and design contracts. Also, the reference to 23 U.S.C. 112(b)(2)(C) through (F), which deals with performance and audit standards and indirect cost rates, would be removed, and instead, subsection (b) would be revised to specifically include these provisions.

TEA-21 allowed for turnkey system projects, also known as design-build contracting, in Federally funded public transportation projects, including demonstration projects. Section 5325(d) (existing section 5326(a)), would replace the term “turnkey” with the more commonly used term “design-build.” Also, this section would be amended to delete any reference to “demonstration projects,” since design-build contracting has matured beyond the demonstration phase. In addition, design-build contracting does not necessarily result in lower project costs or new technologies and, as a result, this concept, which appears in existing section 5326(a)(2), would be removed.

Currently, FTA and the Comptroller General can inspect contract records for capital projects receiving Federal transit assistance, but only in cases of “noncompetitive bidding.” Investigations of the merits of competitive bids are based on (1) whether a grantee violated what it certified to, or (2) the protest procedures in the government-wide Common Grant Rule. New subsection 5325(g), “Examination of the Records,” would strengthen oversight by allowing FTA or the Comptroller General to inspect all contract documents. This provision would be particularly useful in light of the increased flexibility grantees now have due the rescission of the FTA Circular provision limiting contract length.

The “grant prohibition” provision, dealing with contract requirements, was erroneously included under section 5323, “General Provisions On Assistance,” and would be more properly placed under section 5325(h), as proposed.

### **SEC. 3023. HUMAN RESOURCES PROGRAMS**

Sections 5312(b) and (c) would be moved to sections 5322(b) and (c) to better fit the organization of revised section 5312.

### **SEC. 3024. PROJECT MANAGEMENT OVERSIGHT AND REVIEW.**

Given the new security concerns -- and in keeping with actual practice in the field -- section 5327(a) would be revised to require that a project management oversight (PMO) plan include "safety and security management." Currently, competitive sourcing of oversight services between the public and private sectors is barred by section 5327, which

requires that oversight funds be used only for contracts. The only available source for in-house oversight activities is the Administrative Expense appropriation, which is already oversubscribed. Flexibility in use of oversight funds for competitive sourcing would better enable FTA to retain core expertise while still outsourcing the bulk of oversight services. Therefore, section 5327(c)(1) would authorize the use of a one percent PMO takedown to pay for the provision of oversight services by contract or FTA staff. Such funding of FTA oversight employee salaries and related expenses would be in addition to any administrative funds available for that purpose. Section 5327(c)(1) would also be amended to allow a one percent takedown for PMO activities related to the JARC program (5308), the Formula Grants program for special needs of elderly individuals and individuals with disabilities (5310), and the New Freedom program (5317). These programs would also require comprehensive agency oversight of the type that would be authorized under this section.

Section 5327(c) would be amended to strike the reference to 23 U.S.C. 103(e)(4), which was repealed by TEA-21.

#### **SEC. 3025. PROJECT REVIEW.**

Section 3025 would repeal sections 5328(a) and (b), which established a firm schedule for various FTA approvals associated with New Starts and reporting to Congressional committees on failures to meet those schedules. These provisions were enacted at a time when FTA policy mandated a rigid and complex planning process with a multitude of methodology and results reports, all of which were subject to FTA review and approval. FTA reformed that process in response to the emphasis on flexibility and local decisionmaking in the Intermodal Surface Transportation Efficiency Act of 1991, and TEA-21's requirements for project development streamlining. In addition, Congressional concerns about New Starts have shifted to a greater interest in FTA oversight of the financial planning and cost estimation for these projects, and congressional staff have agreed that the reports are no longer necessary. Subsection (c), which provides for a program of interrelated projects specifically identified in law, is now obsolete and would be removed.

#### **SEC. 3026. INVESTIGATIONS OF SAFETY AND SECURITY RISK.**

Section 5329 authorizes FTA to investigate "safety hazards," but does not expressly authorize FTA to investigate "security" matters. The provision, arguably, could be interpreted as not permitting FTA to investigate or assist with security matters absent some particular "hazard." Therefore, this section would be amended to promote active cooperation between FTA and its grantees on security matters by clarifying that FTA may assist grantees on security matters and investigate security concerns without notice of a specific breach of security at a transit system.

The existing section also contains an "all or nothing" provision that authorizes the Secretary to withhold "further financial assistance" upon a transit system's failure to

correct a safety hazard. As proposed, section 5329 would allow the Secretary to determine the amount of funding to be withheld.

Section 5329(b) required that a report on safety hazards in the transit industry be completed by 1992. This provision would be deleted since the report has been completed.

#### **SEC. 3027. STATE SAFETY OVERSIGHT.**

Section 5330 would be amended to change the heading from “Withholding Amounts for Noncompliance with Safety Requirements” to reflect the more commonly used title of “State Safety Oversight.” Additional amendments would ensure that safety is considered well before a rail fixed guideway system begins revenue service, i.e., during the design phase of the project.

Section 5330 allows a single transit system operating in more than one State to designate a single entity to oversee the safety of a rail fixed guideway system. Because this provision is discretionary, a rail fixed guideway system operating in two or more States may be subject to more than one oversight agency, each having different safety standards. In order to strengthen the provision’s goal of safety and reduce the burden on grantees having to comply with differing standards, section 5330 would be revised to make such a designation mandatory.

Subsection (f) required the Secretary to issue regulations no later than December 18, 1992. Because the regulations have been issued, subsection (f) would be deleted.

#### **SEC. 3028. SENSITIVE SECURITY INFORMATION.**

Section 40119 of title 49, U.S.C., authorizes the Transportation Security Administration to enact regulations prohibiting the disclosure of "sensitive security information," the disclosure of which would prove "detrimental to the safety of passengers." FTA's security work has focused not only on passengers, but also on protecting facilities and infrastructure. Moreover, information that relates to the safety of transportation employees also deserves protection. Therefore, section 40119(b)(1)(C) would be amended to expressly protect sensitive security information related to the protection of transportation facilities and infrastructure and transportation employees.

In addition, it is the Department of Transportation's position that the authority to enact regulations prohibiting the disclosure of "sensitive security information," pursuant to section 40119, preempts State open records acts. Although no court has yet decided the preemption issue and the statute does not expressly include a preemption provision, both FTA and its grantees favor the inclusion of an express preemption provision to provide additional protection from State open records acts that would circumvent the intent of the statute. Therefore, a new paragraph (3) would be added to section 40119(b).

### **SEC. 3029. TERRORIST ATTACKS AND OTHER ACTS OF VIOLENCE AGAINST PUBLIC TRANSPORTATION.**

The term "mass transportation" would be changed to "public transportation" throughout Chapter 53 of Title 49, U.S.C., for the reasons set forth in the analysis of section 3001 of the bill. Section 1993 of title 18, U.S.C., is a criminal statute prohibiting terrorist attacks and other acts of violence against the Nation's transit systems, most of which receive Federal public transportation assistance under Chapter 53 of title 49. Therefore, section 1993 of title 18 would be amended to replace the term "mass transportation" with "public transportation."

Section 1993(a)(5) makes it a Federal crime to interfere with anyone "dispatching, operating, or maintaining a mass transportation vehicle or ferry." The statute does not address those who "control" such vehicles, and arguably excludes rail system "controllers" (central command employees who control the movement of rail cars). Although such controllers "operate" vehicles in some cases, and thus may fall within the statute, the statute does not expressly cover them. The amendment to section 1993(a)(5) would explicitly provide that interference with a rail controller constitutes a Federal crime.

### **SEC. 3030. CONTROLLED SUBSTANCES AND ALCOHOL MISUSE TESTING.**

Currently, section 5331 authorizes the Secretary to exclude from FTA drug and alcohol testing those public transportation providers that are adequately covered by the Federal Motor Carrier Safety Administration (FMCSA) or the Federal Railroad Administration (FRA) testing statutes. Section 5331 would be amended to expand the Secretary's authority to exclude from FTA testing, those public transportation providers that are adequately covered under other Federal or Departmental testing statutes or regulations, such as the U.S. Coast Guard's testing provisions applicable to ferryboat employees. Section 5331(f)(3) states that this section shall not prevent the Secretary from continuing in effect, amending, or supplementing a regulation governing drug and alcohol testing prescribed before October 28, 1991. FTA drug and alcohol regulations are now codified (49 CFR Part 655) and therefore subsection (f)(3) is unnecessary.

### **SEC. 3031. EMPLOYEE PROTECTIVE ARRANGEMENTS.**

Amendments to section 5333(b) are conforming amendments. Also, this subsection would be amended to extend its applicability to the JARC program (5308), the National Parks and Public Lands Legacy project (5316), and the New Freedom program (5317), subject to the provisions of those respective sections.

### **SEC. 3032. ADMINISTRATIVE PROCEDURES.**

Questions with respect to FTA's regulatory authority occasionally arise, *e.g.*, with respect to the safety and security of transit systems and, some years ago, illegal drug and alcohol use. Amending section 5334(a), as proposed, would make it clear that the Secretary has

the authority to issue regulations as necessary to carry out the Federal transit provisions in Chapter 53. Current section 5324(c), “Prohibitions Against Regulating Operations and Charges,” would be moved to section 5334, “Administrative Provisions,” as a new subsection (b). It is appropriate to house this prohibition in the “Administrative Provisions” section and make it applicable chapter-wide, rather than on capital projects, only. Also, this provision would be amended to specify that the Secretary is prohibited from regulating a recipient’s routes, schedules, rates, fares, tolls, and rentals, just as this provision had specified prior to the recodification of the Federal Transit Act into 49 U.S.C. Chapter 53 in 1994. In light of the September 11 terrorist attacks, this provision would be further amended to allow the Secretary of Transportation, under direction by the President, to regulate the operation of and charges for public transportation systems for purposes of national defense or in the event of a national or regional emergency.

**SEC. 3033. REPORTS AND AUDITS.**

Section 5335(b), requiring that the Comptroller General submit a “transferability report” to Congress in January 1993, would be removed, as the report was completed.

**SEC. 3034. APPORTIONMENTS OF APPROPRIATIONS FOR FORMULA GRANTS.**

New section 5336(a)(1) proposes an “incentive program.” This section would apportion the funds allocated in section 5338(a)(2)(P) for section 5307 program activities. Pursuant to new section 5336(k)(1), the Secretary could use a portion of the amounts apportioned under the incentive program to make grants to establish data collection systems capable of collecting the data necessary to determine whether there has been an increase in public transportation patronage. As indicated in section 5336(k)(3), these data are essential to the determination of whether an urbanized area may receive funds under the incentive program. Under section 5336(k)(3), the amounts apportioned to an urbanized area would be distributed pursuant to a formula determined by the Secretary that is based on increases in public transportation patronage. Section 5336(k)(4) would allow the Secretary to consider how well the increase in public transportation patronage has been accommodated without reducing the efficiency of transit service. The provision would allow the performance awards to be varied depending on the changes in service provision efficiency, while still emphasizing that the performance incentives are based primarily on improving the outcomes of the Federal transit assistance programs, by focusing first on public transportation patronage.

**SEC. 3035. APPORTIONMENTS BASED ON FIXED GUIDEWAY FACTORS.**

Section 5337(e) would be removed, since that section provided for a special rule from October 1, 1997, through March 31, 1998.

## **SEC. 3036. AUTHORIZATIONS.**

Section 5338 would authorize amounts from the General Fund, and make available amounts from the Mass Transit Account of the Highway Trust Fund to carry out Federal public transportation programs in fiscal years 2004 through 2009. Funds from the Mass Transit Account would be guaranteed by budgetary firewalls, and would represent a contractual obligation of the Government. Beginning in FY 2006, authorizations for public transportation funding from the Mass Transit Account would be adjusted (increased or decreased) whenever the public transportation firewall amount indicated in section 8102 of this bill is adjusted to reflect actual and more recent Mass Transit Account receipts as calculated under section 8101 of this bill. The adjustment would be applied proportionately to all Federal transit programs receiving funding from the Mass Transit Account.

As proposed, section 5338(a), Formula Grants and Research, provides funds from the Mass Transit Account to carry out sections 5305, 5307, 5308, 5310-5318, 5322, 5335, 5505, 5570-5575 of title 49, and section 3038 of Pub. L. 105-178. It also provides for a takedown for grants to the Alaska Railroad for improvements to its passenger operations under section 5307. Section 5338(b), Major Capital Investment Program Grants, would authorize appropriations from the General Fund, in addition to providing funds from the Mass Transit Account to carry out sections 5305 and 5309. Section 5338(c) would authorize funds to be appropriated from the General Fund for administrative expenses. Amounts available under subsections (a) and (b) would remain available until expended and grants financed from amounts derived from the Mass Transit Account or through advance appropriations under those subsections would be contractual obligations.

Throughout the life of TEA-21, planning funds to carry out 49 U.S.C. 5303-5305 and 5313(b) were authorized and made available pursuant to 49 U.S.C. 5338(c). Grants for both planning programs, would be mainstreamed into 49 U.S.C. 5305. Funding for the planning programs would be authorized as a takedown from the Urbanized Area Public Transportation Formula Grants program under section 5307 and the Major Capital Investment program under section 5309 in order to align the planning programs with the capital programs, which are supported by the planning programs. (See sections 5338(a)(2)(A) and (B) and 5338(b)(3)(A) and (B) of this bill.)

More specifically, sections 5338(a)(2)(A) and (b)(3)(A) would provide that 1.25 percent of the funds would be available for planning in fiscal year 2004. For each of fiscal years 2005 through 2009, two percent would be available. These percentages represent a minimal increase over previous fiscal years. The amount proposed in fiscal year 2004 takes into account that this fiscal year will be the first year of reauthorization. The proposed increase in succeeding fiscal years is necessary to address factors such as the following:

- According to the 2000 decennial census of population, 76 newly qualified UZAs will need to develop transportation plans and programs through the establishment of new or reconstituted Metropolitan Planning Organizations (MPOs).



- Also, according to the 2000 decennial census of population, 30 UZAs increased to over 200,000 population. These UZAs will require additional transportation planning work to be accomplished
- The existing 406 UZAs under the 1990 decennial census of population will need to expand their geographic areas as a result of the 2000 decennial census of population. This will require revising their regional Transportation Plans.
- Transportation Air Quality requirements for CO, ozone, and particulates are again changing. This will require extensive re-analyses and aligning of transportation plans and programs to reach air quality conformity. There is estimated to be a 300 percent increase in the number of counties that will be in nonattainment based on revised EPA requirements. A large percentage of these counties will now be within the geographic planning area of MPOs.

Section 5338(a)(2)(C) would provide funding for the National Transit Database (NTD) authorized under section 5335 in fiscal years 2005 through 2009. The NTD workload has increased substantially with the advent of monthly reporting on safety and security and the phasing in of rural and asset condition reporting.

Funding under section 5338(a)(1)(G) would be available for a National Parks and Public Lands Legacy Project only if the project were needed and supported by transportation financial feasibility studies and planning analyses.

### **SEC. 3037. NATIONAL PARKS AND PUBLIC LANDS LEGACY PROJECT.**

On May 30, 2001, President Bush announced the National Parks Legacy Project, a series of proposals to enhance the protection of America's national parks and increase the enjoyment of those visiting the parks. The goals of the National Parks Legacy Project include ensuring access for all, including individuals with disabilities; improving conservation, park, and public land opportunities in urban areas through partnering with State and local governments; and improving park and public land transportation. Section 5316 would address the goals of this project by providing for public transportation in certain Federally owned or managed areas that are open to the general public within the framework of the section 5307 program, modified to reflect the special mission and function of Federal land management agencies.

This section would establish a Federal Lands Transit Program in title 49, U.S.C., complementing the Federal Lands Highway Program in title 23, U.S.C. It would authorize the Secretary of Transportation, in consultation with the Secretary of the Interior, to make grants, contracts, or other agreements to carry out qualified planning or capital projects in, or in the vicinity of, a Federally owned or managed park, refuge, or recreational area that is open to the general public, and implement and oversee the program of projects. This section would also specify requirements concerning departmental cost sharing, financing, and selection of qualified projects. The Secretary may use not more than 5 percent of the funding made available each fiscal year for this program to carry out planning, research, and technical assistance under this section, including the development of technology appropriate for use in a qualified project.

FHWA has the authority to accept Federal funds as a match for transit projects. Subsection (e)(3) would provide similar authority for FTA.

### **SEC. 3038. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.**

The heading of section 3038 would be changed from the "Rural Transportation Accessibility Incentive Program" to its more commonly used name "Over-the-Road Bus Accessibility Program." In addition, section 3038 would be amended to reflect authorization of funds for this program in fiscal years 2004 through 2009.

### **SEC. 3039. FORMULA GRANTS FOR SPECIAL NEEDS OF ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES.**

Currently, under section 5310, the Secretary may provide grants for the special needs of elderly individuals and individuals with disabilities directly (1) to a State or local government authority; or (2) to the chief executive office of the State for allocation to private non-profit corporations or associations when such service is unavailable, insufficient, or inappropriate, or (3) to governmental authorities approved by the State to coordinate services for these two populations groups, if there are no non-profit corporations readily available to provide the service. Section 5310 would be amended to authorize grants directly to a State, which would then be able allocate the funds to a private non-profit organization or a governmental authority under the same conditions required in current law. Section 5310(a)(3) would allow a State to use up to 15 percent of the amounts it receives under this section to administer, plan, and provide technical assistance.

Consistent with existing section 5310, grants would be for capital public transportation projects planned, designed, and carried out to meet the special needs of these populations groups and could include the acquisition of public transportation services as a capital expense. The Federal share would not exceed 80 percent of the net capital costs of the projects, as determined by the Secretary. The remainder of the funds could be derived from the same sources as for the Formula Grants program for other than urbanized areas as proposed under section 3010 of this bill.

As is current practice, funds under subsection (b)(1) would be apportioned to States based on a formula administered by the Secretary. In administering this formula, the Secretary would consider the number of elderly individuals and individuals with disabilities in a State. Under current law, unobligated section 5310 funds available during the fourth quarter of each fiscal year may be transferred to Urbanized Area or Other Than Urbanized Area Formula Grant programs in order to supplement funds apportioned under those sections. Subsection (b)(2) would allow recipients of grants under this section to transfer section 5310 funds to those programs at any time provided that the funds are used for the purposes originally authorized. This would eliminate the artificial fourth quarter requirement since States typically budget for such transfers in the beginning of

each fiscal year. In addition, States could make funds available to a subrecipient in a single transaction that included several FTA program-funding sources.

Under subsection (d), a recipient of a grant would be subject to all section 5307 grant requirements to the extent the Secretary considers appropriate. Recipients transferring funds to the Urbanized Area Formula Grant program would be required to certify that the project for which the funds are requested has been coordinated with private non-private providers of services under this section. Also, recipients would be required to certify coordination among all stakeholders in the same manner as for the New Freedom program proposed in section 3011 of this bill. Finally, recipients would be required to certify that allocations made to subrecipients were distributed in a fair and equitable manner.

#### **SEC. 3040. JOB ACCESS AND REVERSE COMMUTE.**

Section 3037 of TEA-21 authorized the Job Access and Reverse Commute (JARC) program to assist welfare recipients and other low-income individuals in getting to and from jobs. The JARC program would now be codified in section 5308. As proposed in subsection (b), the Secretary would make grants for access to jobs and reverse commute projects directly to the State. A State would be permitted to use up to 15 percent of amount it receives under this section to administer, plan, and provide technical assistance. Funds would be apportioned based on a formula administered by the Secretary. In administering the formula, the Secretary would consider the number of low-income people in the State. For the same reasons stated in the analysis for section 3039 of this bill, a State would be allowed to transfer any funds apportioned to it under section 5308 to the Urbanized Area or Other Than Urbanized Area Formula Grant programs, provided the funds are used for the purposes originally authorized. Section 5333(b) would apply to JARC in the same manner as it would apply to section 5311, by using a Special Warranty. This section also would grant the Secretary the authority to waive the applicability of the Special Warranty for private non-profit subrecipients.

A State would be required to solicit applications for grants under requirements it establishes. Subrecipients could include a State or local public authority, a non-profit organization, or a private operator of public transportation service. Grants would be awarded competitively. (See 5308(e).) Subsection (f) would provide for the same coordination process discussed in the analysis for section 3039 above. The Federal share for a capital project could not exceed 80 percent of the net capital costs of the project. The Federal share for operating assistance could not exceed 50 percent of the net operating costs of the project. Matching funds could be derived from the same sources described in the analysis for the Formula Grant program for Other Than Urbanized Areas under section 3010 of this bill.

## **TITLE IV – MOTOR CARRIER SAFETY**

### **SEC. 4001. AUTHORIZATION OF APPROPRIATIONS.**

This section would establish authorizations for various Federal Motor Carrier Safety Administration (FMCSA) expenses and programs. Administrative expenses would be codified as new subsection (i) of section 31104 of title 49, U.S.C.

### **SEC. 4002. MOTOR CARRIER SAFETY GRANTS.**

Subsection (a) of this section would reauthorize the Motor Carrier Safety Assistance Program (MCSAP), with a number of changes. In addition to increases in authorized funding levels, the program would be amended to require States to include in their separate training manuals for the licensing examination to drive cars and trucks, information about best practices for safely sharing the road with trucks and cars, respectively. Also, States would now be required to enforce the registration requirements of 49 U.S.C. 13902 by placing out of service vehicles that are unregistered or operating beyond the scope of their registrations. States would also be authorized to use MCSAP funds to enforce traffic laws and regulations against non-CMVV when the behavior of drivers of smaller vehicles increases the risk of CMV accidents. This type of enforcement would not have to be combined with a CMV inspection, as is now required.

Currently, the Secretary may reimburse States, municipalities, and others for 100% of their “public education activities” related to high-priority and border activities. Under this proposal, funding at the 100% level would now be available for a wider variety of high-priority activities (research, development, demonstration, and public education) that are likely to address national safety concerns or be of general benefit. The Secretary could designate up to 10% of total MCSAP funding for these high-priority activities. The Secretary would also be authorized to designate up to 10% of MCSAP funds for a safety performance incentive program to reward States that showed improved vehicle safety. Although the Department has broad discretion to determine the details of the program, the Secretary would be required, at a minimum, to focus on reductions in the number and rate of fatal accidents involving CMVVs. These grants would not require a matching contribution from State or local governments. Finally, the Secretary could designate up to \$17,000,000 per year of MCSAP funds to conduct the new entrant motor carrier audits required by section 210 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). The funds would be allocated to States and local governments without a matching contribution. It is expected that these jurisdictions would normally use government employees, not contractors, to carry out the audits. Should they be unable to do so, the Secretary would be authorized, but not be required, to expend the funds directly to carry out new entrant audits in those jurisdictions.

Because of the size and comprehensiveness of the border grants program that would be created, there would no longer be a need for the border category of activities authorized under section 31102(f)(2)(B), and it therefore would be removed.

Subsection (b) would establish a grant program for State enforcement activities at the Canadian or Mexican borders. States would be authorized to use the grants for virtually anything related to CMV safety enforcement and compliance with State and Federal CMV requirements involving foreign motor carriers, including the purchase of land and buildings. However, grant recipients could not use Federal funds to replace State funds; they would be required to maintain the average level of border-related expenditures during fiscal years 2002-2003. In addition, and without complying with the requirements listed above, the Secretary would be authorized to make grants to States and other entities for a wide range of special activities relating to cross-border CMV operations.

Subsection (c) would authorize grants to enable States to improve the implementation of their commercial driver's license (CDL) programs. The Motor Carrier Safety Improvement Act (MCSIA) and the USA PATRIOT Act imposed CDL requirements that demand additional expenditures by the States. These grants would ensure that States are able to keep pace with the responsibilities placed upon them. The Secretary would reimburse a State for no more than 80% of the cost of the improvements. The Secretary would have broad discretion to determine how best to distribute grant funds. Unlike border grants, however, CDL grants would not be used to purchase land or buildings. Each State would also be required to maintain its previous level of CDL expenditures. In addition to the matching grants, the Secretary would be authorized to make grants to States and other parties for 100% of the cost of high-priority CDL activities. The Secretary could designate up to 10% of the funds available under this subsection for high-priority grants. The Secretary could also designate up to 25% of the CDL grant funds for discretionary allocations to State agencies, local governments, or other persons to deal with emerging problems. Funds requiring a matching contribution would be required to be allocated according to a formula to be developed by the Secretary. Up to 1.25% of the funds available for CDL grants could be deducted for administrative expenses. Finally, existing section 31107(c), which authorizes "Emergency CDL grants," would be removed because the CDL grant program created by this subsection serves the same purpose of ensuring that States can improve their CDL programs.

Subsection (d) would amend the penalty provisions of the CDL statute (49 U.S.C. 31114). Currently, the Secretary is required to withhold 5% of certain Federal-aid highway funds for the first year of State noncompliance with the requirements of the CDL program, and 10% for the second and subsequent years. Because these sanctions would have severe consequences for State highway programs, the Secretary may be reluctant to invoke them. Section 31144 would therefore be revised to direct the Secretary to withhold "up to" 5% or 10% of the target funds. This would give the Secretary greater flexibility, and thus greater leverage, to enforce compliance with the CDL requirements.

### **SEC. 4003. HOBBS ACT.**

Subsection (a) would amend the Hobbs Act to make explicit the interpretation given to that act by a series of decisions of the U.S. Circuit Courts of Appeal.

In 1966, when the Department of Transportation (DOT) was created, Congress transferred responsibility for regulating motor carrier safety and driver qualifications from the former Interstate Commerce Commission (ICC) to the Department. *See* Department of Transportation Act, Pub. L. 89-670, Sec. 6(e)(6)(c), 80 Stat. 939, codified as revised at 49 U.S.C. 351(a). Those functions are now vested in FMCSA.

Sections 351(a) and 352 of title 49 provide for the same method of judicial appeal from actions based on these transferred functions as would have been required had the functions remained with the ICC. Prior to 1966, ICC orders were reviewed by three-judge District Courts, with a right of direct appeal to the Supreme Court. In 1975, Congress altered the path of review for ICC actions, substituting for the three-judge District Court, a right of direct appeal to the Court of Appeals for the relevant jurisdiction. This statute is known as the Hobbs Act (28 U.S.C. 2321, 2342).

The ICC was abolished in 1995 and most of its remaining functions were transferred to the newly created Surface Transportation Board (STB) or to FMCSA. The corresponding revisions to the Hobbs Act, however, created uncertainty. The right of the Circuit Courts to review FMCSA actions based on the ICC's commercial motor carrier statutes was assured by inserting a reference to "part B or C of subtitle IV of title 49" in section 2342(3)(A). In addition, section 2342(5) was amended by replacing its reference to appeals of "all rules, regulations, or orders of the Interstate Commerce Commission made reviewable by section 2321 of this title and all final orders of such Commission made reviewable under section 11901(j)(2) of title 49, United States Code," with a reference to "all rules, regulations, or final orders of the Surface Transportation Board made reviewable by section 2321 of this title."

That raised the question whether an action by FMCSA pursuant to the safety authority transferred in 1966 could still be reviewed by the Courts of Appeal, since section 2342(3)(A) applied to the commercial statutes, while section 2342(5) applied to actions of the STB. The D.C. Circuit has concluded that, absent an indication that Congress intended a contrary result, the abolition of the ICC did not alter the manner of judicial review of FMCSA actions carrying out the powers or duties transferred from the ICC in 1966, and that agency actions are thus reviewable under section 2342(5) to the same extent and in the same manner as actions of the STB (*See Aulenback v. Federal Highway Administration*, 103 F.3d 156, 165 (D.C. Cir. 1997)).

A further question is whether FMCSA actions based upon safety statutes enacted after the 1966 transfer of ICC functions to the Department are also reviewable exclusively by the Courts of Appeals. The D.C. Circuit, in affirming such review, noted that "one could argue that the FHWA [now FMCSA] is performing a transferred 'function' whenever it regulates motor carrier safety, even if the only authority actually invoked derives from a post-transfer statute." *International Brotherhood of Teamsters v. Pena*, 17 F.3d 1478, 1482 n. 1 (D.C. Cir. 1994).

Because the private bar appears to be confused, both by the method of review and by the statutes subject to such review, subsection (a) would be amended to incorporate in 18

U.S.C. 2342(3)(A) the D.C. Circuit's conclusions in the Aulenback and Teamsters decisions. Both of these issues would be covered by inserting in section 2342(3)(A) a reference to "subchapter III of chapter 311, chapter 313, and chapter 315 of Part B of subtitle VI of title 49." FMCSA's safety statutes are codified there, including statutes enacted after 1966. All safety statutes would thus be subject to exclusive review by the Courts of Appeal.

Subsections (b) and (c) would simply replace the term "Federal Highway Administration" with "Federal Motor Carrier Safety Administration" in 49 U.S.C. 351(a) and 352. The ICC's motor carrier safety functions were exercised by FHWA until the fall of 1999 and were statutorily entrusted to FMCSA when it was created on January 1, 2000. Because FHWA retains no duties or powers transferred from the ICC, sections 351(a) and 352 should refer to FMCSA.

#### **SEC. 4004. PENALTY FOR DENIAL OF ACCESS TO RECORDS.**

FMCSA investigators have broad authority to inspect and copy motor carrier and shipper records (see 49 U.S.C. 504(c), 31133(a)). The majority of carriers and shippers readily grant access to requested records. Some, however, deliberately impede the investigative process by refusing to set an audit date, or, after setting a date, by ordering investigators off the premises – occasionally with a show of force. Others take a more subtle approach, feigning illness or declaring an "emergency" during the audit; pleading inability to produce records because of the absence of key personnel; or delivering documents at a pace designed to prolong the audit beyond the time available to the investigator.

While investigators can issue an administrative subpoena for documents, refusal to comply requires the agency to file an action in Federal court to enforce the subpoena. This process, though effective, is relatively slow and labor-intensive, and the cost to a carrier or shipper who does not seriously contest the action is minimal.

New section 521(b)(2)(E) would create a financial penalty to dissuade many uncooperative carriers and shippers from denying or impeding FMCSA's legitimate access to records.

#### **SEC. 4005. MEDICAL REVIEW BOARD AND MEDICAL EXAMINERS.**

A new Medical Review Board, as authorized by subsection (a), is proposed by the Department to serve as a source of up-to-date medical advice for the FMCSA on matters related to driver qualification rules, guidelines for medical examiners, and standards for medical exemptions under 49 U.S.C. 31315(b).

Subsection (b) would authorize the Secretary, through notice and comment rulemaking, to create standards that medical examiners would have to meet in order to perform physical examinations of commercial motor vehicle operators that would be valid to demonstrate compliance with 49 CFR 391.41. The Secretary would also be authorized to

create a list of medical examiners who have received qualification training to perform the examinations. After the adoption of the list, only medical examiners on the list could examine a commercial driver and issue the medical certificate required by 49 CFR 391.43(h). The intent of this provision is to ensure that medical professionals are knowledgeable of driver qualification standards and guidelines, understand the physical and mental demands involved in driving a commercial vehicle, and perform physical examinations with full awareness of the conditions in which the examinee will be working. A parallel mechanism is in place for the medical qualifications of airline and other pilots.

#### **SEC. 4006. ENFORCEMENT OF HOUSEHOLD GOODS REGULATIONS.**

Subsection (a) of this section would require household goods carriers to offer shippers arbitration on all matters, including price disputes. The current statute is limited to disputes concerning loss and damage claims. Experience has shown that disagreements on matters other than loss and damage claims are numerous. Since there is no good reason to exclude those issues from possible arbitration, this subsection would require household goods carriers to offer shippers arbitration on all disagreements.

Subsection (b) would authorize State Attorneys General (AG) to enforce the Federal household goods statutes and regulations. This provision is based on similar authority in section 4 of the Telemarketing and Consumer Fraud Abuse Prevention Act of 1994. A State AG would be required to provide prior written notice to the Secretary or Surface Transportation Board before filing a civil action to enforce the household goods standards; the Secretary or Board could intervene and participate in the action. The volume of complaints against household goods carriers has risen steadily. Although shippers are authorized to take legal action on their own behalf, that process is time-consuming and may cost more than the amount in dispute. This paragraph would enable State AGs to provide additional protection, by acting independently to enforce Federal standards for household goods carriers.

#### **SEC. 4007. REGISTRATION OF COMMERCIAL MOTOR CARRIERS, FREIGHT FORWARDERS, AND BROKERS.**

The statutes governing commercial motor carriers, brokers, and freight forwarders (49 U.S.C. subtitle IV, part B, chapters 131-149) sometimes apply to operators using vehicles too small to qualify as CMVs under 49 U.S.C. 31132(1), and thus they are not subject to the Federal safety statutes (49 U.S.C. chapter 311, subchapter III, chapter 313, and chapter 315). Because there is no discernible benefit to the public or the transportation community in registering motor carriers not covered by the safety requirements, subsection (a) of this section would limit the jurisdictional terms “foreign motor carrier,” “foreign motor private carrier,” “motor carrier,” and “motor private carrier” in 49 U.S.C. 13102 to carriers that operate CMVs, as defined in section 31132(1). These terms are used throughout subtitle IV, part B; as amended, they would serve to harmonize the jurisdictional reach of the commercial and the safety statutes.



Subsection (b) amends 49 U.S.C. 13903 to require the registration of freight forwarders of household goods, while authorizing the Secretary to rescind the registration requirements for freight forwarders who handle other property. The need to protect shippers of household goods is clear, but commercial shippers and carriers may no longer derive a benefit from registration of other freight forwarders. This would be an issue for the Secretary to consider through notice and comment rulemaking.

Subsection (c) amends 49 U.S.C. 13904 in the same way, and for the same reason. Brokers of household goods must continue to be registered, but the Secretary would be authorized to eliminate registration of other types of brokers if that requirement is no longer needed to protect shippers.

#### **SEC. 4008. FINANCIAL RESPONSIBILITY FOR PRIVATE MOTOR CARRIERS.**

Subsection (a) of this section would delete the phrase “for compensation” after “transportation of passengers” in section 31138(a), which would subject private carriers of passengers by motor vehicle to the financial responsibility requirements of section 31138. Similarly, subsection (a)(2) would authorize the Secretary to require private carriers of passengers to file the same evidence of financial responsibility that is required of for-hire passenger carriers under 49 U.S.C. 13906(a)(1).

Subsection (b)(1) would delete the phrase “for compensation” after “transportation of property” in section 31139(b)(1), thus subjecting private motor carriers of property to the financial responsibility requirement of section 31139. Subsection (b)(2) authorizes the Secretary to require private motor carriers to file the same evidence of financial responsibility that is required of for-hire motor carriers under 49 U.S.C. 13906(a)(1).

Current law exempts private motor carriers of property and private motor carriers of passengers from the requirement to have financial responsibility covering public liability, property damage, and environmental restoration resulting from crashes involving their vehicles. Although these carriers may be subject to State insurance requirements, it is important to establish uniform national requirements. This section therefore would require private passenger and property carriers to have financial responsibility in the same amounts as are currently required by sections 31138 and 31139. This section would also authorize the Secretary of Transportation to require private carriers to file evidence of financial responsibility with the Department, as for-hire carriers already do.

#### **SEC. 4009. INCREASED PENALTIES FOR OUT-OF-SERVICE VIOLATIONS AND FALSE RECORDS.**

The civil penalties for recordkeeping violations under 49 U.S.C. 521(b)(2)(B) are \$500 for each day the offense continues, up to a maximum of \$5,000, or \$5,000 for each recordkeeping violation that can be shown to have misrepresented a fact constituting a non-recordkeeping violation. Subsection (a) would double these penalties to up to \$1,000 for each day the offense continues, or up to \$10,000 for an offense that misrepresents a

non-recordkeeping violation. Recordkeeping violations frequently have no other purpose than to conceal a safety violation, and they often succeed. Higher penalties should reduce both the number of recordkeeping violations and, indirectly, the number of safety violations as well.

The current penalties under 49 U.S.C. 31310(i)(2) for a driver who violates an out-of-service (OOS) order are, for a first offense, a 90-day disqualification from operating a CMV and a civil penalty of at least \$1,000 and for a second offense, disqualification for one to five years and a civil penalty of at least \$1,000. An employer who knowingly allows or requires a driver to violate an OOS order is subject to a civil penalty of up to \$10,000. OOS orders can be issued for a variety of reasons: for failure to pay civil penalties on schedule, for having an unsatisfactory safety rating, for violating the agency's hours-of-service or equipment regulations, or because the motor carrier constitutes an imminent hazard. Enforcement officers cannot afford to spend hours monitoring a single OOS vehicle, and tracking possible movements of an entire OOS fleet is even more difficult. As a result, many OOS orders are violated. One effective deterrent to violating an OOS order is to raise the cost to violators. Subsection (b) would increase to a maximum of \$25,000 the civil penalty for a motor carrier that knowingly orders a driver to proceed despite an OOS order. An employer that knowingly and willfully ignores OOS orders is liable to imprisonment for up to a year or a fine of up to \$100,000 if the violation did not result in death, or up to \$250,000 if it did result in death, or both. But drivers sometimes decide on their own to ignore an OOS order. Subsection (b) would increase a driver's penalty for a first offense to a 180-day disqualification and a civil penalty of at least \$2,500, and, for a second offense, to a two to five year disqualification and a civil penalty of up to \$5,000. These measures should have a significant deterrent effect.

#### **SEC. 4010. ELIMINATION OF COMMODITY AND SERVICE EXEMPTIONS.**

Section 13506(a) of title 49, U.S.C., exempts certain operations or commodities from the jurisdiction of the Secretary or the Surface Transportation Board under 49 U.S.C. chapters 131-149. Many of these exemptions are obsolete and unjustified.

Subsection (a) would delete the exemption for taxicab service in a vehicle with a capacity of not more than six passengers (section 13506(a)(2)). Section 4007 of this bill would limit the Secretary's registration authority to persons operating "commercial motor vehicles," as defined in 49 U.S.C. 31132(1). That definition includes a broader taxicab exemption, because a CMV is, among other things, a vehicle "designed or used to transport more than 8 passengers (including the driver) for compensation." Section 13506(a)(2) is therefore unnecessary and would be removed.

Subsection (a) would also delete the exemptions for transportation by motor vehicle of ordinary livestock, agricultural or horticultural commodities, commodities on a 1958 listed published by the Interstate Commerce Commission (ICC), fish and shellfish, livestock and poultry feed, and agricultural seeds and plants. The current exemptions are described in more detail in section 13506(a)(6). Most of these exemptions were enacted

at a time when ICC economic regulations protected existing motor carriers that specialized in transporting certain commodities and made it difficult, expensive, and time-consuming for potential competitors to enter the industry. That regulatory system has largely disappeared. FMCSA, which administers most of the remaining commercial statutes, is principally a safety agency. The repeal of these provisions would require for-hire carriers of the commodities listed in section 13506(a)(6) to register with the FMCSA, and may require some of them to file tariffs with and comply with the regulations of the Surface Transportation Board. In general, however, the effect of the repeal would simply be to give FMCSA jurisdiction over motor carriers under the commercial statutes comparable to the jurisdiction it already has over these carriers through the safety statutes.

This subsection would also delete the exemptions for used pallets and used empty shipping containers (section 13506(a)(11); natural, crushed or vesicular rock to be used for decorative purposes (section 13506(a)(12)); wood chips (section 13506(a)(13)); and broken, crushed or powdered glass (section 13506(a)(15)). Like the provisions discussed above, these exemptions were primarily intended to give carriers of certain commodities relief from the barriers to entry erected by the ICC's once-comprehensive regulations. Since those barriers no longer exist, the justification for exempting the carriers from the FMCSA's registration requirements have largely disappeared.

Subsection (b) would make corresponding amendments to section 13507 by removing the references to sections 13506(a)(6), (11), (12), and (13).

#### **SEC. 4011. INTRASTATE OPERATIONS OF INTERSTATE MOTOR CARRIERS.**

As defined in 49 U.S.C. 31132(1), a vehicle is not a commercial motor vehicle (CMV) unless it operates in interstate commerce. One of the implications of the definition is that the Secretary's authority to determine the safety fitness of CMV owners and operators encompasses the accident and safety inspection record of such companies or individuals on interstate trips, but not on intrastate trips. Most interstate motor carriers also have substantial intrastate operations.

For purposes of safety, it is artificial and counterproductive to create two classes of accidents and safety inspection data – one subject to Federal jurisdiction, the other not – when both (typically) involve the same vehicles, drivers, dispatchers, mechanics, and safety management controls, and may cause the same kind of death, injury, or physical damage. In examining a motor carrier's accident and inspection data, it is often difficult, and sometimes impossible, to determine whether the vehicle involved was making an interstate or intrastate trip. This has produced significant variation and potential for inaccuracy in the accident rates and Motor Carrier Safety Status Measurement System (SAFESTAT) scores calculated for motor carriers, and thus in the Department's ability to hold all carriers to the same standard.

In order to simplify and rationalize the analysis of accident data and provide a more complete picture of the safety of motor carrier operations, subsection (a) would require the Secretary, in the course of determining the safety fitness of CMV (i.e., interstate) owners and operators, to consider the accident and inspection record of such owners and operators both on interstate and intrastate trips.

In addition, owners and operators of CMVs who are determined to be unfit and prohibited from operating in interstate commerce, would also be prohibited by subsection (b) from operating CMVs in intrastate commerce until they are able to demonstrate their fitness. There is no good reason to allow an unfit interstate carrier to narrow its operations to a single State, and thus visit its safety deficiencies upon the residents of that State alone.

Finally, subsection (c) would direct the Secretary to place all interstate operations of a motor carrier out of service if a State, using the Federal safety fitness standards prescribed under 49 U.S.C. 31144(b), has placed out of service the intrastate operations of a carrier that has its principal place of business in that State.

A Federal safety determination that an interstate motor carrier is unfit would thus halt both its interstate and intrastate operations, while a State safety determination that an intrastate carrier is unfit will halt both its intrastate and any interstate operations. An unfit carrier should not be allowed to operate anywhere.

#### **SEC. 4012. AUTHORITY TO STOP COMMERCIAL MOTOR VEHICLES.**

Under current law, FMCSA officials may inspect trucks, and driver and motor carrier records, but they have no authority to order trucks on the road to stop for inspection. MCSAP has shifted the primary burden for roadside enforcement to State agencies, whose officers do have the authority to stop vehicles. With the opening of the Mexican border, however, Federal inspectors will play an expanded role in roadside enforcement. In addition, there is no guarantee that State or local police officers will always be available at border facilities or at other vehicle inspection facilities throughout the Nation to order trucks to stop for an FMCSA inspection. FMCSA officials need independent authority to order trucks to stop for inspection in all U.S. jurisdictions.

Section 4012 would provide that authority. Subsection (a) would make it a misdemeanor for the driver of a commercial motor vehicle (CMV) to refuse to stop for an inspection when directed to do so by a uniformed special agent of the FMCSA. The penalty for violating proposed new section 38 of title 18, U.S.C., would be imprisonment for not more than one year (a Class A misdemeanor) (cf. 18 U.S.C. 3581(b)(6)), a fine of not more than \$100,000 (cf. 18 U.S.C. 3571(b)(5)), or both. Subsection (b) would authorize FMCSA's uniformed special agents to order CMV drivers to stop for inspections. This authority would extend to all FMCSA safety investigators.

### **SEC. 4013. PATTERN OF SAFETY VIOLATIONS BY MOTOR CARRIER MANAGEMENT.**

Some motor carrier managers order, encourage, or tolerate widespread regulatory violations and, when caught, declare bankruptcy, rename the motor carrier and reshuffle the managers' titles, sell its assets to a pre-existing shell corporation owned and managed by the same people, or otherwise attempt to evade the payment of civil penalties, obscure the identity of the motor carrier and thus its safety record, and perpetuate a casual indifference to public safety. Although the total number of such managers is small, their actions create a risk disproportionate to their numbers.

Section 4013 would address these problems. It would amend 49 U.S.C. 31135 to authorize the Secretary to suspend, amend, or revoke the registration of a for-hire motor carrier if any of its officers has engaged in a pattern or practice of avoiding compliance, or concealing non-compliance, with Federal motor carrier safety standards. The Secretary could also deny an application to register as a for-hire motor carrier if any of the proposed officers of the carrier has engaged in a pattern of non-compliance. In this context, "officer" means owner, chief executive officer, chief operating officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor.

This provision would not apply to all motor carrier officers whose companies are found to be in violation of the Federal safety rules. Rather, it is intended to authorize the Secretary to force out of the industry those few motor carrier officers who have shown unusual and repeated disregard for safety compliance. It is expected that the Secretary would use this authority only in the most serious cases.

### **SEC. 4014. MOTOR CARRIER RESEARCH AND TECHNOLOGY PROGRAM.**

This section would authorize a comprehensive FMCSA research and technology program. The goal is to support – through contracts, cooperative agreements, and grants – research designed to produce innovative advances in motor carrier, driver, and passenger safety. Equally critical, however, would be the transfer of promising results – whether technical or operational – to potential users and rapid deployment of the fruits of research and development. Improvements in safety require more than good will and good intentions. This section would invest in the intellectual resources that can find solutions to perennial problems and new challenges.

### **SEC. 4015. INTERNATIONAL COOPERATION.**

This section would authorize the Secretary, and thus the Federal Motor Carrier Safety Administration (FMCSA), to engage in international activities. The FMCSA needs this kind of authority to aid in implementing the North American Free Trade Agreement and to carry on discussions with U.S. trading partners concerning a variety of safety issues.

#### **SEC. 4016. PERFORMANCE AND REGISTRATION INFORMATION SYSTEM MANAGEMENT (PRISM).**

PRISM is an effective enforcement tool that enables the States to deny, suspend, or revoke a motor carrier's commercial motor vehicle registrations when FMCSA determines that the carrier has become unfit to operate CMVs safely. By itself, an out-of-service (OOS) order from FMCSA sometimes has little effect. However, when the State simultaneously confiscates the motor carrier's CMV license plates, the carrier's ability to continue operating without detection is greatly reduced. In order to participate in the program, States are required to comply with uniform standards set by the Secretary and to have or seek the legal authority to deny, suspend, or revoke CMV registrations when the Secretary issues an operations OOS order. The Secretary would be authorized to make grants available to States to help them implement the PRISM program.

#### **SEC. 4017. INFORMATION SYSTEMS AND DATA ANALYSIS.**

This section would require the Secretary to carry out a program to improve the collection and analysis of data on the causes of crashes involving CMVs. The absence of crash data detailed enough to allow statistical analysis that could lead to breakthrough insights has long been a problem. This program would address that deficiency.

#### **SEC. 4018. OUTREACH AND EDUCATION.**

Driver error is responsible for the majority of accidents involving CMVs and private automobiles or light trucks – but most of the mistakes are made by the drivers of those smaller vehicles, not by CMV drivers. Subsection (a) would authorize expanded funding for the “Share the Road Safely” program, which addresses this serious, though not widely recognized, problem. One of its goals is to make non-professional drivers aware of the design and handling limits of CMVs, and to publicize a range of simple but effective steps they can take to avoid collisions with big trucks. Subsection (a) would also authorize expansion of the “Safety is Good Business” program, which identifies best safety and business practices and shows how they contribute to motor carriers' financial health.

Subsection (b) would authorize a similar program directed toward improving the situational awareness and defensive driving behaviors of CMV drivers.

## TITLE V – TRANSPORTATION RESEARCH AND EDUCATION

### SUBTITLE A – FUNDING

#### SEC. 5101. AUTHORIZATION OF APPROPRIATIONS

##### In General

Section 5101(a)(1) would authorize surface transportation research, development, technology transfer, technology deployment, and application activities that support a broad program of research activities. Section 5101(a)(2) would authorize a variety of programs related to education and training. Section 5101(a)(3) would authorize funds for the Bureau of Transportation statistics. Section 5101(a)(4) would authorize university transportation research. Section 5101(a)(5) would authorize intelligent transportation systems research. Examples of research programs and activities are described below.

##### Pavement Research and Technology /Long-Term Pavement Performance

Amounts made available under section 5101(a)(1) would be used to carry out provisions of section 502 of title 23, U.S.C., relating to the research, development and delivery of technologies for long-life pavements that are safe, cost effective, meet customer service needs, and can be effectively maintained. Amounts made available could also be used for research relating to long-term pavement performance.

The Innovative Pavement Research and Deployment Program would also be funded under this section. That program carries out the requirements of section 503 of title 23 related to innovative pavement repair, rehabilitation, and construction. In conjunction with each other, these proposals represent the pavement elements of a comprehensive and coordinated program of research, development, and technology deployment that cuts across the traditional boundaries of prior programs.

##### Bridge and Structures Research and Technology Program /Long-Term Bridge Performance

Amounts made available under section 5101(a)(1) would be used carry out section 502 of title 23, U.S.C., relating to research on a new generation of high performance, low maintenance bridges, stewardship and management of existing bridges, and the safety, reliability, and security of bridges, and long-term bridge performance.

Together with the Innovative Bridge Research and Deployment program, also to be funded under this section, these provisions support a comprehensive and coordinated program of bridge research, development, and technology deployment. The program would encompass new initiatives responsive to needs identified by the National Highway Research and Technology Partnership for Renewal of the Nation's Highway Infrastructure, including enhanced materials, structural systems, and technologies for a new generation of high performance, low maintenance bridges; stewardship and

management of existing highway structures; and responses to recognized needs for research and technology to deal with the issues of homeland security and the vulnerability of the Nation's highway structures.

#### Asset Management Research and Technology

Amounts made available under section 5101(a)(1) would be used to carry out research, development, and technology transfer related to asset management by funding Transportation Asset Management (TAM), a relatively new FHWA program, that provides a framework for the optimal allocation of resources. When implemented, it is anticipated that TAM would significantly revise and improve the fundamentals of investment decisions by ensuring that the expenditure of funds will: (1) be based on an analysis that considers alternatives across functions, asset classes, and modes; (2) be driven by customer requirements as reflected in performance goals; (3) include economic as well as engineering considerations; (4) incorporate an extended time horizon; and (5) be systematic and fact-based. Use of TAM would lead to the highest possible total return on investment in transportation assets.

#### Safety Research and Technology

Amounts made available under section 5101(a)(1) would be used to carry out research under section 502 of title 23, U.S.C., relating to run-off-the-road safety, pedestrian and bicyclist safety, intersection safety, speed management, and safety management or other highway safety priority areas designated by the Secretary to find ways to reduce the number of injuries and fatalities on our Nation's roadways. Recommendations of the Transportation Research Board's Research & Technology Coordinating Committee would be incorporated into the project selection process to provide stakeholder input and reduce the risk of initiating non-productive research investments. It is anticipated that the program would significantly improve the deployment and evaluation of safety innovations at State and local levels.

#### Transportation System Management and Operations

Amounts made available under section 5101(a)(1) would fund research activities, defined in section 5201(c)(3), related to traffic detection and surveillance, arterial management, freeway management, demand management, work zone management, emergency management, electronic toll collection, automated enforcement, incident management, roadway weather management, traveler information services, commercial vehicle operations, traffic control, freight management and operations, and the study of the coordination of operations between highway, rail, transit, bicycle, and pedestrian travel. In addition, development and deployment activities associated with these research activities would also be funded under this section.



### Planning, Environment, and Real Estate Services Research

Amounts made available under section 5101(a)(1) would authorize increased funding to carry out a program of core research and technology development supporting transportation planning, environmental assessment, enhancement and protection, and the acquisition and management of real property. Technology transfer and deployment associated with this research would also be authorized by amounts made available under this section.

The research would assist State Departments of Transportation, planning organizations, local agencies, and other State, regional, and local governments in delivering high quality, effective transportation programs and projects.

### Surface Transportation Environment and Planning Cooperative Research Program

Research activities that would be authorized under section 5101(a)(1) are intended to carry out the program described in section 507 of title 23, U.S.C., as proposed in section 5202 of this bill.

Section 5202 of this bill would create a public-private surface transportation cooperative research program in surface transportation-environment research to support the Nation's growth and meet public expectations for an improved transportation system. The establishment of this cooperative research program would enable and facilitate cooperative research across numerous departments and agencies, levels of government, and the public and private sectors, support parallel investigations and shared efforts, and aid in the dissemination of research findings from all resources.

Research would focus on major, multi-year research initiatives to advance knowledge and understanding of complex transportation-environment topics such as: (1) human health, (2) ecology and natural systems, (3) environmental and social justice, (4) emerging technologies, (5) land use, (6) planning and performance measures, and (7) additional priorities.

### Exploratory Advanced Research Program

Research activities authorized under section 5101(a)(1) would be intended to carry out the Exploratory Advanced Research Program described in section 5201 of this bill, which would amend section 502 of title 23, U.S.C. While drawing upon basic research results to provide a better understanding of problems and develop innovative solutions, the expression "exploratory advanced research" conveys its more fundamental character, broader objectives, multi-disciplinary nature, and the greater uncertainty in expected outcomes compared to problem-solving research. The distinction between ongoing exploratory activities from long-term advanced research is recommended by the Transportation Research Board's Research & Technology Coordinating Committee, and would be reflected in the use of the term "exploratory."

### Innovative Bridge Research and Deployment

As authorized under section 5101(a)(1), the Innovative Bridge Research and Deployment Program would focus on technology development and deployment related to research on high performance, low maintenance bridges; stewardship and management of existing bridges; the safety, reliability, and security of bridges; and long-term bridge performance in order to carry out the requirements of section 503 of title 23, U.S.C., as proposed in section 5203 of this bill. In conjunction with the Bridge and Structures Research and Technology Program and the Long-Term Bridge Performance Program, also funded by this paragraph, this proposal would constitute a comprehensive and coordinated program of research, development, and technology deployment related to bridges.

### International Outreach

Amounts made available under section 5101(a)(1) would be used to carry out section 506 of title 23, U.S.C., related to international outreach.

### Advanced Travel Forecasting Procedures Program

Amount made available under section 5101(a)(1) would be used to carry out the proposed Advanced Travel Forecasting Procedures program described in section 5206 of this bill.

Funding for the Advanced Travel Forecasting Procedures program would support the development of additional Transportation Analysis Simulation System (TRANSIMS) analytical methods; development and delivery of training on TRANSIMS methods; minor changes to software; computer system support; data collection; technical assistance; dissemination of reports and information; case studies; and direct grants.

### Policy Research and Technology

Amounts made available under section 5101(a)(1) would be used to carry out a policy research program, including fundamental long-term policy research, analysis of emerging policy issues of national significance, and the dissemination of data, policy analytical tools, and research findings within the domestic highway community and internationally.

Training and Education: Amounts for training and education made available under section 5101(a)(2) would be used: to carry out 504(a) of title 23, U.S.C., relating to the National Highway Institute; to carry out section 504(b), relating to local technical assistance; and to carry out section 504(c)(2), relating to the Eisenhower Transportation Fellowship Program.

Bureau of Transportation Statistics: Amounts made available under section 5101(a)(3) would be used to carry out Bureau of Transportation Statistics (BTS) activities, as described in section 5401 of this bill. BTS collects, analyzes, and disseminates statistics on freight movement, personal travel, and transportation economics; geocodes transportation data to facilitate advanced analysis and planning; develops indicators of

transportation system performance; and issues statistical guidelines for the Department of Transportation.

The proposed fiscal year 2004 authorized level is the President's Budget level. The proposed authorized levels for fiscal years 2005-09 reflect current services increases to keep pace with expected pay raises and inflation.

University Transportation Research: Amounts made available under section 5101(a)(4) would be used to carry out university transportation research described in section 5301 of this bill. The proposed authorized level is \$26,500,000 for each of fiscal years 2004 through 2009.

Intelligent Transportation Systems Research: Amounts made available under section 5101(a)(5) would be used to carry out the Intelligent Transportation Systems Act of 2003, as proposed in subtitle E of title V of this bill. The proposed authorized level is \$121,000,000 for each of fiscal years 2004 through 2009.

Collaborative Research and Development: Section 5101(b) would strike subsections (b)(3)(A) and (B) of section 502 of title 23, U.S.C., which cap at 50 percent, unless otherwise approved by the Secretary upon a showing of "substantial public interest or benefit," the Federal share of the cost of collaborative research and development with various non-Federal entities, including State and local governments, and Federal laboratories. The collaborative research and development program was established under section 502 to encourage innovative solutions to surface transportation problems and stimulate the deployment of new technology. The Secretary is authorized to carry out the program on a cost-shared basis. However, the 50-percent cap serves as a disincentive to potential research partners. The program would better realize its full potential if the cost sharing mandated by section 502(b)(1) is negotiated between the collaborating research entities without a cap on the Federal share.

Applicability of Title 23, United States Code: Section 5101(c) would provide contract authority for the programs authorized under the transportation research and education title of this bill. This section also provides that the Federal share would be up to 100 percent, unless otherwise specified or determined by the Secretary.

## **SUBTITLE B – RESEARCH, TECHNOLOGY, AND EDUCATION**

### **SEC. 5201. RESEARCH, TECHNOLOGY, AND EDUCATION.**

Sec. 5201(a). Research, Technology, and Education.

This provision would amend existing title 23, U.S.C., by changing chapter titles related to research, technology, and education to reflect the substantive changes made in this section.

Sec. 5201(b). Statement of Principles Governing Research and Technology Investments.

This provision would define and clarify the Federal role in the conduct of surface transportation research and technology transfer activities. There are a variety of entities conducting such activities, and this provision identifies the unique Federal placement in this spectrum of work. If the Federal effort is well-designed, activities by others, such as State departments of transportation and the proposed Future Strategic Highway Research Program (FSHRP), would complement the unique Federal activity without duplicating it.

This provision would improve the processes concerning surface transportation research projects by setting out specific management principles and procedures for Federal involvement in research and technology, including project selection and the conduct of the research.

The Federal Highway Administration (FHWA) has worked closely with transportation community stakeholders over the years to assure the relevance and responsiveness of the research it undertakes for and with them. As a result of this collaborative review, FHWA has identified a number of desired improvements in the processes it uses to undertake and manage its surface transportation research program. Stakeholder views and suggested improvements are described in the General Accounting Office's (GAO's) report, *Highway Research: Systematic Selection and Evaluation Processes Needed for Research Program*, and the Transportation Research Board's (TRB's) Special Report 261, *The Federal Role in Highway Research and Technology*, developed in conjunction with FHWA's Research and Technology Coordinating Committee (RTCC). Similar lessons regarding research and technology investments also have been learned from the 1998 National Highway Research and Technology (R&T) Partnership Forum, sponsored by FHWA, the American Association of State Highway and Transportation Officials, and the TRB.

Although the FHWA R&T program has historically been effective, these reviews have highlighted the need for a number of specific improvements. These include: better definition of the Federal role in R&T; improved stakeholder input into program development; additional emphasis on longer term advanced research; recognition of the need for policy research; and more formal mechanisms for peer review and evaluation of the completed research. Both the RTCC and the GAO concluded that investment decisions for surface transportation R&T activities should be based on the well-established principles of competition and that merit review, to the greatest extent possible.

Sec. 5201(c). Transportation Pooled Fund Program.

This provision would encourage FHWA, State DOTs, and other transportation and research organizations to pool resources to undertake planning, research, development, and technology transfer activities of mutual interest and would endorse FHWA's Transportation Pooled Fund Program as a vital and effective program to achieve these objectives. The provision would also provide authority for FHWA to enter into contracts,

grants, and cooperative agreements as agent for all participants in a pooled fund project, to simplify and expedite such projects.

Simplified accounting procedures that allow for transfer of funds to a single account for payment of costs for pooled fund studies is also proposed separately, to simplify the process for administering a project jointly funded by two or more States.

Sec. 5201(d). Operations Elements in Research Activities; Container and Vehicle Security.

The proposed amendments would clarify the components of transportation system management and operations research and development activities and establish the eligibility of these activities to be funded under the surface transportation research title. It would also add freight container and vehicle security research initiatives as eligible components of the program.

Sec. 5201(e). Turner-Fairbank Highway Research Center.

This proposal would direct the Secretary to operate, in the Federal Highway Administration, the Turner-Fairbank Highway Research Center. The purpose of this provision is to recognize the Turner-Fairbank Highway Research Center as the base for a nationwide research program to meet the transportation needs of the 21<sup>st</sup> century. The Turner-Fairbank Highway Research Center is home to a unique set of laboratories that employs experts in more than 30 transportation-related disciplines, and continued maintenance and upgrading of the Turner-Fairbank Highway Research Center is critical.

This proposal would also provide for the uses of the Turner-Fairbank Highway Research Center. The Center supports the conduct of highway research and development related to new highway technology, the development of understandings, tools, and techniques to provide solutions to complex technical problems, and the development of innovative highway products and practices.

Sec. 5201(f). Exploratory Advanced Research Program.

These amendments would revise the Advanced Research Program to reflect the evolving direction of the program. In particular, the changes differentiate ongoing exploratory activities from the more fundamental long-term advanced research recommended by the Transportation Research Board's Research & Technology Coordinating Committee. This distinction is highlighted by the use of the term "exploratory."

Sec. 5201(g). Authority to Purchase Promotional Items.

This section would provide that funds appropriated for the administration and operation of the Federal Highway Administration (FHWA) may be used to purchase promotional items of nominal value for use in educational outreach and the recruitment of individuals for employment. Authority to purchase promotional items would enhance FHWA's

efforts to inform potential applicants of its programs and recruit and hire qualified individuals.

FHWA must compete to attract and retain a strong workforce for the 21<sup>st</sup> Century, one that has the skills to meet the Nation's transportation needs and reflects the diversity of the American people. FHWA faces a potential workforce problem, due to various imbalances in the current workforce and the large numbers of employees who are becoming eligible for retirement. For example, over the past two fiscal years, FHWA has not been able to meet its generalist civil engineer goals for its Professional Development Program. Similarly, the FHWA field offices have been unable to successfully attract and hire "mid-career" engineers to meet current needs. These recruitment and hiring difficulties are due, in part, to the decrease in the number of matriculating and graduating civil engineering students over the past decade.

In response, FHWA has undertaken a major workforce planning initiative, including development of a human resources strategic plan that calls for a coordinated recruitment and staffing strategy that maximizes limited organizational resources. In addition, FHWA, working with schools and with its transportation partners, is developing outreach programs to make younger people more aware of transportation programs and transportation career opportunities. Private sector employers, as well as States and local governments, often use promotional items as part of their workforce recruitment efforts, both for information purposes and to increase name recognition among potential applicants. FHWA's inability to mirror these practices hampers the effectiveness of its recruiting efforts.

#### Sec. 5201(h). Facilitating Transportation Research and Technology Deployment Partnerships.

This provision would promote more effective use of available resources by making possible increased cooperation in research and technology between FHWA and other Federal agencies, State transportation departments, and other transportation-related organizations, such as TRB and AASHTO, to better achieve RD&T objectives established at the national level and to develop a technology transfer program to promote and use those results.

Current law prohibits procurement of sources of potentially valuable R&T partners, such as TRB, AASHTO, State DOTs, cities, and counties, thereby creating barriers to carrying out mutually beneficial R&T projects. This provision would streamline the procurement process to allow these R&T partners to be directly funded by FHWA and to allow FHWA to accept funds from these sources for joint R&T efforts. More specifically, this provision would exempt entities such as TRB, AASHTO, State DOTs, cities, and counties from "prohibited sources" status in procurement. The rationale for this change is based on the premise that these entities possess a unique status and it will be beneficial to restore the agency's ability to work with States on test and evaluation programs that provide funds to States to try out innovative products and report on findings.

FHWA would also be allowed to accept funds from these unique partners to conduct joint R&T efforts, as well as to accept funds from other Federal agencies through interagency transfers of funds. States and municipalities might fund research to create solutions for immediate needs. FHWA could participate by administering the projects, providing technical assistance, or sponsoring the project in part. If the problem being addressed has implications that are national in nature, FHWA's Turner-Fairbank Highway Research Center might be an appropriate place to conduct research, funded in whole or in part by the other cooperating entities. This would promote effective use of available resources and help ensure that FHWA's R&T program is responsive to our partners.

#### Sec. 5201(i). Long-Term Pavement Performance Program.

The FHWA proposes to continue the Long-Term Pavement Performance Program (LTPP) with the intent of achieving the program objectives by 2009. Specific activities include data collection, data analysis, product development and delivery, program assessment, and development of a detailed plan for future maintenance and operation of the LTPP database and related materials. This proposal is consistent with both the original vision for LTPP articulated in Transportation Research Board Special Report 202, and the recommendations of the TRB LTPP Committee report "Fulfilling the Promise of Better Roads," 2001.

#### Sec. 5201(j). Procurement for Research, Development, and Technology Transfer Activities.

The "other transactions" procurement mechanism has proven to be a fast and flexible way to initiate research projects. The Defense Advanced Research Projects Agency (DARPA) makes extensive use of the authority it has for R&T activities, and serves as a model of how this administrative tool can be used to energize cooperative research activities with stakeholder groups.

DOT's use of this mechanism has been limited. Section 503 of title 23 gives the Secretary broad discretionary authority to enter into "other transactions" for research, development, and technology transfer activities -- but the focus of this section is on motor carrier transportation. In addition, section 5111 of TEA-21 specifically authorizes the use of "other transactions" authority for the Advanced Vehicle Technologies Program (AVP), the responsibility for which the Secretary delegated to RSPA. By its terms, the provision limited RSPA's use of "other transactions" authority to the AVP.

This proposal is to intended to establish the Secretary's broad discretionary authority to enter into other transactions for research, development, and technology transfer activities, not limited to motor carrier transportation and the AVP program, thereby authorizing and encouraging DOT/FHWA to structure innovative contracting arrangements, initiate research faster, and promote better cooperative research activities from stakeholder groups.

Sec. 5201(k). Infrastructure Investment Needs Report.

This provision changes the due dates for the Conditions and Performance reports from “January 31, 1999, and January 31 of every second year thereafter” to “July 31, 2004, and July 31 of every second year thereafter,” in order to better align the report dates with the availability of data and the timing of Congressional needs.

**SEC. 5202. SURFACE TRANSPORTATION ENVIRONMENT AND PLANNING COOPERATIVE RESEARCH PROGRAM.**

This section would create a public-private surface transportation environment and planning cooperative research program to support the Nation’s growth and meet public expectations for an improved transportation system. This program would be a comprehensive strategy for realizing that vision. The establishment of this cooperative research program would enable cooperative research across numerous departments and agencies, levels of government, and the public and private sectors, support parallel investigations and shared efforts, and aid in the dissemination of research findings from all resources. A new cooperative research program would focus resources on critical issues that cannot be resolved effectively by parties whose interests are at stake. The program would address transportation environment and planning research that addresses longer-term systems effects.

The research conducted would focus on major, multi-year research initiatives to advance knowledge and understanding of complex transportation-environment topics such as: 1) human health, 2) ecology and natural systems, 3) environmental and socioeconomic relations, 4) emerging technologies, 5) land use, 6) planning and performance measures, and 7) additional priorities.

The current Surface Transportation-Environment Cooperative Research program would be eliminated since the proposed program would replace it.

**SEC. 5203. LONG-TERM BRIDGE PERFORMANCE PROGRAM;  
INNOVATIVE BRIDGE RESEARCH AND DEPLOYMENT PROGRAM.**

Section 5203(a) would eliminate the seismic research program and establish the long-term bridge performance program. The seismic research program would be eliminated because the major goals and objectives of this program have been achieved

A 20-year long-term bridge performance program would be established in section 502(g) of title 23 to provide the detailed, quantitative performance information necessary to reliably predict long-term bridge performance. This program would be similar to the long-term pavement performance program.

Under the program, the Secretary would make grants and enter into cooperative agreements and contracts to monitor, material test, and evaluate test bridges; to analyze this data; and to prepare products to fulfill program objectives and meet future bridge



technology needs. The program would use various contracting mechanisms to procure the necessary professional, technical and managerial capabilities to implement and conduct this long-term research. FHWA would oversee all aspects of the program, including the design, implementation, operation, and administration, and would conduct periodic evaluations of the program to assure that program goals and objectives are being accomplished, that all actions conform to applicable regulations, and that requirements are being met.

Section 5203(b) would amend section 503(b) to change the name of the innovative bridge research and construction program to the innovative bridge research and deployment program. This name change reflects the expanded focus of the program under section 503(b)(1) from innovative material technology in the construction of bridges and other structures to innovative designs, material, and construction methods in the construction, repair, and rehabilitation of bridges and other highway structures. The reason for this change in focus is to broaden the scope of this program to encourage innovation in all aspects of the bridge program, rather than just materials.

The goals of the program in section 503(b)(2) would also be amended to reflect the focus on innovation. The documentation and dissemination of objective evaluations of the performance and benefits of innovative designs, materials, and construction methods and the transfer of information and technology would be added to the goals of the program. Structural systems would be added to the goal concerning engineering design criteria. Also, the goal of developing bridges and structures capable of withstanding a terrorist attack would be added. The goals of developing cost-effective and innovative techniques to separate vehicle and pedestrian traffic from railroad traffic and nondestructive bridge evaluation technologies and techniques would be eliminated. The reason for this change in focus is to broaden the scope of this program to encourage innovation in all aspects of the bridge program and not just to try new materials. The emphasis on evaluation and technology transfer is needed to ensure that the lessons learned, both successes and failures, are fully documented and broadly disseminated to maximize the benefits of this program and to clearly state that such activities are within the scope and intent of this program.

#### **SEC. 5204. TECHNOLOGY DEPLOYMENT.**

This section would greatly expand an infrastructure technology delivery and deployment program that would improve the performance and significantly reduce the long-term costs of highway pavements and bridges. Section 503(a)(1) would be amended to retitle the material dealing with technology deployment to differentiate it from a previous program activity. A reporting requirement associated with the old program would be eliminated. Section 503(a)(7) of title 23 would be amended to clarify with whom the Secretary may make grants and enter into cooperative agreements and contracts and the purposes for those grants, cooperative agreements, and contracts. An application requirement would be added. Section 503(a) also would be amended to include a technology and information transfer provision and a Federal share provision.

Section 503(c) of title 23 would be added to require the Secretary to establish and implement an innovative pavement research and deployment program. The goal of this program is to demonstrate and spur the development of totally new and innovative pavement systems. These new systems would combine high performance materials and methods for the most structurally and functionally efficient and cost effective systems. This program would support the accelerated development and deployment of enhanced materials, design and construction systems, and technologies.

Section 503(d) of title 23 would be added to establish a safety innovation deployment program. This program would support a strategic mix of safety research and technology projects and encourage the evaluation and deployment of safety innovations. Research would be focused on recognized problem areas and would include long-term endeavors designed to produce major safety improvements. This program is proposed because it is difficult for other organizations to maintain the effort needed to achieve breakthroughs that do not have inherent academic interest or profit potential. The program would significantly improve the deployment and evaluation of safety innovations at State and local levels.

#### **SEC. 5205. TRAINING AND EDUCATION.**

Section 504(a)(3) of title 23 would be modified to address the broader education and training responsibilities of the National Highway Institute (NHI) by including a reference to “transportation system management and operations” in the types of courses to be developed and administered by NHI; would amend the reference to environmental interests to more accurately reflect current priorities; would provide latitude for NHI to address evolving program areas by substituting the words “in areas including” for “relating to”; and would recognize that the motor carrier education and training responsibilities have transferred to the Federal Motor Carrier Safety Administration by deleting the reference to “motor carrier safety activities.”

A new paragraph concerning the Federal share for the Local Technical Assistance Program (LTAP) would be added to section 504(b) of title 23. The paragraph would provide for a 50% cost sharing for LTAP expenditures. This paragraph would also allow technology and training funds to be used as part of the non-Federal share of the costs. The section would also establish a no-match requirement for Tribal Technical Assistance Programs (TTAP) Centers.

The term “surface transportation workforce development, training, and education” would be defined in section 101 of title 23 and would be added to the definition of “construction” in section 101(a)(3) to make surface transportation workforce development, training, and education eligible for funding under the interstate maintenance program, National Highway System, bridge program, and surface transportation program. Section 504(d) would allow a State to obligate these funds for tuition and direct educational expenses, excluding salaries, in connection with education and training of employees of State and local transportation agencies, employee professional development, student internships, university or community college support,

and education outreach activities to develop interest and promote participation in surface transportation careers. The Federal share for these surface transportation workforce development, training, and education activities would be 100 percent.

#### **SEC. 5206. ADVANCED TRAVEL FORECASTING PROCEDURES PROGRAM.**

Section 1210 of TEA-21 authorized the establishment of the Advanced Travel Forecasting Procedures Program to develop and deploy the Transportation Analysis Simulation System (TRANSIMS) to improve urban travel analysis and planning analytic procedures. This section would expand the program to include statewide transportation planning and would shift the primary focus of the program from development to deployment.

Through the simulation of the movements of individuals and vehicles, TRANSIMS provides for major improvements in travel forecasting and the estimation of emissions in air quality conformity analyses. TRANSIMS can also better address policy questions such as induced travel and the integration of operational considerations, both highway and transit, into the planning process. The level of detail provided by TRANSIMS makes it suitable for use in identifying transportation vulnerabilities and planning for the transportation response to events such as chemical, nuclear, radiological, and biological terrorism and other security concerns. The TEA-21 funds have been used to develop TRANSIMS methods and software, a user-friendly commercial version of TRANSIMS, training, and deployment of TRANSIMS to Portland, Oregon. However, sufficient funds were not available to support a major deployment effort.

Many metropolitan areas have expressed an interest in using TRANSIMS for travel forecasting, but believe that additional experience is needed before implementing this new procedure. This proposal would aid local areas by building an experience base for TRANSIMS. The Department has a major interest in the deployment of improved travel forecasting procedures. Travel forecasting procedures are coming under closer scrutiny from environmental and other activist groups. It is far more cost-effective to improve the methods than to deal with continued legal and procedural challenges to forecasting methodology. The Department is in the best position to lead the country in this effort. The experience gained from this effort, and methods of implementation developed, would lower the cost to Federal, State, and local agencies to implement TRANSIMS.

The funding would support the following activities: development of additional TRANSIMS analytic methods; development and delivery of training on TRANSIMS methods; minor changes to software; computer system support; data collection, technical assistance; dissemination of reports and information; case studies; and direct grants.

Not more than 75 percent of the funds made available to carry out this program could be allocated to State departments of transportation and metropolitan planning organizations for the implementation of TRANSIMS.

## **SUBTITLE C – MULTIMODAL RESEARCH PROGRAMS; SCHOLARSHIP OPPORTUNITIES**

### **SEC. 5301. UNIVERSITY TRANSPORTATION RESEARCH.**

This section would revise 49 U.S.C. 5505, which established the University Transportation Centers (UTC) program in 1988, to create a partnership between the academic community and DOT for the advancement of research, education, and technology transfer. Over the years, the focus has become less clear and performance results have been mixed in each of the three TEA-21 mandated objectives (peer-reviewed basic/applied research, multi-disciplinary education including participation in research, and technology transfer). This section proposes to create a new program, the University-Industry-Government Partnerships Program, to improve the results of future taxpayer investments by: (1) concentrating the strengths of the participating universities; (2) increasing accountability and integration of the program; (3) fostering a greater tie to the multi-modal national research agenda and developing the future transportation workforce; and (4) creating a stronger University-Industry-Government alliance.

Specifically, in order to open the program to all eligible institutions of higher learning, this section would amend 49 U.S.C. 5505 by removing the requirement that the Secretary establish 10 regional centers. In addition, this section also proposes to delete subsections 5505(i) and 5505(j), which earmark grant moneys for certain specified institutions and groups of institutions. This would ensure an open, competitive process and provide the best return on taxpayer investment.

Proposed subsection (b) would clearly establish the objectives of the new program. Specifically, grantees under the program would be required to conduct basic and applied research that supports DOT's transportation research agenda, establish an education program that includes multidisciplinary course work and participation in research and provides an opportunity for practical experience, and institute an ongoing technology transfer program. In addition, grantees would be required to elect either education or research as their primary objective and direct at least 50% of total costs to accomplishment of that objective.

Proposed subsection (c) would amend the grantee-selection criteria. Specifically, it would require that grant applicants have formal research and education partnerships with at least one private sector partner and at least one public sector government partner (e.g., state, local, metropolitan planning organization, transit operator, or special district). Moreover, applicants whose primary objective is research would be required to have a strategic plan that addresses more than one mode of transportation. Applicants whose primary objective is education would be required to have a strategic plan that includes a research plan that addresses intermodal issues. This section would also establish the amount of matching funds for which the applicant has obtained binding commitments as a selection criterion.

This section would provide that the Federal share of the costs of activities carried out using a grant under this program shall not exceed 50% of costs. It would also withdraw the authority for UTCs to use Local Technical Assistance Program funds as matching funds. It would also direct the Secretary to conduct all grant management and administration functions necessary to facilitate the program, coordinate program activities among the grant recipients, widely disseminate program results, and ensure the effective use of program resources.

Finally, this provision would require UTCs to support and use the Transportation Research Information Services (TRIS) databases produced and maintained by the Transportation Research Board (TRB) and available online through the National Transportation Library. The UTCs are already required under TEA-21 to make research results available to potential users in a form that can be “implemented, utilized, or otherwise applied,” and this proposal is a mechanism for accomplishing this, ensuring effective and efficient reporting of research results throughout the transportation community. Specific uses would include program development, reporting of active research and technology activities, and input of the final report information.

This proposal would ensure effective use of resources and better integrate UTC R&T activities into a National Transportation Research Program. It would also promote and enhance the dissemination of results from UTC-sponsored basic or applied research or project studies and technology transfer activities among State transportation departments, FHWA, universities, public and private sector transportation organizations, and the public.

## **SEC. 5302. MULTIMODAL RESEARCH PROGRAM.**

This section proposes to replace the advanced vehicle technologies program with a program focused on multimodal technologies. Specifically, proposed section 5506(a) directs the Secretary to establish a program to encourage and promote research, development, demonstration, and testing of technologies that have multimodal applications, including advanced heavy-duty vehicle and hydrogen infrastructure technologies, and to foster adoption of those technologies in transportation. This approach would ensure that advances in multimodal technologies are the singular focus of a DOT program charged with looking at America's transportation system as a whole. While this proposal would provide the Secretary with the authority to pursue all multimodal technologies, it does identify two specific areas of focus for this program:

(1) **Advanced Heavy-Duty Vehicle Technologies.** Proposed section 5506(a)(1) would require the Secretary to conduct research, development, demonstration, and testing to integrate emerging technologies and projects into multimodal heavy-duty vehicle technologies in order to provide seamless, safe, secure, and efficient transportation. The goal of these activities would be to increase safety, enhance operational efficiency, and reduce fuel use and emissions from heavy-duty vehicles such as highway freight vehicles,

transit buses, marine vehicles (freight and ferries), and freight locomotives. This proposed multimodal approach is an effective way to apply new technologies to the Nation's pressing transportation needs.

To carry out this subsection, DOT would enter into collaborative partnerships with the Department of Energy, the Department of Defense, and the truck, bus, rail, and ferry industries. In addition, DOT would pursue development of a common deployment and test platform for technology integration, adaptable to all equipment manufacturers and end users. This platform would allow the deployment, test, and evaluation under real-world conditions of multiple heavy-duty vehicle components and subsystems with both safety and energy efficiency attributes. Potential targets for active demonstration and test would include power management technologies; component and system reliability growth; component and system modeling and simulation; system integration innovations; safety systems innovations; and emissions and fuel use-reducing technologies.

Proposed section 5506(a)(1) would also allow the Secretary to explore public and private sector research advances; select and integrate technologies for transportation applications to ensure seamless and efficient multimodal transportation systems; analyze multimodal technology and system issues that require new solutions and technologies; establish a competitive process for selecting innovative and advanced technology development and applications projects to address multimodal transportation issues; develop, test, and evaluate new technologies; encourage market deployment and penetration of new technologies that support multimodal transportation; and use public-private partnership agreements to carry out these activities.

(2) Hydrogen Infrastructure Safety Research and Development. The Vice President's Report of the National Energy Policy Development Group declares the need for deploying clean, affordable, efficient, and renewable energy sources in transportation vehicles. The report envisions the use of fuel cell vehicles, direct hydrogen-fueled vehicles, and other alternative fuel vehicles as ways of increasing America's fuel economy and decreasing foreign petroleum dependence. However, challenges exist to meeting America's need for clean, affordable, efficient and renewable energy sources in transportation vehicles.

For example, there are no existing Federal standards for the safe handling and transport of large quantities of hydrogen fuel and for on-board hydrogen storage tanks in passenger vehicles. Such standards are vital if alternative fuel vehicles are to be deployed beyond their present niche market.

America's energy and vehicle companies, assisted by the Department of Energy, are conducting extensive research in hydrogen fuel mass production and fuel cell power systems for vehicles, but little research is being conducted to set the standards for safe handling and transport of large quantities of hydrogen fuel, or safety standards for on-board hydrogen vehicle power and storage systems. The cause, in part, has been the reluctance of both vehicle and energy industries to share strategic investment and research results.

Industry is awaiting Federal guidance on hydrogen infrastructure safety before making investment decisions on the types of fueling systems to provide, and the types of on-board power and storage systems to place on vehicles.

Proposed section 5506(a)(2) would authorize the Secretary to address these challenges by conducting research, development, demonstration, and testing on the safety aspects of hydrogen transportation and refueling infrastructure to support the use of next generation vehicle technologies.

Under the authority of this subsection, the Secretary would maximize the use of public-private partnership agreements to: promote the development of industry codes and standards pertaining to hydrogen infrastructure, including fuel systems, transportation safety (for all modes of transportation, including pipeline), and emergency response; study the transportation-related impacts of the mass storage and movement of hydrogen fuel, the application of hydrogen-based systems in vehicles, and hydrogen fueling practices; set priorities on transportation-related infrastructure safety, with emphasis on vehicle system safety and hazardous materials transportation safety (including pipeline safety); establish a competitive process for the annual selection of innovative and advanced technology development and applications projects to address hydrogen supply, storage, and refueling infrastructure issues; develop, test, and evaluate innovative and advanced technologies; and support deployment and marketability of next generation vehicle technologies using fuel cells and direct hydrogen power systems.

Finally, proposed section 5506(b) would provide the Department with the administrative authority to effectively and efficiently carry out research, development, demonstration, and testing of technologies that have multimodal applications.

### **SEC. 5303. COMMERCIAL REMOTE SENSING PRODUCTS.**

Section 5113 of TEA-21 required the Secretary to establish, not later than 18 months after enactment of TEA-21, a national policy for the use of commercial remote sensing products and spatial information technologies in national transportation infrastructure development and construction. This proposed provision would update section 5113(b) to reflect that the Secretary has established a national policy and will maintain that policy as a means of accomplishing the goals of section 5113 of TEA-21.

### **SEC. 5304. TRANSPORTATION SCHOLARSHIP OPPORTUNITIES PROGRAM.**

Over the next several years, the U.S. Department of Transportation (DOT) will lose a significant number of its employees to retirement. The Department's recruiting strategy to address this challenge calls for a greater emphasis on pipeline recruiting. The proposed scholarship program would be an integral part of that effort, allowing the Department to engage a potential recruiting pool early in the education cycle and widen outreach to include a more diverse pool of potential employees. Partnering with outside

organizations, where appropriate, is expected to aid the Department in identifying potential candidates from groups currently underrepresented in the DOT workforce.

Recognizing the importance of student-centered programs for recruitment purposes, the Department of Transportation would develop a Department-wide scholarship program that can provide academic tuition assistance and opportunities to participate in cooperative employment programs. This program can significantly improve the Department's pipeline recruiting efforts by building relationships early with individuals studying disciplines critical to the Department. This is especially important for recruiting for entry-level professional positions, which serve as the training ground for future senior level DOT employees.

Legislative authority to fund scholarship programs currently exists through the Federal Highway Administration and the Eisenhower Fellowship Program (23 U.S.C. 504 (c)(2)). However, this authority is limited. Other DOT Operating Administrations have limited or no authority to fund scholarships, preventing the development of a comprehensive, Department-wide program.

A comprehensive and Department-wide scholarship program responds directly to the President's Strategic Management of Human Capital Efforts (e.g., Strategic Competencies (talent) component of the Human Capital Scorecard). A scholarship program would support the ability of the Operating Administrations to respond to the Secretarial initiative on external recruitment strategies, specifically the requirements to build a pipeline of students and to diversify recruiting efforts. Funding would also expand support for existing and future partnerships that have the capacity to raise awareness about the benefits of working for DOT.

## **SUBTITLE D – CROSSMODAL TRANSPORTATION DATA AND ANALYSIS**

### **SEC. 5401. BUREAU OF TRANSPORTATION STATISTICS.**

#### **In General**

During 2002, the Office of the Secretary completed a formal review of the Bureau of Transportation Statistics' (BTS') mission and functions, which resulted in a significant sharpening of the agency's focus around five core data programs and two cross-cutting programs. The data programs will develop useful, reliable, and timely data on freight movement, personal travel behavior, transportation economics, airline data (separately authorized in 49 U.S.C. 41708 and delegated by the Secretary in 49 CFR 1.71(a)), and geographic information systems. The cross-cutting programs will develop and publish key indicators of national transportation system performance and improve statistical methods to address transportation-specific problems.

To increase investment in its core programs, BTS will eliminate or shrink non-core activities, including the National Transportation Library, the Motor Carrier Information program (separately authorized in 49 U.S.C. 14123 and delegated by the Secretary in 49



CFR 1.71(b)), the Intermodal Transportation Data Base, specialized compilations of data from other sources, and data quality audits of non-BTS programs.

Sec. 5401(b). Director.

Section 5401(b) would be revised to expand the qualifications necessary to assume the position of the Director. This amendment would add training and experience in the use of transportation statistics to the list of qualifications.

Sec. 5401(c). Responsibilities.

In General

Subsection (c) would replace a sweeping data collection and compilation mandate with one that is more focused and realistic, given the funding levels proposed for BTS. The premise of the subsection is to build on BTS' strengths – those areas where it can provide relevant data and analysis not available from any other source. While this subsection would narrow BTS' data collection and compilation activities, it is faithful to the original legislative intent for BTS, which is to produce key indicators of transportation system performance.

Sec. 5401(c)(1). Freight Statistics.

This subsection would establish freight data collection and analysis as a core BTS activity. BTS currently conducts, with the U.S. Census Bureau, a Commodity Flow Survey (CFS) every five years. The CFS is a survey of shippers, and requests data on all kinds of freight movements, by all modes. It provides information on the origin and destination of each shipment, its value and weight, the mode of transportation, and the commodity type. Freight data users have raised concerns about shortcomings in the CFS' timeliness, coverage, and geographic detail. BTS plans to address these concerns by replacing the CFS with a more comprehensive, annual freight data collection program, which would also capture data on hazardous materials flows, carrier activity, intermodal connections, and points of congestion. BTS also expects to play a lead role in the International Trade Data System currently under development -- with responsibility for data integrity, security, validation, and dissemination of statistical information related to transportation.

Sec. 5401(c)(2). Travel Statistics.

This subsection would establish travel data collection and analysis as a core BTS activity. BTS currently conducts, with the Federal Highway Administration, a National Household Travel Survey (NHTS) every five years. NHTS data are collected from a sample of U.S. households and extrapolated to provide national estimates of trips and miles by travel mode, purpose, and many other characteristics. The survey collects information on daily, local trips and on long-distance travel in the United States. Personal travel data users have raised concerns about the NHTS' timeliness and inability to report information on

small populations, such as non-English speakers and households without a telephone. There are also gaps or inadequacies in the NHTS coverage of bicycle use and pedestrians, travel by persons with disabilities, and time use. BTS plans to address these concerns with a more comprehensive data collection program that would provide more detailed data on modal choice, travel costs, trip times, intermodal connections, and transportation accessibility and reliability. The new program would also collect risk exposure data useful for transportation safety analysis, pursuant to a National Transportation Safety Board recommendation (NTSB/SR-02/02).

#### Sec. 5401(c)(3). Transportation Economics.

This subsection would establish economic data and analysis as a core BTS activity. This emphasis is consistent with BTS' legislative history; the ISTEA conference report placed a heavy emphasis on economic statistics. BTS has started data programs to estimate the transportation component of the Nation's gross domestic product; track the net value of infrastructure and rolling stock; and measure modal productivity. A new effort -- based on grant-funded research -- will relate transportation activity to changes in the national economy. None of these existing programs is yet comprehensive, and there is a clear need for better data on the costs and benefits of transportation investment and the economic consequences of transportation system disruptions.

#### Sec. 5401(c)(4). Transportation Geospatial Data.

This subsection would establish geospatial data and analysis as a core BTS activity. The purpose is to put data on maps, where the human eye can detect patterns that might otherwise be hidden in tables of numbers. BTS currently has lead responsibility for the transportation layer of the National Spatial Data Infrastructure and is developing prototype geospatial data standards for the Administration's Geospatial One-Stop electronic government initiative. In addition, BTS provides mapping support to the Department of Transportation's Crisis Management Center. Making geospatial data and analysis a core activity will accelerate progress on completing geospatial data standards for all transportation modes and geocoding the national transportation system.

#### Sec. 5401(c)(5). System Performance.

This subsection would establish measurement and analysis of transportation system performance as a core BTS activity. This activity includes developing, producing, and publishing key indicators, or measures, of system performance, identifying gaps in data needed for sound transportation decisionmaking, and compiling and publishing an annual transportation statistics abstract.

BTS is currently developing measures, or indicators, for the Department's strategic outcome goals and has begun work on 25-30 key, system-wide indicators. They include, for example, extent and age of the vehicle fleet, household spending on transportation, life years lost from transportation accidents, and air emissions from transportation. Indicators are typically constructed by combining data from multiple sources. BTS

currently publishes an annual *National Transportation Statistics* (NTS) report, a comprehensive compilation of transportation-related statistics. The report includes source and accuracy statements for all data. While compiling data collected by others would no longer be a core BTS activity -- and many such publications would be discontinued -- the NTS and companion *Pocket Guide to Transportation* are popular basic references and would be continued.

BTS would review data gaps at least annually with the Advisory Council on Transportation Statistics.

#### Sec. 5401(c)(6). Methods and Standards.

This subsection would establish transportation statistics methodological research as a core BTS activity. BTS would undertake continuing research on statistical methods to address transportation-specific problems in statistics and to improve the quality of BTS data. It would also coordinate broad, collaborative efforts with the modes and others to develop standards and definitions for transportation data. This program would develop statistical policy for BTS, oversee disclosure issues related to data confidentiality, and help DOT's Chief Information Officer maintain statistical quality guidelines for the Department. According to the National Research Council, an active program of methodological research and standard-setting is a best practice for Federal statistical agencies (*Principles and Practices for a Federal Statistical Agency*, 2001).

This subsection would also continue BTS' statutory authority to issue guidelines in order to ensure that transportation statistics are accurate, relevant, comparable, accessible, and in a form that permits systematic analysis. This core activity has received additional emphasis in light of Section 515(a) of Pub. L. 106-554 and the OMB Final Guidelines on Data Quality.

BTS would continue to provide data verification and validation support for the Department's annual performance plan and report under the Government Performance and Results Act.

#### Sec. 5401(d). Coordinating Collection of Information.

This subsection would be amended to help focus the use of limited resources more efficiently and in a more integrated manner within the Department.

#### Sec. 5401(e). Supporting Transportation Decisionmaking.

This subsection would restate the existing statutory language in 49 U.S.C. 111(c)(7) and would provide the broad categories of BTS' technical assistance.

#### Sec. 5401(f). Research and Development Grants.

This subsection would be amended to allow the grant program to focus on core program

research, if appropriate. Additionally, grants could be made as an alternative to accomplish program-related research, to investigate and develop new methods of data collection and analysis, or to improve methods for sharing geographic data. The amendment would retain the statutory funding limit on the grants program.

Sec. 5401(g). Transportation Statistics Annual Report.

This subsection would be amended to allow BTS to streamline and better focus its annual report to the President and Congress. The report would provide information on the movement of people and goods, documentation of methods used to obtain the information and ensure the quality of the statistics presented in the report, and recommendations for improving transportation statistics. This subsection would also add a delivery date for submission of the report to the President and Congress.

Sec. 5401(h). Proceeds of Data Product Sales.

This subsection would restate the existing statutory language in 49 U.S.C. 111(k).

Sec. 5401(i). Limitations on Statutory Construction.

This subsection would restate the existing statutory language in 49 U.S.C. 111(h).

Sec. 5401(j). Mandatory Response Authority for Freight Data Collection.

This subsection would provide BTS with independent authority to require responses to its American Freight Data survey. Previously, BTS collected freight data under an interagency agreement with the U.S. Census Bureau. The Census Bureau used its mandatory authority for this data collection as part of its five-year economic census. However, for greater flexibility in the scope and timing of the data collection, BTS is seeking the same mandatory response language that is found in the Census Bureau's statutory authority. This mandatory response language is essential for the success of BTS' proposed American Freight Data survey. Typically, responses collected on a voluntary basis, particularly from business establishments, are less timely, complete, and accurate than responses collected under a mandatory survey, reducing the quality of the data and increasing the cost of the survey. Response rates for address-based voluntary surveys of business establishments range from less than one percent (market research) to between 45 and 60 percent (the U.S. Census Bureau and other Federal statistical agencies). Mandatory data collection from business establishments typically yield 70 to 99 percent response rates depending on the level of follow-up. Past experience at BTS supports these figures. For example, during the early weeks of the 1997 Commodity Freight Survey, response rates were well below what BTS expected (the low 60s). BTS decided to re-print the envelopes, stamping the word "Mandatory" (under the U.S. Census Bureau's mandatory response authority) above the address, and within two weeks the response rate jumped 14 percentage points. The final response rate for the 1997 Commodity Freight Survey was about 77 percent. In addition, the Census Bureau has indicated that many businesses have instituted policies that prohibit employees from

responding to voluntary surveys. The language for this section mirrors the Census Bureau's authority that BTS has relied on for past Commodity Flow Surveys.

#### Sec. 5401(k). Prohibition on Certain Disclosures.

This subsection would be amended to include contractors. Based on the fact that BTS uses contractors to accomplish its statutory mission, the agency believes the statutory prohibition should specifically cover these individuals. BTS has identified this as a gap in the statutory coverage and believes the prohibition should apply whether the individual making the disclosure is an officer, employee, or contractor.

#### Sec. 5401(l). Data Access.

This subsection would provide BTS with express statutory authority to access transportation and transportation-related data collected by other Federal agencies unless such data sharing is expressly prohibited by law or the sharing of such data would significantly impair the responsibilities of the agency that supplied the information to BTS. This amendment is necessary because of past difficulties experienced by BTS in obtaining transportation data on international trade, freight movement, and other transportation statistics from other Federal agencies. The language for this subsection mirrors the statutory language for the Energy Information Administration (15 U.S.C. 790g(a)).

#### Sec. 5401(m). Advisory Council on Transportation Statistics.

This subsection codifies the note that appears for 49 U.S.C. 111. Section 6007 of Pub. L. 102-240 (ISTEA) created the Advisory Council on Transportation Statistics; however, the statutory language was placed in a note to 49 U.S.C. 111. This amendment would add clarity to the section and would assist readers in locating the statutory language that authorizes the Advisory Council on Transportation Statistics. It would also expand slightly the qualifications for membership on the Advisory Council on Transportation Statistics.

As noted above, Section 5401 would repeal a number of the BTS' existing statutory responsibilities, including the following:

#### 49 U.S.C. 111(d) - Intermodal Transportation Data Base.

As authorized in TEA-21, TranStats, the Intermodal Transportation Data Base, is now operational. Recognizing the emphasis on higher priority and more focused activities, BTS will finalize development of the TranStats intermodal database of 100 transportation databases. Repeal of this subsection would provide BTS greater flexibility in deciding how to disseminate data for its programs.

#### 49 U.S.C. 111(e) - National Transportation Library.

Recognizing the importance of higher priority activities, BTS would discontinue the National Transportation Library. Though providing one-stop shopping for transportation

research documents is a valuable activity, it does not fit into BTS' focus on core statistical programs. BTS hopes that the NTL asset – which includes a large collection of full-text electronic documents and bibliographic information, as well as powerful search tools – will be preserved, perhaps as part of the DOT Library.

49 U.S.C. 111(f) - National Transportation Atlas Data Base.

Proposed section 5401(c)(4) would establish geospatial data and analysis as a core BTS activity. The specific statutory requirement for a National Transportation Atlas Database (NTAD) would be repealed so that BTS has the flexibility to respond to changing customer needs for relevant geospatial data products and services. Further, the Administration's Geospatial One-Stop project is creating a web portal that will provide one-stop shopping for geospatial data of all kinds, which could render the NTAD duplicative.

## **SUBTITLE E – INTELLIGENT TRANSPORTATION SYSTEMS RESEARCH**

This section is intended to replace Subtitle C of Title V, TEA-21, which would be repealed. The following describes the changes from the provisions of TEA-21.

### **SEC. 5501. SHORT TITLE.**

This section would name the subtitle the "Intelligent Transportation Systems Act of 2003."

### **SEC. 5502. GOALS AND PURPOSES.**

The goals stated in TEA-21 would be changed to include reference to public safety and security. These changes are intended to reflect new emphasis areas in the Intelligent Transportation Systems (ITS) Program.

### **SEC. 5503. GENERAL AUTHORITIES AND REQUIREMENTS.**

The policy would be changed to remove the term "deployment projects" and include the term "research projects," to reflect the proposed elimination of the ITS Deployment Program, and to recognize that research is a significant component of the ITS Program.

The term "Consultation with Federal Officials" would be changed to include reference to the proposed Homeland Security Department to reflect the new emphasis on transportation security.

The subsection dealing with Procurement Methods would be deleted to reflect that this requirement was completed during TEA-21.

#### **SEC. 5504. NATIONAL ARCHITECTURE AND STANDARDS.**

This section would continue the general requirements and activities called for in TEA-21 related to Architecture and Standards. The changes would reflect the completion of several specific requirements of TEA-21.

The report on critical standards, the critical standards component of provisional standards, and the waiver of requirement sections would be deleted to reflect that the critical standards requirements were completed.

The provisions on spectrum would be deleted to reflect that this requirement was completed.

#### **SEC. 5505. RESEARCH AND DEVELOPMENT.**

This section would establish an ITS research and development program. The program would provide funding for the conduct of research, development, operational tests, and other activities that are necessary to develop and deploy advanced technology to improve the safety and performance of the Nation's surface transportation systems. The priority areas outline and identify system characteristics that would be improved or enhanced, and associated project types that could be funded through this program. The priority areas would include projects that would: enhance mobility and productivity through improved traffic management, incident management, transit management, freight management, road weather management, toll collection, traveler information, or highway operations systems; enhance safety through improved crash-avoidance and protection, crash and other notification, commercial vehicle operations, and infrastructure-based or cooperative safety systems; enhance security through improved response to security related emergencies and improved transportation security systems, such as traffic management systems and systems designed to promote the end to end movement of containers; and facilitate the integration of intelligent infrastructure, vehicle, and control technologies.

#### **SEC. 5506. USE OF FUNDS.**

Sections referring to an infrastructure development and life cycle cost analysis and a financing and operations plan would be deleted because they refer to projects funded out of the ITS Integration Program and Commercial Vehicle Intelligent Transportation System Infrastructure Deployment Program, which would be eliminated.

The provision on use of innovative financing would be deleted because there were no requests to use this provision during the life of TEA-21, and it has been determined that there is no need for this financing mechanism.

## **SEC. 5507. DEFINITIONS.**

The term “CVISN” would be deleted because this term is no longer referenced in Title V. The Commercial Vehicle Intelligent Transportation Infrastructure Deployment Program would be deleted.

The term “Commercial Vehicle Operations” would be deleted because this term is no longer referenced in Title V.

The word “Corridor” would be deleted because this term is no longer referenced in Title V.

The term “National Architecture” would be modified to eliminate the reference to adoption by the Secretary. This is not a requirement of TEA-21 and is not being proposed as a requirement in this bill. There is no need to formally adopt the National Architecture, which is often modified to correct minor errors and updated significantly approximately every two years. Adoption would require a rulemaking every time a change is necessary.

## **SEC. 5508. REPEAL.**

This section would repeal the intelligent transportation systems subtitle of TEA-21, which this section would replace.

## **TITLE VI – TRANSPORTATION PLANNING; INTERMODAL FACILITIES**

### **SEC. 6001. TRANSPORTATION PLANNING.**

Subsection (a) would add a new chapter 52, Transportation Planning, to subtitle III of title 49, U.S.C. It would incorporate FHWA and FTA planning provisions from titles 23 and 49, to make maintaining identical provisions more straightforward.

Section 5201--Policy would provide a common policy section for both Metropolitan and Statewide Transportation Planning.

Section 5201(a)(2) would be added to reflect the growing importance of improving the decisionmaking and planning conducted under the Federal-aid program. This section would not require modification of existing planning processes, but would clearly indicate that planning and plan development are not static activities. The language would reflect the innovation being undertaken by many metropolitan planning organizations (MPOs) and States in the conduct of metropolitan planning to encourage others in the same fashion. The provision specifically encourages use of performance-based approaches as guided by the planning factors identified in subsections 5203(f) and 5204(d). Among these planning factors are protection and enhancement of the environment. Therefore, MPOs should become involved early in environmental planning activities.



Section 5201(a)(3) would be added to reflect congressional intent that Statewide Planning should have private enterprise participation in projects and services.

Section 5202--Definitions would include definitions used in chapter 52.

Section 5203--Metropolitan Planning would combine and make revisions to existing section 134 of title 23, U.S.C., and sections 5303, 5304, and 5305 of title 49, U.S.C.

Section 5203(a)(1) would revise existing law by substituting the word “metropolitan” for urbanized. This is an acknowledgement that the metropolitan planning process addresses the urbanized area plus that area that is anticipated to become urbanized over a twenty-year period.

Section 5203(a)(4) would provide that the MPO, the State DOT, and the appropriate public transit provider must agree on the approaches that will be used in the metropolitan decisionmaking process regarding complex transportation improvements. This section would indicate that planning and sponsoring organizations are jointly responsible for the planning and development of projects.

Section 5203(b)(1)(A) would modify existing law to reflect a change in procedure by the U.S. Census Bureau. The Census Bureau did not define central cities in the designation of urbanized areas under the 2000 Census. In the absence of such definition, there is no independent determination of central cities to fit current statutory language. The Census Bureau, however, does name urbanized areas by largest incorporated jurisdiction(s) within an urbanized area. This is the same basis upon which it defined central cities. Therefore, this section would substitute the word "named" for "defined" to clarify current practice with a more appropriate term.

Section 5203(b)(2) would modify existing legislation to clarify terminology regarding a transportation management area (TMA). The current statute uses the term “designation” regarding the institution responsible for metropolitan planning and the special geography for a TMA. It also links the two by indicating that when a TMA is designated certain requirements apply, including changes in MPO board membership and certification. TMAs are designated by the Secretary based on population information from the Census Bureau. MPOs may be designated and redesignated upon agreement of local officials and the Governor at any time. To clarify that the geography identification does not force a change in the MPO policy board, the word “identified” is being proposed.

Section 5203(b)(2)(B) would modify existing law to remove an obsolete provision in section 134(b)(2)(B) relating to agencies included in MPOs in 1991. The current provision was adopted in 1991 for the purposes of clarifying the limits of the new statutory language. Two authorizations have existed with this language in place. DOT believes that there is no continuing need for this provision.

Section 5203(b)(5) would modify existing law to reflect a change in Census Bureau policy regarding definition of central cities. The 2000 Census does not include such

definitions. As an alternative, the Department is proposing the use of the largest incorporated city as used by the Census Bureau in naming the urbanized area.

Section 5203(c)(2)(B) would modify existing law to reflect that the Office of Management and Budget, not the Census Bureau, designates standard metropolitan statistical areas.

Section 5203(c)(3) would be added to provide clarification of new urbanized area designation consequences inside an existing metropolitan planning area. Since a metropolitan planning area is already identified for such cases, creating a new MPO would not contribute to an efficient or effective regional planning process. Although it would not be prohibited under this provision, designation of a second MPO is not necessary.

Section 5203(d) would provide that the planning process should consider the impacts of plans and planned projects that may affect adjacent areas.

Section 5203(e)(2) would modify existing law to include operation and management of the transportation system.

Section 5203(e)(3) would be added to emphasize the need for coordination where an improvement does not actually cross an MPO boundary, but still has impacts (in some cases, miles beyond boundary) on transportation facilities in other areas.

Section 5203(e)(4) would be added to encourage coordination of the transportation planning process with officials responsible for other types of planning activities that are affected by transportation, including State and local planned growth, economic development, environmental protection, airport operations, housing, and freight.

Section 5203(f)(1) would modify existing law to be consistent with the statewide planning language.

Sections 5203(f)(1)(B) and (C) would modify existing law to give added emphasis to security and safety by making each a separate planning factor.

Section 5203(f)(1)(E) would add a reference to planned growth patterns.

Subparagraphs (A), (D), (F), and (H) under section 5203(f)(1) would reference opportunities to engage public and private operators in metropolitan planning.

Section 5203(g) would modify existing law by dropping the adjective “long-range” in association with plan. There is only one plan and it has a 20-year horizon. The continued use of “long-range” has reinforced the perception that there is a “short-range” or another plan that must also be created.

Section 5203(g)(1) would modify existing law by extending the minimum update cycle from every 3 years to every 5 years. This change recognizes the level of effort required of State/local agencies.

Section 5203(g)(2) would provide that the transportation plan now includes what was formerly the TIP. All projects, from both the short-range program and the long-range plan, would now be described within one document called the plan.

Section 5203(g)(2)(C) would modify existing law to strengthen the importance of operations and management in the planning process.

Section 5203(g)(3) would modify existing law to encourage stronger coordination among transportation and air quality planning processes.

Section 5203(g)(4) would be added to clarify the relationship of air quality and transportation planning horizon references and how they apply to the transportation plan. This section would also clarify treatment of projects that extend beyond the plan horizon year for conformity purposes.

Section 5203(g)(5) would modify existing law to reflect elimination of the TIP in relation to the approval process and public involvement. This provision would significantly expand the parties participating in planning and would explicitly include private providers. It would also add bicyclists and pedestrians to the list of parties afforded a specific opportunity to comment on the plan before its approval.

Section 5203(g)(6) would modify existing law to reflect the new role of the Governor in approving a portion of the plan (in response to elimination of TIP). The Governor would approve only the first five years of the plan.

Section 5203(g)(7) would be added to implement elimination of the TIP by making the first five years of the plan the key focal point for project programming. The FHWA and FTA roles in plan action and approval would be established.

Sections 5203(g)(8) and (9) would reflect elimination of the TIP.

Section 5203(h) would modify existing law to provide clarification for the meaning of transportation management areas. The term "designation" would be replaced by "identification" to reduce confusion between institutional change and geographic area identification. The section allowing a request to designate an area below 200,000 in population would be eliminated because it has seldom been used, and has no direct funding implications. The term "metropolitan planning organization serving" would be added to highlight the fact that a TMA is a geographic area, not an institution that conducts planning

Section 5203(h)(3) would modify existing law to streamline and integrate the congestion management process into overall planning process and plan development.

Section 5203(h)(4) would modify existing law to highlight the role of the MPO as an institution, as discussed above.

Section 5203(h)(5) would modify existing law to reflect focus on the MPO planning process and clarify that all Federal funds available to the metropolitan area could be withheld as a sanction for not being certified. In recognition of the level of effort required of State/local agencies, the minimum cycle for certification would be extended from three to five years.

A provision related to transfer of ISTEA funds would be removed because it is outdated. Transfer of funds is still covered by 23 U.S.C. 104(k).

Section 5203(j) would modify existing law to reflect streamlining and integration of congestion management planning into the overall planning process.

Section 5203(l) would indicate that funds set aside under 23 U.S.C. 104(f) and 49 U.S.C. 5305(h) are available to carry out the metropolitan planning process.

New section 5203(n) would be added to clarify the linkage between transportation planning and the National Environmental Policy Act (NEPA) process and support appropriate utilization of planning information and analyses to facilitate streamlining of the NEPA process, and to clarify the manner in which planning studies can be utilized in the NEPA process. The transportation planning process is a local function, which, by statute, is undertaken by State and local governments. Although the Department of Transportation has an oversight role, it does not conduct the process and, therefore, there is no Federal action to trigger the application of NEPA. This is different than the “big picture” planning process undertaken by other Federal agencies with respect to lands that they manage, where action by the Federal agency is involved and NEPA applies. To the extent that the transportation planning process has included procedures similar to those required under NEPA, the DOT should be able to rely on the studies produced in the planning process.

Section 5204--Statewide Planning would incorporate, with revisions, existing section 135 of title 23 and would provide a common statewide planning section for both FTA and FHWA.

#### General Modifications

The term “long-range” which modifies “transportation plan” would be deleted, since the plan is already identified as a 20-year plan.

For brevity, the Statewide Transportation Improvement Program is referred to as the “STIP” throughout this section.

TEA-21 used various references when describing local officials in rural areas. A consistent reference would be used throughout: “affected officials with responsibility for transportation.”

“Non-metropolitan local officials” would be defined in a new section 5202--Definitions.

In order to advance planning streamlining, required products and reviews of the planning process would generally be placed on a 5-year schedule.

#### Section 5204(a)--General Requirements

Existing section 135(a)(1) of title 23 would be moved to section 5201--Policy, which would provide a common policy section for both Metropolitan and Statewide Transportation Planning.

Existing section 135(a)(2) of title 23 would now be section 5204(a)(1), with amended language: “To accomplish the objectives stated in section 5201” inserted before “each” and “Subject to ... title 49” deleted; “subject to section 5203” would be added after the end of the paragraph to recognize the integration of Metropolitan Transportation Planning (MTP).

Existing section 135(b) of title 23 would now be section 5204(b), with added language: “with other related Statewide planning activities such as trade and economic development and related multi-State planning efforts,” after “areas of the State and” to recognize the importance of trade and economic development in each State and with other States; and adding a new paragraph “(3) participate in the integration of planning and environmental studies pursuant to section 5203(n) of this title.” to note that States need to participate in these studies.

#### Section 5204(c)--Interstate Agreements

Section 5204(c) would be added to allow States to enter into compacts or agreements for the purpose of formal planning cooperation and coordination, since so many projects have multi-State implications. A similar provision is included in existing section 134(d)(2), Metropolitan Planning, and would be included in the metropolitan planning section in proposed section 5203(d)(2).

#### Section 5204(d)--Scope of Planning Process (existing section 135(c))

In section 5204(d)(1), the phrase “and implementing projects and services” would be added after “strategies” to reflect the concept that not only projects, but also transportation services, are developed through the planning process.

In section 5204(d)(1)(A), the term “non-metropolitan areas” would be inserted into this factor after “States.” The Department has been increasingly concerned about these often-neglected areas and this would require States to consider economic vitality for rural areas. (“Non-metropolitan areas” is defined in a recent amendment to the joint FHWA/FTA planning regulations).

Sections 5204(d)(1)(B) and (C). In existing law, “security” was a joint factor with “safety.” After the terrorism attacks of September 11, 2001, security has taken on a new dimension. Security would now be a separate factor in subparagraph (C) to highlight this concern at all levels of government.

In section 5204(d)(1)(D), the term “options available to” would be deleted after “mobility” so that it is clear that this is more than just considering options.

Section 5204(d)(1)(E). Transportation plans and growth patterns should be reasonably consistent. Both guide various major infrastructure investments at all levels of government and facilitate private enterprise. Language would be added to require consistency so that investments are made where they will have the best impacts.

Section 5204(f)--Transportation Plan (existing section 135(e))

Section 5204(f)(1) would require State plans to be updated every five years. There is no current time requirement for State plan updates. This update cycle would provide consistency between updates for plans at the metropolitan and State levels.

Section 5204(f)(3). The term “representatives of transportation agency employees,” would be replaced by “representatives of public transportation employees,” and the term “representatives of users of public transit,” would be replaced by “representatives of users of public transportation” to provide greater consistency with the definitions in 49 U.S.C. 5302. The term “representatives of users of pedestrian walkways and bicycle transportation facilities,” would be inserted after the term “users of public transportation” to identify the importance of this class of users.

Section 5204(f)(6). A new paragraph, “Existing System,” would be added to address the need for assessment of the existing system to maximize its potential through various means, such as Intelligent Transportation Systems.

Section 5204(g)--Statewide Transportation Improvement Program (STIP) (existing section 135(f))

Section 135(f)(1)(B)(ii)(II) required that States submit to the Secretary, within one year of TEA-21’s passage, the details of their consultation process with non-metropolitan officials. This requirement has been accomplished, so the provision would be eliminated.

Section 5204(g)(3) (existing section 135(f)(1)(C)) would substitute the term “State” for the term “Governor.” This reflects the current practice in most States. The same changes proposed for the listed parties in section 5204(f)(3) above would be made in this section.

Section 5204(g)(4) would establish 5-year increments and updates for the STIP. This is consistent with section 5203(g)(6), which would provide that the first five years of projects in the metropolitan plan may be selected for advancement. Provisions similar to those proposed in section 5203 for a cooperative process in arriving at the annual listing of obligated projects would be included. An annual list should be reflected in section 5204 since the State is the recipient of substantial funds from both FTA and FHWA.

Section 5204 (g)(4)(B)(ii) (existing section 135(f)(2)(C)(ii)) would be amended by inserting “in each year of the initial five years of” after “described.” This would ensure that the identical projects programmed in the metropolitan transportation plans are brought into the STIP without modifications.

Section 5204(g)(4)(F) (existing section 135(f)(2)(G)) would emphasize transportation control measures as a STIP priority by inserting “and transportation control measures included in the State’s air quality implementation plan.” after “of this title.”

In section 5204(g)(5), section 5311 of title 49 would be added to the NHS, bridge, and other projects that require “consultation” and that are excepted from “cooperation” since this program is generally run by the States as a discretionary program after criteria are set.

Section 5204(g)(6) (existing section 135(f)(4)) would be renamed “STIP Approval” and would require a STIP approval “at least every five years by the Secretary.” A new section 5204(g)(7), Planning Finding, (existing section 135(f)(4)) would be set out separately.

A new section 5204(k) would be added for “Integration Of Planning And Environmental Studies” to reflect the process for Environmental Streamlining included in proposed new section 5203(n).

#### Subsection (b)--Transportation Conformity Related Provisions

Section 5203(g)(4), discussed above, would add a provision to better integrate the transportation planning and air quality planning processes, and to closely align the transportation and air quality planning horizons for purposes of transportation conformity.

Currently, transportation conformity must be determined for the entire 20-year planning horizon of metropolitan transportation plans. On the other hand, air quality State implementation plans (SIPs) usually cover a much shorter timeframe (10 years or less). This mismatch in timeframes does not provide for an integrated planning process beyond the life of the SIP. In order to address this issue, the conformity requirement of a transportation plan would be revised to more closely align with the timeframe of a SIP. However, in no case would conformity analyses cover a period of fewer than 10 years, and it could be longer if the SIP emissions budget extends beyond ten years. It is also recognized that MPOs may desire to include certain projects whose completion dates may extend beyond the minimum timeframe of 10 years, but that currently need approval or funding to proceed. In such a case, the conformity analysis must extend beyond the minimum time horizon through the completion date of the project.

Subsection (b) would revise the frequency for which new conformity determinations are required. In metropolitan areas in nonattainment or maintenance, the transportation plan must currently be updated once every three years and conformity redetermined.

Updating transportation plans and requiring conformity determinations every five years instead of every three years would allow MPOs more time to develop better, more comprehensive transportation plans. Also, there is no existing requirement for regular update cycles to keep air quality plans current. Consequently, frequent conformity updates result in the planning assumptions and models that were used to develop the motor vehicle emissions budgets in the SIP and those that were used to complete the conformity analysis becoming out of sync with one another.

Section 5203(g)(1) would revise existing legislation to only require transportation plan updates every five years. Subsection (b) would align the required frequency of conformity determinations for metropolitan transportation plans in section 7506 of title 42, with the revised plan update requirement.

Subsection (b) would also include provisions to allow MPOs to make new conformity determinations whenever the MPO deemed it necessary to amend or update its transportation plans, and to allow EPA to require new conformity determinations triggered by revisions to the applicable SIP, as defined through regulation.

Subsection (c)--Conforming Clarification would amend section 7506 of title 42, U.S.C., to provide consistency between section 7506 and the proposed revised transportation planning provisions in chapter 52 of title 49, which would eliminate separate transportation improvement programs. This section would make clear that references to "programs" and "improvement programs" in section 7506 should now refer to transportation plans developed under section 5203 of title 49, U.S.C.

Subsection (d)--Streamline State Conformity Rule Requirements would amend section 7506(c)(4)(C) of title 42, U.S.C., and would require States to promulgate conformity rules that include only the conformity consultation procedures per 40 CFR 93.105. State and local governments are currently required to submit State implementation plans that describe an area's specific consultation procedures and include the remainder of the Federal rule verbatim. The amendment would reduce the number of implementation plans required without compromising the air quality benefits of the conformity program. The amendment would also ensure that all States could take advantage of administrative changes to the conformity program as soon as they are promulgated. Currently, State and local transportation planners with approved conformity rules cannot take advantage of any new administrative changes to the conformity program until State conformity rules are updated and approved.

## **SEC. 6002. INTERMODAL PASSENGER FACILITIES.**

To provide seamless transportation for the traveling public, there is a critical need for the Nation's surface public transportation modes to link to each other and to airports at intermodal facilities. Few intermodal passenger terminals in the country bring together all the surface public transportation modes: motorcoach, intercity rail, urban mass transportation, and rural local transit. Further, current surface transportation programs fail to address the importance of intercity bus service to our Nation's transportation



infrastructure. Intercity buses serve over 4,200 U.S. communities in regular service and virtually every community in the United States through regular route, charter, or tour service. Intercity bus service connects sparsely populated rural routes to larger corridors.

For these reasons, the Department believes that it is in the economic interest of the United States to improve the efficiency of public surface transportation modes by ensuring their connection with and access to intermodal passenger terminals, thereby streamlining the transfer of passengers among modes, enhancing travel options, and increasing passenger transportation operating efficiencies.

To that end, this section would amend title 49, U.S.C., chapter 55, Intermodal Transportation, to add a new subchapter III, Intermodal Passenger Facilities. The purpose of this subchapter would be to accelerate intermodal integration among North America's passenger transportation modes by assuring intercity public transportation access to intermodal passenger facilities; encouraging the development of an integrated system of public transportation information; and providing intercity bus intermodal facility grants.

Under this subchapter, the Secretary would make grants, on a competitive basis, to State and local governmental authorities for financing a capital project that the Secretary determines to be justified and to have adequate financial commitment. A capital project, under this subchapter, may be the acquisition, construction, improvement, or renovation of an intermodal facility that is related physically and functionally to intercity bus service and that establishes or enhances coordination between intercity bus service and other modes of transportation. A capital project could also be the added costs of providing better access between intercity bus service and other transportation. The primary criterion for selection would be the extent to which the facility enhances the integration of all modes of intercity and local public transportation, as well as the connection with the private automobile.

The Federal share would not exceed 50 percent of the net project costs, as determined by the Secretary. Up to 30 percent of the non-Federal share could include amounts appropriated to or made available to a Federal department or agency for transportation purposes.

Under the proposal, \$100,000,000 in contract authority would be available from the Highway Trust Fund for each of fiscal years 2005 through 2009 to carry out this subchapter. The funding would further assist the intercity bus industry in linking passengers arriving and departing through airports, public transportation facilities, train stations, and seaports with their final home, work, and tourism destinations.

## **TITLE VII – MISCELLANEOUS**

### **SUBTITLE A -- RAILROADS**

#### **SEC. 7101. RAIL CORRIDOR PLANNING.**

This section would amend the existing high-speed rail corridor planning program authority found at 49 U.S.C. 26101 to expand the list of eligible corridor planning activities that the Secretary would be authorized to fund, to include corridor planning related to the implementation of an effective and efficient system of conventional speed intercity rail passenger operations. This amendment would provide the Secretary with additional flexibility to assist State and local governments in planning the optimum improvements for each rail corridor. In some corridors, the optimum investments would be in high-speed rail improvements and in other corridors the optimum investments would be conventional rail improvements.

#### **SEC. 7102. HIGH-SPEED RAIL AUTHORIZATIONS.**

Section 7102 would reauthorize existing high-speed rail corridor planning and rail technology improvement programs for fiscal years 2004 through 2009. The corridor planning component of the program and the technology improvement program would each be authorized in the amount of \$25 million for each year. The corridor planning program would retain the current fifty percent matching requirement, which helps ensure State and local support of the planning process.

### **SUBTITLE B – MISCELLANEOUS TECHNICAL CORRECTIONS TO TITLE 49**

#### **SEC. 7201. CORRECTION OF OBSOLETE REFERENCES TO INTERSTATE COMMERCE COMMISSION.**

Section 7201 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 (b) 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 Interstate Commerce Commission 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). DOT 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 (c) substitutes a correct reference to the STB where current law incorrectly refers to the former ICC.

Subsection (d) 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 (e) would revise the structure of section 13541(a) to resolve a logical inconsistency in the language and thereby conform to the intent of Congress. As the current language stands, an exemption under 13541(a) is allowed only if the STB (or the STB Chairman) can find that the application of the provision in question to the particular case "is in the public interest" (see section 13541(a)(3)). In fact, the STB must find that the exemption from the application of the provision is in the public interest, or the subsection has no meaning. The proposed modification would revise the language of the subsection to give it the latter meaning.

Subsection (f) 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 (g) would substitute a correct reference to the STB where current law incorrectly refers to the former ICC.

## **SUBTITLE C – HAZARDOUS MATERIAL TRANSPORTATION**

### **SEC. 7301. DEFINITIONS.**

This section would modify the definition of "commerce" in chapter 51 of title 49 to provide jurisdiction over hazardous materials activities being conducted on a U.S.-registered aircraft anywhere in the world. Currently, DOT does not have clear authority over U.S.-registered aircraft carrying hazardous materials between two foreign points. Such jurisdiction would parallel U.S. and DOT jurisdiction over other safety aspects of

those same flights. Assertion and exercise of that jurisdiction over U.S.-registered aircraft is necessary for the United States to carry out its obligations under the Chicago Convention.

The purpose of this proposed provision is to clarify that DOT has the authority, under Federal hazardous materials transportation law (49 U.S.C. 5101-5127), to regulate hazardous materials transportation conducted on all U.S.-registered aircraft.

## **SEC. 7302. REPRESENTATIONS AND TAMPERING WITH HAZARDOUS MATERIAL PACKAGING.**

This section would enhance the scope of the Secretary's regulatory authority by amending section 5103(b)(1)(A) of title 49 to add that persons who prepare, accept, or reject hazardous materials for transportation in commerce, persons who are responsible for the safety of transporting hazardous materials in commerce, persons who certify compliance with any requirement issued under chapter 51, persons who misrepresent whether they are engaged in a function listed under 5103(b)(1)(A), and persons who perform any other act or function relating to the transportation of a hazardous material in commerce are subject to the Hazardous Materials Regulations. The application to "rejection" situations is necessary to address training requirements for those carriers, especially air carriers, who do not carry hazardous material and should be required to train their employees on how to identify and reject hazardous materials for transportation in commerce. The current law does not require training for carriers that do not carry hazardous materials or cause the transportation of hazardous materials. However, if a carrier does not train its employees to reject hazardous materials, it may unwittingly become a carrier of hazardous materials and subject to the training rules. Expansion of the law to cover rejection of hazardous materials is necessary to ensure compliance with the regulations by preventing the improper transportation of hazardous materials and, thus, enhance safety.

The application to persons who prepare or accept hazardous materials is necessary to clarify that non-shipper personnel who prepare hazardous materials for transportation on behalf of a shipper (e.g., freight forwarders) and non-carrier personnel who accept hazardous materials for transportation on behalf of a carrier (e.g., a broker, agent, or freight forwarder) are subject to the Hazardous Materials Regulations, including training requirements. The proposed amendment would also ensure that persons who are responsible for compliance with the Hazardous Materials Regulations are subject to the regulations. Including persons who certify compliance with any requirement issued under chapter 51 would ensure that the person has the knowledge necessary to accurately certify that the requirement has been met. In addition, this section would clarify that persons who misrepresent whether they are engaged in a regulated activity, such as transporting hazardous materials in commerce, are subject to the Hazardous Materials Regulations, including the civil penalty and criminal penalty provisions for violations of them. Finally, this section would ensure that persons who perform any other act or

function relating to the transportation of a hazardous material are subject to the Hazardous Materials Regulations and the civil penalty and criminal penalty provisions applicable to them.

The purpose of this proposed provision is to clarify and expand the list of persons subject to the requirements of Federal hazardous materials transportation law, 49 U.S.C. 5101-5127, and the Hazardous Materials Regulations, 49 C.F.R. Parts 171-180.

### **SEC. 7303. HAZARDOUS MATERIAL TRANSPORTATION SAFETY AND SECURITY.**

This section of the bill would amend section 5121 of title 49, U.S.C., to provide for enhanced authority to discover hidden shipments of hazardous materials. Subsection (a) of this proposal would amend section 5121(c) to clarify and enhance the inspection and enforcement authority of DOT officials and inspection personnel, thereby enabling them to more effectively identify hazardous materials shipments and to determine whether those shipments are made in accordance with the Hazardous Materials Regulations. This proposal would expand DOT inspection authority to authorize a designated DOT officer or employee to: access, open, and examine a package (except for the packaging immediately adjacent to the hazardous materials contents) offered for or in transportation when the officer or employee has an objectively reasonable and articulable belief that the package may contain a hazardous material; remove from transportation a package or related packages in a shipment when the officer or employee has an objectively reasonable and articulable belief that the package or packages may pose an imminent hazard and contemporaneously documents that belief; gather information from the shipper, packaging manufacturer or retester, or others responsible for the package to determine the nature and hazards of the contents of the package; as necessary, order the shipper, packaging manufacturer or retester, or others responsible for the package to have the package transported to, opened, and the contents analyzed at an appropriate facility; and authorize properly qualified personnel to assist in the package opening and examination when safety might otherwise be compromised.

Existing authority also would be amended to require the Secretary to develop procedures to assist in the safe resumption of transportation of the package and transport unit when an inspection or investigation does not result in discovery of an imminent hazard.

This improved inspection authority comports with Fourth Amendment principles on permissible searches by the Government. The landmark decision, *New York v. Burger*, 482 U.S. 691 (1987), and its progeny adopted the administrative search doctrine permitting a regulatory agency with a substantial governmental interest to conduct warrantless inspections of "closely regulated" or "pervasively regulated" industries, provided that the agency's inspection program is reasonable. One case, *United States v. V-I Oil Co.*, 63 F.3d 909 (9th Cir. 1995), cert. denied, 517 U.S. 1208, 116 S.Ct. 1824 (1996), ruled that the transportation of hazardous materials is a "closely regulated" industry in upholding the Federal Railroad Administration's hazardous materials inspection program. The hazardous materials law thus reduces the privacy expectation of

those businesses engaging in activities regulated under that law. Therefore, persons offering or transporting packages identified as hazardous materials possess limited privacy interests, authorizing DOT inspection personnel to inspect these shipments.

Likewise, this proposal would respect the constitutional rights of persons offering or transporting other types of shipments suspected to contain a hazardous material. Momentary stopping and searching of these packages constitutes minimally intrusive conduct necessary to carry out the purpose of the statute. See *V-1 Oil Co. v. Means*, 94 F.3d 1420 (10th Cir. 1996). A brief detention is valid provided that there is an objectively reasonable and articulable suspicion of a violation of the hazardous material transportation law. See *United States v. McSwain*, 29 F.3d 558 (10th Cir. 1994). DOT officers or inspectors would have to have a particularized and objective basis for suspecting a violation, such as a pattern of shipping or transporting undeclared or unreported hazardous materials, in order to open an unmarked package. See *United States v. Cortez*, 449 U.S. 411 (1981).

The authority that would be provided to DOT officials and inspection personnel under these new subsections is necessary to ensure the safe transportation of hazardous materials. The National Transportation Safety Board (NTSB) found that improperly packaged and undeclared hazardous materials caused the loss of 110 lives on ValuJet flight 592 in the Florida Everglades on May 11, 1996. The shipping and transportation of undeclared or hidden hazardous materials is the most dangerous practice involved in hazardous materials transportation. Without notice of the existence and nature of hazardous materials, carriers are unable to verify that the materials are being transported in accordance with the Hazardous Materials Regulations and to take appropriate emergency response actions when a problem develops.

The ValuJet incident does not stand alone. In other cases, airplanes could have been lost and people killed as a result of hidden hazardous materials in packagings. In 1998, a Federal Express employee was loading a box when the inner contents shifted, causing 200 rounds of cartridges to explode and char the box. Another serious incident involving a package shipped via Federal Express occurred in 1996, when ramp handlers encountered strong fumes while unloading an aircraft. Six ramp crew personnel were affected by the fumes and sent to a health clinic for observation. The package contained methyl acrylate, a flammable liquid, and was not marked, labeled, or documented as a hazardous material shipment.

In 1999, eleven 38-pound batteries containing acid were offered for transportation by air. Four of the batteries leaked their entire contents into the aircraft's cargo compartment. The undeclared hazmat was discovered by ground handling employees who noticed a strong smell coming from the cargo compartment. Also in 1999, Airborne Express was offered a package containing liquid phenol -- a poison -- in unmarked packages. The package leaked at the Airborne Express facility prior to transportation, causing the facility to be evacuated.

In 1998, an undeclared shipment of non-spillable wet electric storage batteries was offered to Southwest Airlines for transportation. The shipment burst into flames while en route to the airport via truck. In 1999, an undeclared shipment of liquefied petroleum gas was offered for transportation by air to Federal Express. The shipment was transported to New York from Portland, Oregon, on a regularly scheduled cargo flight. One day after its arrival in New York, the package burst into flames at Federal Express's sort facility.

In a 1997 incident aboard a Continental Airlines plane, drums inside a wooden crate leaked, four crew members were affected by the fumes, and two crew members sought medical attention. The leaking drums were discovered after passengers had disembarked. The shipment originated in Italy and was destined for Brazil. It had been offered to UPS in Germany, flown on a cargo aircraft to Newark, offered by UPS to Continental Airlines in Newark, and flown to Miami, where the leaking drums were discovered. The inner drums had been marked and labeled, but there were no hazardous material markings on the outer crate and no hazardous material shipping papers.

In 1996, UPS employees unloading an aircraft discovered a leaking package. Eight employees inhaled fumes and were sent to a hospital for observation. The leaking commodity was benzaldehyde, a class 9 material recently regulated as a hazardous material both domestically and internationally because of its anesthetic or noxious effects on flight crews. Also in 1996, a box containing undeclared hazardous material -- calcium hypochlorite and liquid bleach -- was transported on a regularly- scheduled American Airlines passenger-carrying flight from California to Montego Bay, Jamaica. Upon arrival, airport personnel observed smoke coming from the aircraft's cargo compartment. Both smoke and toxic fumes were emitted when the cargo doors were opened. The box, which was leaking, burst into flames shortly after being removed from the cargo hold.

In addition, the Federal Aviation Administration's (FAA) enforcement statistics demonstrate that undeclared hazardous materials shipments are a frequent and increasing problem. The following data show FAA's 1993-2000 hazardous materials enforcement cases and the percentage of them that involved undeclared hazardous materials:

YEAR	HM CASES	# CASES W/UNDEC. HM	% CASES W/UND. HM
1993	895	420	47%
1994	1,029	656	64%
1995	726	516	71%
1996	888	664	75%
1997	1,231	1,008	82%
1998	1,890	1,320	70%
1999	2,268	1,597	70%
2000	2,767	1,716	62%

These statistics reflect an increasing number of cases based on initiatives undertaken by FAA's expanded hazardous material workforce and an increasing number of cases involving the discovery of undeclared hazardous materials shipments.

Furthermore, the problem of undeclared hazardous materials shipments is not limited to air transportation; it has been experienced in virtually every mode of transportation. These major incidents are merely representative of a more widespread problem. The following data from the Research and Special Program Administration's Hazardous Materials Information System (HMIS) indicate that there were hundreds of carrier-reported incidents (usually releases of hazardous materials) involving undeclared or hidden hazardous materials. Specifically, from January 1990 through December 2000, there were approximately 3,300 carrier-reported incidents involving a release of undeclared hazardous materials, resulting in 110 deaths and 197 injuries. Because many incidents are unreported, including those in intrastate highway transportation not required to be reported until recently, these statistics understate the severity of problems caused by shipments of undeclared hazardous materials. In addition, these statistics cover only those shipments in which an incident occurred -- most likely only a small percentage of the total number of undeclared or hidden hazardous materials shipments.

The authorities being set forth for DOT officials and inspection personnel would clarify and expand their existing authority to deal with this problem by opening certain packagings, inspecting their contents, identifying likely hazardous materials, taking and analyzing samples of those materials, and taking or directing effective mitigating or prohibitory actions to reduce, eliminate or prevent hazards and their serious potential consequences. For example, a hazardous materials inspector who directly observes a hazardous materials shipment that does not comply with the law currently has no authority under the law to prevent movement of that shipment until it is brought into compliance. This proposal would provide such authority.

Subsection (b) of this proposal would amend section 5121(d) to authorize the Secretary of Transportation to issue emergency orders when it is determined, by inspection, investigation, testing, or research that a violation of this chapter or a regulation issued under it, or an unsafe condition or practice is causing an imminent hazard. In those situations, the Secretary would be authorized to issue or impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or the opportunity for a hearing, but only to the extent necessary to abate the imminent hazard. The Secretary's action would have to be a written order describing the violation, condition or practice causing the imminent hazard; stating the restrictions, prohibitions, recalls, or out-of-service orders being issued or imposed; and prescribing standards and procedures for obtaining relief from the order. A person aggrieved by an action of the Secretary could petition for review of that action, with an opportunity for a hearing on the record under the Administrative Procedure Act, within 20 days after the order is issued. The term "out-of-service order" would be defined in section 5121(d) as a mandate that an aircraft, vessel, motor vehicle, train, railcar, locomotive, other vehicle, transport unit, freight container, or package not be moved until specified conditions have been met.

Subsection (c) would add a new section 5121(f) to allow the Secretary to determine whether release of certain sensitive information contained in government records would be contrary to national security. Currently, the Freedom of Information Act (FOIA) provides for the protection from release of certain sensitive information that is contained



in government records; for example, information related to the privacy of individuals, trade secrets, commercial information, investigative records, and security information about aviation. This current authority allows or requires the withholding of some information relating to the transportation of hazardous materials. However, FOIA does not necessarily protect all information that could be used by terrorists to plan for or to carry out terrorist acts relating to the transportation of hazardous materials.

Security-sensitive information could include an application for classification and approval to transport an explosive that contains details of the manufacturing process or a study of gaps in security with respect to the transportation of hazardous materials. Subsection (c) of this proposal would allow the Secretary to determine, on a case-by-case basis, whether release of the information would be contrary to national security. This proposal would also allow the Secretary to determine by regulation that certain categories of information would not be released. Moreover, this proposal would allow the Secretary to make a limited release of information in furtherance of national security, without waiving the right to withhold the information from the general public.

Subsection (d) of this proposal would expand the existing capability of the Department to look at the risks of hazardous material and participate in emergency preparedness. A new subsection (g) would be added to section 5121, authorizing the Secretary of Transportation to enter into grants, cooperative agreements, and other transactions to address security risk assessment and emergency preparedness and to otherwise further the objectives of chapter 51 of title 49. Those objectives include the conduct of research, development, demonstration, risk assessment, emergency response planning, program support, and training activities. The Secretary would have express authority to enter into grants, agreements and other transactions with a person, agency or instrumentality of the United States, a unit of State or local government, an Indian tribe, a foreign government (in coordination with the Department of State), an educational institution, or other entity.

Subsection (e) of this proposal would authorize a new approach to address the problem of undeclared hazardous material in transportation in commerce. It would authorize the Secretary to initiate a program to randomly inspect cargo shipments at U.S. Customs ports of entry to determine the extent to which undeclared hazardous material is being offered for transportation in commerce. Department of Transportation inspection personnel, in coordination with Department of Homeland Security officials, would be authorized to open and inspect containers at any U.S. Customs port of entry. Although these inspections would not be based on a reasonably articulable belief that a hazardous material is present, they would be carried out by Department inspection personnel at U.S. Customs ports of entry where they would be similar to border inspections, and they would be based upon random selections made by supervisory personnel not present at the site of the inspections. Therefore, the proposed program represents a careful balancing of parties' privacy interests and the need to protect emergency responders, transportation workers, and the general public from the dangers inherent in the transportation of undeclared hazardous material.

The purpose of this proposed provision is to clarify and expand DOT's enforcement authority under the Federal hazardous materials transportation law, 49 U.S.C. 5101-5127.

#### **SEC. 7304. ADMINISTRATIVE AUTHORITY FOR TRANSPORTATION SERVICE AND INFRASTRUCTURE ASSURANCE RESEARCH.**

This section would provide the Administrator of the Research and Special Programs Administration (RSPA) necessary administrative authority to conduct effective research on transportation service and infrastructure assurance and to prevent security-sensitive information developed in the course of that research from aiding persons who might want to disrupt the transportation system. RSPA has had considerable success in implementing research through the gamut of contracts, grants, cooperative agreements, and other transactions. The flexibility to select the appropriate funding mechanism would aid this research. Research on transportation service and infrastructure assurance would entail the gathering of such information as ongoing security efforts and vulnerabilities from transportation interdependencies. Information such as this could be used in an attack on transportation systems. This proposal would allow the Administrator to limit release of such information to those whose official duties include a role in safety or security.

The purpose of this proposed provision is to provide RSPA with the authority to enter into "other transactions" agreements to conduct research into transportation service and infrastructure assurance and to carry out RSPA's research activities. "Other transactions" agreements are contractual arrangements that allow the maximum participation in R&D programs. While "other transactions" authority is not subject to the statutes and regulations specifically applicable to Federal contracts or grants programs, their use does not eliminate the applicability of all laws and regulations or other guidance provided within the Department. This authority generally encourages greater use of commercial-like practices, standards, and procedures; makes the acquisition process work better, faster, and less expensively; and provides greater flexibility and shared Government-industry responsibility for achieving desired milestones.

Federal agencies, such as NASA, DoD, and the Defense Advanced Research Projects Agency (DARPA) already use this type of authority and confirm its effectiveness. This authority also exists under Federal pipeline law, 49 U.S.C. 60117. Moreover, RSPA has used such authority itself, on a limited basis, as part of its involvement in the DARPA Technology Reinvestment Project, Advanced Vehicles Technologies Program, Remote Sensing Program, and Human Factor Program.

#### **SEC. 7305. UNITED STATES POSTAL SERVICE CIVIL PENALTY AUTHORITY.**

This section would amend chapter 30 of title 39, U.S.C., to prohibit hazardous materials in the mail unless specifically authorized by law or Postal Service regulation. It also would allow the United States Postal Service to collect civil penalties, and to recover clean-up costs and damages, for violations of this statutory provision and regulations issued under it. This

language would provide the Postal Service with civil penalty authority analogous to the Department of Transportation's civil penalty authority under chapter 51. It would enhance the Postal Service's authority to regulate hazardous materials in the mail and would institute a civil penalty process that would serve as a deterrent to those who unlawfully place hazardous material in the mails.

This section would require the Postal Service to demonstrate that a "knowing" violation has occurred, to give written notice of the amount of the penalty, cost or damages assessed, and to provide an opportunity for a hearing before making a finding of violation. The Postal Service would have to take into account certain penalty assessment criteria -- such as prior violation history, gravity of the violation, and ability to remain in business -- in determining the amount of a civil penalty. A person accused of a violation would have the right to file an administrative appeal with the Postal Service, and the Attorney General would be able to bring a civil action to collect penalties, damages, and costs. Costs, damages, and penalties under this section would be paid into the Postal Service Fund under 39 U.S.C. 2003.

Most hazardous materials are nonmailable. The Postal Service regulations generally limit the mailing of hazardous materials to ORM-D materials (defined as "consumer commodities"). The postal mailing standards for hazardous materials closely adhere to DOT's Hazardous Materials Regulations and often include additional limitations and prohibitions.

Currently, anyone who mails or causes to be mailed a nonmailable or improperly packaged hazardous material can be subject to criminal penalties including, but not limited to, those specified in 18 U.S.C. 1716. The Postal Service initiates hazardous materials investigations and works cooperatively with other agencies to conduct inspections. However, it can be difficult to enforce the postal service regulations using this criminal penalty authority because "intent" must be demonstrated. Moreover, U.S. Attorneys' offices may lack the resources or time to devote to prosecuting these violations.

Between January 1, 1998, and June 30, 2002, Postal Service personnel reported over 1200 hazardous materials incidents involving the mail. None of these incidents resulted in death or serious injury. However, in 93 of these incidents, medical attention was needed for one or more Postal Service employees. Of these, 47 required medical follow-up due to potential exposure to biological materials (e.g., blood or urine). Also, 93 of these incidents resulted in property damage of approximately \$115,059. This amount does not include costs associated with emergency response, evacuation, hospitalization, and lost productivity.

Several incidents in the last four years demonstrate the serious potential safety hazards posed by hazardous materials in the mail. Civil penalty authority would have given the Postal Service a mechanism for better enforcing its postal regulations and for recovering clean-up costs and damages.

For example, in 1998, a Priority Mail parcel containing four glass quart bottles of mercury was mailed from Baltimore, Maryland to San Francisco, California. During the offloading of luggage at an intermediate location, a ground handler reported that it was "raining silver." The ground supervisor instructed the ground employee to remove the damaged parcel, and to

resume the reloading operations to maintain an on-time departure. The fire department responded after the aircraft had departed and found that the damaged parcel contained mercury. The aircraft was told to return to the airport. Three pounds of mercury were found in the fuselage of the aircraft. The Postal Service paid \$87,000 to Southwest Airlines in aircraft clean-up costs. The airline did not press for reimbursement of other costs, which were estimated at \$1.4 million.

In 1998, a Priority Mail parcel containing two one-quart cans of Sodium Bisulfate was mailed from San Francisco, California, to Seattle, Washington. The parcel leaked while at a Postal Service bulk mailing center. The fire department was called and the mailing center was evacuated for approximately 4 hours during which all mail operations ceased. An outside company was called to perform the clean-up operation. Sodium Bisulfate is mailable, but is transportable by "Surface Only." The mailer did not properly package or label this parcel or disclose the contents to the postal clerk. The clean-up cost associated with this incident was \$2,500. This does not include the cost of the mail center being closed.

In November 2000, a parcel containing methyl limino ethanol and hydrogen sulfide was mailed from Woodlawn, Texas, to a testing laboratory in Texas. The package was damaged and leaked during handling at the post office. The fire department responded to the incident. Twenty-two employees were hospitalized for exposure to noxious fumes. Costs and damages to the Postal Service were approximately \$11,000.

In November 2000, a motorcycle gas tank was mailed from a repair shop in Arizona to a customer outside Portland, Oregon. The gas tank contained an estimated three gallons of gasoline, which is prohibited in the mail. The package was damaged and leaked during the flight into Los Angeles International Airport. The aircraft landed safely. Fumes were noticed during off-loading of the lower cargo compartment. The fire department responded and the aircraft was taken out of service and cleaned. The parcel was turned over to the Postal Inspection Service.

In 2001, a Priority Mail parcel containing one gallon of auto paint was mailed from San Francisco, California, to Macon, Georgia. The package leaked in the lower compartment of an aircraft. The mailer had first tried to check the package as luggage but was told that he could not take auto paint on the aircraft. He then mailed the article. This type of paint is mailable, but is transportable by "Surface Only." The customer did not properly package or label this parcel or disclose the contents to the postal clerk.

In 2001, a mailer packed mercury in a vial and soup can, sealed it with duct tape, and placed it in a parcel along with books and tools. This parcel was packed inside another parcel. The mercury leaked while at a Postal Service bulk mailing center. Clean-up costs were estimated at \$1,500.

In April 2001, four employees complained of eye and throat irritation after discovery of an unknown liquid leaking from a Priority Mail parcel at the air cargo complex at Baltimore-Washington International Airport. The package was going from Forest Hill, Maryland, to Orville, California. The building was evacuated and the affected employees were transported

to two local area hospitals, where they were evaluated and released "fit for regular duty." Emergency Services personnel from Maryland Aviation Administration and Maryland Environment Department responded. The substance was identified as Hydro Rinse chemical cleaning solution (which would be mailable if properly packaged in an appropriate quantity). The Material Safety Data Sheet was obtained and reviewed by fire department officials prior to cleanup and eventual clearance to reoccupy the facility. Estimated work-hour cost was \$1,500.

In December 2001, a package containing a one gallon bottle of Dichloromethane broke open on the slide just above the key station of a parcel sorting machine at the Seattle Bulk Mail Center. The package was going from Quebec, Canada to Snohomish, Washington. The vapors caused respiratory problems for an employee who was keying on the machine. She was taken to the doctor and later released with no restrictions. The fire department was called. They arrived and performed the cleanup, and declared the building safe for work. Several other packages were damaged in this spill of nonmailable material. Estimated work-hour cost was \$750, and estimated property damage was \$200.

In June 2002, the spill team was called to the Springfield Bulk Mail Center because of a parcel with a strong smell of gasoline. The parcel contained a gas-powered generator that apparently had not been fully drained and aired out before shipping. Gasoline is nonmailable under any circumstances. It was being sent from Eden, New York, to Malvern, Pennsylvania.

Three recent incidents further illustrate the continuing need for a civil penalty for violations of postal hazardous materials law and regulations:

In September 2002, at the Louisville, Kentucky plant, a mailhandler discovered a leaking package. The package was marked certified mail, with a stamped "Airborne Express" address on the ticket. The package was going from New Hampshire to Indiana. A supervisor called the Spill Response team. The Spill Response team determined that the material was mercury. When contacted, the sender (a family dentistry office) stated that the box contained an amalgamator that may contain mercury. Mercury is nonmailable. Decontamination of the facility and other costs were approximately \$5,200.

In July 2002, a package containing a compressed gas cylinder was discovered leaking at the Springfield Bulk Mail Center. The package was traveling from Malden, Massachusetts, to Gilford, New Hampshire. The contents of the cylinder were not evident and the Hazmat Spill team contacted the local fire department, which secured the cylinder's leaking valve. The mailer and addressee were contacted to determine the type of compressed gas contained in the cylinder, but neither responded to the inquiry. The fire department subsequently determined that the gas was carbon dioxide under approximately 1,000 psi of pressure. The response and clean-up efforts took approximately 12 hours.

In July 2002, the spill team at the Springfield Bulk Mail Center was called to respond to a leaking package. The package was opened and found to contain leaking bottles of ArmorAll and paint remover. The package also contained a 14-ounce propane tank, paint thinner, four

7-ounce cans of sterno, and seven quarts of paint. This package containing flammable materials was being shipped from Lawrence, Massachusetts, to Puerto Rico. Flammable liquid is prohibited in the mail for transportation by air.

#### **SEC. 7306. REGISTRATION.**

Subsection (a) of this section would make changes to the registration provisions in section 5108. Section 5108(a)(1)(B) would be amended to update the terminology used to reference explosive materials so as to ensure consistency with current regulatory requirements.

Section 5108(a)(2)(B) would be amended to allow the Secretary to require a registration statement from persons who design and inspect a packaging or packaging component that is represented as qualified for use in transporting hazardous materials in commerce. This proposed change is consistent with the proposed changes to section 5103(b)(1) regarding persons subject to the Hazardous Materials Regulations.

Subsection (b) would clarify an existing exemption from the Safe Explosives Act requirements of title 18, U.S.C., (1) to correct the grammatical error between the singular subject ("aspect") and plural verb ("are"); (2) to make explicit that the regulation of transportation safety includes the regulation of security risks; and (3) to make explicit that the exemption extends to the new Department of Homeland Security, with its central role in ensuring transportation security. Recent amendments of explosives law in the Department of Homeland Security Act of 2002 (see Section 1123 of Pub. L. 107-296) occasioned interpretational difficulty in this provision, and clarity would assist the governmental agencies that jointly administer law in this area and the affected manufacturing and transportation industries.

#### **SEC. 7307. SHIPPING PAPER RETENTION.**

This section would amend section 5110(a) to reflect that each person who prepares a shipping paper must make the disclosures the Secretary prescribes by regulation. Section 5110(b) would be deleted as unnecessary because the informational elements set forth in that subsection are already required by the Secretary under the Hazardous Materials Regulations.

This section would also modify the requirement in existing section 5110(e) that shippers and carriers retain shipping papers for one year. Section 5110(e) presently requires retention for one year after the hazardous material to which a shipping paper applies is no longer in transportation. Because many shippers do not know whether or when the transportation ends, they do not know how long they are required to retain the shipping papers. In addition, the one-year retention period is inadequate for law enforcement purposes; meaningful, yet minimally costly (especially for electronic records), record retention should be for a three-year period. Therefore, this section would be modified to provide for shipping paper retention for three years after the shipping paper is provided to the carrier.

## **SEC. 7308. PLANNING AND TRAINING GRANTS.**

This section would clarify section 5116(e) by changing the phrase "Amounts of the State or tribe" to "Amounts received by the State or tribe" and by simplifying two related references. Section 5116(f) would be amended to consolidate the authority to monitor public-sector emergency response planning and training in the Secretary of Transportation because, historically, DOT has been the only agency funded to carry out this function. In subsection (g), the phrase "Government grant" programs would be broadened to "Federal financial assistance" programs in order to provide for more complete coordination of funding sources.

Also, this section would amend section 5116 to provide a name for the account established under subsection 5116(i), calling it the "Emergency Preparedness Fund." Amounts collected by the Secretary under section 5108(g)(2)(C) would be deposited into the Emergency Preparedness Fund and could be used for emergency planning and training grants under sections 5116(a) and (b), monitoring and technical assistance under section 5116(f), and administrative costs of carrying out sections 5116, 5108(g)(2), and 5115. It also would clarify that these amounts may be used to develop, publish, and distribute the Emergency Response Guidebook, which RSPA has been doing under current law. Existing section 5116(k) would be deleted because the training grants report it mandates has been completed and submitted to Congress.

## **SEC. 7309. ENFORCEMENT.**

This section would amend section 5122 for clarity. Specifically, subsection (a) would be amended to clarify the types of judicial relief, including civil penalties, that may be granted in an action brought by the Attorney General. Subsection (b) would be amended for clarity by changing the word "ameliorate" to "mitigate." "Ameliorate" means "to make better," which is inappropriate with regard to addressing a hazard.

## **SEC. 7310. PENALTIES.**

This section would amend the civil and criminal penalty provisions in sections 5123 and 5124. It would extend those sections to cover violations of exemptions or approvals issued by the Department, to ensure that appropriate enforcement action can be taken against persons violating those special authorities.

Section 5123 also would be amended to increase the maximum civil penalty from \$27,500 to \$100,000 for each violation. An increase in the maximum civil penalty would give the Department flexibility to assess appropriately high civil penalties in cases involving significant noncompliance with the Hazardous Materials Regulations and especially those resulting in death, serious injury, or significant property damage. Finally, section 5123 would be amended to specify that a violator is liable for interest that accrues on a civil penalty and to state that, in a civil action to collect a civil penalty, the validity, amount, and appropriateness of the civil penalty is not subject to review.

Section 5124 would be revised to include a new “reckless” standard and to define the “knowing,” “reckless,” and “willful” mental-state standards necessary to establish a criminal violation. Section 5124(a) would be amended to provide that a person who knowingly, willfully, or recklessly violates chapter 51 or a regulation, order, exemption, or approval issued under that chapter, is subject to the criminal penalties provided for in that subsection.

The “knowing” standard proposed for criminal violations under section 5124 would mirror the “knowing” standard for civil violations currently contained in section 5123.

The proposed definition of a “willful” violation under section 5124 would codify the willful standard articulated by the courts. Specifically, a person would be found to have acted willfully when the person has knowledge of the facts giving rise to the violation and the person has knowledge that the conduct was unlawful. See *Bryan v. U.S.*, 524 U.S. 184 (1998); *U.S. v. Loera*, 923 F.2d 725 (9th Cir.), *cert. denied*, 502 U.S. 854 (1991); *U.S. v. Hollis*, 971 F.2d 1441 (10th Cir. 1992), *cert. denied*, 507 U.S. 985 (1993).

This section also proposes to add a “reckless” standard to section 5124. A person would be found to have acted recklessly when the person displays a deliberate indifference or conscious disregard for the consequences of his or her conduct. Again, this definition is consistent with current court decisions. See *Farmer v. Brennan*, 511 U.S. 825 (1994); *U.S. v. Albers*, 226 F.3d 989 (9<sup>th</sup> Cir. 2000), *cert. denied*, 531 U.S. 1114 (2001).

In addition, a new section 5124(b) would address violations that result in a release of hazardous material. Specifically, proposed section 5124(b) would increase the criminal penalties for a person knowingly violating 49 U.S.C. 5104(b) or willfully or recklessly violating chapter 51 or a regulation issued under that chapter, and thereby causing a release of hazardous material. The penalty would be a fine under title 18, not more than twenty years imprisonment, or both, which would be an increase from current law of 15 years of possible imprisonment. The need to deter intentional releases of hazardous materials is self-evident. Hazardous materials can have disastrous consequences to members of the public exposed to those materials and to the environment.

Furthermore, the criminal penalty provision would be amended to provide that knowledge of the existence of a regulation or requirement prescribed by the Secretary is not an element of the criminal provision. This change is essential to ability of Federal prosecutors to pursue criminal cases against terrorists, parties who are likely to ignore civil penalty proceedings, or others concerning whom it may be difficult to prove actual knowledge of the regulatory requirements. Nevertheless, prosecutors still would be required to prove that a person committed the act or omission charged and knew that a hazardous material was involved.

Section 5124 would also be amended to parallel section 5123, which provides that a separate violation occurs for each day a violation -- committed by a person that transports hazardous material or causes hazardous material to be transported -- continues.

This section would amend section 46312 of title 49 (criminal penalty for violations in transporting hazardous materials by air) to clarify that the regulations referred to in that section



include the Hazardous Materials Regulations issued by the Secretary under chapter 51. Consequently, violations in transporting hazardous materials by air would clearly constitute violations of both Federal hazardous material law and the Federal Aviation Act.

Finally, this section would amend section 3663 of title 18 in order to allow the Department of Justice to seek restitution against persons convicted of a criminal offense under 49 U.S.C. 5124.

#### **SEC. 7311. EMERGENCY WAIVER OF PREEMPTION.**

This section would amend section 5125 by adding a new subsection (h) to authorize the Secretary to immediately waive Federal preemption to allow State, local, and Tribal governments to regulate hazardous material transportation to ensure public safety in the event of a terrorist threat. The Secretary would be authorized to issue an emergency waiver of preemption, on an expedited basis without notice and public procedure, when the Secretary determines in writing that there is a possible threat that hazardous material being transported in commerce may be used in an attack on people or property, and notice and public procedure are impracticable or contrary to the public interest. The emergency waiver would remain in effect for no more than six months unless the Secretary determines in writing that the threat continued to exist. The proposal also provides for the filing of petitions for reconsideration of the Secretary's actions under this provision.

This proposal would add a new subsection (i) to specify that each preemption standard is to be applied independently to each non-Federal requirement in order to determine whether it is preempted. This change would clarify that a non-Federal requirement must satisfy both preemption standards: the "dual compliance" test and the "obstacle" test.

Finally, this section would add a new subsection (j) to clarify that the Secretary's preemption authority does not apply to a procedure, penalty, required mental state, or other standard used by a State, political subdivision of a State, or Indian tribe to enforce hazardous material transportation requirements.

However, States may not be as free to regulate in the rail area as they are in other modes of transportation. Section 20106 of title 49, "National uniformity of regulation," provides as follows:

Laws, regulations, and orders related to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force a law, regulation, or order related to railroad safety until the Secretary of Transportation prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety when the law, regulation, or order (1) is necessary to eliminate or reduce an essentially local safety hazard; (2) is not incompatible with a law, regulation, or order of the United States Government; and (3) does not unreasonably burden interstate commerce.

See also *CSX Transportation, Inc. v. Public Utilities Commission of Ohio*, 901 F.2d 497 (6th Cir. 1990), *cert. denied*, 111 U.S. 781 (1991), holding that an Ohio statute regulating hazardous materials transportation by rail is subject to the preemption provisions of section 20106, rather than the more permissive preemption provisions of 49 U.S.C. 5125. Furthermore, the plain language of section 20106 allows regulation by a "State." In the interest of national uniformity, this language has been interpreted narrowly, and has been held to permit regulation only by a State, and not by political subdivisions of a State. See, e.g., *Donelon v. New Orleans Terminal Co.*, 474 F.2d 1108 (5th Cir. 1973), *cert. denied*, 414 U.S. 855 (1973).

#### **SEC. 7312. JUDICIAL REVIEW.**

This section would add a new section 5127 providing for judicial review of final actions taken by the Secretary under chapter 51. This provision would establish the appropriate judicial forum for review of final agency actions in the areas of compliance, enforcement, civil penalties, rulemaking, and preemption. The existing law is silent on this issue with the exception of judicial review of final preemption determinations, which are currently subject to review by an appropriate U.S. district court. The proposed new section covers final actions taken by the Secretary of Transportation, the Commandant of the Coast Guard, and the Administrators of the Research and Special Programs Administration, the Federal Aviation Administration, the Federal Motor Carrier Safety Administration, and the Federal Highway Administration. The Federal Railroad Administration would be excluded because it already has a judicial review provision (49 U.S.C. 20114(c)) applicable to its hazardous materials cases.

Under the proposal, the United States Court of Appeals for the District of Columbia or for the circuit in which a person seeking review resides or has its principal place of business would review the final action. The petition for review must be filed within 60 days after issuance of the order. The section describes judicial procedures, the authority of the court, and a requirement for prior objection. All of these provisions are modeled on the statute providing for judicial review of Department of Transportation and Federal Aviation Administration aviation orders (section 46110 of title 49). The national transportation issues under chapter 51 similarly require the type of uniform decisionmaking that the U.S. Courts of Appeals can provide.

### **SUBTITLE D – SANITARY FOOD TRANSPORTATION**

#### **SEC. 7401. SHORT TITLE.**

This section sets forth the short title for the Sanitary Food Transportation Act of 2003. This title would reallocate responsibilities for food transportation safety among the Departments of Health and Human Services (HHS), Transportation, and Agriculture.

## **SEC. 7402. RESPONSIBILITIES OF THE SECRETARY OF HEALTH AND HUMAN SERVICES.**

Subsection (a) of this section would amend section 402 of the Federal Food, Drug, and Cosmetic Act (the Act) to provide that food is adulterated if transported in violation of safe transportation practices prescribed under new section 416 of the Act.

Subsection (b) would add to the Act a new section 416 with the following provisions:

Section 416(a) would require the Secretary of HHS to establish by regulation sanitary transportation practices to be followed by shippers, carriers, and others engaged in food transport. The Secretary could prescribe practices relating to matters such as sanitation, packaging and protective measures; limitations on the use of vehicles; information sharing between shippers and carriers; and recordkeeping, reporting, and compliance with inspections.

Section 416(b) would authorize the Secretary to publish in the Federal Register (and amend as needed) lists of nonfood products that could render adulterated food products shipped simultaneously or subsequently in the same vehicle.

Section 416(c) would authorize the Secretary to waive all or part of the requirements of section 416, in appropriate circumstances, with respect to particular classes of persons, vehicles, food, or nonfood products.

Section 416(d) would preempt State or local law concerning transportation of food that is not identical to section 416.

Section 416(e) would require the heads of other Federal agencies, including the Secretaries of Transportation and Agriculture and the Administrator of the Environmental Protection Agency, to assist the Secretary of HHS, upon request, in carrying out this section.

Section 416(f) would define terms used in this section.

Subsection (c) of section 203 would add to the Act a new section 703A, requiring persons subject to section 416 to cooperate with HHS inspections of records required under section 416. It would also include a conforming amendment to section 703 of the Act.

Subsection (d) would amend section 301 of the Act to make violations of requirements added by this section prohibited acts subject to the sanctions provided in chapter III of the Act.

### **SEC. 7403. DEPARTMENT OF TRANSPORTATION REQUIREMENTS.**

This section would require the Secretary of Transportation, in consultation with the Secretaries of Health and Human Services and Agriculture, to establish procedures for performing inspections for the purpose of identifying suspected incidents of contamination or adulteration of food that might violate regulations issued under section 416 of the Federal Food, Drug, and Cosmetic Act, and of meat and poultry products subject to detention under section 402 of the Federal Meat Inspection Act (21 U.S.C. 672) and section 19 of the Poultry Products Inspection Act (21 U.S.C. 467a). In addition, it would require the Secretary of Transportation to train Department of Transportation personnel who perform motor vehicle and railroad related safety inspections to identify practices and conditions that could pose a threat to food safety and to notify the Secretary of HHS and the Secretary of Agriculture of any instances of potential food contamination identified during those inspections.

### **SEC. 7404. EFFECTIVE DATE OF SUBTITLE.**

This section would make the changes in law under the subtitle align with the Federal fiscal year, which is particularly important for the transfer of duties among different agencies.

This proposal would streamline Federal responsibilities for ensuring the safety of food shipments. Primary responsibility would be transferred from this Department to the Department of Health and Human Services, which would set practices to be followed by shippers, carriers, and others. Highway and railroad safety inspectors would be trained to spot threats to food safety and to report possible contamination.

## **SUBTITLE E – SPORT FISHING AND BOATING SAFETY**

### **SEC. 7501. SPORT FISH RESTORATION ACCOUNT AMENDMENTS.**

This section would extend through fiscal year 2009 the authorization for transfer or expenditure of funds in the Sport Fish Restoration Account of the Aquatic Resources Trust Fund to carry out the Recreational Boating Safety Program (46 U.S.C. 13106(a)), section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note), the Boating Infrastructure Grant Program (16 U.S.C. 777g-1(d)), and the National Outreach and Communications Program (16 U.S.C. 777g(d)).

Several States and government agencies are sponsoring Clean Marina Programs to control pollution from marinas and from recreational boating activities along the Nation's coastal waters, lakes, and rivers. These programs have been very successful in protecting air and water quality, which are critical to our nation's economic livelihood and our recreational boating and fishing industries. This provision is intended to recognize the value and importance of Clean Marina Programs and to promote the voluntary adoption of environmentally responsible marina and boating practices through Clean Marina Initiatives. The language also encourages Federal agencies to promote Clean Marina

Initiatives to the extent practicable in administering relevant programs under the Aquatic Resources Trust Fund.

## **TITLE VIII – TRANSPORTATION DISCRETIONARY SPENDING GUARANTEE AND BUDGET OFFSETS**

### **SEC. 8101. DISCRETIONARY SPENDING CATEGORIES.**

This provision would amend section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) to set discretionary outlay caps for the highway category and the mass transit category for fiscal years 2004 through 2009.

This provision would also amend section 250(c)(4) of the BBEDCA to update the definitions of accounts for the highway and the mass transit categories of discretionary spending to reflect new budget accounts for the highway and the mass transit category programs.

This provision would amend section 251(b)(1)(B) of the BBEDCA to revise the calculation of the adjustment to the highway category cap. The proposed revision would eliminate the look ahead portion of the adjustment to the category in an effort to smooth the extreme peaks and valleys in highway funding levels that resulted from the revenue aligned budget authority (RABA) mechanism under TEA-21. The President's budget submission would include a look back calculation to adjust for the actual level of highway account revenues collected. In place of the look ahead adjustment, this provision creates a "look now" adjustment at mid-year that modifies the highway category cap for the budget year based on the most recent estimate of highway account revenues for the current year. This look now adjustment would occur when the Office of Management and Budget releases the Mid-Session Review document, approximately six months after the President's budget is submitted to Congress.

The BBEDCA would be further amended to reference obligation limitation estimates under the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 instead of those under TEA-21. New estimates of receipts to the highway account for fiscal years 2004 through 2009 would be inserted in place of 1998 through 2003 estimates.

This provision also inserts a new section 251(b)(1)(C) of the BBEDCA to provide an adjustment to the mass transit category cap. The calculation of the mass transit adjustment would also include the same look back and look now components as described above for the highway category cap.

Sections 251(b)(1)(D) and (E) of the BBEDCA, providing for estimating and adjusting limits on outlays for the highway and mass transit categories in future budget years, would be amended by this provision to reflect the new reauthorization act and time period.

**SEC. 8102. LEVEL OF OBLIGATION LIMITATIONS.**

This provision would establish the obligation limitations for fiscal years 2004 through 2009 for the highway category and the mass transit category.

**SEC. 8103. EFFECTIVENESS OF TITLE.**

This provision would take into account the fact that selected sections of the Balanced Budget and Emergency Deficit Control Act of 1985, including the section being amended in this title, expired on September 30, 2002. The provision delays the effectiveness of the amendments until the day that the relevant section of the Act is once again effective. If section 251 of the Act is not renewed, this title will have no effect.

**TITLE IX – AMENDMENTS TO INTERNAL REVENUE CODE OF 1986**

**SEC. 9001. SHORT TITLE; AMENDMENT OF 1986 CODE.**

This section provides the short title for Title IX, and provides that amendments would be made to the Internal Revenue Code of 1986 (Title 26 of the United States Code), unless otherwise provided.

**SEC. 9002. EXTENSION OF HIGHWAY-RELATED TAXES AND TRUST FUND.**

This provision would extend all Highway Trust Fund excise taxes at the current rates through September 30, 2011, and would extend transfer of gross receipts from highway excise taxes to the Highway Trust Fund. The provision would also extend current motor fuel tax exemptions. The provision would extend Highway Trust Fund expenditure authority through September 30, 2011, and would update the expenditure purposes for the Highway and Mass Transit Accounts to the purposes included in authorizing legislation up to and including this bill.

**SEC. 9003. EXTENSION OF TAX BENEFITS FOR ALCOHOL FUELS.**

This provision would extend the ethanol and renewable-source methanol tax provisions through September 30, 2014 (excise tax reduction), and December 31, 2014 (income tax credit), respectively. This provision would also extend until 2014 the authority for refund of the difference between the usual fuel tax and the incentive tax for gasoline, diesel fuel, and aviation fuel used to produce certain alcohol fuels that qualify for an incentive tax rate.

**SEC. 9004. PRIVATE ACTIVITY BONDS FOR SURFACE TRANSPORTATION INFRASTRUCTURE.**

Currently, tax-exempt private activity bonds may be issued for certain privately developed and operated facilities, including airport facilities, docks and wharves, water,

sewage and solid waste disposal facilities, mass commuting facilities, qualified residential rental projects, qualified hazardous waste facilities, high-speed intercity rail facilities, and environmental enhancements of hydro-electric generating facilities.

This provision would amend the Internal Revenue Code to include highway facilities and surface freight transfer facilities among the types of privately developed and operated projects that can utilize tax-exempt private activity bond financing. The new bonds would be subject to the Internal Revenue Code rules that govern exempt facility bonds, except that they would not count against a State's private activity bond volume cap. The maximum aggregate amount of bonds that could be issued under the provision would be \$15 billion. The Secretary of Transportation would allocate the \$15 billion of authority among eligible projects.

Highway facilities eligible for financing under the program would consist of any surface transportation project eligible for Federal assistance under title 23 of the United States Code, or any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible. Surface freight transfer facilities would consist of facilities for the transfer of freight from truck to rail or rail to truck, including any temporary storage facilities directly related to those transfers. Examples of eligible surface freight transfer facilities would include cranes, loading docks, and computer-controlled equipment that are integral to such freight transfers. Examples of non-qualifying facilities would include lodging, retail, industrial, or manufacturing facilities.

#### **SEC. 9005. ALL ALCOHOL FUEL TAXES TRANSFERRED TO HIGHWAY TRUST FUND.**

Currently, all tax revenues on the highway use of motor fuels are deposited in the Federal Highway Trust Fund, except for 2.5 cents per gallon of the tax on gasohol that is deposited in the General Fund. This section would eliminate the deposit of 2.5 cents per gallon of gasohol tax revenues in the General Fund and deposit all tax revenues from the highway use of gasohol to the Federal Highway Trust Fund. This is consistent with the well-established principle of dedicating highway user taxes to the Highway Trust Fund.

#### **SEC. 9006. TRANSFER FROM HIGHWAY TRUST FUND TO BOAT SAFETY ACCOUNT.**

This amendment would extend through fiscal year 2011 the authorization for Federal gasoline excise taxes that are attributable to motorboat use to be transferred from the Highway Trust Fund to the Boat Safety Account of the Aquatic Resources Trust Fund (ARTF). As provided in current law, the balance of the motorboat fuel taxes would continue to be transferred to the Land and Water Conservation Fund (\$1 million) and the Sport Fish Restoration Account of the ARTF. It also extends through fiscal year 2009 the authorization of expenditures from the Boat Safety Account.

Funds in the Boat Safety Account are authorized to provide financial assistance for the development, implementation, and administration of a coordinated State Recreational Boating Safety (RBS) Grant Program, which is an integral component of the National RBS Program. Current law (46 U.S.C. 13106; 26 U.S.C. 9503) authorizes a discretionary annual appropriation of up to \$70 million from the Boat Safety Account.

This section would also make a technical correction to section 1151(e) of the Homeland Security Act. Section 1151(e) prohibits the Department of Homeland Security from using Transportation Trust Funds except for (1) security funds provided to the Federal Aviation Administration prior to fiscal year 2003 and (2) the boating safety funds (addressed here) that are transferred to the Aquatic Resources Trust Fund. However, the authority as to boating safety funds needs clarification, and would be amended to read as follows: "and any funds provided to the Coast Guard from the Highway Trust Fund and transferred into the Boat Safety Account of the Aquatic Resources Trust Fund for boating safety programs."

#### **SEC. 9007. EXTENSION OF SMALL ENGINE FUEL TAXES TRANSFERRED TO SPORT FISH RESTORATION ACCOUNT.**

This amendment would extend through fiscal year 2011 the authorization for Federal gasoline excise taxes from non-business use of small-engine outdoor power equipment to be transferred from the Highway Trust Fund to the Sport Fish Restoration Account of the Aquatic Resources Trust Fund. These funds are authorized to carry out the purposes of the Coastal Wetlands Planning, Protection, and Restoration Act (Title III of Pub. L. 101-646, Nov. 29, 1990, 104 Stat. 4778).

#### **SEC. 9008. TECHNICAL CORRECTION.**

This section would correct a technical error in the 1998 amendments to section 9504(b)(2) of the Trust Fund Code authorizing expenditures from the Sport Fish Restoration Account. It would conform section 9504(b)(2) to the provision in section 9503(c)(5) that small engine fuel tax revenues may be expended only to carry out the purposes of the Coastal Wetlands Planning, Protection, and Restoration Act.

#### **SEC. 9009. TRANSFER BY REGISTERED PIPELINE, VESSEL, OR BARGE REQUIRED FOR FUEL TAX EXEMPTION OF BULK TRANSFERS TO REGISTERED TERMINALS OR REFINERIES; DISPLAY OF REGISTRATION REQUIREMENT.**

Federal excise taxes on motor fuels represent the most significant portion of revenues into the Highway Trust Fund. Fuel tax evasion is responsible for a substantial amount of lost revenue. This provision and the provisions that follow propose changes to the Internal Revenue Code intended to prevent or reduce evasion of highway fuel taxes and to improve the collection process for all highway user taxes.



This provision would facilitate tracking of bulk transfers of taxable fuel by amending the Internal Revenue Code to: require that only fuel transferred by registered pipeline, vessel, or barge would qualify for the fuel tax exemption of bulk transfers to registered terminals or refineries; impose an assessable penalty on persons who fail to register as required; require that anyone required to register for transportation of taxable fuels must display a proof of registration on any vessel or barge used in transporting taxable fuel; and impose a civil penalty for failure to display the proof of registration on the vessel or barge. The penalty for failure to register would be \$1,000 for each day in which an unregistered person engages in an activity for which registration is required, and the penalty for failure to display proof of registration would be \$500. Penalties would increase for additional violations. Joint and several liability would apply for any person or entity willfully participating in a violation of the proposed requirement to register for transportation of taxable fuels.

#### **SEC. 9010. RETURNS FILED ELECTRONICALLY.**

This provision would require any person or entity having 25 or more reportable transactions per month to meet information reporting requirements by filing electronically for fuel tracking purposes. A person or entity required to file a heavy vehicle use tax return who has more than 25 vehicles would also be required to file electronically. The filing format would be determined by the Secretary of the Treasury.

The automated fuel reporting system mandated by Congress in TEA-21 has the ability to provide data to the States to support their fuel tax audit and enforcement efforts. If files are received electronically, States would receive complete destination State data, something they requested when the system was under development, whereas paper filing permits only summary data to be entered into the automated system. Electronic tracking of taxable fuels and taxes paid would make tax fraud and evasion much more difficult.

#### **SEC. 9011. CIVIL PENALTY FOR REFUSAL OF ENTRY.**

This provision would impose an assessable penalty on any refusal to allow inspections related to taxable fuel that are now authorized by section 4083(c). This proposal would enhance the ability of the IRS to enforce Federal fuel taxes.

#### **SEC. 9012. REQUIREMENT OF TAX PAYMENT DECAL; ELIMINATION OF INSTALLMENT PAYMENTS OF HIGHWAY USE TAX.**

This provision would amend the Internal Revenue Code regarding payment of highway use tax on motor vehicles at or above a taxable gross weight of 55,000 pounds to add a requirement that a proof of payment decal/tax certificate be displayed on such vehicles to show that the tax has been paid. The decal, fitted with a bar code, would allow for automatic reading of the truck registration data as envisioned by the Commercial Vehicle Information Systems and Networks (CVISN), and would also be an integral part of the Smart Borders initiatives headed up by the U.S. Customs Service. A civil penalty of \$50 would be imposed for a violation of the display requirement.

This provision would also eliminate the option of paying the heavy vehicle highway use tax in quarterly installments. Installment payments have provided an opportunity for tax evasion by allowing an owner to register a vehicle for the entire tax year after payment of only the first installment of the annual tax.

**SEC. 9013. ADDITIONAL RULES REGARDING INSPECTIONS OF RECORDS.**

This provision would amend the Internal Revenue Code to require that copies of Federal fuel tax records be furnished to State or local fuel tax enforcement officers upon request, whether they are part of the State Revenue Department or of another enforcement agency such as the DOT or the State police. In addition, this provision would require that certain records relating to the highway use tax on vehicles with a taxable gross weight of 55,000 pounds or above be available for inspection by other Federal or State enforcement agencies with responsibilities for such vehicles or taxes. Sharing of information between enforcement agencies increases the number of agents looking for evasion, and improves the opportunity to stop evasion at levels beyond the revenue agencies.