Calendar No. 426

108TH CONGRESS *2d Session*	SENATE	REPORT 108–222

SAFE, ACCOUNTABLE, FLEXIBLE, AND EFFICIENT TRANSPORTATION EQUITY ACT OF 2003

REPORT

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

TO ACCOMPANY

S. 1072

TOGETHER WITH

MINORITY VIEWS

JANUARY 9, 2004.—Ordered to be printed.
Filed under authority of the order of the Senate of December 9, 2003.

U.S. GOVERNMENT PRINTING OFFICE
91–236 WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

one hundred eighth congress

JAMES M. INHOFE, Oklahoma, *Chairman*

JOHN W. WARNER, Virginia
CHRISTOPHER S. BOND, Missouri
GEORGE V. VOINOVICH, Ohio
MICHAEL D. CRAPO, Idaho
LINCOLN CHAFEE, Rhode Island
JOHN CORNYN, Texaa
LISA MURKOWSKI, Alaska
CRAIG THOMAS, Wyoming
WAYNE ALLARD, Colorado

JAMES M. JEFFORDS, Vermont
MAX BAUCUS, Montana
HARRY REID, Nevada
BOB GRAHAM, Florida
JOSEPH I. LIEBERMAN, Connecticut
BARBARA BOXER, California
RON WYDEN, Oregon
THOMAS R. CARPER, Delaware
HILLARY RODHAM CLINTON, New York

ANDREW WHEELER *Majority Staff Director*
KEN CONNOLLY, *Minority Staff Director*

C O N T E N T S

	Page
General statement	1
Background	1
Highway Safety Program	2
Mobility	2
Freight movement	3
Program stewardship and improved project delivery	3
Conclusion	4
Section-by-section analyis	4
Section 1. Short title; table of contents	4
Sec. 2. General definitions	4
Sec 3. Definitions for title 23	4
SUBTITLE A—FUNDING	
Sec. 1101. Authorization of appropriations	5
Sec. 1102. Obligation ceiling	6
Sec. 1103. Apportionments	6
Sec. 1104. Minimun guarantee	7
Sec. 1105. Revenue aligned budget authority (RABA)	7
SUBTITLE B—NEW PROGRAMS	
Sec. 1201. Infrastructure Performance and Maintenance program (IPAM)	8
Sec. 1202. Future of the Surface Transportation System	8
Sec. 1203. Freight transportation gateways; Freight intermodal connections	9
Sec. 1204. Construction of ferry boats and ferry terminal facilities	9
Sec. 1205. Designation of the Daniel Patrick Moynihan Interstate Highway	9
SUBTITLE C—FINANCE	
Sec. 1301. Federal share	10
Sec. 1302. Transfer of highway and transit funds	10
Sec. 1303. Transportation Infrastructure Finance and Innovation Act (TIFIA)	10
Sec. 1304. Facilitation of International Registration Plans and International Fuel Tax Agreements	11
Sec. 1305. Nationla Commission on Future Revenue Sources to support the Highway Trust Fund and finance the needs of the Surface Transportation System	12
Sec. 1306. State infrastructure banks	12
SUBTITLE D—SAFETY	
Sec. 1401. Highway Safety Improvement Program	13
Sec. 1402. Operation Lifesaver	14
Sec. 1403. License suspension	14
Sec. 1404. Bus axle weight exemption	14
Sec. 1405. Safe Routes to School program	14
Sec. 1406. Purchase of equipment	15
Sec. 1407. Workzone safety	15
Sec. 1408. Worker injury prevention and free flow of vehicular traffic	15
SUBTITLE E—ENVIRONMENTAL PLANNING AND REVIEW	
Sec. 1501. Integration of natural resource concerns into State and metropolitan transportation planning	16
Sec. 1502. Consultation between transportation agencies and resource agencies in transportation planning	16
Sec. 1503. Integration of natural resource concerns into transportation project planning	17

Page
Sec. 1504. Public involvement in transportation planning projects 17
Sec. 1505. Project mitigation 18

CHAPTER 2—TRANSPORTATION PROJECT DEVELOPMENT PROCESS

Sec. 1511. Transportation project development process 19
Sec. 1512. Assumption of responsibility for categorical exclusions 20
Sec. 1513. Surface transportation project delivery pilot program 20
Sec. 1514. Regulation 21

CHAPTER 3—MISCELLANEOUS

Sec. 1521. Critical real property acquisition 21
Sec. 1522. Planning Capacity Building Initiative 21

SUBTITLE F—ENVIRONMENT

Sec. 1601. Environmental Restoration and Pollution Abatement; Control of Invasive Plant Species and Establishment of Native Species 22
Sec. 1602. National Scenic Byways Program 22
Sec. 1603. Recreational Trails Program (RTP) 23
Sec. 1604. Exemption of Interstate System 23
Sec. 1605. Standards 24
Sec. 1606. Use of High-Occupancy Vehicle (HOV) Lanes 24
Sec. 1607. Bicycle Transportation and Pedestrian Walkways 25
Sec. 1608. Idling Reduction Facilities in Interstate Rights-of-Way 25
Sec. 1609. Toll Programs 26
Sec. 1610. Federal Reference Method 26
Sec. 1611. Addition of Particulate Matter Areas to CMAQ 27
Sec. 1612. Addition of CMAQ-Eligible Projects 28
Sec. 1613. Improved Interagency Consultation 29
Sec. 1614. Evaluation and Assessment of CMAQ Projects 30
Sec. 1615. Synchronized Planning and Conformity Timelines, Requirements, and Horizon 30
Sec. 1616. Transition to New Air Quality Standards 32
Sec. 1617. Reduced Barriers to Air Quality Improvements 33
Sec. 1618. Air Quality Monitoring Data Influenced by Exceptional Events 34
Sec. 1619. Conforming Amendments 35
Sec. 1620. Highway Stormwater Discharge Mitigation Program 36

SUBTITLE G—OPERATIONS

Sec. 1701. Transportation Systems Management and Operations 37
Sec. 1702. Real-time System Management Information Program 37

SUBTITLE H—FEDERAL-AID STEWARDSHIP

Sec. 1801. Future Interstate System Routes 38
Sec. 1802. Stewardship and Oversight 38
Sec. 1803. Design-Build Contracting 39
Sec. 1804. Program Efficiencies Finance 39
Sec. 1805. Set-Asides for Interstate Discretionary Projects 39
Sec. 1806. Federal Lands Highways Program 40
Sec. 1807. Emergency Relief 41
Sec. 1808. Highway Bridge Program 41
Sec. 1809. Appalachian Development Highway System 41
Sec. 1810. Multistate Corridor Program 41
Sec. 1811. Border Planning, Operations, and Technology and Capacity Program 42
Sec. 1812. Puerto Rico Highway Program 43
Sec. 1813. National Historic Covered Bridge Preservation 43
Sec. 1814. Transportation and Community and System Preservation Pilot Program 43
Sec. 1815. Tribal-State Road Maintenance Agreements 44
Sec. 1816. Forest Highways 44
Sec. 1817. Territorial Highway Program 44
Sec. 1818. Magnetic Levitation Transportation Technology Deployment Program 44
Sec. 1819. Donations and Credits 45
Sec. 1820. Disadvantaged Business Enterprises 45

Page

SUBTITLE I—TECHNICAL CORRECTIONS

Sec. 1901. Repeal or Update of Obsolete Text 45
Sec. 1902. Clarification of Date 45
Sec. 1903. Inclusion of Requirements for Signs Identifying Funding Sources in Title 23 46
Sec. 1904. Inclusion of "Buy America" Requirements in Title 23 46
Sec. 1905. Technical Amendments to Nondiscrimination Section 46

TITLE II—TRANSPORTATION RESEARCH

Sec. 2001. Authorization of Appropriations. 46
Sec. 2002. Obligation Ceiling 48
Sec. 2003. Notice 48

SUBTITLE B—RESEARCH AND TECHNOLOGY

Section 2101. Research and Technology Program 49

SUBCHAPTER I—SURFACE TRANSPORTATION

Subsection 501. Definitions 49
Subsection 502. Surface Transportation Research 49
Subsection 503. Technology Application Program 50
Subsection 504. Training and Education 51
Subsection 505. State Planning and Research 51
Subsection 506. International Highway Transportation Outreach Program 52
Subsection 507. Surface Transportation-Environment Cooperative Research Program 52
Subsection 508. Surface Transportation Research Technology Deployment and Strategic Planning 53
Subsection 509. New Strategic Highway Research Program 53
Subsection 510. University Transportation Centers 53
Subsection 511. Multistate corridor operations and management 54
Sec. 2102. Study of Data Collection and Statistical Analysis 54
Sec. 2103. Centers for Surface Transportation Excellence 55

SUBTITLE C—INTELLIGENT TRANSPORTATION SYSTEM RESEARCH

Sec. 2201. Intelligent Transportation System Research and Technical Assistance Program 55
Sec. 5501. Short Title 55
Sec. 5502. Goals and Purposes 55
Subsection 521. Findings 55
Subsection 522. Goals and Purposes 56
Subsection 523. Definitions 56
Subsection 524. General Authorities and Requirements 56
Subsection 525. National ITS Program Plan 57
Subsection 526. National ITS Architecture and Standards 57
Subsection 527. Research and Development 57
Subsection 528. Commercial Vehicle Intelligent Transportation System Infrastructure Program 57
Subsection 529. Use of Funds 58

TITLE III—INTERMODAL PASSENGER FACILITIES

Sec. 3001. Intermodal Passenger Facilities 58

TITLE IV—FEDERAL AID IN SPORT FISH RESTORATION ACT AMENDMENTS

New title provisions 58

Hearings 60
Legislative history 88
Rollcall votes 88
Regulary impact statement 90
Mandates assessment 91
Cost of legislation 91

Page
Minority views of Senator Graham 92
Changes in existing law 108

Calendar No. 426

108TH CONGRESS, 2d Session | SENATE | REPORT 108–222

SAFE, ACCOUNTABLE, FLEXIBLE, AND EFFICIENT TRANSPORTATION EQUITY ACT OF 2003

JANUARY 9, 2004.—Ordered to be printed.

Filed under authority of the order of the Senate of December 9, 2003.

Mr. INHOFE, from the Committee on Environment and Public Works, submitted the following

REPORT

together with

MINORITY VIEWS

[to accompany S. 1072]

The Committee on Environment and Public Works, to which was referred the bill (S. 1072) to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

GENERAL STATEMENT

Background

The Transportation Equity Act for the 21st Century was enacted June 9, 1998, as Public Law 105–178. It authorized the Federal surface transportation programs for highways, highway safety, and transit for the 6-year period between 1998–2003. The TEA–21 Restoration Act, enacted July 22, 1998, provided technical corrections to the original law.

TEA–21 succeeded the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), which was landmark authorizing legis-

91–236

lation for surface transportation. S. 1072, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA) strives to combine the legacies of ISTEA and TEA–21 with new initiatives to meet greater challenges of improving mobility and safety, while protecting and enhancing human and natural environments.

The committee began the reauthorization process in the 107th Congress by holding a series of hearings during which we heard from over 100 witnesses and reviewed over 1,500 pages of testimony. A common theme throughout all the hearings was that TEA–21 worked. Accordingly, the committee did not seek to make wholesale changes to the existing program. The committee has also retained the basic formula factors for program apportionments.

Based on the hearing testimony, the committee did make certain modifications and enhancements to TEA–21 specific areas.

Highway Safety Improvement Program

SAFETEA creates a new core Highway Safety Improvement Program that is intended to raise safety consciousness and provide funding support to reduce highway injuries and fatalities. Under current law, States are required to use 10 percent of their Surface Transportation Program (STP) formula dollars for safety programs. This bill eliminates the 10 percent set-aside from STP and instead funds a new safety core program. The existing STP formula is used to distribute the new safety program dollars to the States.

States are required to develop a comprehensive highway safety plan in consultation with highway safety officials, local law enforcement officials, and others to identify highway safety problems which need to be addressed. The plan is to be the guiding document in allocating funds under the Highway Safety Improvement Program.

All activities previously eligible under the Hazard Elimination Program (section 152) are eligible under the new safety program. Additional activities, related to workzone safety, such as traffic enforcement activities and installation of safety barriers, are added.

SAFETEA maintains a set-aside for railroad grade crossings and increases it to $200 million per year. The bill establishes a new Safe Routes to School Program funded at $70 million per year.

Mobility

Despite the historic increase in highways investment following enactment of TEA–21, operational performance has declined. For example, a trip that would have taken 25 minutes during congested periods in 1987 now takes an additional 5 minutes. While increased capital investment is one way to address this issue, we must also consider ways to better manage the existing system. This bill proposes a national goal of real-time traffic information availability for the entire nation. This goal, while ambitious, is an important one because we need to reorient our thinking to recognize the importance of allowing users of the system to utilize the system more efficiently. Specifically, by providing travelers with useful information, it will enable them to select the right travel alternative.

Mobility is a problem in both urban and rural areas. SAFETEA gives States and localities improved "tools" to address these prob-

lems. For example, States are permitted and encouraged to consider innovative techniques such as HOT lanes (single occupants pay a toll to use the High Occupancy Lanes) and variable toll pricing (uses peak hour pricing to control congestion). The bill establishes an Intermodal Passenger Facilities Program, adopted from the Administration's proposal, to improve connections between various modes of transportation. Current surface transportation programs fail to address the importance of intercity bus service. In many cases, this type of service is the only link rural communities have with larger urban areas. This bill encourages the development of an integrated system of public transportation facilities through intercity bus facility grants. The bill also builds upon the existing Interstate Reconstruction and Rehabilitation Pilot Program by adding a variable toll pricing provision. This will give communities the option to use peak hour pricing on congested facilities in order to increase mobility and improve air quality.

Although operational performance may have declined, the overall physical condition of the nation's highway and bridge infrastructure has improved. According to the 2002 Conditions and Performance report to Congress, the percentage of highway mileage with "acceptable" ride quality rose from 82.5 percent in 1993 to 86 percent in 2000. The data clearly demonstrates that increased investment results in better infrastructure. This bill follows the example of TEA–21 and substantially increases the amount of dollars available for States and communities to improve their transportation facilities.

Freight Movement

Freight movement in America is expected to grow dramatically in both volume and value over the coming decades. With increased international trade and movement toward a "just-in-time" economy, freight shipping will take on heightened importance. Throughout the reauthorization hearings, the committee heard concerns about inadequate facilities, insufficient capacity and inefficient connections.

SAFETEA calls upon each State to designate freight coordinators to ensure that freight needs are considered during the planning process. Efficiency and capacity at both borders and along major, multi-state trade corridors will be improved by modifications to TEA–21. The committee has also addressed challenges in the area of intermodal connectivity by creating a Gateways initiative, which includes a funding set-aside for completion of "last mile" connections from the National Highway System core program. Inadequate connections between port terminals and highways or rail facilities and highways are a major factor in freight congestion. Although the bill does not provide for separate funding for freight connections, it does require State to consider freight infrastructure issues.

Program Stewardship and Improved Project Delivery

While the last 10 years has seen improvements in our national surface transportation system, in some important cases this progress has been too slow and costly. The committee heard testimony on the potential for waste and inefficiency in projects management. It also heard testimony about the time consuming process

of project delivery, from right-of-way acquisition and utility relocation to permitting and environmental documentation. The committee has responded with measures designed to improve both overall stewardship and project delivery .

SAFETEA strengthens stewardship of highway trust fund dollars by requiring project management plans and annual financial plans for Federal-aid projects above $1 billion and requiring annual financial plans for all projects receiving $100 million or more in Federal-aid. As the highway system ages, extensive reconstruction will be necessary. Many of these projects may be very large in scope and therefore will require careful oversight.

SAFETEA addresses several environmental issues. The bill contains provisions to ease the transition for areas designated nonattainment under the new air quality standards. The transportation conformity process is changed to better align it with air quality planning. SAFETEA provides tools to assist new nonattainment areas in determining conformity. The bill also makes progress in streamlining the project delivery process. It encourages communities and project sponsors to consider environmental concerns earlier in the process and provides tools to reduce or eliminate unnecessary delays during the environmental review stage.

Conclusion

The link between a robust economy and a strong transportation infrastructure is undeniable. The movement of people and goods is one of the foremost links in the creation of jobs and opportunities for Americans. The Department of Transportation estimates that every $1 billion in new Federal investment creates more than 47,500 jobs. Accordingly, our comprehensive 6-year bill at $255 billion will create approximately

2 million new jobs. The committee is committed to the enactment of this bill, which is a crucial step in the continuing economic recovery.

SECTION-BY-SECTION ANALYSIS

TITLE I—FEDERAL-AID HIGHWAYS

Section 1. Short Title; Table of Contents

This section designates the title of the bill as the "Safe Accountable, Flexible, and Efficient Transportation Equity Act of 2003," and lists the table of contents

Sec. 2. General Definitions

This section defines the terms "Department" as Department of Transportation and "Secretary" as the Secretary of Transportation for the purposes of this Act.

Sec. 3. Definitions for Title 23

This section amends Section 101 of title 23, United States Code to include various refinements to existing definitions. New definitions for "recreation roads" and "public forest service roads" are added to reflect new classes of Federal lands highways and changes to the definitions of "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. Definitions for "freight transportation gateway"; "highway safety improvement project"; "territorial highway system" and "transportation systems management and operations" are added.

SUBTITLE A—FUNDING

Sec. 1101. Authorization of Appropriations

SUMMARY

This section authorizes sums out of the Highway Trust Fund (other than Mass Transit Account) for the Interstate Maintenance Program, National Highway System, Bridge Program, Surface Transportation Program, Congestion Mitigation and Air Quality Improvement Program, Highway Safety Improvement Program, Appalachian Development Highway System Program, Recreational Trails Program, Federal Lands Program, Multi-State Corridor Planning Program, Border, Planning, Operations and Technology Program, National Scenic Byways Program, Infrastructure Performance and Maintenance Program, Construction of Ferry Boats and Ferry Terminal Facilities, and the Puerto Rico Highway Program.

DISCUSSION

The authorizing amounts to be appropriated to each program are as follows:

Interstate Maintenance	$5,500,000,000 for fiscal year 2004 $6,300,000,000 for fiscal year 2005 $6,550,000,000 for fiscal years 2006, 2007, 2008, and for fiscal year 2009
National Highway System	$6,650,000,000 for fiscal year 2004 $7,650,000,000 for fiscal year 2005 $7,950,000,000 for fiscal years 2006, 2007, 2008, and 2009
Highway Bridge	$4,700,000,000 for fiscal year 2004 $5,400,000,000 for fiscal year 2005 $5,600,000,000 for fiscal years 2006, 2007, 2008, and 2009
Surface Transportation	$6,950,000,000 for fiscal year 2004 $7,950,000,000 for fiscal year 2005 $8,250,000,000 for fiscal years 2006, 2007, 2008, and 2009
Congestion Mitigation and Air Quality Improvement	$1,900,000,000 for fiscal year 2004 $2,150,000,000 for fiscal year 2005 $2,225,000,000 for fiscal years 2006, 2007, 2008, and 2009
Highway Safety Improvement	$1,200,000,000 for fiscal year 2004 $1,300,000,000 for fiscal year 2005 $1,350,000,000 for fiscal years 2006, 2007, 2008, and 2009
Appalachian Development Highway System	$590,000,000 for fiscal years 2004 through 2009
Recreational Trails	$60,000,000 for fiscal years 2004 through 2009

Federal Lands Highway Indian Reservation Roads	$300,000,000 for fiscal year 2004
	$325,000,000 for fiscal year 2005
	$350,000,000 for fiscal year 2006
	$375,000,000 for fiscal year 2007
	$400,000,000 for fiscal year 2008
	$425,000,000 for fiscal year 2009
Recreation Roads	$50,000,000 for each fiscal years 2004 through 2009
Park Roads and Parkways	$300,000,000 for fiscal year 2004
	$310,000,000 for fiscal year 2005
	$320,000,000 for fiscal years 2006 through 2009
Refuge Roads	$30,000,000 for fiscal years 2004 through 2009
Public Lands Highways	$300,000,000 for fiscal years 2004 through 2009
Safety	$40,000,000 for fiscal years 2004 through 2009
Multi-State Corridor Planning	$112,500,000 for fiscal year 2004
	$135,000,000 for fiscal year 2005
	$157,500,000 for fiscal year 2006
	$180,000,000 for fiscal years 2007
	$202,500,000 for fiscal year 2008
	$225,000,000 for fiscal year 2009.
Border Planning, Operations, and Technology	$112,500,000 for fiscal year 2004
	$135,000,000 for fiscal year 2005
	$157,500,000 for fiscal year 2006
	$180,000,000 for fiscal year 2007
	$202,500,000 for fiscal year 2008
	$225,000,000 for fiscal year 2009
National Scenic Byways	$34,000,000 for fiscal year 2004
	$35,000,000 for fiscal year 2005
	$36,000,000 for fiscal year 2006
	$37,000,000 for fiscal year 2007
	$39,000,000 for fiscal years 2008 and 2009
Infrastructure Performance and Maintenance	$2,500,000,000 for fiscal years 2004, 2005, and 2006
	$2,000,000,000 for fiscal years 2007 and 2008
	$500,000,000 for fiscal year 2009.
Construction of Ferry Boats and Terminal Facilities	$38,000,000 for fiscal years 2004 through 2009
Puerto Rico Highway	$140,000,000 for fiscal years 2004
	$145,000,000 for fiscal year 2005
	$149,000,000 for fiscal year 2006
	$154,000,000 for fiscal year 2007
	$160,000,000 for fiscal year 2008
	$163,000,000 for fiscal year 2009

Sec. 1102. Obligation Ceiling

[RESERVED]

Sec. 1103. Apportionments

SUMMARY

This section makes amendments to current apportionments. It authorizes the appropriation of funds for the administrative expenses of the Federal Highway Administration and describes the use of these funds.

DISCUSSION

This section amends the amounts authorized for administrative expenses, for specified programs to:

$450,000,000 for fiscal year 2004;
$465,000,000 for fiscal year 2005;
$480,000,000 for fiscal year 2006;
$495,000,000 for fiscal year 2007;

$510,000,000 for fiscal year 2008; and
$525,000,000 for fiscal year 2009.

Funds authorized in this section shall be used for the Federal-aid highway program and programs authorized under chapter 2 of title 23, U.S.C.. Such sums as the Secretary determines to be appropriate shall be transferred to the Appalachian Regional Commission for administrative activities associated with the Appalachian Highway Development System.

The bill increases the set-aside for metropolitan planning to 1.5 percent from the same programs as under TEA–21, and additionally, the new Highway Safety Improvement Program and Equity Bonus Program. An increase in funding for metropolitan planning is required as the 2000 Census establishes 46 new Metropolitan Planning Organizations (MPOs) throughout the country which will now be eligible for the Federal planning funding. This bill directs, each MPO to assume the responsibility for carrying out specific, costly and detailed Federal analysis as required under NEPA, air quality conformity, long range planning, Transportation Improvement Program planning, transportation modeling, operations, and public involvement. This bill further enhances metropolitan planning for habitat plan development, freight movement, transportation security, deployment of Intelligent Transportation Systems (ITS) including operating and managing traffic centers and incident management programs, and interacting with emergency management officials regarding homeland security issues.

Sec. 1104. Minimum Guarantee

SUMMARY

This section replaces the Minimum Guarantee Program under section 105 of title 23, United States Code.

DISCUSSION

The Secretary shall ensure that the percentages of apportionments of each State is sufficient to ensure that no State's percentage return from the Highway Trust Fund is less than 90.5 percent in each of the fiscal years 2004–2009. The rate of return shall include from each State, the total apportionments made for the fiscal year for the Interstate Maintenance Program, the National Highway System Program, the Highway Bridge Program, the Surface Transportation Program, the Congestion Mitigation and Air Quality Improvement Program, the Highway Safety Improvement Program, the Appalachian Development Highway System Program, the Recreational Trails Program, the Infrastructure Performance and Maintenance Program, the Metropolitan Planning Program, and the Equity Bonus Program.

Sec. 1105. Revenue Aligned Budget Authority (RABA)

SUMMARY

This section changes the calculation of Revenue Aligned Budget Authority under section 110 of title 23, U.S.C.

DISCUSSION

A new method of determining RABA is established in this section. This provision amends section 110 of title 23, to continue the RABA provision during fiscal years 2006–2009. It also amends 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.

SUBTITLE B—NEW PROGRAMS

Sec. 1201. Infrastructure Performance and Maintenance Program (IPAM)

SUMMARY

This discretionary program seeks to promote projects that result in immediate benefits for the highway system condition and performance while avoiding long-term commitments of funds and is a way to aid in spending down Highway Trust Fund balances.

DISCUSSION

For activities under this section, States may obligate funds allocated to them under the following program categories: Interstate Maintenance, National Highway System, Surface Transportation Program, Highway Safety Improvement Program, Congestion Mitigation and Air Quality Improvement, and the Highway Bridge Program. Eligible activities include the preservation, maintenance, or improvement of existing highway infrastructure elements or operational improvements at points of recurring highway congestion.

The intent of the IPAM program is to fund ready-to-go projects a State may undertake and complete within a short timeframe. A State must obligate IPAM funds within 6 months of the allocation or the Secretary shall withdraw the funds and obligation authority and redistribute the funds and authority to another State with the ability to obligate additional IPAM funds before the end of the fiscal year or they shall lapse.

Sec. 1202. Future of the Surface Transportation System

SUMMARY

The Secretary is to conduct a comprehensive study of future transportation needs of our surface transportation system and its connections to freight facilities and other modes of transportation.

DISCUSSION

Section 101 of title 23 is amended by changing the declaration of policy to include additional language to support the transportation needs of the 21st century. The Secretary shall conduct a complete investigation and study of the current conditions and the future needs of the surface transportation system. This section describes the specific issues to be addressed and in the study and requires that the study be made available to the Committee on Environment and Public Works of the Senate and the Committee on

Transportation and Infrastructure of the House of Representatives within 4 years.

Sec. 1203. Freight Transportation Gateways; Freight Intermodal Connections

SUMMARY

This program promotes intermodal improvements for freight movement into and through nationally or regionally significant trade transport gateways, ports, and hubs, including improvements to intermodal connectors.

DISCUSSION

States shall create a freight transportation coordinator position to coordinate public and private collaboration in developing regional solutions to freight transportation and freight gateway problems. States are directed to ensure that intermodal freight transportation needs are integrated into the project development process, including transportation planning.

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 encourage adoption of new financing strategies to leverage State, local, and private investment in freight transportation gateways; and (3) to increase economic efficiency by facilitating the movement of goods. This section also makes intermodal freight projects eligible for NHS and STP and directs each State to set-aside not less than 2 percent of its annual NHS apportionment to carry out this section.

Sec. 1204. Construction of Ferry Boats and Ferry Terminal Facilities

SUMMARY

The Secretary shall carry out a program for the construction of ferry boats and ferry facilities in accordance with section 129(c).

DISCUSSION

SAFETEA continues the authorization of $38,000,000 for each of fiscal years 2004 through 2009 for ferry boats and ferry terminal facilities. In addition, the Secretary shall set-aside $20,000,000 from the National Highway System for the construction or refurbishment of ferry boats and ferry terminals, the acquisition of zero or low-emission boats and the construction of approaches to facilities located in the marine highway systems that are part of the Nation Highway System (i.e., "last mile" connections).

Sec. 1205. Designation of Daniel Patrick Moynihan Interstate Highway

SUMMARY

This section designates Interstate Highway 86 in the State of New York as the Daniel Patrick Moynihan Interstate Highway.

SUBTITLE C—FINANCE

Sec. 1301. Federal Share

SUMMARY

This section amends section 120(b) of title 23, U.S.C., which determines the increased Federal share applied to certain Federal-aid highway projects. The sliding scale established in section 120(b) of title 23, U.S.C. is modified to simplify the calculation used to determine the rates for each State. The sliding scale allows those States with higher percentages of Federal lands to increase their Federal share derived from a specific formula. States may voluntarily increase their share on Federal-aid projects, which may in effect decrease the Federal share.

DISCUSSION

The amended provision directs the Department to create a table using the criteria currently listed in 120 (a) and (b) with the exception that States are no longer required to have an agreement. Use of this table by States with higher percentages of Federal lands, allows those States the highest Federal share possible and gives them maximum flexibility in determining the appropriate Federal share.

Sec. 1302. Transfer of Highway and Transit Funds

SUMMARY

This section clarifies and authorizes the transferability of funds from the Highway Trust Fund.

DISCUSSION

This provision clarifies 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 title 23 assistance.

This section also allows funds derived from the HTF to be transferred, at the request of a State, to another State or States or to a Federal agency provided that they are expended on title 23 eligible projects.

An equal amount of obligation authority is transferred with funds transferred from one State to another State. Funds may only be used for the same purpose and in the same manner for which they were authorized.

Sec. 1303. Transportation Infrastructure Finance and Innovation Act (TIFIA) Amendments

SUMMARY

This section makes amendments to the TIFIA program under sections 181 through 189 of title 23, U.S.C.

DISCUSSION

The change to section 181(8)(D), as redesignated, expands the definition of freight-related projects eligible for TIFIA assistance.

The provision also allows for a group of such related projects to be eligible, each of which individually might not meet the threshold requirements to apply for TIFIA credit assistance.

The change to section 182(a)(1) clarifies the provision regarding statewide and metropolitan planning requirements. The existing provision contained language that could be misinterpreted to constrain TIFIA assistance in the case of a project with a construction timetable that extended beyond the typical 3-year approved State Transportation Improvement Program (STIP).

The changes to section 182(a)(3) lowers the threshold cost for eligible projects to $50 million and allows a project to be eligible when project costs are anticipated to equal or exceed 20 percent of the Federal highway funds apportioned to that State in the most recently completed fiscal year.

The change to section 183(a)(4) codifies current regulation requiring a project's senior obligations to receive an investment-grade rating in order to execute a secured loan agreement.

The changes to section 184(b)(4) conform the interest rate setting mechanism for the line of credit with that for secured loans. This change allows the Department to execute both agreements on the same date at the same interest rate if a borrower utilizes both a secured loan and a line of credit for the same project.

Section 188(a)(2) allows all collected fees to be available to the Secretary without further appropriation to carry out this section.

The Administrative costs authorized in 188(a)(3) for this section are not more than $2,000,000 for each fiscal year 2004 through 2009.

Sec. 1304. Facilitation of International Registration Plans and International Fuel Tax Agreements

SUMMARY

This section allows the Secretary to provide assistance to States to help with administrative needs resulting from their service as a home jurisdiction for motor carriers from Mexico.

DISCUSSION

The International Fuel Tax Agreement (IFTA) and the International Regional Plan (IRP) are agreements various US States and Canadian Provinces have 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 the jurisdiction responsible for collecting fuel use taxes and fees. Since the implementation of NAFTA, the Mexican government imposes and collects fuel taxes and registration fees differently from the US and Canada. The National Governors Association is currently evaluating Mexico and its participation in the IFTA and IRP programs. In the interim, Mexican motor carriers may use individual US States or Canadian Provinces as their home jurisdiction.

Sec. 1305. National Commission on Future Revenue Sources to Support the Highway Trust Fund and Finance the Needs of the Surface Transportation System

SUMMARY

This section establishes a National Commission to conduct a comprehensive study of the alternatives to replace or supplement the fuel tax as the principal sources to support the Highway Trust Fund and suggest new or alterative sources of revenue to fund the needs of the surface transportation system over at least the next 30 years.

DISCUSSION

The commission is required to provide in-depth information on the timing and magnitude of potential revenue needs and factors that must be considered in implementing any policy alternatives. The study shall examine the following factors: 1) the affects of each major tax that goes into the HTF; 2) the ability to increase taxes if there are revenue shortfalls; and 3) potential new sources of revenue to support highway, transit, and other surface transportation programs.

Sec. 1306. State Infrastructure Banks

SUMMARY

This section amends 1511(b)(1)(A) of TEA–21, which named the following States: Missouri, Rhode Island, California, and Florida. This change extends the program to any State that seeks to establish a State infrastructure bank.

DISCUSSION

SAFETEA reauthorizes the State Infrastructure Bank (SIB) program under which all States are authorized to enter into cooperative agreements with the Secretary to set up infrastructure revolving funds eligible to be capitalized with Federal transportation funds authorized for the fiscal year 2004–2009 period.

The SIB program gives States the capacity to increase the efficiency of their transportation investment and significantly leverage Federal resources by attracting non-Federal public and private investment. The program provides greater flexibility to the States by allowing other types of project assistance in addition to the traditional reimbursable grant.

SIBs provide various forms of non-grant assistance to eligible projects, including at or below-market rate subordinate loans, interest rate buy-downs on third party loans, and guarantees and other forms of credit enhancement. Any debt that the SIB issues or guarantees must be of investment grade caliber.

SUBTITLE D—SAFETY

Sec. 1401. Highway Safety Improvement Program

SUMMARY

This program authorizes a new core Federal-aid funding program for the Highway Safety Improvement Program (HSIP) in section 148 of title 23.

DISCUSSION

The committee heard compelling testimony that further progress was needed to protect the safety of the traveling public. While the rate of highway fatalities has decreased in recent years, the number has held steady at nearly 42,000 per year. In response, the committee has elected to create its only new core program, the Highway Safety Improvement Program, and apportion funds to the States for the new program. Recognizing that needs and circumstances vary in each State, the committee has sought to provide flexibility to the States on how the new program funds are spent. To ensure that such flexibility is well applied, the committee will require each State to develop a safety plan and restrict spending under the program to projects or activities arising from that plan.

Section 133 of title 23, is amended by eliminating the current provision that requires States to set-aside a minimum of 10 percent of Surface Transportation Program funds for safety programs. Section 148 is subject to three set-asides: 1) $200,000,000 for the installation of protective devices and elimination of hazards at railway-highway crossings; 2) $70,000,000 for the Safe Routes to Schools program under section 150 of title 23; and 3) $600,000 for Operation Lifesaver.

Section 1401 eliminates the Hazard Elimination Program under section 152 of title 23, and incorporates it into 23 U.S.C. 148, the new HSIP. Additional categories eligible for funding under this section have been added to what is currently eligible under subsection (f) and (g) of section 152, title 23.

The HSIP directs State transportation departments to establish and implement a State strategic highway safety plan in their State. After a transition period, in order to receive funds for this program, States must have a process in place to analyze highway safety problems and opportunities and to produce strategies to mitigate identified safety problems.

States that have developed a strategic highway safety plan are also permitted to use up to 25 percent of their section 148 funds on safety projects carried out under any other section of title 23 as long as the project is consistent with the State's strategic highway safety plan.

The development of a strategic highway safety plan does not require changes in existing planning processes, plans, or programs of other State transportation or highway safety agencies.

Sec. 1402. Operation Lifesaver

SUMMARY

This section increases the funding level for Operation Lifesaver from $500,000 to $600,000 for each fiscal year and moves the source of funding from the Surface Transportation Program to section 148, the Highway Safety Improvement Program.

Sec. 1403. License Suspension

SUMMARY

Section 164(a)(3) of title 23 is amended by inserting a new definition for license suspension.

DISCUSSION

Safety advocates have found that repeat offenders, who have had their license suspended, will often illegally drive during expended periods of license suspension. Upon recommendation of safety advocates, the committee has amended the definition of license suspension to assist States in addressing this problem.

The term license suspension will now mean the suspension of all driving privileges of an individual for the duration of the suspension period; or the combination of suspension of all driving privileges of an individual for the first 90 days of the suspension period, followed by reinstatement of limited driving privileges only when the individual operates a motor vehicle equipped with an ignition interlock system or other device approved by the Secretary during the remainder of the suspension period.

Sec. 1404. Bus Axle Weight Exemption

SUMMARY

This section amends section 127 of title 23, relating to axle weight limitations for vehicles using the Interstate System.

DISCUSSION

This section amends section 127 of title 23 to exempt any over-the-road bus (as defined in section 301 of the Americans With Disabilities Act of 1990) or any vehicle that is regularly and exclusively used as an intrastate public agency transit passenger bus using the National System of Interstate and Defense Highways from the maximum gross weight limitations imposed by any State.

Sec. 1405. Safe Routes to Schools Program

SUMMARY

This section creates a new Safe Routes to Schools Program, section 150 of title 23. The Secretary shall establish and carry out a safe routes to schools program for the benefit of children who walk and bicycle to school.

DISCUSSION

Before apportioning amounts to carry out section 148 for a fiscal year, the Secretary shall set-aside $70,000,000 to carry out this sec-

tion. The Secretary shall distribute these funds using the formula established in section 148. The purposes of this program shall be to enable and to encourage children to walk and bicycle to school, to encourage a healthy and active lifestyle by making walking and bicycling to school safer and more appealing transportation alternatives, and to facilitate the planning, development, and implementation of projects and activities that will improve safety in the vicinity (within two miles) of primary and secondary schools.

Sec. 1406. Purchases of Equipment

SUMMARY

Section 152 of title 23 is amended to require that States or other entities carrying out a project funded under this section, analyze the savings associated with purchasing versus renting equipment. This section applies to any equipment priced in excess of $75,000 and aerial work platforms in excess of $25,000.

Sec. 1407. Workzone Safety

SUMMARY

This section attempts to minimize injuries and fatalities in workzones by imposing insurance requirements and requiring the use of ITS technologies and safety budgeting.

DISCUSSION

Section 358(b) of the National Highway System Designation Act of 1995 is amended to direct the Secretary to further encourage safety measures on federally assisted projects above a specified cost threshold. This section also directs the Secretary to encourage the letting of contracts with contractors that carry general liability insurance in an amount not less than $15,000,000. Projects costing more than $15,000,000 are also required to include continuously monitored workzone intelligent transportation systems. All federally funded projects must also fully fund at least 5 percent of the project costs for workzone safety and temporary traffic control measures.

The committee is concerned about the growing number of facilities and injuries in roadway construction workzones. In an effort to help reduce this clear public problem, the committee encourages the use of "Unit-Bid Pricing" in Federal-aid highway contracts for costs related to motorist and roadway construction worker safety, including installation and maintenance of traffic control devices, utilization of law enforcement personnel, and the creation of positive separation between workers and motorists.

Sec. 1408. Worker Injury Prevention and Free Flow of Vehicular Traffic

SUMMARY

This section directs the Secretary to promulgate regulations requiring workers near a Federal-aid highway to wear high-visibility clothing, and to require any other worker-safety measures that the

Secretary deems necessary to minimize worker injuries and maintain the free flow of vehicular traffic.

SUBTITLE E—ENVIRONMENTAL PLANNING AND REVIEW

Chapter 1 Transportation Planning

Sec. 1501. Integration of Natural Resource Concerns Into State and Metropolitan Transportation Planning

SUMMARY

This section amends 23 U.S.C. 134(f) and 135(c) to add factors that may be considered during the transportation planning process. It also gives States and metropolitan planning organizations (MPOs) the flexibility to determine, after soliciting and considering comment from the public, which of the specific factors are most appropriate for the State or metropolitan area to consider. Current language in the statute that bars court review of failure to consider specified planning factors is retained.

DISCUSSION

Current law requires the planning process to provide for consideration of projects and strategies that will, among other things, protect and enhance the environment and improve the quality of life. The items added by section 1501 provide planners with more direction as to what those concepts mean, but do not constitute a checklist with every item requiring consideration by every State and MPO. Instead, the legislation allows each State and MPO to decide which specific factors are appropriate for consideration. Early identification of potential environmental concerns may help reduce or avoid delays during environmental review. The Secretary is given no authority to review, for purposes of planning certification, the determination of appropriate factors made by a State or MPO.

Sec. 1502. Consultation Between Transportation Agencies and Resource Agencies in Transportation Planning

SUMMARY

This section amends 23 U.S.C. 134(g) and 135(e) to require MPOs and States to consult with various other agencies when developing the long range transportation plan. Consultation shall include comparison of the transportation plan to conservation plans or maps and inventories of natural or historic resources (if such plans, maps or inventories are available) or consideration of areas where wildlife crossing structures may be needed. The section also requires that the long range plan include a discussion of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetlands and other environmental functions, including areas that may have the greatest potential to restore and maintain the habitat types and hydrological and environmental function affected by the plan.

DISCUSSION

The requirement for transportation planners to consult with appropriate resource agencies to compare transportation plans with available State conservation plans or maps and available inventories of natural or historic resources, as well as to identify areas where wildlife crossing structures may be needed, will help planners to identify and potentially avoid or minimize impacts of transportation projects on these resources and thereby facilitate more efficient environmental reviews of individual projects. However, for various reasons including financial constraints, State conservation plans or maps or inventories of natural or historic resources do not exist in many areas. This legislation does not require the creation of such plans, maps, or inventories. Consideration of areas where wildlife crossing structures may be needed is required only with respect to transportation programs and strategies for the future. A review of the current infrastructure is not required. The discussion of potential mitigation activities and areas in which to carry out those activities is intended to encourage States to think strategically, particularly for habitat and wetlands mitigation. The level of detail of this discussion should correspond to the level of detail contained in the rest of the plan. For example, a conceptual transportation plan may, but is not required to, include specific size or location details that would generally be determined during the environmental review stage.

Sec. 1503. Integration of Natural Resource Concerns Into Transportation Project Planning

SUMMARY

This section amends 23 U.S.C. 109(c) to direct the Secretary to consider two documents regarding context sensitive design when developing criteria for project design. The current provision for consideration of "A Policy on Geometric Design of Highways and Streets" is retained.

DISCUSSION

Context sensitive design involves consideration of the environmental context of a project and encourages design that minimizes impacts on the project's surroundings. Adding context sensitive design principles to the current design criteria will give transportation officials the flexibility to adjust to the characteristics of each specific location while still ensuring sound engineering and safety measures.

Sec. 1504. Public Involvement in Transportation Planning and Projects

SUMMARY

This section amends 23 U.S.C. 134(g) and 135(e) to provide that States and MPOs improve public involvement in the planning process. To the maximum extent practicable, States and MPOs shall hold any public meetings at convenient and accessible locations and times, employ visualization techniques, and provide for publication

of publicly available planning materials in electronically accessible formats, such as the worldwide web.

DISCUSSION

Use of advancing technology to publish plans and better articulate potential benefits and impacts of transportation plans will improve community awareness during the planning process. Early identification of community concerns may help reduce or avoid delays during the environmental review stage. MPOs, particularly small MPOs, and States have limited resources to apply toward meeting numerous planning requirements. Therefore, each MPO and State should use its own discretion in allocating resources for improved utilization of technology.

Sec. 1505. Project Mitigation

SUMMARY

This section amends chapter I of title 23, U.S.C., to allow States to establish habitat, streams, and wetlands mitigation funds for efforts related to those activities. States are allowed to deposit Surface Transportation Program and National Highway System dollars into the funds. States may use the funds for habitat, streams, or wetlands mitigation related to a project or projects funded under title 23. In selecting sites for mitigation efforts, States should give preference to sites with the greatest potential to restore and preserve habitat and conserve biodiversity.

DISCUSSION

Federal and State environmental laws may often require habitat, stream or wetland mitigation to compensate for adverse environmental impacts that may result from transportation projects. For example: 1) compliance with the Endangered Species Act may require habitat mitigation as a reasonable and prudent measure necessary to minimize the impact on listed endangered or threatened species; 2) compliance with the Clean Water Act may require stream mitigation in order to obtain water quality certification from the State under Section 401; 3) section 404 of the Clean Water Act requires permits for the discharge of dredged or fill material into navigable waters, which may require mitigation of wetlands.

The State Mitigation Fund is a planning and project management tool available to States to provide additional flexibility and certainty in meeting mitigation requirements mandated by other environmental laws. In addition, States may use the mitigation funds to undertake larger mitigation efforts based on the total impacts of multiple projects rather than project by project mitigation, enabling States to more effectively plan for and provide the mitigation that is or likely will be required for transportation projects under other environmental laws.

CHAPTER 2—TRANSPORTATION PROJECT DEVELOPMENT PROCESS

Sec. 1511. Transportation Project Development Process

SUMMARY

Section 1511, subsection (a), creates a new section 326 of title 23, U.S.C., which authorizes the use of and sets forth a process for agencies to prepare environmental review documents, studies, approvals, and permits required by Federal law for approval of a transportation project.

Section 326(a) defines, for purposes of the section, the terms agency, environmental impact statement, environmental review process, project, project sponsor, and State transportation department.

Subsection (b) establishes the Department as the lead agency and allows the process laid out in this section to be used by the lead agency either at the request of the project sponsor or with the concurrence of the project sponsor; (c) lists the responsibilities of the lead agency; and (d) sets out the responsibilities of the cooperating agencies.

Section 326(e) directs the lead agency to develop a coordination plan, which shall include a workplan and a schedule. Default deadlines are included in the case of the collaborative process failing to establish comment deadlines. Subsections (f) and (g) describe the process for developing the project purpose and need and alternatives, respectively. Current standards are left unchanged, but opportunity for public comment is specifically provided.

Section 326(h) sets out a process for resolving inter agency disputes that arise during the environmental review process; (i) directs the Secretary to establish a program to measure and report progress toward improving and expediting the planning and National Environmental Policy Act (NEPA) review process; and (j) continues authority for the Secretary to provide funds to other agencies to assist them in carrying out the environmental review process for a project.

DISCUSSION

Section 1309 of TEA–21 directed the Secretary of Transportation to "develop and implement a coordinated environmental review process for highway construction and mass transit projects." To date, regulations implementing section 1309 have not been issued. Section 1511 of this legislation replaces section 1309 of TEA–21 and is intended to facilitate faster and more efficient completion of transportation projects without diminishing environmental protections contained in law.

The process established is for complying with current environmental laws, it does not amend or override any current law. As in TEA–21, agencies are encouraged to conduct their reviews, analyses, and studies concurrently with the review required under the NEPA. Under this process, interested parties will be involved in the earlier stages of the review required under the NEPA.

The Department, as the lead agency, will be responsible for identifying and inviting cooperating agencies; developing an agency coordination plan, including a workplan and a schedule; and deter-

mining the purpose and need of a project and the alternatives to be considered. Whereas current practice involves cooperating agency designations for only those few agencies that will play a major role in reviewing the project, this process expands the meaning of the term to include all agencies that have an interest in or special expertise regarding the project or its potential impacts.

Public involvement is also enhanced under this process. In addition to leaving unchanged any current opportunities for public comment, this process includes new opportunity for public comment during the determination of project purpose and need and selection of alternatives to be considered.

Finally, the legislation leaves unchanged the authorization from TEA–21 for States to use their Federal transportation dollars as assistance to resource agencies in order to expedite resource agency activities in the environmental review process.

Sec. 1512. Assumption of Responsibility for Categorical Exclusions

SUMMARY

Section 1512 gives the Secretary authority to assign and a State the ability to assume the Secretary's responsibility for processing the environmental review for projects classified as categorical exclusions under current Council on Environmental Quality regulations.

DISCUSSION

Categorical exclusions (CEs), according to current Council on Environmental Quality regulations, are projects that "do not individually or cumulatively have a significant effect on the human environment". Approximately 90 percent of all surface transportation projects are processed as CEs. So, while CEs take significantly less time to prepare than environmental impact statements, a slight improvement in processing time for each CE can result in a large improvement system wide.

Sec. 1513. Surface Transportation Project Delivery Pilot Program

SUMMARY

This section establishes a pilot program for not more than five States to assume the Secretary's responsibility for environmental review for a project. This delegation does not extend to conformity determinations, planning requirements, or rulemaking authority. Delegation of the Secretary's responsibility to a State shall be governed by a written agreement between the Secretary and the State. To ensure compliance by a State, the Secretary shall conduct periodic audits for each State participating in the program. The public shall have opportunity to comment prior to the submission of a State's application to participate in the pilot program and following an audit of compliance with the agreement.

DISCUSSION

The legislation includes a 5-State pilot program (including a pilot for the State of Oklahoma) for delegation of certain of the Secretary's environmental review responsibilities for transportation

projects within the pilot State. The pilot program is intended to provide information to the committee and to the public as to whether delegation of the Secretary's environmental review responsibilities will result in more efficient environmental reviews that are performed according to the same procedural and substantive requirements as would apply if the Secretary were conducting the reviews.

Sec. 1514. Regulations

This section directs the Secretary to promulgate within 1 year regulations necessary to carry out chapters 1 and 2 of the subtitle.

CHAPTER 3—MISCELLANEOUS

Sec. 1521. Critical Real Property Acquisition

SUMMARY

This section enables States to use Federal funds to acquire expeditiously a limited number of parcels that may be needed for future transportation purposes and are threatened by future economic development. The early acquisition maintains viable transportation options and provides the States with an opportunity to reserve future alignment alternatives while allowing timely and cost-saving acquisitions.

DISCUSSION

This section provides that, in limited circumstances and with the Secretary's approval, State may use title 23 funds to cover costs incurred in acquiring parcels of real property, considered to be critical for any project proposed for title 23 funding, prior to the completion of environmental reviews for property acquisition. Environmental reviews and approvals are required before physical construction, demolition, or clearing can occur. States cannot retain the Federal-aid share of the proceeds if a parcel is sold or leased.

Prior to the 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, and the property is necessary for implementation of the project's stated goals.

Sec. 1522. Planning Capacity Building Initiative

SUMMARY

This section establishes a planning capacity building initiative to strengthen metropolitan and statewide transportation planning under this title and under Chapter 52 of title 49, and to enhance Tribal capacity to conduct joint transportation planning under Chapter 2 of title 23.

DISCUSSION

Priority shall be given to planning practices and processes that support the transportation elements of homeland security planning, performance based planning, safety planning, operations planning,

freight planning, and integration of environment and planning. The Federal Highway Administration, in cooperation with the Federal Transit Administration, will administer the initiative.

SUBTITLE F—ENVIRONMENT

Sec. 1601. Environmental Restoration and Pollution Abatement; Control of Invasive Plant Species and Establishment of Native Species

SUMMARY

This section amends title 23 to establish eligibility for environmental restoration and pollution abatement, and invasive species. The section makes eligible the use of NHS and STP funds for activities under this section.

DISCUSSION

Section 165 establishes the eligibility for environmental restoration and pollution abatement and authorizes the use of funds for projects, including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 410 and 402 of the Federal Water Pollution Control Act, which will address water pollution or environmental degradation caused wholly or partially by a transportation facility. The expenditure of funds is limited to 20 percent of the total cost of an ongoing reconstruction, rehabilitation, resurfacing or restoration project.

Current law allows a State to use STP funds for environmental restoration and pollution abatement projects (including the retrofit or construction of stormwater treatment systems) to address water pollution or environmental degradation caused or contributed to by transportation facilities. As amended, the use of STP funds is now extended and the use of NHS funds is now authorized for these projects, as well as mitigation projects related to Federal highways but not limited to those currently undergoing reconstruction, rehabilitation, resurfacing or restoration.

Section 166 establishes provisions for the control of invasive plant species and the establishment of native plant species. Activities to control exotic and invasive plant species or to establish native species may be carried out in advance, concurrently with, or following project construction. Activities carried out in advance of projects are allowed if such measures are consistent with Federal law and State transportation planning processes.

Sec. 1602. National Scenic Byways Program

SUMMARY

This section amends section 162 of title 23, the National Scenic Byways Program. The Secretary shall allocate $220,000,000 for fiscal years 2004 through 2009.

DISCUSSION

Section 162 of title 23 is amended to recognize that the Secretary already is promoting the collection of National Scenic Byways and All-American Roads as "America's Byways." If State and byway

representatives reach consensus on establishing a single designation category, then these amendments will 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.

A new subsection is added to authorize the Secretary to form public-private partnerships to carry out technical assistance, marketing, market research, and promotion with respect to 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. The Secretary may use not more than $2,000,000 for each fiscal year made available under this section to carry out projects and activities under this subsection.

Sec. 1603. Recreational Trails Program (RTP)

SUMMARY

This section allows funds to be used to provide and maintain recreational trails for motorized and nonmotorized recreational trail uses.

DISCUSSION

The changes in section 206 of title 23 amend the permissible uses of funds apportioned to States under this program. 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. Non-law enforcement trail safety and trail use monitoring patrols, and trail related training are now activities eligible for RTP educational funds. However, funds provided under this program are not intended to support routine law enforcement.

Under this section, pre-approval planning and environmental compliance costs may be credited toward the non-Federal share for RTP projects, limited to costs incurred less than 18 months prior to project approval.

Since projects in this section are much smaller than typical highway projects, this program is relieved of several requirements, which, while appropriate for large highway projects, are excessively burdensome for small trail projects. RTP projects are not subject to sections 112, 114, 116, 134, 135, 138, 217, and 301, of title 23 and section 303 of title 49.

Sec. 1604. Exemption of Interstate System

SUMMARY

This section establishes an exemption for the Interstate System from consideration under section 303 of title 49 and section 138 of title 23, regardless of whether the Interstate System or portions of the System may be listed on or eligible for the National Register of Historic Places. A portion of the Interstate System that possesses an independent feature of historic significance, such as a bridge or an architectural feature, shall be considered an historic

site under section 303 of title 49 and section 138 of title 23, as applicable.

Sec. 1605. Standards

SUMMARY

This section amends section 109 of title 23, Standards. The changes to section 109 are made to place greater emphasis on the need to consider preservation of human and natural resources as a part of the decisionmaking process in developing highway projects.

DISCUSSION

Consideration of the impacts of highway projects has been part of the design process for many years. However, the transportation community, the traveling public, and local communities have demanded 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.

This section also directs the Secretary to ensure that the plans and specifications for proposed highway projects have considered preservation, historic, scenic, natural environment, and community values.

Sec. 1606. Use of High-Occupancy Vehicle (HOV) Lanes

SUMMARY

This section amends section 102(a) of title 23 to clarify existing law and provide more flexibility to State and local agencies for effective management of HOV facilities.

DISCUSSION

This section identifies the types of vehicles that are exempt from meeting the minimum occupancy requirements for HOV facilities. This provision also identifies 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.

1) 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.

2) Responsible agencies may allow low-emission and energy-efficient vehicles to use HOV facilities provided that the agency: creates a program that defines how such qualifying vehicles are selected and certified; establishes a method to label qualifying vehicles; continuously monitors, evaluates, and reports to the

Secretary on performance; and imposes restrictions on the use of HOV lanes by vehicles that do not meet established requirements.

3) Responsible agencies are provided with the option of charging vehicles a toll for the 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 are met.

This section also identifies the associated provisions that must be followed when establishing a program that addresses how vehicles can enroll and participate, and the other required provisions that must be satisfied.

Sec. 1607. Bicycle Transportation and Pedestrian Walkways

SUMMARY

This section makes minor amendments to section 217 of title 23.

DISCUSSION

These changes explicitly allow the use of STP and CMAQ funds for non-construction pedestrian safety programs whereby current law only mentions bicycle safety. It also explicitly mentions pedestrian use on bridges, whereby current law only mentions bicycle use.

The current practice of charging user fees for shared-use paths is now explicitly allowed. The fees collected by a State must be used for maintenance and operation of shared use paths within the State. This provision restricts the application of a user fee to shared-use paths not within a highway right-of-way and prohibits extension of user fees to sidewalks or bicycle lanes.

In order to address concerns regarding bicycle and pedestrian safety, the national bicycle and pedestrian clearinghouse first authorized in section 1212(i) of TEA–21 is reauthorized. A new subsection (j) provides funding and contract authority for these safety efforts for fiscal years 2004 through 2009.

This section also provides that the bicycle and safety grants are to be funded by a set-aside from the Surface Transportation Program.

Sec. 1608. Idling Reduction Facilities in Interstate Rights-of-Way

SUMMARY

This section creates 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.

DISCUSSION

The purpose of this exception allows States (either directly or through contracts) to place electrification or other idling reductions facilities in rest areas that can 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 are 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, may charge for the services provided under this authority.

Sec. 1609. Toll Programs

SUMMARY

This section modifies the Interstate System Reconstruction and Rehabilitation Program and establishes a new Variable Toll Pricing Program. The Interstate System Reconstruction and Rehabilitation Pilot Program, established in TEA–21, is amended to ease the eligibility criteria for participation in the pilot program. The Variable Toll Pricing Program that replaces the Value Pricing Pilot Program under TEA–21.

DISCUSSION

The change to the Interstate System Reconstruction and Rehabilitation Program modifies the financial analysis to require that the State demonstrate that financing the improvements through tolls is the most efficient, economical, or expeditious way to advance the project.

This section also establishes a variable toll pricing program to enable the use of variable toll pricing on congested facilities in order to increase mobility and improve air quality.

The Secretary may permit a State or public authority to toll any highway, bridge, or tunnel, including facilities on the Interstate System, to manage high levels of congestion or reduce emissions in a nonattainment area or maintenance area.

To be eligible to participate in this program, a State must provide to the Secretary a description of the congestion and air quality problems to be addressed and the goals to be achieved.

This section also permits any State or public authority currently operating under the authority of a cooperative agreement developed under the value pricing pilot program from TEA–21 to continue operating under the terms of that agreement and states that any State or public authority shall be allowed to continue tolling under that authority.

Sec. 1610. Federal Reference Method

SUMMARY

This section directs EPA to conduct a study of the ability of monitors to differentiate particulate matter larger than 2.5 micrometers in diameter (coarse particulate matter). EPA is also directed to develop a method to measure directly the amount and composition of coarse particulate matter.

DISCUSSION

This section directs EPA to conduct a study of the ability of monitors to differentiate particulate matter larger than 2.5 micrometers in diameter (coarse particulate matter). This study will give policymakers and the agency a better understanding of the difficulties involved in distinguishing particles that are smaller than 2.5 micrometers in size from those that are larger. This knowledge will assist policymakers by minimizing the potential of measurements to either inflate or deflate the quantity of smaller particles, or to inflate or deflate the quantity of larger particles.

EPA is also directed to develop a method to measure directly the amount and composition of coarse particulate matter. This will ensure that EPA has the tools necessary so that it does not need to rely on a methodology for measuring coarse particles (2.5 to 10 microns in size) by measuring all particles (up to 10 microns in size) and subtracting fine particles (2.5 microns or less in size), as this subtraction method may increase the probability of measurement error. EPA is also directed to develop a method to measure different kinds of particles. By developing the ability to measure different types, or so-called "species" of particles, the agency will be able to better identify those particles that constitute the particles of greater concern and to identify the point of origin of the emissions for purposes of modeling.

Sec. 1611. Addition of Particulate Matter Areas to CMAQ

SUMMARY

This section modifies the Congestion Mitigation and Air Quality Improvement (CMAQ) program apportionment formula in anticipation of the new air quality standards that will soon be in effect for ozone and fine particulate matter (PM–2.5). The basic construct of the CMAQ apportionment formula remains unchanged: CMAQ funds are allocated to each State based on the ratio of the total weighted population of a State's nonattainment and maintenance areas to the total weighted population of all nonattainment and maintenance areas in the Nation. In addition, all States are guaranteed at least ½ of 1 percent.

DISCUSSION

This section adds the population of areas that are nonattainment for the fine particulate matter standard (PM–2.5) and the 8-hour ozone standard into both parts of the ratio, weighted with factors of 1.2 and 1.0, respectively. Fine particulate matter and 8-hour ozone areas have been added to the formula because once the designations are made for these standards in 2004, these areas will need funds to help them attain the standards.

The weighting factor for the population of ozone and carbon monoxide maintenance areas is now changed from 0.8 to 1.0, to remedy the counterproductive multiplication result that occurred when multiplying by a number less than 1.0. Weighting factors are multiplied when an area is nonattainment or maintenance for more than one pollutant so that the area receives additional funds. However, this result does not occur if one of the weighting factors is 0.8 (e.g., 0.8 x 1.2 = 0.96). In addition, PM–2.5 maintenance areas have been added and also receive a weight of 1.0.

The weighting factors for the different classifications of 1-hour ozone areas are not changed, and range from 1.0 to 1.4, depending on classification. However, the population of all areas that are nonattainment for the 8-hour ozone standard are weighted with a factor of 1.0. If there is some period of time when both the 1-hour and 8-hour ozone standards apply, the population in areas that are nonattainment or maintenance for both ozone standards should receive the higher of the two weighting factors, which will be the 1-hour weighting factor. EPA intends to revoke the 1-hour standard 1 year

after designating areas for the 8-hour standard, and therefore, the length of time when both ozone standards apply will be limited.

A slight change has been made to the formula in the case where an area is nonattainment or maintenance for both ozone and carbon monoxide. Instead of multiplying the entire population of the ozone area by an additional adjustment factor of 1.2, only the population of the ozone area that lives within the boundary of the carbon monoxide area is multiplied by the adjustment factor of 1.2. This change corrects the current method, where the entire population of the ozone area is multiplied by 1.2 regardless of the size of the CO area. The change improves distribution of CMAQ funding by better allocating it according to the number of people living in areas designated nonattainment or maintenance for various pollutants.

An additional adjustment factor of 1.2 is also included for areas that are nonattainment for ozone, CO, or both that are also nonattainment or maintenance for $PM_{2.5}$. Therefore, if a particular county is designated as nonattainment or maintenance for all three pollutants, the factors would be multiplied together (e.g., 1.0 x 1.2 x 1.2, for a total weighting factor of 1.44). The additional adjustment factor provides areas that are nonattainment or maintenance for more than one pollutant with additional CMAQ funds, recognizing that these areas must attain or maintain more than one air quality standard.

Sec. 1612. Addition of CMAQ-Eligible Projects

SUMMARY

Paragraph (a) of section 1612 makes the purchase of alternative fuel, as defined in the Energy Policy act of 1992, and the purchase of biodiesel fuel eligible activities under the CMAQ program.

Paragraph (b) of this section ensures that States that receive the minimum apportionment can use CMAQ money to fund projects for the purpose of congestion mitgation or improving air quality, instead of only being able to use CMAQ dollars for projects that can be funded under the surface transportation program.

DISCUSSION

Currently, CMAQ funds can be used for a wide array of purposes designed to improve air quality, including improvements to transit systems, capital improvements to ITS projects, bicycle and pedestrian facilities, traffic flow improvements, alternative fuel infrastructure, inspection and maintenance programs, and shared ride services. The Clean Air Act (CAA) and EPA encourage the use of alternative fuels to assist areas in reducing criteria pollutants. CMAQ provisions in TEA21 / ISTEA include a specific subsection authorizing the use of CMAQ funds on alternative fuel infrastructure. Section 1612 further facilitates the use of alternative fuels by also allowing purchase of alternative fuels with CMAQ funds.

The committee is also aware that some confusion remains in DOT and EPA field and regional offices regarding whether projects to control the extended idling of vehicles, such as advanced truck stop electrification projects, are eligible for CMAQ funding. Such confusion has led to delays in project approvals. Advanced truck

stop electrification projects dramatically reduce emissions, and therefore improve air quality, by allowing long-haul drivers to turn off their engines during extended stops (e.g., during USDOT-mandated rest periods); mitigate congestion by providing drivers timely information regarding road congestion and alternative routes; enhance energy independence by reducing diesel fuel consumption; enhance highway safety by providing drivers a quieter, more restful sleep environment; and reduce noise impacts to nearby neighborhoods. Furthermore, advanced truck stop electrification projects can quality for CMAQ funding, whether they are implemented through public-private partnerships; involve private ownership of land, project facilities or other physical assets, emission reduction credits and offsets; or are located on public or private land or rights-of-way. Such programs are clearly authorized under section 108(f)(1)(A)(xi) of the Clean Air Act (42 U.S.C. 7408(f)(1)(A)(xi) and associated Federal guidance (65 Fed. Reg. 9040 (Feb. 23, 2000)). Therefore, the committee directs the Secretary of Transportation and the Administrator of the Environmental Protection Agency to issue guidance to all appropriate Federal, State and local agencies that interpret and implement CMAQ and/or Clean Air Act programs informing such agencies as to the foregoing.

Paragraph (b) of this section remedies an oversight that exists in the current law by providing States that receive the minimum amount of CMAQ funding the ability to use the money for air quality and congestion mitigation projects, if they so choose. States that receive the minimum apportionment either do not have nonattainment and maintenance areas, or have a nonattainment or maintenance area with a small enough population that they would only receive the guaranteed minimum ½ of 1 percent based on the population apportionment formula. This section of the bill allows these States to fund CMAQ-type projects with their CMAQ funds. It allows these areas to fund projects that would otherwise be eligible under section 149(b), regardless of the fact that section 149(b) specifically states that the eligible projects may only be funded in nonattainment or maintenance areas. This change is in keeping with the overall purpose of the CMAQ program.

Sec. 1613. Improved Interagency Consultation

SUMMARY

Section 1615 requires the Secretary to encourage States and MPOs to consult with State and local air quality agencies in nonattainment and maintenance areas on the estimated emissions reductions from proposed congestion mitigation and air quality improvement programs and projects.

DISCUSSION

The purpose of the C MAQ program is to help States meet their air quality goals of attaining or maintaining the air quality standards. This section has been added to acknowledge that State and local air quality agencies have valuable input with regard to which projects can best serve this purpose in their particular areas, and their participation in selecting projects, while not mandated, is to be encouraged. States, MPOs, and transit agencies, in consultation

with State and local air quality agencies, are encouraged to work cooperatively in developing criteria for project selection and in making decisions over which projects and programs to fund under the CMAQ program.

Sec. 1614. Evaluation and Assessment of CMAQ Projects

SUMMARY

Section 1616 requires the DOT to evaluate and assess a representative sample of CMAQ projects in consultation with EPA, maintain and disseminate a data base of CMAQ projects, and consider the recommendations and findings of the NAS CMAQ report in consultation with EPA.

DISCUSSION

Evaluation and information sharing are important aspects of the CMAQ program and should be used to direct CMAQ funding toward the most cost-effective projects and programs. CMAQ funding can be used for innovative projects that contribute to improved air quality. If a particular type of project is successful in achieving emissions reductions, the goals of the program are furthered if that information is shared widely with other nonattainment and maintenance areas. The Department, in consultation with EPA, must consider the NAS report recommendations and findings to improve the operation and evaluation of the program. The committee's interest is to ensure that the information from previous efforts and expenses is used wisely.

Sec. 1615. Synchronized Planning and Conformity Timelines, Requirements, and Horizon

SUMMARY

This section changes how often updates must be made to metropolitan transportation plans and metropolitan transportation improvement programs (TIPs) in nonattainment and maintenance areas, and statewide TIPs. Currently, these documents expire every 3 years, 2 years, and 3 years, respectively. With this bill, all three of these planning documents must be updated every 4 years. This section also changes the minimum frequency with which transportation conformity must be demonstrated to every 4 years. Other changes to transportation conformity include a change in the horizon of the conformity determination, and a change in the projects to which conformity applies. In addition, this section adds a requirement for EPA's conformity regulations.

DISCUSSION

Frequency. Section 1617 amends 23 U.S.C. 134 to require that metropolitan transportation plans and metropolitan transportation improvement programs (TIPs) be updated every 4 years in nonattainment and maintenance areas. Currently, plans must be updated every 3 years, but TIPs must be updated every 2 years. Attainment areas will continue to update transportation plans every 5 years. Section 135 is also amended to require that statewide TIPs be updated every 4 years, to be consistent with metropolitan plans

and TIPs. The section also amends section 176 of title 42, the conformity section of the Clean Air Act, to require that conformity for transportation plans and TIPs be determined every 4 years, unless an MPO elects to update their plan or TIP more frequently, or conformity is triggered by triggered by an EPA action on a SIP submission. In the case where conformity is triggered by an EPA SIP action, this section provides metropolitan areas with 2 years to determine conformity (currently, areas have 18 months).

The committee recognizes that there may be value to transportation planners in placing the frequency of metropolitan transportation plan and TIP updates and the frequency of conformity determinations on the same timetable, and also recognizes the benefit of giving metropolitan areas more time to devote to planning. The current transportation law requires TIPs to be updated at least every 2 years, and current planning regulations require plans to be updated every 3 years. Because conformity must be determined before new TIPs or new plans are adopted, many metropolitan areas were starting another TIP update as soon as transportation planning and conformity requirements were met for the previous one. Some witnesses testifying before the committee has indicated that transportation planning will improve if metropolitan areas have more time to devote to it, rather than continuously creating TIP updates and determining their conformity. Because conformity must still be determined before an updated plan or TIP is adopted, air quality should not be affected by this change; air quality impacts will still be checked before any major changes to the transportation network are made.

Horizon. This section also changes the horizon of the conformity determination, that is, how far into the future each conformity determination must examine. Currently, a conformity determination is made analyzing a 20 year period of time, which is the length of time covered by a transportation plan. This section changes the horizon of a conformity determination to be the longest of 10 years, the latest year a State air quality plan (State Implementation Plan, or SIP) establishes a budget, or the year after a regionally significant project is completed if the project requires approval before the next conformity determination.

Conformity must marry two separate planning activities: transportation planning and air quality planning. While transportation plans cover a period of 20 years, SIPs, which are used as the measure of conformity, generally cover a period of 10 years or fewer. The committee is changing the horizon of the conformity determination so that it more closely matches the length of time covered by a SIP. In addition, the language also ensures that the emissions impacts of large projects on travel are considered before Federal approvals are made. The change made to the horizon does not preclude State or local agencies from examining longer time periods for informational or local air quality purposes, if they choose to do so.

Projects. This section defines transportation project to include only a project that is regionally significant, or a project that makes a significant revision to an existing project. The definition of regionally significant project closely tracks the existing EPA definition in regulation. Likewise, the definition of significant revision tracks the existing EPA criteria for significant change in design

concept or scope. With the addition of this definition for transportation project, conformity determinations are required for regionally significant projects or projects that make a significant revision to an existing project, rather than for every Federal project. However, this change does not affect the requirement that the emissions impacts from all projects in the transportation plan and TIP must be considered when determining conformity of a plan or TIP. Vehicle Miles Traveled (VMT) from projects that are not regionally significant must still be considered in a plan or TIP conformity determination.

Requirement for Regulation. This section adds a new requirement that EPA's regulations must address the effects of the most recent population, economic, employment, travel, transit ridership, congestion, and induced travel demand information in the development and application of the latest travel models. This section requires that EPA adjust regulations to ensure that travel models can account for the effects of these elements. Currently, travel models can account for the effects of most of the elements on this list, because the Clean Air Act has required that conformity be based on the most recent estimates of emissions since 1990, and EPA's conformity regulations specify how latest information regarding population, employment, travel, congestion, and transit service must be incorporated into a conformity determination.

The new elements on this list are induced travel demand and transit ridership information. The committee recognizes that induced demand is a concept that is relatively recent and has been the subject of some debate. Before changing regulations in response to this section, EPA should examine the recent literature regarding induced demand, including papers on the topic submitted to the Transportation Research Board within the last 6 years. Recent literature should inform EPA's proposal on where, when, and how induced demand should be included in travel models. If recent literature does not include recommendations for how to incorporate induced demand into travel modeling, then EPA should request input on this topic from the public and the expert community prior to proposing its regulations.

Sec. 1616. Transition to New Air Quality Standards

SUMMARY

Section 1616 provides methods for new nonattainment areas to use in determining transportation conformity to help achieve the national ambient air quality standards. Many areas will soon be designated nonattainment with the revised national ambient air quality standards for ozone (the 8-hour standard) and fine particulate matter (PM–2.5). In the case of areas that have not been in nonattainment before and have not been required to demonstrate transportation conformity or develop an emissions budget to use in that demonstration, or in the event that the agency revokes a prior standard before new nonattainment areas have approved emissions budgets for a revised standards, the committee has provided that those areas would be able to use an emissions budget in a SIP for prior standard for the same pollutant, if one is available. Areas

could also use the other tests that are currently available in cases where an area does not have a SIP.

DISCUSSION

This section is added because EPA plans to designate areas for the new 8-hour ozone standard in April 2004, and make designations for the fine particulate matter standard (PM–2.5) in December 2004. Newly designated nonattainment areas that have not been previously designated nonattainment for the same pollutant will have a 1-year grace period before conformity applies, but they have 3 years to submit SIPs to EPA. SIPs include motor vehicle emissions budgets, which are the total amount of each pollutant or precursor that is allowable for the transportation sector. These budgets serve as the measure of comparison when determining conformity. Therefore, after areas are designated for an air quality standard, there will be a period of time when other means of determining conformity must be used.

This section will allow areas that are designated for the new 8-hour ozone standard to use the motor vehicle emissions budget from their 1-hour ozone SIP, if it exists, even if EPA revokes the 1-hour standard. Rather than referring specifically to the 8-hour and 1-hour ozone standards, this section is written broadly to refer to any standards. The committee recognizes that EPA, from time to time, may revise air quality standards. Areas should be able to use the budgets from the SIP that addresses the most recent prior standard of the same pollutant, if one exists and EPA has found its budgets adequate or has approved the SIP.

The committee did not mandate the use of the budgets from a SIP for the most recent prior standard, but instead give areas the choice to do so, or use the existing tests. There may be instances where the budget from a SIP addressing the prior standard would not provide a good test of conformity. For example, such a budget could be established for a year that is many years in the past, be based on a geographic boundary that is different than the boundary for the current standard, or be based on information that is significantly out-of-date. For these reasons, the committee believes it is important to provide a choice to areas. Areas will use the consultation process to determine whether budgets addressing a prior standard for the same pollutant or another test or tests, will be used for conformity.

Sec. 1617. Reduced Barriers to Air Quality Improvements

SUMMARY

Section 1617 reduces barriers to regions implementing transportation control measures (TCMs) to improve their regional air quality. The section allows an area to substitute an existing TCM or add a TCM if they can show that the new TCM will achieve equivalent or greater emissions reductions. Substitution or addition of a TCM will not require express permission in the State air quality plan (SIP), a formal revision of the SIP, nor a new conformity determination.

DISCUSSION

TCMs are transportation-related measures that have the potential to reduce emissions of criteria pollutants. Many TCMs reduce emissions by reducing VMT, for example, high-occupancy vehicle lanes, transit projects, park and ride lots, ride-share programs, and pedestrian and bicycle facilities. States can include TCMs in their SIPs. However, unless the SIP includes a TCM substitution mechanism, i.e., a set of provisions for substituting TCMs, the SIP must be revised to change a TCM that is delayed or no longer viable. The purpose of this section is to allow all States to substitute TCMs without a full SIP revision, regardless of whether the State has its own substitution mechanism.

TCMs can be substituted if the substitute measure achieves the same or greater emission reductions as the measure being replaced, based on an analysis that uses the latest planning assumptions and the current models. The substitute TCMs must be implemented on the same schedule as the original measure, if that is possible. However, the committee recognizes that it may not be possible for the substitute measure to be on the original schedule; for example, a possible reason that a State would want to substitute a TCM is that it has proved difficult to implement in a timely way. In those cases, the substitute measure must be implemented as soon as practicable, but not later than the date on which the SIP is supposed to achieve its purpose. For example, if the TCM is included in the SIP as part of the attainment demonstration, and the attainment date is 2005, the substitute TCM must be implemented as soon as practicable to reduce emissions by 2005.

Subparagraph (B) of this provision states that after carrying out subparagraph (A), a State shall adopt the substitute or additional control measure in the applicable SIP. In this instance, the committee has used the word "adopt" to mean that the State must record the measure as being part of the SIP. The sole intent of this subparagraph is to ensure that the State keeps an up-to-date list of the TCMs that must be implemented, so that a member of the public can review the list at any point and have the complete, correct list of TCMs that are in the SIP. This subparagraph is not intended to create any additional process requirements than those in subparagraph (A).

Sec. 1618. Air Quality Monitoring Data Influenced by Exceptional Events

SUMMARY

Section 1618 requires EPA to promulgate regulations governing the handling of air quality monitoring data influenced by exceptional events. These regulations allow Governors to petition EPA to exclude air quality data directly due to exceptional events. Events such as forest fires or volcanic eruptions, should not influence whether a region is meeting its Federal air quality goals. The section includes requirements for demonstrating the occurrence of such a natural event by reliable and accurate data, a clear causal relationship between the exceptional event and a national air quality standard exceedance, and a public process for the determination.

DISCUSSION

This section includes a definition of exceptional events and excludes certain events from the definition. Natural climatological occurrences such as stagnant air masses, high temperatures, or lack of precipitation influence pollutant behavior but do not themselves create pollutants. Thus, they are not considered exceptional events. Likewise, air pollution related to source noncompliance may not be considered an exceptional event. In contrast, events which are part of natural ecological processes, which generate pollutants themselves that cannot be controlled, qualify as exceptional events.

The committee is concerned that the EPA's current approach for modeling carbon monoxide (CO) emissions from motor vehicles may not be appropriate for cold weather States, such as Alaska, that must make CO attainment and maintenance demonstrations. The committee therefore requests that EPA evaluate the effectiveness of its MOBLIE6 model to determine if it adequately accounts for the effects of cold weather on CO emissions.

EPA is directed to follow principles in promulgating regulations under this section. These principles reflect the requirements of the current Clean Air Act and do not establish new requirements for States or EPA to meet. Instead, these are principles that EPA must follow when promulgating regulations under this section.

Sec. 1619. Conforming Amendments

SUMMARY

Section 1619 updates the language in section 176 of title 42, that directs EPA to write regulations. It removes references to the date of enactment of the Clean Air Act Amendments of 1990. It also removes the requirement for States to duplicate the entire text of Federal conformity regulations in their State Implementation Plans (SIP) each time there is a revision in those regulations. Instead, States will be required to further amend their SIPs only when revising conformity consultation procedures.

DISCUSSION

Current law requires that States submit criteria and procedures for assessing conformity of transportation plans, TIPs, and projects. This requirement results in States having to adopt the entire Federal conformity rule into their SIPs. States that have done so must update their SIP whenever EPA updates any portion of the conformity regulations, which EPA has done several times since promulgating the initial rule in 1993, most recently in 2000 and 2002. However, only the consultation procedures that exist in the regulations need to be tailored to individual States. This change ensures that States must submit consultation procedures, but no longer have to repeat the entire Federal conformity regulations. This change will reduce the paperwork burden on States with no adverse air quality impact.

Sec. 1620. Highway Stormwater Discharge Mitigation Program

SUMMARY

This section creates a highway stormwater discharge program in a new section 167 of title 23, U.S.C. to improve the quality of stormwater discharge from Federal-aid highways and associated facilities and to enhance groundwater recharge.

DISCUSSION

Section 1620 creates a new section within the Surface Transportation Program (STP) for States to fund transportation-related stormwater mitigation projects. States must allocate 2 percent of the funds apportioned under STP to stormwater mitigation projects sponsored by local governments or States that reduce polluted runoff from existing highways and other transportation-related activities. Current law does not have a mandatory set-aside but provides States the option of using their STP funds for stormwater mitigation projects when they are conducted in conjunction with an ongoing transportation project.

An eligible project is one that improves stormwater discharge water quality, attains preconstruction hydrology, promotes infiltration of stormwater, recharges groundwater, minimizes stream bank erosion, promotes natural filters, otherwise mitigates the water quality impacts of stormwater discharges or reduces flooding caused by highway stormwater discharge. Projects will vary across the country because effective projects depend onsite-specific conditions, such as site imperviousness, existing best management practices, climate and land availability. Highway maintenance projects are not eligible stormwater mitigation projects. Examples of projects eligible for funds under this program include, but are not limited to extended detention ponds, streambank restoration, stormwater wetlands, vegetated buffers, filters, such as rock, sand and vegetated, underground storage vaults, infiltration basins and trenches, porous pavement, and bioretention systems, insets in storm drains, and oil and grit separators.

The program requires States to give priority to projects that will assist the State or locality comply with the Federal Water Pollution Control Act. The Secretary is required to issue guidance to assist States in carrying out this section that includes information on innovative technologies and nonstructural best management practices to mitigate highway stormwater discharges. The committee intends that the funds made available by this program be distributed by State DOTs, with special emphasis on assisting local governments and to local governments for use in highwaystorm water mitigation, and specifically activities that allow these entities to comply with the requirements of stormwater phase II permits and other Clean Water Act regulations.

SUBTITLE G—OPERATIONS

Sec. 1701. Transportation Systems Management and Operations

SUMMARY

This section amends 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. States may use up to 2 percent of the funds apportioned under this section to reduce traffic delays caused by motor vehicle accidents and breakdowns on highways during peak driving times.

This section adds the definition of "transportation system management and operations" to the general definitions section.

DISCUSSION

This section establishes a TSM&O program and differentiates it from construction provisions in title 23. This section also alleviate ambiguities that inhibit deployment and implementation of TSM&O activities, and establishes procurement flexibility that State and local agencies need to increase their ability to employ advanced operational practices and advanced technology.

The committee encourages the Administrator to continue the development and deployment of safety messenger notification systems to disseminate safety information on Federal-aid highways to motorists and public safety agencies as needed. Examples may include traffic congestion, freight movement and conditions, Amber Alert, weather event emergency notifications, and border and homeland security notifications.

Sec. 1702. Real-time System Management Information Program

SUMMARY

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

The purpose of the proposed real-time system management information 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. The program goals are 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.

23 U.S.C. 169(c), as proposed by section 1702 of SAFETEA requires that each State establish a statewide incident reporting system within 2 years of enactment of this section. If a State demonstrates that it cannot meet this deadline, the Secretary may allow an extension, of up to 5 years, to accomplish the requirement of the subsection. In exercising this discretion, the Secretary should provide the State the minimum extension necessary to complete development of its reporting system.

DISCUSSION

The Secretary is required to establish data exchange formats within 1 year of enactment of this bill.

Each State is required to establish a statewide incident reporting system within 2 years of enactment of this bill, unless a waiver is received from the Secretary that allows up to 3 additional years. State and local governments are required 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.

Activities related to the planning and deployment of real-time monitoring elements are eligible for Surface Transportation Program and National Highway System funds. Under this section, a State may obligate State Planning and Research funds for activities related to the planning of real-time monitoring elements.

SUBTITLE H—FEDERAL-AID STEWARDSHIP

Sec. 1801. Future Interstate System Routes

SUMMARY

This section replaces the 12-year requirement in section 103(c)(4)(B) of title 23 with a 25-year requirement to provide States more time to substantially complete construction of highways designated as future Interstate System routes, before the States forfeit future Interstate designation status. This section also extends the time limitation contained in existing agreements from 12 years to 25 years.

Sec. 1802. Stewardship and Oversight

SUMMARY

This section includes a provision that requires 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.

DISCUSSION

The Secretary shall require the States to annually certify the adequacy of their financial management systems and project delivery systems to meet all requirements for financial integrity. As part of the financial integrity oversight, the Secretary is required to develop minimum standards for estimating project costs and to periodically evaluate 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.

This section also requires a recipient of Federal financial assistance to prepare an annual financial plan for projects that receive $100,000,000 or more in Federal-aid assistance and that are not subject to the requirements for major projects.

This section mandates debarment of contractors who have been convicted of fraud related to Federal-aid highway or transit pro-

grams and mandates the suspension of contractors who have been indicted for offenses relating to fraud.

This section requires 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 were injured by the fraud.

Finally, this section requires a value engineering analysis, as defined in this section, for all projects over $25 million and bridge projects over $20 million.

Sec. 1803. Design-Build Contracting

SUMMARY

This section amends section 112(b)(3) of title 23, to include intermodal facilities in the definition of qualified projects.

Sec. 1804. Program Efficiencies Finance

SUMMARY

This section amends 23 U.S.C. 115, Advance construction, and 23 U.S.C. 118, Availability of Funds.

DISCUSSION

Section 115 is amended to remove the restriction that a State must obligate all funds apportioned or allocated to it, 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 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 further modifies 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 allows the Secretary to obligate the Federal share or a portion of the Federal share of cost of the project by executing a project agreement.

Section 118 of title 23, is amended to clarify the method used by FHWA to account for Federal-aid funds and determine amounts subject to lapse. This revision results in no change to current practice but simplifies the language to reduce ambiguity.

Sec. 1805. Set-Asides for Interstate Discretionary Projects

SUMMARY

This section continues the Interstate Discretionary Project set-aside in section 118(c)(1) of title 23, for fiscal years 2004 through 2009 and increases the amount from $50,000,000 to $100,000,000.

Sec. 1806. Federal Lands Highways Program

SUMMARY

The Federal Lands Highway Program provides funding for a coordinated program of public roads and transit facilities serving Federal and Indian lands.

DISCUSSION

The Federal Lands Highways Program allocation in section 202 of title 23, U.S.C. is amended to: 1) 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; 2) allow the use of Indian Reservation Road Bridge funds to be used for design, engineering and preconstruction as well as construction; (3) limit the amounts that the Bureau of Indian Affairs may use to pay the costs of administering the Indian Reservation Roads Program (including the administrative expenses relating to individual projects associated with the Indian reservation roads program) to 6 percent; and (4) require not later than 30 days after the date on which funds are made available to the Secretary of the Interior the distribution and availability of such funds for immediate use by eligible Indian tribes.

Section 204 of title 23 is amended to: (1) allow the Secretary 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.

A recreation roads funding category is created to provide 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.

Maintenance and improvement projects on recreation roads consistent with or identified in a land use plan do not need any additional environmental reviews or assessments under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if there is no new information and no significant changes to the proposal bearing on environmental concerns. Improvement projects include paving of gravel roads, turning a single lane bridge into a double lane bridge, or widening a single lane road into a double lane road.

A safety funding category is created to provide dedicated funds for transportation safety improvement projects, collection of safety information, development and operation of safety management systems, highway safety education programs, and other eligible activities under section 402 of title 23.

Sec. 1807. Emergency Relief

SUMMARY

The Emergency Relief Program provides funds for the repair or reconstruction of Federal-aid highways and roads which have suffered serious damage as a result of natural disasters or catastrophic failures from an external cause.

DISCUSSION

This section increases the amount authorized to be obligated in any one fiscal year for emergency relief under section 125 from $100,000,000 to $300,000,000.

Sec. 1808. Highway Bridge Program

SUMMARY

The Highway Bridge Program provides funds to assist States in improving the condition of their bridges, through replacement, rehabilitation, and systematic preventive maintenance.

DISCUSSION

The changes to section 144 allow the use of bridge funds for: 1) preventive maintenance activities consistent with the section 116(d) of the NHS Designation Act, 2) preventive maintenance on off-system bridges, and 3) scour countermeasures without regard to eligibility. Bridge discretionary funding is increased to $150 million. The Federal share on these projects is the share applicable under 23 U.S.C. 120(b) as adjusted by subsection (d).

Sec. 1809. Appalachian Development Highway System

SUMMARY

The Appalachian Development Highway System Program provides funds for the construction of the Appalachian corridor highways in 13 States and for the establishment of a State-Federal framework to meet the needs of the region.

DISCUSSION

This section describes how funds made available for the Appalachian development highway system are to be apportioned to the States in the Appalachian region. The latest cost estimate is to be used as the basis for apportionments. The funding shall remain available until expended and the Federal share is delineated in section 201 of the Appalachian Regional Development Act of 1965. This section also prohibits the use of toll credits on the Appalachian development highway system.

Sec. 1810. Multistate Corridor Program

SUMMARY

The purpose of this program is to support and encourage multistate transportation planning and facilitate project development and decisionmaking involving multistate corridors. State transportation departments or metropolitan planning organizations

may receive and administer the funds provided under this section for multistate highway and multimodal planning studies and construction.

DISCUSSION

Freight demand is forecasted to increase significantly in the coming years. The committee's goal is to meet this growing demand by improving highways and intermodal connections in the nation's key corridors. Funds provided by the corridor program should supplement other public and private funding to support strategic improvements, expanding both capacity and efficiency.

The Secretary shall select studies and projects to be carried out under this program based on: 1) the existence and significance of binding agreements; 2) the endorsement of the study or project by elected representative; 3) prospects for early completion; and 4) whether the study or project was listed in 1105(c) of ISTEA.

The Secretary shall encourage States and other jurisdictions to work together and shall give priority to projects that increase mobility, freight productivity, access to marine or inland ports, safety and security, and reliability.

Sec. 1811. Border Planning, Operations, and Technology and Capacity Program

SUMMARY

The purpose of this program is to support the coordination and improvement in bi-national transportation planning, operations, efficiency, capacity, information exchange, safety, and security at the international borders of the United States with Canada and Mexico. The term "border State" in this section means any of the States of Alaska, Arizona, California, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New Mexico, New York, North Dakota, Texas, Vermont, and Washington.

DISCUSSION

The demands of a global economy are placing an ever growing strain on the nation's points of entry. As with the corridors program, described above, the committee has elected to expand funding for the borders program in hopes that both capacity and operational efficiency can be improved to meet future freight mobility needs.

The General Services Administration (GSA) is authorized to receive funding under this section. The committee intends that transportation improvement projects undertaken with funds directly transferred by the Secretary to the GSA shall be designed and constructed in coordination with State transportation official from the project State.

State transportation departments and metropolitan planning organizations at or near an international land border in a border State may receive and administer funds allocated under this program to carry out the eligible activities listed in this section.

The Secretary shall select projects to be carried out based on a number of criteria and shall give priority to those projects that em-

phasize multimodal planning, improvements in infrastructure, and specific operational improvements listed in this section.

Sec. 1812. Puerto Rico Highway Program

SUMMARY

Section 173 of title 23 authorizes the continuation of the Puerto Rico Highway Program to carry out a highway program in the Commonwealth of Puerto Rico.

DISCUSSION

The apportionment made under this section shall be treated as though it were apportioned under sections 104(b), 144, and 206 of title 23 for each program funded under those sections by multiplying the aggregate of the amounts for the fiscal year by the ratio of the amount of funds apportioned to Puerto Rico for each such program for fiscal year 2003 as it bears to the total amount of funds apportioned to Puerto Rico for all such programs for fiscal year 2003.

Sec. 1813. National Historic Covered Bridge Preservation

SUMMARY

This section authorizes the Secretary to make grants to States for covered bridges that are listed or eligible for listing on the National Register of Historic Places.

DISCUSSION

Subject to the availability of appropriations, the Secretary shall make grants to States that submit applications that demonstrate a need for assistance in carrying out one or more historic covered bridge projects described in this section.

Sec. 1814. Transportation and Community and System Preservation Pilot Program

SUMMARY

This section continues the Transportation and Community and System Preservation Pilot (TCSP) Program, a comprehensive initiative of research and implementation grants to investigate the relationships betweenTCSP and private sector-based initiatives.

This section also makes TCSP projects STP eligible.

DISCUSSION

This section requires the Secretary to establish a comprehensive program to facilitate the planning, development, and implementation of strategies by States, metropolitan planning organizations, federally recognized Indian tribes, and local governments to integrate TCSP plans and practices that address the goals described in this section.

Sec. 1815. Tribal-State Road Maintenance Agreements

SUMMARY

This provision amends section 204 of title 23 to authorize States and tribes to enter into road maintenance agreements.

DISCUSSION

This provision permits tribes to assume State responsibilities for maintaining Indian reservation roads and roads that provide access to Indian reservation roads. Maintenance agreements entered into by States and tribes do not require the approval of the Secretary. However, the Secretary is required to report annually to Congress identifying (1) the tribes and States that have entered into maintenance agreements, (2) the number of road miles for which Indian tribes have assumed maintenance responsibilities, and (3) the amount of funding transferred to Indian tribes under these agreements in each fiscal year.

Sec. 1816. Forest Highways

SUMMARY

Section 204 is amended by reserving $15,000,000 of the funds made available for forest highways for use in the repair, maintenance or removal of culverts and bridges on forest highways.

DISCUSSION

This section ensures a minimum level of attention is given to the problems resulting from improperly placed culverts, including landslide risks and blockage of fish passage.

Sec. 1817. Territorial Highway Program

SUMMARY

The changes made in section 215 of title 23 update and consolidate the statutory provisions governing the territorial highway program.

Sec. 1818. Magnetic Levitation Transportation Technology Deployment Program

SUMMARY

This section continues the authorization of the Magnetic Levitation Transportation Technology Deployment program (MAGLEV) in section 322 of title 23.

DISCUSSION

Section 322 of title 23 is amended to allow the Secretary to solicit additional applications from States or authorities designated by one or more States, for financial assistance for planning, design, and construction of eligible MAGLEV projects.

Sec. 1819. Donations and Credits

SUMMARY

Section 323 of title 23 is amended to give States and local governments additional flexibility to match Federal funds and expedite project implementation.

DISCUSSION

This provision expands section 323 to include the value of donated services provided by local government employees to be credited to the non-Federal share for projects funded under title 23 funds.

Sec. 1820. Disadvantaged Business Enterprises

SUMMARY

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

DISCUSSION

This 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.

SUBTITLE I—TECHNICAL CORRECTIONS

Sec. 1901. Repeal or Update of Obsolete Text

DISCUSSION

Letting of Contracts: This amendment deletes the obsolete exception.

Fringe and Corridor Parking Facilities: The amendment would substitute a meaningful reference for the obsolete term.

Repeal of obsolete sections of title 23: This section repeals obsolete 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 Date

SUMMARY

This section restates, 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 is made.

Sec. 1903. Inclusion of Requirements for Signs Identifying Funding Sources in Title 23

SUMMARY

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 amount of funding being used. This section transfers the provision to 23 U.S.C. 321 and makes a needed conforming amendment.

Sec. 1904. Inclusion of "Buy America" Requirements in Title 23

SUMMARY

This section sets forth the "Buy America" provision and designates it as 23 U.S.C. 321. The provision makes non-substantive, conforming amendments to the text needed because of the transfer, simplifies the text, and deletes an executed report requirement.

Sec. 1905. Technical Amendments to Nondiscrimination Section

SUMMARY

This section makes several technical amendments to section 140 of title 23.

DISCUSSION

Technical changes made include: eliminating gender-based language; clarifying that funding made available to carry out this section has the same broad availability as the source from which the funds are made available (an STP takedown); removing the $2.5 million funding cap on highway construction and technology training programs established for fiscal year 1976 as no longer necessary; correcting a typographical error; and clarifying the purpose and intent of subsection (d) by modifying the title to remove the reference to Indian contracting.

TITLE II—TRANSPORTATION RESEARCH

SUBTITLE A—FUNDING

Sec. 2001. Authorization of Appropriations.

Subsection (a)

SUMMARY

Subsection (a) provides contract authority from the Highway Trust Fund for research programs, for each of the fiscal years 2004 through 2009.

DISCUSSION

Surface Transportation Research is authorized at $211M for fiscal year 2004 and 2005, $215M for fiscal year 2005, $218M for fiscal year 2007, $220M for fiscal year 2008, and $223M for fiscal year 2009. The amounts include $20M each year for the Surface Transportation-Environment Cooperative Research Program. Training and Education is authorized at $27M for fiscal year 2004,

$28M for fiscal year 2005, $29M for fiscal year 2006, $30M for fiscal year 2007, $31M for fiscal year 2008, and $32M for fiscal year 2009. The Bureau of Transportation Statistics is authorized at $28M each fiscal year. The ITS Standards, Research, Operational Tests, and Development program is authorized at $120M for fiscal year 2004, $123M for fiscal year 2005, $126M for fiscal year 2006, $129M for fiscal year 2007, $132M for fiscal year 2008, and $135M for fiscal year 2009. University Transportation Centers is authorized at $40M for fiscal year 2004 and $45M for fiscal years 2005 through 2009.

Subsection (b)

SUMMARY

Subsection (b) provides the period of availability of funds for obligation and the Federal share of project cost.

DISCUSSION

The sums authorized to be appropriated under subsection (a) are available for obligation in the same manner as apportioned funds under Chapter 1 of title 23, USC. The Federal share of the cost of a project under this section shall be the share applicable under 23, U.S.C. 120(b) as adjusted by subsection 120(d), unless otherwise stated or determined by the Secretary. Funds remain available until expended.

Subsection (c)

SUMMARY

Subsection (c) summarizes the allocations for the amounts made available in subsection (a).

DISCUSSION

From the amounts made available for the Surface Transportation Research program, subsection (c)(1) provides $27M for fiscal years 2004 through 2009 for advanced, high risk, long-term research under 502(d) of title 23, USC. In addition, the following amounts are made available for the long-term pavement performance program under section 502(c) of title 23, USC: $18M for each of fiscal years 2004 and 2005, $17M for fiscal year 2006, $15M for fiscal year 2007, $12M for fiscal year 2008, $10M for fiscal years 2009. Subsection (c)(2) provides $342M for each of fiscal years 2004 through 2009 to carry out the Technology Application Program under section 503 of title 23, USC. Subsection (c)(4) provides, $.5M for each of fiscal years 2004 through 2009 to carry out the International Highway Transportation Outreach Program under section 506 of title 23, USC.

From the amounts made available for Training and Education, subsection (c)(3)(A) provides the following amounts for the National Highway Institute under section 504(a) of title 23, USC: $12M for fiscal year 2004, $12.5M for fiscal year 2005, $13M for fiscal year 2006, $13.5M for fiscal year 2007, $14M for fiscal years 2008, and $14.5M for fiscal year 2009. In addition, subsection (c)(3)(B) provides the following amounts to carry out the Local Technical As-

sistance Program under section 504(b) of title 23, USC: $12M for fiscal year 2004, $12.5M for fiscal year 2005, $13M for fiscal year 2006, $13.5M for fiscal year 2007, $14M for fiscal years 2008, and $14.5M for fiscal year 2009. Subsection (c)(3)(C) provides $3M for each of fiscal years 2004 through 2009 for carrying out the Eisenhower Transportation Fellowship Program under section 504(c)(2) of title 23. USC.

From the amounts made available for the ITS Standards, Research, Operational Test and Development Program, subsection (c)(6) provides that not less than $30M for each of fiscal years 2004 through 2009 be made available to carry out the Commercial Vehicle Intelligent Transportation Systems Infrastructure Program under section 528 of title 23, USC.

Subsection (c)(5) provides $75,000,000 in each of fiscal years 2004 through 2009 to carry out the New Strategic Highway Research Program under Section 509 of title 23, USC.

Subsection (d)

SUMMARY

Subsection (d) describes the transferability of funds.

DISCUSSION

Transfers are allowed among funds allocated under paragraphs (1), (2), or (4) of subsection (c) in amounts not to exceed 10 percent of the amount allocated in the fiscal year. The same is allowed for funds allocated under subparagraphs (A), (B), or (C) of subsection (c)(3).

Sec. 2002. Obligation Ceiling

SUMMARY

This section sets the annual obligation limitation for the amounts made available under Title II for Transportation Research.

DISCUSSION

For fiscal years 2004 through 2009, the limits on obligation of contract authority available for Transportation Research are as follow: $496M for fiscal year 2004, $510M for fiscal year 2005, $518M for fiscal year 2006, $525M for fiscal year 2007, $531M for fiscal year 2008, and $538M for fiscal year 2009.

Sec. 2003. Notice

SUMMARY

This section outlines requirements for the Department of Transportation to notify the appropriate committees of Congress should any reprogramming of authorized funds or reorganization take place.

DISCUSSION

This section continues an existing notification requirement. If any funds under this title are subject to a reprogramming action

requiring notice to the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate, notice shall be concurrently provided to the Committee on Transportation and Infrastructure and the Committee on Science of the House of Representatives and the Committee on Environment and Public Works of the Senate. This section also extends the requirement that on or before the 15th day preceding the date of any major reorganization of a program, project, or activity of the Department of Transportation for which funds are authorized by this title, the Secretary shall provide notice of the reorganization to the Committee on Transportation and Infrastructure and the Committee on Science of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SUBTITLE B—RESEARCH AND TECHNOLOGY

Section 2101. Research and Technology Program

SUMMARY

This section amends Chapter 5 of title 23, U.S.C. to provide authority for programs under Subchapter I Surface Transportation, Subchapter II Intelligent Transportation System Research and Technical Assistance Program; and Subchapter III Miscellaneous.

SUBCHAPTER I—SURFACE TRANSPORTATION

Subsection 501. Definitions

SUMMARY

This section defines terms used in this subchapter.

Subsection 502. Surface Transportation Research

SUMMARY

This subsection authorizes the Secretary to carry out research, development, testing, and technology transfer activities.

DISCUSSION

Under this subsection the Secretary may, independently or in cooperation with others, carry out activities in research, development, and technology transfer with respect to all phases of transportation planning and development and the effect of State laws on these activities. In addition, the Secretary may test, develop, or assist in testing and developing any material, invention, patented article, or process. Activities under this subsection must be consistent with the surface transportation research and technology development strategic plan required under section 508(c). All parties entering into contracts, cooperative agreements, or other transactions with the Secretary to perform research or provide technical assistance shall be selected on a competitive basis and on the basis of a peer review. The research, development, or use of technology under a cooperative agreement is subject to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.). The Federal share of the cost of activities carried out under a cooperative research

and development agreement shall not exceed 50 percent, unless otherwise approved by the Secretary.

Among specific programs and activities, a new Advanced, Long-Term Research program is established that addresses longer-term, high risk research with potentially dramatic breakthroughs for improving durability, efficiency, the environment, productivity, and safety. The Seismic Research Program, Long-Term Pavement Performance Program (LTPP), and the Infrastructure Investment Needs Report are continued. A report on the initial conclusion of the LTPP program is required to be included in the strategic plan under section 508(c). The due dates for the infrastructure needs report is change from January 31 to July 31, and the comparison to previous reports is no longer fixed at the prior three biannual reports.

Finally, this subsection requires the Secretary, in consultation with the Secretary of Homeland Security, to develop a 5-year strategic plan for research and technology transfer and deployment activities pertaining to the security aspects of highway infrastructure and operations aspects.

Subsection 503. Technology Application Program

SUMMARY

This subsection amends the Technology Deployment Initiatives and Partnerships Program and the Innovative Bridge Research and Construction Program under section 503, Title 23, USC.

DISCUSSION

This subsection establishes the Technology Application Initiatives and Partnerships Program to accelerate the transportation community's adoption of innovative technologies. The Secretary is required to develop goals in consultation with the Surface Transportation Research Technology Advisory Committee and other interested stakeholders, as part of the research strategic plan under section 508(c) of this title. Goals shall be designed to provide tangible benefits in the areas of efficiency, safety, reliability, service life, environmental protection, and sustainability. In selecting projects, the Secretary shall give preference to projects that leverage Federal funds with other public or private resources.

The Innovative Surface Transportation Infrastructure Research and Construction Program expands the former program that emphasized bridges to now include all structures. The program still includes the application of innovative material, design, and construction technologies in the construction, preservation, and rehabilitation of elements of surface transportation infrastructure. Grants under this program are awarded based on program goals. The Secretary is charged with ensuring the application of technology and technology transfer. The Secretary shall determine the Federal share of the cost of the project.

This subsection also eliminates the requirement to continue SHRP partnerships under section 503(a)(6) of title 23. Section 503(a)(7) of tile 23 is amended to delete the list of specified areas within which the Secretary may make grants, cooperative agreements, and contracts to foster alliances and support efforts. Report-

ing on results and progress is published under the research strategic plan under section 508(c). Section 503(b) of title 23 is retitled and revised to broaden the emphasis from bridge research to surface transportation infrastructure research. In addition, the emphasis on innovative material technology research is expanded to include design and construction technologies. The program goal under section 503(b) to develop techniques to separate vehicle and pedestrian traffic from railroad traffic has been eliminated. Added is a provision that requires any entity to accelerate within the agency, to the extent possible, a new technology implemented with funds made available under this section.

Subsection 504. Training and Education

SUMMARY

This subsection modifies the training and education programs of the National Highway Institute.

DISCUSSION

Section 504(a)(3) of title 23 is modified to emphasize asset management and the application of emerging technologies as two areas in which the Institute shall develop courses. The section identifies additional courses to be developed by the Institute, in consultation with State departments of transportation and the American Association of State Highway and Transportation Officials. Other changes to the section include the requirement for the Institute to periodically review courses and to make revisions or cease to offer courses as necessary. The cost for course development is now explicitly stated as part of the cost of training and education to be paid by a private entity or person, unless otherwise determined by the Secretary.

Section 504(a)(7) of title 23 is modified by removing the limitation on the amount of fees that the Institute can collect in any fiscal year. Funds made available to carry out this section may now be combined with or held separately from fees collected under memoranda of understanding, regional compacts, and other similar agreements, in addition to being combined with or held separately from fees collected under this section as previously allowed.

Changes to the Local Technical Assistance Program add incident response and operations as areas in which the Secretary can assist transportation agencies and governments under grants, cooperative agreements, and contracts. Where urbanized areas are cited, the qualifying definition of population sizes between 50,000 and 100,000 is no longer included. Finally, regional cooperation is promoted under Section 504(2)(C) as an area in which to assist urban transportation agencies.

The Dwight David Eisenhower Transportation Fellowship Program is continued to allow the Secretary to make grants for research fellowships for the purpose of attracting qualified students to the field of transportation.

Subsection 505. State Planning and Research

SUMMARY

This subsection amends the program of funding to States for research, development, and technology transfer activities.

DISCUSSION

Two percent of sums apportioned under section 104 (except subsection (f) and (h)) and Section 144 shall be available for specified State planning and research activities. Not less than 25 percent of the funds shall be expended by the State for research, development, and technology transfer activities, unless waived by the Secretary. The Federal share of the cost of a project shall be the share applicable under 23 U.S.C. 120(b), as adjusted by subsection 120(b) unless the Secretary determines that the interest of the Federal-aid highway program would best be served by decreasing or eliminating the non-Federal share.

This subsection adds that SPR funds may be used for the purposes authorized under the International Highway Transportation Outreach Program of section 506(a).

Subsection 506. International Highway Transportation Outreach Program

SUMMARY

This subsection amends the International Highway Transportation Outreach Program under section 506, title 23 USC.

DISCUSSION

This subsection continues the current program for the Secretary to conduct international highway transportation outreach aimed at promoting U.S. expertise and goods and services and increasing the transfer of U.S. technology, and informing the U.S. highway community of technological innovations in foreign countries.

Each fiscal year, the Secretary is required to submit a report to Congress that describes the destinations and costs of international travel conducted in carrying out activities under this program.

Subsection 507. Surface Transportation-Environment Cooperative Research Program

SUMMARY

This subsection amends the existing Surface Transportation-Environment Cooperative Research Program.

DISCUSSION

This section reauthorizes funds for a research program that was authorized in TEA–21 but never received an appropriation. This research program examinies a wide range of environmental issues in surface transportation. The program shall be based on the contents of National Research Council Report 268, "Surface Transportation Environment Research: A Long-Term Strategy". The Secretary is to administer the program and sharpen the focus of the research

through stakeholder input via workshops, symposia, and expert panel.

Subsection 508. Surface Transportation Research Technology Deployment and Strategic Planning

SUMMARY

This subsection amends the strategic planning requirements for research under section 508 of title 23.

DISCUSSION

The subsection continues the requirement of the Secretary to establish a strategic planning process for research. It adds the establishment of a Surface Transportation Research Technology Advisory Committee to provide program advice to the Secretary. Continued is the requirement for the Secretary to enter into a contract with the Transportation Research Board, on behalf of the Research and Technology Coordinating Committee of the National Research Council, for the review of the plan and the strategic planning process and to provide program recommendations.

Subsection 509. New Strategic Highway Research Program

SUMMARY

This subsection establishes a new strategic highway program.

DISCUSSION

In section 5112 of TEA–21, Congress requested that the Transportation Research Board (TRB) conduct a study to determine a new strategic highway program. This new strategic highway program is based on the Future Strategic Highway Research Program (F-SHRP) recommended in TRB Special Report 260: Strategic Highway Research: Saving Lives, reducing Congestion, Improving Quality of Lives.

Under this subsection, the National Research Council shall establish and carry out the strategic highway program. The program shall consider, at minimum, the results of studies relating to the implementation of the Strategic Highway Safety Plan prepared by the American Association of State Highway and Transportation Officials (AASHTO). In administering the program, the National Research Council shall acquire a qualified, permanent core staff, and ensure that identified stakeholders are involved in the program.

Before October 1, 2007, the Secretary is required to enter into a contract with the TRB to complete a report on implementing results of the new strategic highway program. The Secretary shall submit the report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

Subsection 510. University Transportation Centers

SUMMARY

This subsection modifies the existing university transportation research program under section 5505 of title 49 USC.

DISCUSSION

Section 5505 of title 49 U.S.C. 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. As amended under this subsection, the grants are increased from 33 to 40 eligible institutions.

The subsection continues the establishment of 1 regional center at institutions in each of the 10 Federal regions. A new provision allows locating no more than one center (or one lead university in a consortia) in any State. Only regional centers will be selected based on proposals requested by the Secretary. All grantees must otherwise meet specified requirements that include a 6-year program plan and annual report to the Secretary on projects and activities. A peer review is required for reports on research under this program. The Secretary must coordinate activities of the centers and operate a clearinghouse for the dissemination of results from activities.

Restrictions have been placed on the amount of funds available to centers that can be used for faculty positions, laboratory facilities, student internships, and administration. Funds authorized under this subsection shall be available for 2 years after September 30 of the fiscal year for which the funds were authorized.

Subsection 511. Multistate corridor operations and management

SUMMARY

This subsection continues funding to support the I–95 corridor Coalition, established under the Intermodal Surface Transportation Act of 1991.

Sec. 2102. Study of Data Collection and Statistical Analysis

SUMMARY

This section provides for activities of the Bureau of Transportation Statistics relating to transportation data collection and statistical analysis.

DISCUSSION

Under this section, the Bureau of Transportation Statistics assumes the role of the lead agency to establish, not later than October 1, 2004, statistical standards for the Department of Transportation. The Bureau shall provide annually to the Secretary an overview of the level of effort expended on statistical analyses.

Not later than 90 days after the date of enactment of this Act, the Secretary shall provide a grant to, or enter into a cooperative agreement or contract with the Transportation Research Board to conduct a study of data collection and statistical analysis efforts. In conducting the study, the Board shall consult with stakeholders. Not later than 1 year after the date of the grant or cooperative agreement, the Board shall submit to the Secretary, the Committee on Environment and Public Works of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives a final report on the results of the study. The Bureau

shall, to the maximum extent practicable, implement any recommendations included in the study. The Comptroller General of the United States shall conduct a review of the study. Each year, beginning in 2004, the Bureau shall prepare and submit to the Secretary an annual report on progress made in response to the study recommendations.

Sec. 2103. Centers for Surface Transportation Excellence

SUMMARY

This section establishes centers for surface transportation excellence to promote high-quality outcomes in support of strategic national programs and activities.

DISCUSSION

The centers for transportation excellence are:

Environmental Excellence to assist States in planning and delivering environmentally sound transportation projects.

Operations Excellence for implementing operations in planning and management.

Excellence in Surface Transportation Safety to provide critical safety program information, technical support in the Secretary's 22 safety emphasis areas, and training for State personnel.

Excellence in Project Finance to support States in developing finance plans and project oversight tools and training in financing methods to advance projects and leverage funds.

Excellence in Asset Management to develop and conduct research, provide training and education, and disseminate information on the benefits of and tools for asset management.

The centers for transportation are selected by the Secretary on a competitive basis.

SUBTITLE C—INTELLIGENT TRANSPORTATION SYSTEM RESEARCH

Sec. 2201. Intelligent Transportation System Research and Technical Assistance Program.

This section is intended to replace Subtitle C of Title V, TEA–21, which is repealed. The following describes the changes from the provisions of TEA–21.

Sec. 5501. Short Title

This section names the subtitle the "Intelligent Transportation Systems Act of 2003."

Sec. 5502. Goals and Purposes

The goals stated in TEA–21 are changed to include references to public safety and security. These changes are intended to reflect new emphasis areas in the Intelligent Transportation Systems (ITS) Program.

Subsection 521. Findings

SUMMARY

This subsection modifies the TEA–21 section regarding findings of the Congress on the ITS program.

DISCUSSION

This subsection amends the TEA–21 section by deleting one remark that makes reference to ISTEA and maintaining that Congress finds continued investment in architecture and standards development, research, technical assistance, and system integration is needed to accelerate the rate at which ITS investment is incorporated into the national transportation network to improve safety and efficiency and to reduce negative impacts on communities and the environment.

Subsection 522. Goals and Purposes

SUMMARY

This subsection modifies the goals and purposes of the ITS program .

DISCUSSION

New goals are added to reflect the expanded interests for the program. Other modifications reflect changes in emphasis for a number of program activities.

Subsection 523. Definitions

SUMMARY

This subsection deletes the word "corridor" from terms used in the new subtitle to reflect the deletion of the corridor development program under TEA–21. Terms relating to commercial vehicle operations are moved to the subsection on commercial vehicle systems.

Subsection 524. General Authorities and Requirements

SUMMARY

This subsection makes changes to general authorities and requirements under TEA–21 that provide ITS program scope, policy, and the requirements of the Secretary.

DISCUSSION

Under this subsection, a requirement that the Secretary "assist in the application of ITS" replaces the TEA–21 requirement that the Secretary "advance nationwide deployment." In carrying out the program, the Secretary is now required to consult with the Secretary of Homeland Security along with other Federal officials. This subsection adds requirements for the program advisory committee authorized by section 5204(h) of TEA–21, and also includes the amount of funding available for the committee. Now removed is the requirement for the Secretary to use the Software Engineering Institute's Capability Maturity Model, or other risk assessment methodology, to reduce the cost, schedule, and performance risk associated with software. Finally, the Secretary is required to issue revised guidelines and requirements for evaluating operational test and other projects.

Subsection 525. National ITS Program Plan

SUMMARY

This subsection continues the requirement for the Secretary to develop a National Program Plan for ITS.

DISCUSSION

The National ITS program addresses program goals, objectives, and milestones, and must be maintained and updated as necessary and submitted to Congress as part of the Surface Transportation Research Strategic Plan .

Subsection 526. National ITS Architecture and Standards

SUMMARY

This subsection continues the general requirements and activities related to the national architecture and standards.

DISCUSSION

Changes under this subsection reflect the completion of several requirements specified in TEA–21. These include the report to Congress on critical standards and the provision for communication spectrum for ITS. Subsection 526(d), which includes provision for conformity with the National ITS Architecture, no longer includes deployment. Deployment is no longer emphasized as a direct activity of the Secretary. Exceptions to conformity no longer include upgrades or expansions of existing systems, as allowed under TEA–21.

Subsection 527. Research and Development

SUMMARY

This subsection continues ITS research and development program authorized under TEA–21. Changes reflect new focus areas.

DISCUSSION

Under this subsection, the types of projects and activities that receive funding priority are greatly broadened. Among other requirements, a new provision requires any call center receiving calls relating to an automatic crash notification event to be immediately capable of routing calls via the 9–1–1 network to the public safety answering point serving the location of the vehicle involved in the emergency.

Subsection 528. Commercial Vehicle Intelligent Transportation System Infrastructure Program

SUMMARY

This subsection is intended to complete the core deployment of Commercial Vehicle Information Systems and Networks (CVISN) under TEA–21 and to encourage the expanded deployment of CVISN.

DISCUSSION

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 will receive a grant that has been reduced by the amount of funds previously received for CVISN core deployment. States that have not previously received funding for CVISN core deployment will 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.

The Secretary may make grants to States for the expanded deployment of Commercial Vehicle Information Systems and Networks. The amount of the grants will 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 is $1 million. A State that has completed core deployment is eligible for an expanded deployment grant.

The Federal share of grant funds under this section is 50 percent. The Federal share for funds used for Commercial Vehicle Information Systems and Networks from other eligible sources is 80 percent.

Subsection 529. Use of Funds

SUMMARY

This subsection changes the use of funds by deleting the TEA–21 restrictions on funds for operational test and deployment.

TITLE III—INTERMODAL PASSENGER FACILITIES

Sec. 3001. Intermodal Passenger Facilities

SUMMARY

The section amends chapter 55 of title 49, U.S.C., Intermodal Transportation, and replaces it with a new Intermodal Passenger Facilities.

DISCUSSION

The purpose of this subchapter is 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 shall 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 cost of providing better access between intercity bus service and other transportation. The primary criterion for selection is 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 shall not exceed 50 percent of the net project costs, as determined by the Secretary. Up to 30 percent of the non-Federal share may include amounts appropriated to or made available to a Federal department or agency for transportation purposes.

Under the proposal, $10,000,000 in contract authority shall be available from the Highway Trust Fund for each of fiscal years 2005 through 2009 to carry out this subchapter. These facilities will further assist in linking passengers arriving and departing through airports, public transportation facilities, train stations, and seaports with their final home, work, and tourism destinations.

TITLE IV—FEDERAL AID IN SPORT FISH RESTORATION ACT AMENDMENTS

SUMMARY

The new title amends the Dingell-Johnson Sport Fish Restoration Act of 1950 and reauthorizes the Dingell-Johnson programs within the committee's jurisdiction for 6 years. The Title also reorganizes the funding mechanism for these programs.

All programs are assigned a percentage to allow a simplified, consistent and fair allocation of funds.

DISCUSSION

Under Section 4102, any amount apportioned to any State under the provisions of this Act which is unexpended or unobligated at the end of the period during which it is available for expenditure on any project is authorized to be made available for expenditure by the Secretary of the Interior to supplement the 55.3 percent of each annual appropriation to be apportioned among the States, as provided for in section 4(b) of the Dingell-Johnson Act.

Section 4103 simplifies the current distribution of funds to the Coastal Wetlands, Boating Safety, the Clean Vessel Act, Boating Infrastructure, National Outreach and Communications programs as well as funding for administrative costs. For fiscal years 2004 through 2009, each annual appropriation made in accordance with the provisions of section 3 of Dingell-Johnson shall be distributed on a percentage basis. Funds are distributed as follows:

Coastal Wetlands	18 percent
Boating Safety	18 percent
Clean Vessel Act	1.9 percent
Boating Infrastructure	1.9 percent
National Outreach and Communications	1.9 percent
Administration	2.1 percent

Under Section 4104, funds are redistributed to supplement the 55.3 percent of each annual appropriation to be apportioned among the States under section 4(b) of this Act.

Section 4107 provides for the redistribution of remaining funds from Section 12 of title 16 U.S.C. to supplement the 55.3 percent of each annual appropriation to be apportioned among the States under section 4(b) of this Act (i.e., Puerto Rico, the District of Columbia, Guam, American Samoa, Commonwealth of the Northern Marina Islands and Virgin Islands).

Sections 4105 and 4106 make necessary conforming changes as a result of this Title.

Section 4108 provides, for each of fiscal year 2004 through 2009, 0.9 percent of each annual appropriation for the Multistate Conservation Grant Program.

HEARINGS

The Committee on Public Works and Environment held eight hearings, two field hearings and 4 symposiums during the 107th Congress to hear from the Administration, States, industry, and users of the surface transportation system for an overview of how TEA–21 worked and what issues needed to be addressed in reauthorization. A complete transcript of these hearings is contained in S. Hrg. 107–668, Parts I and II.

Partners for America's Transportation Future: Hearing to Examine Lessons Learned From TEA–21 and Perspectives on Reauthorization From the Federal, State and Local Level—January 24, 2002

This kick-off hearing examined the state of the nation's transportation system, lessons learned in the 10 years since the passage of the Intermodal Surface Transportation Efficiency Act (ISTEA), and where the transportation program is headed.

PANEL I

Honorable Norman Y. Mineta, Secretary, United States Department of Transportation.

Secretary Mineta detailed five areas in which TEA–21 benefited America's transportation system: predictability, equity and flexibility of funding; safety; mobility and system upgrading; application of innovative technologies; and quality of life. He praised TEA–21's 40 percent increase over ISTEA and noted that minimum guarantees and Highway Trust Fund firewalls, and flexible funding allowed States to meet their own needs, and innovative loan and grant programs strengthened infrastructure.

The Secretary suggested several ways to build on the success of TEA–21. Among them: preserve funding flexibility; build on the intermodal approaches of ISTEA and TEA–21; expand innovative financing programs; and focus more on the management and performance of the system as a whole rather than on "inputs" or the functional components such as planning, development, operation and maintenance themselves. Secretary Mineta also stressed that further safety improvements must be made because 41,000 deaths and over 3 million injuries suffered annually on highways is not acceptable.

PANEL II

Chris Hart, Hillsborough County Florida Commissioner.

Peter Clavell, Mayor, Burlington, Vermont.

H. Brett Coles, Mayor, Boise, Idaho.

Raymond C. Scheppach, Executive Director, National Governors Association.

Raymand Scheppach, speaking on behalf of the National Governor's Association, voiced strong support for protection of the Highway Trust Fund. He also stated, "The public transportation system is largely the responsibility of States and local governments. It is important that the next authorization should not weaken or preempt State authority."

Burlington, VT, Mayor Peter Clavelle spoke on behalf of the National League of Cities. He stated that "one of the greatest successes of TEA–21 was the establishment of a direct link between gasoline taxes collected at the pump and Federal transportation spending." Mayor Clavelle voiced concern over transportation security, asking, "Will the Federal Government be able to offer greater assistance to cities to meet their needs?" He calls for all transportation taxes to be deposited into the highway trust fund. Federal-State financial matching relationships and innovative financing techniques such as tolls were also supported by Mayor Clavelle, as was local flexibility, instead of a "one size fits all" transportation program.

Representing the United States Conference of Mayors, Boise Mayor H. Brent Coles revealed the results of a survey taken by 40 mayors relating to TEA–21. The survey suggested that "States are reaching out to local governments under TEA–21." Further results listed the most important transportation priorities as system preservation (35 percent), congestion relief (20 percent), and new rail projects (15 percent). Mayor Coles then cited the formation of a new commuter rail project in Boise, called the Treasure Valley Partnership, as confirmation that TEA–21 is working.

The National Association of Counties (NACo) was represented by Chris Hart, County Commissioner of Hillsborough County, Florida. He had a very favorable view of TEA–21, praising the flexibility that allowed for greater input from local officials. Commissioner Hart listed congestion, environmental streamlining, and investment in rural roads as chief concerns of NACo.

Subcommittee on Transportation, Infrastructure, and Nuclear Safety Hearing Fiscal Year 2003 Budget and Highway Trust Fund—February 11, 2002

TEA–21 created the concept of Revenue Aligned Budget Authority (RABA) to align spending from the highway account of the Highway Trust Fund (HTF) to revenue into the HTF. During the first few years of TEA–21, actual HTF receipts were higher than projected at the time of the legislation's passage. This resulted in an upward adjustment of the guaranteed funding levels set out in TEA–21.

In fiscal year 2003, TEA–21 set the projected guaranteed funding level at $27.7 billion. However, HTF receipts did not meet anticipated revenues resulting in a negative RABA adjustment of $4.4 billion reflected in the President's fiscal year 2003 budget request. The President's budget request set the obligation limitation at $23.2 billion representing a $8.6 billion decrease from the fiscal year 2002 funding level.

PANEL I

Honorable Mary Peters, Administrator, Federal Highway Administration.

Ms. Donna McLean, Assistant Secretary for Budget, US Department of Transportation.

The Administrator stressed that the Federal-aid program should not abandon the RABA concept. Instead, as the reauthoriozation process advances, she urged Congress to work with the Administration to refine the process and eliminate the dramatic positive and negative fluctuations under the current program.

PANEL II

Honorable Tom Stephens, Director, Nevada Department of Transportation.

Carson City, NV (on behalf of the American Association of State Highway and Transportation Officials).

Mr. Bill Fay, President and CEO, American Highway Users Alliance, Washington, DC.

Mr. Tom Hill, Chief Executive, Oldcastle Materials, Inc., Washington, DC (on behalf of American Road and Transportation Builders Association).

The non-Federal witnesses on the second panel focused their testimony on the need to correct the negative RABA adjustment and the impact of such a dramatic decrease in funding.

Research Round Table Discussion on Reauthorization of Federal Surface Transportation Research Program Friday, March 15, 2002

PARTICIPANTS

Dr. Michael Walton, University of Texas in Austin.

Mr. Robert E. Skinner, Executive Director, Transportation Research Board (TRB).

Professor Elizabeth Deakin, University of California in Berkeley.

Dr. Taylor Eighmy, Director, Recycled Material Resource Center at the University of New Hampshire.

Mr. Scott Bernstein, President of the Center for Neighborhood Technology.

Mr. Val Riva, President and CEO, American Concrete Pavement Association.

Mr. David B. Carlson, President, Fred Carlson Company (testifying on behalf of the National Asphalt Pavement Association).

Dr. Chelsea C. White, Georgia Institute of Technology (testifying on behalf of Intelligent Transportation Society of America (ITS)).

Dr. Phillip J. Tarnoff, Institute of Transportation Engineers (ITE).

Mr. Michael M. Ryan, Representing the Pennsylvania Department of Transportation (PennDOT) and the American Association of State Highway and Transportation Officials (AASHTO).

Mr. Bud Wright and Mr. Dennis C. Judycki, Executive Director and Director of Research, Development and Technology, respectively, Federal Highway Administration (FHWA).

Mr. Wright and Mr. Judycki both stressed the importance of research and technology. Funds for these activities were reduced under TEA–21, and this coupled with loss of flexibility caused by earmarks and designations impeded FHWA's ability to do research. The response to this was a re-emphasis on cooperation, information sharing and development of coordinated research agendas within the highway community. One of the successes cited as a result of this was the Long Term Pavement Program, to which the States provided $14 million through the National Cooperative Highway Research Program. In 1999, a national highway research and technology partnership created by FHWA, AASHTO and TRB formulated a collaborative national research and technology agenda, focusing on safety, infrastructure renewal, operations and mobility, planning and environment, and policy analysis and system monitoring.

Mr. Skinner argued for a decentralized research program to match the decentralized surface transportation system, because "decentralized research programs allow the potential users of research results to participate at many different levels. Because the industry is so highly fragmented, a more centralized program would probably make it even more difficult to establish productive links between researchers and the users of research products." Mr. Skinner also states, "The Federal role in highway research and technology is vital to highway innovation. Only the Federal Government has the resources to undertake and sustain high-risk but potentially high-payoff research, and only the Federal Government has the incentives to invest in long-term, fundamental research." He cites a Research and Technology Coordinating Committee report (TRB Special Report 261) in which suggestions are made for the improvement of FHWA'a research and technology program.

The focus of Dr. Walton's testimony was the Future Strategic Highway Research Program (F-SHRP). TEA–21 had asked the National Research Council to convene a study group to "determine the goals, purposes, and research agenda" for F-SHRP. The resulting report, entitled Strategic Highway Research: Saving Lives, Reducing Congestion, Improving Quality of Life, recommended the establishment of an F-SHRP program comprised of four strategic areas: renewal, safety, reliability, and capacity. Renewal refers to "devel-

oping a consistent systematic approach to performing highway renewal that is rapid, causes minimum disruption, and produces long-life facilities it means get in, get out, and stay out on our highway." Reliability refers to "provid[ing] highway users with reliable travel times by preventing and reducing the impact of non-recurring incidents."

Professor Deakin served as chair of the Surface Transportation Environmental Cooperative Research Board, which was created in 1999 through the TRB. The Board found that "a major new investment in transportation-environmental research is needed to support the nation's growth and meet public expectations for improved transportation system performance." Six critical areas were identified to bring about this improvement: human health; ecology and natural systems; environmental and social justice; emerging technologies; land use; and planning and performance measures. Increased funding was also advocated by Professor Deakin.

Mr. Riva outlined his key components for effective pavement research. He believed the research must be useful, that education and knowledge transfer is critical, that research must be conducted in a cooperative effort between the public and private sectors, that it must focus on pavement replacement and making due with existing facilities, and that the construction must be environmentally sensitive.

Dr. Eighmy's testimony was centered on his four "take home" messages regarding recycled materials in the highway environment: (1) "research on recycled materials is going to require strategic partnerships;" (2) research done by these partnerships must be placed in the hands of decisionmakers within the highway community; (3) "[t]hese research activities not only must produce more basic knowledge, but these tangible products that must also evolve have to be things like material specifications, performance specifications, best practices, guidance, evaluation methodologies policy analysis as research, and demonstration projects;" and (4) "a measurement of research success needs to be put in terms of actual use of the product by the highway community, particularly the State DOT's."

The focus of Mr. Bernstein's testimony was the five areas of TEA–21 in need of improvement in relation to its stated purposes (intermodalism, economic efficiency, environmental quality, and equity). The five areas were: (1) transparency or the ability to see clearly how resources are used; (2) data "good data should support good science and good decisions, but bad data is going to work the other way;" (3) travel security (here Mr. Bernstein cited an American Travel survey which stated that 81 percent of trips over 100 miles are taken by car, and asks why surface transportation security efforts do not match those of aviation security); (4) the value of fixing it first, and preserving instead of replacing; and (5) transportation and household economics (here Mr. Bernstein suggested that the DOT track issues such as the financial impact on people based on how many cars they own).

On behalf of the National Asphalt Pavement Association, Mr. Carlson advocated that Congress authorize a "multi-year asphalt pavement research and technology program, managed by the FHWA, with oversight input from members of AASHTO and the

hot mix asphalt industry." This would, according to Mr. Bernstein, "result in highways that are safer and environmentally friendly, designed for perpetual use, and repair projects that are quick and reduce traffic congestion."

Dr. White specified four areas on which the ITS should focus, according to its National Transportation Systems Program Plan: "an integrated network of transportation information that involves the instrumentation of major intersections and roads; advance crash avoidance technologies and automatic crash and incident detection, notification, and response; advanced transportation management systems that enable area-wide surveillance; and operational responses to traffic flow changes."

Six recommendations were outlined by Dr. Tarnoff for the purpose of improving TEA–21. These were: (1) funding for F-SHRP should be provided through a ′ of 1 percent take-down of Federal highway funds; (2) increase funding for the Transit Cooperative Research Program; (3) more focused research on intersection safety counteremeasures; (4) a study should be conducted by the Secretary of Transportation to identify the best practices of incorporating operations and safety into the planning process; (5) continue to fund the ITS research and development program; and (6) support the findings of TRB report 261.

Mr. Ryan detailed the two themes of AASHTO's Research Authorization Report. First is "the need for enhanced fundamental, long-term higher risk research." Second is "the need to do more aggressive training, technology transfer, and education." Mr. Ryan concluded by stressing that AASHTO supports many other programs that had been the subject of previous testimony, chief among them environmental quality and the Cooperative Research.

TEA–21 Reauthorization: Transportation Mobility, Congestion, and Intermodalism, March 19, 2002

PANEL I

Mr. C. Kenneth Orski, Director , MIT's International Mobility Observatory,

Mr. Alan Pisarski, Chairman of the Transportation Research Board Committee on National Transportation Data Requirements, and Programs.

Mr. Anthony Downs, Senior Fellow, Downs Institute.

Mr. Fred Salvucci, Senior Lecturer at MIT (specializing in transportation).

In his testimony, Mr. Orski provided an overview of nine areas that he felt had a large degree of consensus with the transportation industry and among the major stakeholder groups. These nine areas are: protecting the budgetary firewalls and guaranteed funding enjoyed by the highway and transit programs; giving States greater freedom to transfer funds between programs; a comprehensive strategy for addressing congestion is needed; providing administrative relief in the environmental review while not losing environmental protections; continued Federal support for intelligent transportation systems; providing funding for lower cost transit solutions such as bus rapid transit; allowing for the creation and funding of high occupancy tolls lane networks; providing for a na-

tional essential bus service network to provide greater national mobility; and examining and implementing refinements or new mechanisms to sustain the highway trust fund.

Data was the central theme of the testimony of Mr. Pisarski. The trend lines show American's are still predominately using the automobile as their mode of choice. Transportation is and will always be about distance and time. Transportation's goal must be to reduce the impact of distance on the ability of society to act on its varying interests. We are now at the stage where it is the pressures of time that should be the great driver of transportation goals and issues for the future.

Mr. Downs, the author of the book "Stuck in Traffic" testified specifically on the issue of congestion. Mr. Downs testified that there are positive social benefits to peak hour congestion that enable us as a society to pursue other goals such as where we live and work, living in low-density settlement patterns, and enjoying flexible means of movement. Mr. Downs provided data that demonstrated that the problem of congestion is getting worse around the country. Once congestion appears in a community there is very little that can be done to eliminate congestion all together. There are strategies that can be put in place such as incident management, ramp metering, the use of HOT lanes, adding capacity at bottlenecks, or moving closer to your workplace that can be employed to mitigate or diminish the effects of congestion.

Mr. Salvucci's testimony examined the impact of the implementation of the Federal-aid highway program and its role in developing our surface transportation system. From his examination of the past and the current state of the transportation system, Mr. Salvucci suggested four areas that can improve our transportation system. These are: (1) establishing a new program to federally fund the cost of operating and maintaining the existing national highway system; (2) developing a new category of funding for the rebuilding and redevelopment of old infrastructure and megaprojects; (3) developing a new initiative to prioritize access to airports; and (4) developing a new program to provide Federal funding for improved paratransit service.

PANEL II

Mr. Ron Sims, County Executive of King County, Washington.

Mr. Tim Lomax, Research Engineer for the Texas Transportation Institute (TTI) at Texas A&M University.

Mr. Sims testimony highlighted the role congestion is playing in urban areas. As an executive for a highly growing region, Mr. Sims has seen how population growth, development patterns, and lack of infrastructure investment can bring congestion problems to urban areas. The cost of congestion is one of the factors that a major employer in his area relocated their corporate headquarters. Mr. Sims provided three key recommendations to assist metropolitan areas mitigate the effects of congestion and keep areas competitive in the global economy. These are: (1) encouraging and promoting more flexible use of Federal funds for areas such as air quality improvements, ITS, and system operations; (2) the creation of geographically defined metropolitan transportation systems within which Federal fund would be targeted; and (3) targeting more Federal

transportation dollars directly to metropolitan areas to combat congestion.

Mr. Lomax, discussed a mechanism developed by the Texas Transportation Institute to measure and quantify congestion. According to TTI's studies, over the past 20 years American cities have not been able to keep pace with the demand brought by population and job growth. As a result, it now takes travelers in the top 75 metropolitan areas 185 percent longer to travel during peak periods. In 2000, travelers in these areas lost 3.6 billion hours to congestion. While road building can help to reduce the growth of traffic congestion, Mr. Lomax suggested that just funding roadway improvements will not solve our battle to curb congestion. A new balanced solution that examines and invests in all modes and in operation and demand aspects of the transportation system is a needed to fight the effects of ever growing congestion.

Symposium on Operations and Security in the Metropolitan Area—May 10, 2002

This roundtable discussion focused on the importance of enhanced communications, coordination and deployment of ITS technology to assist traffic managers and law enforcement in handling local and national emergencies.

PARTICIPANTS

Dr. Christine Johnson, Intelligent Transportation Systems, Federal Highway Administration.

Mr. Henry Hungerbeeler, Director, Missouri Department of Transportation.

Mr. John Njord, Exective Director, Utah Department of Transportation.

Mr. Elwyn Tinklenberg, Commissioner, Minnesota Department of Transportation.

Admiral Richard E. Bennis, Associate Undersecretary for Maritime and Land Security Transportation Security Administration.

Mr. Jacob Snow, General Manager, Regional Transportation Commission of Southern Nevada (on behalf of the Association of Metropolitan Planning Organizations).

Mr. Matthew Edelman, Executive Director, TRANSCOM, Jersey City, NJ.

Mr. Steve Lockwood, Vice President, Parsons Brinckerhoff (on behalf of the Institute of Transportation Engineers).

Dr. William D. Miller, Executive Director, Oklahoma Aeronautics and Space Commission.

Mr. Jack Goldstein, Senior Vice President, Science Applications International Corp. (on behalf of ITS America).

In their opening remarks, Senators Reid, Bond and Jeffords highlighted the importance of ITS and operations management to enhancing local and Federal response to emergencies. Senator Bond also noted the importance of "waterway transportation systems" and pointed out that "one medium size tow on the Mississippi takes 870 trucks off the road . . . [resulting in] less highway congestion, less fuel burned, improved safety, cleaner air in the ozone non-attainment area os St. Louis, and less highway wear and tear."

Christine Johnson (FHWA) pointed out that two investments offer "very high leverage in contributing" solutions to the problems of security and congestion. These investments are "monitoring technology that yields real-time information on traffic speed and volume; on incident details . . . transit and emergency response fleet location; weather data; and emergency evacuation details." The second is investment in institutional infrastructure that routinely brings together transportation, public safety, and emergency managers to collaborate on planning for response to routine traffic incidents and to major emergencies, and to develop ways to communicate such information.

Mr. Henry Hungerbeeler (Missouri Department of Transportation) noted that AASHTO's board of directors recommended that FEMA and Homeland Security support those "purely security-related costs that States will incur, and the Highway Trust Fund support those needs that serve multiple purposes, such as surface transportation, emergency response capabilities for major incidents on or off the transportation system." He also focused on defense mobilization needs, protection of highway assets, capabilities of the system for emergency response and special needs associated with the movement of goods.

Mr. John Njord (Utah Department of Transportation) highlighted the fact that in the West, as compared to much of the rest of the Nation, States face enormous growth. He noted that over the past 10 years Utah had population growth of 30 percent per year. Because of this Utah invested in a coordinated intelligent transportation system and has seen a reduction of delays on streets by up to 20 percent. Their ITS uses: closed circuit television cameras; congestion sensors; road pavement condition sensors; 511 traveler information; close coordination with highway patrols; and a web site which contains detailed traffic information. He recommended strong Federal support for ITS technology deployment. Mr. Njord also noted that "there is not bigger 'bang for the buck' than ITS technology in reducing congestion and increasing air quality" and thus he recommended that CMAQ funds be allowed to be used for more than 3 years' worth of operation.

Mr. Tinglenberg (Minnesota Dept. of Transportation) echoed some of the remarks of Mr. Njord regarding the importance of ITS technology. He noted that communication is the best response to handling security problems and recommended "the use of cameras and digital imaging systems, advanced signal integration systems . . 511 and C-vision, improved variable message capabilities." In terms of the reauthorization, he proposed strong financial support of ITS deployment and mentioned AASHTO's support for about $142 million per year. In addition, he favored funding of around $125 million per year for critical research and development regarding new ITS technologies. He also discussed ramp metering and noted that their metering system provided annual benefits of about $40 million to our system.

Mr. Snow, who testified on behalf of AMPO, noted that Las Vegas had "100 percent growth in the last 10 years." He described the problems such tremendous growth creates. He strongly supported "development of a performance-based management and operations element [regarding] regional transportation plans." He

wanted DOT and Homeland Security to "assist in funding needed info-structure to provide data that will assess the system's effectiveness." He also recommended that the amount of funding provided to MPOs should increase to 2 percent from the current level of 1 percent and that MPOs be allowed to flex funds from STP and CMAQ in support of ITS operations, and that these "types of flex funds need to be sub-allocated to MPOs. . . ."

Mr. Edelman, who represents a coalition of 18 agencies in New York, New Jersey and Connecticut, noted how the value of ITS was proven after the September 11 bombings of the World Trade Center in New York. He noted how ITS technology helped enforce the ban on single occupancy autos coming into Manhattan. Also, bus operators on the day of the attack "were able to use our multi-agency video network to make the best use of their resources." In addition, his group "used the I–95 Coalition's network to advise drivers throughout the Northeast, linked to a massive deployment of traveler information systems, to avoid [certain areas]." He called for more funding for ongoing operations and maintenance costs of ITS systems.

Mr. Lockwood testified on behalf of the Institute of Transportation Engineers. He recommended that the Federal Government play an enhanced role in accelerating the evolution of incorporating systems management into State and local agency decisionmaking by clarifying support of Federal policy. He also urged supporting a higher priority for performance-oriented improvements; provision of appropriate funding flexibility; and promoting stronger operations oriented planning and multi-jurisdictional partnerships at the regional level.

Mr. Goldstein represented ITS America at the roundtable discussion and he noted that ITS technologies, already deployed, are "being used to enhance the security of the Nation's surface transportation system." He pointed out that in addition to the technology deployed, system performance is "predicated on the ability of skilled transportation professionals to collect, analyze, and archive data about the performance of the system, during the hours of peak use." He concluded by stating that ITS America proposed the "creation of a national transportation information network, which will link all existing and future metropolitan and rural transportation systems in the Nation into an integrated, yet distributed, data network." He recommended that Congress double funding for ITS operations in the reauthorization of TEA–21.

Mr. Miller, of the Oklahoma Aeronautics and Space Commission, emphasized that America was faced with the "defender's disadvantage" in that we must defend against all possible attacks, while the terrorist only has to find one weakness in our system. He noted that ITS technologies "can be a powerful tool in aiding first responders and traffic managers, while assisting the efforts to secure our transportation infrastructure." In Oklahoma their multi-phase ITS integration program included a fiber optic communications backbone capable of integrating a myriad of ITS components, to enhance security and preparedness. Their program linked DOT, Federal , military and local agencies into this common communication backbone.

Transportation Planning and Smart Growth, May 15, 2002

Under the current Federal surface transportation program, States and metropolitan areas engage in a planning process as a prerequisite to spending Federal-aid highway and transit funds. This full committee hearing examined the effectiveness of the current transportation planning program and explored ideas for the future.

PANEL I

Ms. Cynthia Burbank, Program Manager, Planning and Environment, Federal Highway Administration (FHWA).

Mr. Kenneth J. Leonard, Director, Division of Transportation Investment Management, Wisconsin Department of Transportation, Madison, WI (on behalf of the American Association of State Highway and Transportation Officials (AASHTO)).

Mr. Ronald Kirby, Transportation Director, Metropolitan Washington Council of Governments, Washington, DC (on behalf of the Association of Metropolitan Planning Organizations (AMPO)).

Mr. Peter Gregory, Executive Director, Two Rivers Ottauquechee Regional Commission, Woodstock, VT (on behalf of the National Association of Regional Council (NARC)).

PANEL II

Mr. Andrew Cotugno, Planning Director, METRO, Portland, OR.

Ms. Judith Espinosa, Director, Alliance for Transportation Research, Albuquerque, NM (on behalf of the Surface Transportation Policy Project).

Ms. Jennifer Joy Wilson, President, National Stone, Sand and Gravel Association, Arlington, VA Wendell Cox, Wendell Cox Consultancy, Belleville, IL.

Mr. Tom Downs, Director, National Center for Smart Growth Education and Research, University of Maryland, Baltimore, MD.

The overall planning program received a good review from the witnesses on both panels. They testified that the planning provisions implemented since the passage of ISTEA have largely worked well and have encouraged improvements in transportation planning. The witnesses also offered varied critiques and suggestions for reauthorization.

As it was a specific question posed to the witnesses, several commented on the requirement that States and MPOs draft financially constrained plans. Kenneth Leonard argued, "The financial constraint requirement makes it difficult for States to make adjustments needed as to which projects can move forward to obligation and letting." He recommended increased flexibility related to financial constraint in State and Metropolitan Transportation Improvement Plans.

Ronald Kirby, and others, considered the fiscal constraint requirements as among the most effective tools provided by ISTEA and TEA–21. Developing financially sound transportation plans and programs improved the credibility of MPOs' plans and "presented the public with a realistic view of what can be delivered in the way of transportation projects and services Any dilution of the

fiscal constraint requirement may find us over-promising transportation improvements and losing our credibility with our customers."

The witnesses hailed the expansion of efforts to include the public and stakeholders in the transportation planning process. Looking to the future, the witnesses highlighted the importance of improving planning for freight transportation. They also noted TEA–21's emphasis on outreach to local officials. Peter Gregory, described Vermont's planning program, which depends on the State's regional planning commissions. "Each regional planning commission is guided by a transportation advisory committee (TAC) comprised primarily of locally elected officials. These local officials provide the Vermont Agency of Transportation (VTrans) with a regional transportation plan and prioritized projects in all modes." Mr. Gregory recommended that Congress encourage rural officials' involvement in the transportation planning process by developing new funding streams to provide guaranteed planning funding for rural areas and by "adopting clear and concise law incorporating local governments into the transportation decisionmaking process."

Mr. Leonard presented a slightly different perspective on the balance of decisionmaking authority between the MPO, the State, and local officials. In his view, "the Nation is well-served by the current balance of responsibility for the development of highway, transit and intermodal projects, and AASHTO recommends that Congress maintain this balance and reaffirm the leadership role and authority of the States as TEA–21 is reauthorized."

The witnesses also addressed the importance of assistance provided by FHWA and FTA. FHWA and FTA continue to conduct training courses, provide technical assistance, support peer exchanges, identify best practices, and prepare case studies in order to assist the MPOs, State DOTs, and transit operators in implementing the planning provisions of ISTEA and TEA–21.

Several witnesses mentioned the opportunities for gain presented by improved coordination among State and local planning agencies and environment and transportation officials. Several witnesses addressed the linkage between land use and transportation planning directly. Most reiterated that, ultimately, land use decisions are the responsibility of local and State officials. Ms. Burbank presented the Administration's view of smart growth and transportation planning: "Land use and transportation have a symbiotic relationship. How development occurs can greatly influence regional travel patterns and, in turn, the degree of access provided by the transportation system can influence land use distribution Smart growth does not mean pitting transit or any other mode against highways It is not an issue of highways versus transit. It is an issue of expanding transportation choices and providing a balanced intermodal transportation system that allows for the efficient and economical movement of people and goods."

Joy Wilson emphasized this point as well: "Investment and use of mass transit and public transportation whether buses or rail are necessary and important tools in our battle to solve congestion. But these tools need to be in some proportion to Americans' interest in using them, and should not be used as weapons against roads and vehicle use."

The witnesses explored the complex nature of the relationship between land use and transportation planning. Andrew Cotugno explained that the key to a successful integration of smart growth and transportation is the awareness of "what land use goals are being pursued and how a planned transportation project will either lead the region closer to the goals or conflict or undermine the goals."

Wendell Cox, on the other hand, questioned the effectiveness of "smart growth" strategies. He argued, "No problem has been identified of sufficient magnitude to justify the coercive smart growth strategies; two that there is little potential for reducing traffic congestion or increasing transportation choices for all but a few, mainly those going downtown through transit . . . And finally, smart growth strategies tend to intensify the very problems they are purported to solve.

Several witnesses pointed out that extensive research, data collection, and data analysis are required to achieve that level of understanding. Judith Espinosa and Thomas Downs both discussed the shortage of current research regarding the linkage between land use and transportation and the inadequacy of the tools and methods used to analyze and address related problems. Recommended solutions included a significant commitment to research exploring these issues and improving relevant data sets. Ms. Espinosa and Mr. Downs also suggested a reemphasis in the transportation planning process to ensure that planners consider factors such as health, pedestrian trips, and land use impacts.

Mr. Cotugno proposed three pillars for encouraging smart growth through the reauthorization bill. He described ways in which the FTA New Starts Program, the National Corridor Planning and Development Program, and the Transportation and Community and System Preservation Pilot Program could be enhanced to form a strong and comprehensive base for States to proactively address both land use and transportation concerns.

Symposium on Transportation Safety (A Round Table Discussion to Examine Safety Programs Funded by the Highway Trust Fund)—June 14, 2002

PANELISTS

Frederick Wright, Executive Director, Federal Highway Administration.

Bruce Warner, Director, Oregon Department of transportation and Chairman of the Standing Committee on Highway Traffic Safety, AASHTO.

William Walsh, National Highway Traffic Safety Administration.

Edward Hamberger, President and CEO, Association of American Railroads.

Tricia Roberts, Director, Delaware Office of Highway Safety (representing the National Association of Governors' Highway Safety Representatives).

Brian Holmes (representing the American Road and Transportation Builders Association).

Wendy Hamilton, National President, Mothers Against Drunk Driving.

D.B. Hill, Chairman, Workzone Safety Committee, Associated General Contractors.

Kathleen Holst, President, American Traffic Safety Services Association.

Frederick Wright (FHWA) noted that over 41,000 lives are lost and 3 million injuries occur in roadway accidents each year. He states that to "significantly reduce fatalities and injuries, we must use a comprehensive approach that addresses the roadway environment, driver behavior and the vehicle." He proposed regarding the roadways that investments should be targeted on "run-off-the-road crashes, crashes at intersections, speed management, and pedestrian safety . . ." He noted that Secretary Mineta believes that "accurate crash data collection and analysis are essential to identify the most critical safety problems and to deploy the most effective countermeasures."

Bruce Warner (AASHTO) pointed out that after three decades of decline "the reduction in highway fatality rates has stalled." He noted that "40 percent of the fatalities are alcohol related; 20 percent are speed related; and only 73 percent of the people use their seat belts . . . [and that] one-fourth of fatalities are at intersections; one-third of them are run-off-the-road accidents; and 45 percent of all the fatalities are on rural two-lane roads." He recommended that "investment in transportation safety should be almost doubled" and that each State "should develop goal-oriented, performance-based comprehensive highway safety component of its long-range plan, incorporating education, enforcement, emergency medical services and highway infrastructure improvements."

William Walsh (NHTSA) suggested that Congress and DOT; "one, streamline the grant program structure to reduce the administrative burden on the States; two, develop performance based programs to encourage States to direct resources to programs with the most significant safety benefits; three, reward States who make the most significant strides in improving safety; and four, design a balanced approach that recognizes the complexity of the problems . . . ."

Mr. Hamberger (AAR) had "one major issue before [the EPW] committee," he wanted to double funding for the section 130 grade crossing protection and separation program to $300 million. He noted that there "are over 400 people a year killed at grade crossing incidents."

Ms. Tricia Roberts (National Assoc. of Gov's Highway Safety Reps) made five major proposals: 1) States should have the right to determine how Federal funds are spent within their States; 2) States should have "fewer Federal programs to administer;" 3) States need adequate resources to be able to effectively address safety problems; 4) States need timely, accurate and accessible data with which to make safety-related decisions; and last, States need to conduct more research on driver and road-user behaviors.

Brian Holmes (ARTBA) pointed out that "for every $1 billion of investments by the public in government-financed road improvements, there has been a prevention of 1,400 premature deaths and nearly 50,000 injuries." He noted that ARTBA recommends improving safety on rural two-lanes roads with a new $1 billion two-lane roads initiative; focusing and investing in highway and road con-

struction work zone safety initiatives, where over 1,000 people are killed and 39,000 are injured each year; and continuing with the Federal investments in the Federal Roadway Infrastructure Safety Program.

Wendy Hamilton (MADD) recommends that "Congress should allocate at least $1 billion annually for the creation of a national traffic safety fund." She noted that in 2000, "16,650 people were killed in alcohol-related traffic accidents." She noted that "the best defense against a drunk driver is a seat belt," and that there should be an increase in the percentage of highway construction funds to be redirected if a State does not comply with the section 154 open container law provision. She also recommended that States that do not enact section 154 (open container) and 164 (repeat offender) State laws should only be permitted to redirect funds for impaired driving programs.

D.B. Hill (AGC) proposed that Congress include "incentives for States to pursue work zone safety initiatives" such as incentives "to make widespread use of law enforcement officers and devices such as photo enforcement and radar." He noted that States "should be directed to use positive barriers on high-risk projects . . . " He also pointed out that motorists "must be aware there are increased dangers in the work zones to themselves and to workers." In addition, he recommended that work zones be divided into higher and lower-risk areas with appropriate enforcement and speed limits.

Kathleen Holst (ATTSA) began by stating that "five times more people have died on roadways since 1900 than in all our Nation's wars" and that "one child in 84 born today will die violently in a motor vehicle crash." She advocated a $3 billion per year investment in a roadway safety program to aggressively counteract the "role of the roadway itself in causing death and injury in America." Specially, ATTSA proposes to target risks and problems related to: older drivers, work zones, intersections, run-off-the-road crashes, pedestrians and bicyclists, speeding, research and emergency management." Ms. Holst concluded that "the most important concept is the idea of creating a dedicated core roadway safety program . . . [along with] dedicating safety dollars that target low-cost safety improvements, such as wider pavement markings, brighter and more visible signage, rumble strips and modern guard rails."

Transportation and Air Quality, July 30, 2002

TEA–21 and the Clean Air Act include a variety of programs and provisions that encourage the close collaboration of transportation and air quality planners, and direct public and private investments toward projects, systems and technologies to reduce air pollution coming from the mobile source sector. These include the Congestion Mitigation and Air Quality improvement program (CMAQ), transportation conformity, and specific performance standards for vehicles, fuels and incentives for clean vehicle development.

Through emission control technology, passenger vehicles have become substantially cleaner than they were prior to 1970. This trend will continue as new, low-sulfur fuel requirements are phased in over the next 3–7 years. All new light-duty trucks and sport utility vehicles (SUVs) will, by 2005, be required to achieve more stringent emissions performance, and by 2010, all new heavy duty die-

sel buses and trucks will be much cleaner. Past improvements in emissions performance have been compromised by increases in vehicle miles traveled (VMT), but that VMT effect is projected to be significantly less in the future. As a whole, mobile source sector emissions will continue declining into the future, though at a less rapid rate after 2020. However, as NOx emissions from large stationary sources are reduced under the NOx SIP Call and to attain the PM–2.5 standard, the mobile source sector's percentage of its contribution toward ozone formation and fine particulates in areas may increase over the next decade.

PANEL I

Hon. Mary Peters, Administrator, Federal Highway Administration, U.S. Department of Transportation.

Hon. Jeffrey Holmstead, Assistant Administrator, U.S. Environmental Protection Agency.

Administrator Peters testified that air quality problems linked to transportation require flexible, multi-level solutions. She described the benefits of and the working of the CMAQ program, including the various eligible project types, such as ride-sharing, ITS implementation and emission inspection and maintenance. She also indicated that CMAQ supports experimentation by the States and the MPOs to meet travel demand in the most environmentally sensitive ways and has encouraged cooperation between transportation and air quality agencies. Ms. Peters stated that stronger institutional links between transportation and air quality planning agencies have been created, but suggested that air quality models used in conformity are imprecise and that transportation and air quality planning cycles could be better synchronized.

Administrator Holmstead testified that the new cars purchased today are more than 95 percent cleaner than cars purchased 30 years ago. He stated that concentrations of the four criteria pollutants most affected by the transportation sector, carbon monoxide, nitrogen dioxide, ozone and particulate matter, have all declined substantially since 1970. He said that in 2004, all new cars, light trucks, minivans and SUVs will have to meet the same stringent emission standards. Beginning in 2007, heavy duty diesel trucks and buses will be required reduce emissions of particulates and NOx by 90 percent and 95 percent respectively. He said that these emissions reductions are possible in large part due to requirements for cleaner gasoline and diesel fuel. Mr. Holmstead said that, within the next 2 years, EPA will be setting the same types of emission performance standards for non-road diesel engines, such as construction equipment. He testified that cleaner cars and fuels alone are insufficient to achieve the emissions improvements that are necessary to attain the national ambient air quality standards. Transportation conformity and CMAQ are important programs that help achieve attainment, but could be improved by directing CMAQ funds to areas that do not attain the PM–2.5 standard.

PANEL II

Mr. Scott Johnstone, Secretary, Vermont Agency for Natural Resources.

Mr. Ron Harris, County Judge, Collin County, Texas.

Ms. Lynn Terry, Deputy Executive Officer, California Air Resources Board.

Mr. James Stephenson, President, Yancy Brothers Company, Atlanta, Georgia.

Mr. Michael Replogle, Transportation Director, Environmental Defense.

Mr. Scott Johnstone testified that while Vermont is currently attaining the national ambient air quality standards, surface transportation is the largest in-State source of air pollution. He stated that air toxics contribute significantly to the formation of ground level ozone and, in Vermont, represent an area of air quality where the State's standards are not being met. He recommended that TEA–21 reauthorization legislation should require CMAQ to incorporating fine particulate matter, air toxics, and greenhouse gases in the allocation and eligibility criteria. Greenhouse gas reduction goals and incentives could be tracked by monitoring vehicle miles traveled due to transportation projects. He further recommended that the committee consider land use effects of transportation projects, and consider allocating funding that will provide incentives for grid patterns and public transit projects that would improve land use, reduce congestion, improve air quality, and encourage smarter growth.

Mr. Ron Harris testified that efforts under the CMAQ program have been a significant help in the north Texas area, particularly with HOV lanes. He recommended that reauthorization legislation encourage intelligent transportation systems and coordination of multiple jurisdictions. He encouraged the EPA to continue working to clean up off-road equipment and recommended that incentives for diesel retrofits be provided.

Ms. Lynn Terry testified that transportation conformity is critical to ensure that health based air quality standards are met in the required timeframe. She stated that the process requires looking at emissions today as well as in the future, to ensure that we continue clean air progress as our population and economy grow. She encouraged the committee to consider steps to make the implementation of transportation control measures more flexible. She indicated that the most difficult problem with the current conformity process is the inability to take new information into account in a workable way. She suggested more frequent updating of SIPs and a better synchronization of transportation plans and SIPs.

Mr. James Stephenson testified that Government agencies must have more flexibility in administering the conformity process and the public needs more predictability in the planning process. He stated that conformity lapses do not occur due to severe clean air problems, but because of missed deadlines and paperwork problems.

Mr. Michael Replogle testified that over 160 million people still live in areas of the country with poor air quality. He said that people living near big roads can face cancer risks as high as 1 in 500 from air toxics. He stated that transportation conformity has only really begun to be implemented as many ozone attainment SIPs were adopted only last year. He testified that Congress' requirement that transportation decisions must conform with SIPs has im-

proved air quality accounting and spurred investments in cleaner fuels, vehicles and maintenance, and encourage transportation choices and smart growth that cuts traffic and pollution. He recommended that reauthorization legislation should increase funding for CMAQ dramatically, ensure that frequency of conformity determinations supports timely attainment of air quality standards and encourage easy adoption of transportation control measures.

Subcommittee on Transportation, Infrastructure, and Nuclear Safety Hearing Western Transportation Issues Reno, Nevada, August 8, 2002

The Subcommittee conducted a field hearing in Reno, NV, to examine the State of Nevada's transportation needs and review the Federal Lands Highway Program. The greater part of all Federal and tribal lands is located in the 13 western-most States.

In his opening statement, Subcommittee Chairman Reid stated that Southern Nevada's explosive growth over the last decade presented unique opportunities and challenges for the State's transportation officials. Senator Reid also pointed out that no State has a higher percentage of Federal land than Nevada. Of Nevada's land mass, 87 percent is Federal land.

PANEL I

Hon. Mary Peters, Administrator, Federal Highway Administration, U.S. Department of Transportation.

Administrator Peters gave a brief outline of the Federal lands program. She stated that from fiscal years 1998 to 2002, about 66 percent of the Federal lands highway funds allocated went to projects located in the 13 western-most States. Administrator Peters and Chairman Reid also discussed the completion of the Hoover Dam Bypass and the importance of this project to the movement of goods and people in Southern Nevada and accross the southwestern United States.

PANEL II

Hon. Tom Stephens, Director, Nevada Department of Transportation, Carson City, NV.

Mr. Greg Krause, Executive Director, Washoe County Regional Transportation Commission, Reno, NV.

Mr. Juan Palma, Executive Director, Tahoe Regional Planning Agency, Zephyr Cove, NV.

Mr. Gary Carano, Nevada Resort Association, Reno, NV.

Mr. Stephens highlighted the importance of considering the western perspective in this reauthorization cycle. "One size does not fit all, and the west is considerably different than the rest of the country." He pointed out that Nevada is the fastest growing State in the union, growing 66 percent over the last decade. While congestion continues to be an issue, Nevada is not ignoring is maintenance responsibilities. The State will spend more than half of its construction dollars on maintenance.

Mr. Palma testified of the State's continued efforts to preserve the "national treasure" of Lake Tahoe. Millions have been spent to

improve roads around the lake and improve stormwater runoff collection.

Mr. Krause testified about Washoe County's efforts to improve mobility through increased investment in transit and improved system operations through the use of intelligent transportation systems. Mr. Krause also spoke a the State's responsibility to "take on our burdens and shoulder our share at the local level." As part of this process, Mr. Krause spoke of a ballot initiative to allow for the indexing of local gas taxes to inflation.

Mr. Carano spoke of the importance of a well-maintained transportation system and its relationship to Nevada's thriving travel and tourism industry. Mr. Carano specifically mentioned the importance of maintaining Interstate 80 for the Northern Nevada economy.

PANEL III

Hon. Bruce Warner, Director, Oregon Department of Transportation, Salem, OR.

Hon. John H. Milton, Commissioner, Humboldt County, Winnemucca, NV.

Ms. Robyn Burdette, Chairwoman, Summit Lake Paiute Tribe, Winnemucca, NV.

Mr. Warner talked about the importance of the Federal lands program in the West. He also discussed at length the need to find new methods of financing transportation in the future. He encouraged Congress to create a "pilot study that would promote research and testing of new methods for financing transportation."

Mr. Milton highlighted Humboldt County's difficulty in funding road projects given because over 70 percent of Humboldt County's transportation system serves Federal lands which do not generate revenue.

Ms. Burdette testified of the importance of the Indian Reservation Road program and called for increased program funding. She expressed the Nevada tribes' interest in continuing and enhancing their partnership with the State of Nevada. She also addressed the problem of rural road safety and the need for a targeted safety program for Indian Reservation Roads.

Examination of the Unique Transportation Needs of Small Town and Rural America, Montpelier, Vermont, August 20, 2002

This field hearing focused on the unique transportation needs of Rural America. Witnesses brought a national and northeastern regional perspective to the topic.

PARTICIPANTS

Honorable Michael Jackson, Deputy Secretary, U.S. Department of Transportation, Washington, DC.

Honorable Brian Searles, Secretary, Vermont Agency of Transportation, Montpelier, VT.

Mr. Raymond S. Burton, Executive Councilor, Woodville, NH.

Honorable Richard Pembroke, Chairman, Vermont House Committee on Transportation, Bennington, VT.

Hon. Richard Mazza, Chairman, Vermont Senate Committee on Transportation, Colchester, VT.

Mr. Thomas Adler, Northeast Transportation Institute and Museum, White River, Junction, Vermont

Ms. Debra Ricker, Associated General Contractors of Vermont, Barre, VT.

Mr. Paul Bruhn, Preservation Trust of Vermont, Burlington, VT.

Mr. Matthew Sternberg, Executive Director, Rutland Redevelopment Authority, Rutland, VT.

Secretary Jackson established the importance of the hearing, stating: "The rural community has very, very strong and pronounced needs to access transportation in this country. 21 percent of the population lives in rural communities, and 18 percent of the jobs, and many of those people don't have access to transportation to get to their jobs when they must leave their home."

Vermont Transportation Secretary Brian Searles offered testimony on behalf of the American Association of State Highway and Transportation Officials (AASHTO), and pointed to the disproportionate highway safety challenges in rural America, stating, "rural two-lane safety is a concern for AASHTO members. The General Accounting Office recently reported that although 40 percent of all vehicle miles are traveled on rural roads, 60 percent of traffic fatalities in 1999 occurred on rural roads. Funding should be increased to improve safety of rural roads, both State and local. AASHTO urges that the highway program be increased over 6 years to $41 billion annually. From this, an additional $1 billion annually should be dedicated to safety."

The State officials appearing before the committee each expressed the need for increased funding, especially to ensure proper maintenance of the Interstate System. Vermont's Secretary Searles observed, "parts of our interstate system are 40 years old and need repair. A recent needs assessment of Vermont's 320 miles of Eisenhower Interstate System showed that an investment of $74 million was needed just to bring the system up to Federal standards. Simply put, we cannot afford that kind of investment and meet our other commitments/needs on our national highway systems and State highway systems."

Senator Mazza concurred, "Our economy relies heavily on interstate trade and travel. Interstate 89 and 91 are the lifeline for much of the State. We face enormous reconstruction and repair costs on our interstate. Vermont's northern border with Canada has felt the effects of NAFTA and its attendant growth in freight movement. International freight also moves through Vermont from neighboring New York. Replacement of the Missisquoi Bridge, at a staggering cost by Vermont standards, is essential to support our international trade."

Speaking on behalf or the Associated General Contractors, Debra Ricker argued for greater emphasis on asset management to address the maintenance challenge faced by rural areas: "To properly account for infrastructure assets, governments must develop an asset management plan which at a minimum should identify the condition of pavements, structures, and facilities. That plan should include deterioration rates for those assets so that a determination can be made for the annual funds necessary to maintain those as-

sets at a recommended level of performance. This whole issue of asset management is important to getting the optimum level of results from our expenditures while maintaining our infrastructure. In short, getting the biggest bang for the buck."

Witnesses endorsed features of the current program. Representative Pembroke talked about the value of the planning: "The toughest part of my job as chairman (of the Vermont House Transportation Committee) is distributing dollars among the many competing transportation needs in Vermont. Looking back, I think that we have been able to do that in a fair and a productive way, and we have used the planning provisions of the Federal law to get the job done. The direction of the law to emphasize planning from the bottom up has definitely been the right decision . . . As a result of the success of the project manager system which we directed the agency to institute, and taking advantage of the advanced construction provisions of the Federal law, I leave my chairmanship with enough shelf projects to consume a year's worth of Vermont Federal appropriation."

Paul Brauhn spoke in support of the benefits provided by the enhancements program and design flexibility for rural areas and small towns in America: "I'd like to emphasize how important the enactment of ISTEA has been in encouraging a real transformation within State agencies of transportation nationwide. There's been a broadening of their mission from the important one of building roads for safe and efficient movement of cars and trucks to acknowledging the significant impact that transportation projects have on people and communities . . . the new design standards which were enabled by this new policy within the new Federal policy that allowed the States to develop new design standards. We've done that here in Vermont; it's been very successful. It hasn't solved all of our problems or all of the concerns, but it's provided a vehicle for a flexible system for providing transportation, meeting community needs, and not overwhelming some of our communities." Regarding the enhancement program, Brauhn said: "It's been one of ISTEA's truly outstanding success stories. To make use of the program's 12 activities to improve the esthetics and amenities associated with travel on the highways and also to build new and better partnerships with State transportation agencies."

Joint Subcommittee Hearing on Freight and Intermodal Transportation, September 9, 2002

The Senate Committee Environment and Public Works' Subcommittee on Transportation, Infrastructure, and Nuclear Safety and the Committee on Commerce, Science, and Transportation's Subcommittee on Surface Transportation and Merchant Marine held a hearing on September 9, 2002 to learn about freight movement in the United States and how goods move between the modes as it moves from its origin to its destination.

PANEL I

Mr. Jeffery Shane, Deputy Secretary for Policy, United States Department of Transportation.

Ms. JayEtta Hecker, Director of the Infrastructure Group, United States General Accounting Office.

In his testimony, Mr. Shane provided an overview of freight movement in the United States. He testified that in 1998 the United State transportation system carried nearly 4 trillion ton-miles of freight valued at over $9 trillion. By the year 2020, forecasters predict that the US transportation system will handle cargo valued at over $28 trillion. In order to accommodate such a dramatic growth in the movement of goods, the administration would try to do the following during reauthorization: (1) preserve funding flexibility to allow the broadest application of funds to transportation solutions; (2) Strengthen the efficiency and integration of the Nation's system of goods movement by improving international gateways and points of intermodal connection; (3) focus more on the management and performance of the system; (4) develop the data and analyses critical to sound transportation decisionmaking; (5) foster the development and deployment of technology to support intermodal freight security, productivity, and safety; and (6) expand and improve innovative financing programs in order to encourage greater private investment in the transportation system.

Maritime transportation was the focus of Ms. Hecker's testimony. She recommended the establishment of nation goals as the related to maritime transportation and that a clearly defined Federal role relative to other stakeholders. She also called for a mechanism to determine funding tools and other approaches that will maximize the impact of any Federal investment.

PANEL II

Ms. Katie Dusenberry, Chairperson, Arizona Department of Transportation Board.

Mr. Michael Wickman, Chairman and CEO, Roadway Express.

Mr. Edward Hamberger, President, Association of American Railroads.

Mr. Rick Larrabee, Director, Port Commerce at the Port Authority of New York and New Jersey.

Mr. Michael Huerta, Senior Vice President and Managing Director, ASC State and Local Solutions.

Mr. John Caruthers, Jr., Chairman, I–69 Mid-Continent Highway Coalition.

Ms. Dusenberry testified about the conditions surrounding the movement of goods and people in and around the Hoover Dam area. The Hoover Dam is very important for its management of water resources and its generation of electrical power but its critical role it plays in transportion. Traffic moves over the dam as a bridge connecting the States of Arizona and Nevada. Since 9/11/01, the road on the Hoover Dam has been closed to commercial trucking causing 2,100 trucks per day to take at least a 23 mile detour. She recommended that the committees provide funding to complete work on a new bridge span at the Hoover Dam.

Mr. Wickman's testimony provided insight in the movement of goods through motor vehicles. He testified that nearly 60 percent of goods moving through America's border are moved by truck. As freight movement in America increases, there will be a greater number of trucks moving on our nation's roadways. Congress needs to ensure that there are safe, effective, and efficient procedures in place to screen freight moving in and around our country. Our na-

tion's economy depends on goods getting to the appropriate location on time. Without improvements in process and technology, we will not be able to keep pace.

Mr. Hamberger's testimony highlighted the growing role of rail in the movement of goods in America. Through the use of intermodal containers that allow goods to easily move between rail and trucks, the rail industry has been able to see a steady increase in the number of units of freight they move. Mr. Hamberger provided nine recommendations that the freight stakeholder coalition is unified behind. These are: (1) protecting the integrity of the Highway Trust Fund; (2) dedicating fund to the NHS intermodal connectors; (3) establishing a national freight industry advisory group; (4) creating and funding a Freight Cooperative Research Program; (5) expanding freight planning expertise at the State and local levels; (6) developing ways to increase available funds without new user fees and taxes; (7) significantly increase funds for an expedited corridor/border and gateway program; (8) streamlining environmental permitting for freight projects; and (9) increasing funding and promote the use of CMAQ for freight projects.

Mr. Larrabee described the operations of the Port Authority of New York and New Jersey. In doing so, he made seven points for the consideration of the committees. These are: (1) there is a need for continued attention to the maritime transportation system; (2) congestion and other bottlenecks to efficient transportation need to be addressed; (3) the Nation must work for improvements in the transportation system to accommodate the expected increases in freight movement; (4) Congress must look at all modes include water bourn transportation to handle the volume of goods that are being moved; (5) continued support of the use of CMAQ for freight and programs such as the Borders/Corridors Programs is needed; (6) improvements to freight corridors can also have tremendous benefits to the traveling public; and (7) the use of intelligent technology has proven very worthwhile and its use should be promoted.

Mr. Huerta's testimony provided an overview of how the Borders and Corridors program authorized in TEA–21 has worked. He testified that while the concept of the program was sound, the program has fallen short of its intended goals. Congress should provide more funding to make these programs work effectively and reduce the earmarking of these programs during the annual appropriations process.

Mr. Caruthers, discussed the I–69 corridor. The I–69 corridor was designated as a congressional High Priority Corridor in both ISTEA and TEA–21. While there are several segments of this roadway that are complete, many portions of the roadway are not in place. Completion of the Corridor 18 portion of I–69 is projected to save 3100 lives, avoid 158,00 injuries, and 409,000 property damage accidents. Congress should provide more funding to the Borders and Corridors program so State can work together to complete vital trade routes such as I–69.

Project Delivery and Environmental Stewardship, September 19, 2002

The term "Project Delivery" refers to the myriad steps required to complete transportation projects. As congestion has emerged as

a priority concern across the country, timely completion of transportation projects have taken on greater urgency. A number of transportation stakeholders, including State Departments of Transportation and State resource agency officials, have begun to approach Project Delivery, and the environmental component of that process, as an opportunity to create broad benefit for communities and the environment. Senator Smith and his staff explored this more affirmative notion of Environmental Stewardship and identified examples of best practices from around the country. At this hearing, State and local officials and practitioners described their efforts to both streamline and improve the outcomes of the environmental process. Although the witnesses often emphasized different techniques for accomplishing the shared goal of designing and completing transportation projects without sacrificing the environment, they discussed many of the same approaches.

PANEL I

Mr. Emil Frankel, Assistant Secretary for Transportation Policy, U.S. Department of Transportation Washington, DC.

Mr. John Suarez, Assistant Administrator, Office of Enforcement, Compliance, and Assurance U.S. Environmental Protection Agency, Washington, DC.

Mr. Kenneth Mead, Inspector General, U.S. Department of Transportation, Washington, DC.

Ms. Kate Siggerud, Acting Director of Physical Infrastructure Issues, General Accounting Office Washington, DC.

PANEL II

Ms. Carol Murray, Commissioner, New Hampshire Department of Transportation, Concord, NH.

Mr. Kenneth Morefield, Assistant Secretary for Planning and Engineering, Florida Department of Transportation, Tallahassee, FL.

Ms. Emily Wadhams, State Historic Preservation Officer, Vermont Department of Housing and Community Affairs, Montpelier, VT.

Mr. Hal Kassoff, Vice President of Highway Programs, Parsons Brinckerhoff, Washington, DC (on behalf of the American Council of Engineering Companies).

Mr. Charles Hales, Transit Planning Principal, HDR Inc., Portland, OR.

Emil Frankel pointed out in his testimony, "Issues confronted in one project will often vary substantially from those in another seemingly similar project The nature and complexity of the issues mean that blanket solutions have proved very elusive." Many of the witnesses highlighted examples of innovative processes around the country that have improved project delivery while successfully promoting environmental stewardship. Ken Morefield described Florida's "Efficient Transportation Decision Making Process" (ETDM). Mr. Morefield testified that the ETDM process in Florida accomplishes the directives of Section 1309 of TEA–21 and the National Environmental Policy Act. While this program of task forces, technological innovation, and early stakeholder and public involvement has helped Florida improve its transportation planning and con-

struction process, Mr. Morefield reminded the committee that Florida DOT does "not promote it as one that will fit every State." He does not advise "one-size-fits-all" approach to project delivery and environmental stewardship.

Emily Wadhams discussed Vermont's innovative approach to expediting historic preservation reviews of transportation projects. Vermont developed a Programmatic Agreement (PA) that creates an alternative review process for transportation projects under Section 106 of the National Historic Preservation Act. This innovative approach arose from the understanding that the Agency of Transportation (AOT) and the State Historic Preservation Office (SHPO) share two mutual goals: to improve project delivery and to preserve the State's historic resources. Under the PA, "the State Historic Preservation Officer has delegated the review and sign-off authority to qualified historic preservation professionals within the Vermont AOT for all State and Federal transportation undertakings." The agreement uses qualified historic preservation professionals within AOT to provide the appropriate level of consideration for historic and archeological resources in transportation project planning. AOT and SHPO staff worked collaboratively to determine exactly how the review process would work under the PA. They developed the PA Manual, which "clarified or developed procedures and other guidance to define how resources should be evaluated and treated in the Section 106 process."

While many of the hearing witnesses identified unique, State-specific efforts to improve project delivery and environmental stewardship, some recommendations were reiterated throughout the hearing: early public and stakeholder involvement in project planning; improved interagency cooperation, including resource agency involvement during project planning and design phases; additional funding and technical assistance from FHWA to facilitate streamlining and stewardship efforts in the States; and development and use of new technologies to better integrate resource and community needs into a comprehensive planning process.

While the committee heard some consistent recommendations from witnesses, the question of project delivery also inspires disagreement among practitioners, stakeholders, advocates, and elected officials. Senator Wyden stated his commitment to working within the confines of current law: "I am prepared, as long as I've got any breath in this body, to stay at it administratively to try and get it right." Senator Baucus, on the other hand, "would like to see us specifically legislate environmental streamlining no waiting for regulations or more Executive Orders. Congress needs to be clear about what they need to see and put it into law."

Charlie Hales testified, "Environmental review requirements, well integrated and well administered, help assure that good projects are advanced with public support, avoiding adverse impacts and mitigating unavoidable impacts. This translates into public acceptance and smoother permitting." Hal Kassoff presented an opposing view, "Those who argue that the environmental review process is not a significant cause of delay and that funding constraints and mismanagement are the real problems, are distorting reality."

Concern over project delivery is not a new issue. As the witnesses described, TEA 21 included provisions to expedite project delivery. For most observers, timeliness has been the principal concern. Today, it can take from 9 to 19 years to go from concept to completion on a major project. The Project Delivery and Environmental Stewardship hearing presented the committee with a myriad of identified challenges and potential solutions to a complex and contentious issue.

Innovative Financing: Beyond the Highway Trust Fund, September 25, 2002

PANELISTS

Hon. Phyllis Scheinberg, Deputy Assistant Secretary for Budget and Programs, U.S. Department of Transportation, Washington, DC.

Hon. Janice Hahn, Councilwoman, city of Los Angeles, Los Angeles, CA.

Hon. Peter Rahn, Secretary, U.S. Department of Transportation, Sante Fe, NM.

JayEtta Hecker, Director of Physical Infrastructure Issues, General Accounting Office, Washington, DC.

John Horsely, Executive Director, American Association of State Highway and Transportation Officials.

Jeff Carey, from Merrill Lynch, New York, NY.

David Seltzer, from Mercator Advisors, Philadelphia, PA.

In summary, the witnesses reinforced the need to diversify transportation finance. They define terms, provided methods for evaluating alternative approaches and cited recent examples of the successful application of innovative financing techniques.

Secretary Scheinberg highlighted the Administration's perspectives as follows, "We see the primary objectives of innovative finance as leveraging Federal resources, improving utilization of existing funds, accelerating construction timetables, and attracting non-Federal investment in major projects. She highlighted three major innovative finance programs: the Transportation Infrastructure Finance and Innovation Program, or TIFIA, Grant Anticipation Revenue Vehicles, or GARVEE bonds, and State Infrastructure Banks, or SIBs.

She noted that the use of TIFIA, GARVEEs and SIBs are moving from innovative to mainstream which is an indicator of success, but it does not means that the needs of project finance have been completely met.

David Seltzer advised the committee members on fundamental considerations when evaluating finance policy options: "Your two committees have at their disposal, really, three approaches that may be used to advance infrastructure projects: regulatory incentives, Tax Code incentives, and credit incentives." He stated that for any of these tools to be successful, three groups of stakeholders have to be satisfied simultaneously: project sponsors, the investor and the Federal policymaker. In response to a comment by Senator Jeffords about identifying new sources of investments, Mr. Seltzer noted the a possible new investor in transportation financing would be pension funds which represent some $3.6 trillion in assets. At

this point there are virtually no U.S. transportation projects in their portfolios. The principal reason for this is that the primary financing vehicle of tax-exempt bonds does not appeal to tax-exempt entities such as pension funds. However, something like tax credit bonds, where the principal could be sold to, say, a pension fund and the tax credits decoupled and sold to other investors may be marketable.

Jayetta Hecker drew on recent General Accounting Office studies to advise the members on limitations and cautions regarding the use of innovative finance tools: "The limitations on the use of these tools are real. The biggest one, of course, is States' willingness and authority. You have a lot of States that are very cautious about debt financing and financing projects in a manner other than on a pay-as-you-go basis. There is also a skill issue. This is a brand-new kind of skill, financing and bond market specialists. It is very different than highway engineering. Also, it is mostly affected by legislators at the State level or the local level and their willingness to look at these different tools. There are also limitations in Federal and State law. The application of TIFIA is limited to projects costing over $100 million. Only 5 States are allowed to use TEA–21 funds to capitalize their SIBs. Then there are State laws that restrict public/private partnerships and, of course, there are Federal tax policies on private activity bonds. So, there are a whole range of factors that are really behind some of the limitations in the extensive application of these new tools.

Janice Hahn described successful efforts to apply the innovative finance concepts through the Alameda Corridor Transportation Authority (ACTA) : "ACTA consolidated four branch lines serving the ports into a 20-mile freight rail expressway that is completely grade separated, including a 10-mile long 30-foot trench that runs through older, economically disadvantaged industrial neighborhoods south of downtown Los Angeles. The linchpin of ACTA's funding plan was designation of the Alameda Corridor as a high-priority corridor in the 1995 National Highway System's Designation Act. That designation cleared the way for Congress to appropriate $59 million needed to back the $400 million loan to the project from the U.S. Department of Transportation. That was the leverage, if you will, for the biggest piece of our financing package, more than $1.1 billion in proceeds from revenue bonds sold by ACTA. The bond and the Federal loan are being retired by corridor use fees and paid by the railroads. The funding breaks down roughly like this: 46 percent from ACTA revenue bonds, 16 percent from the U.S. DOT loan, 16 percent from the ports, 16 percent from California's State and local grants, much of it administered by the L.A. County Metropolitan Transportation Authority, and 6 percent from other sources."

TEA–21 Reauthorization: Conditions and Performance of The Federal-Aid Highway System, September 30, 2002

PANEL I

Hon. Senator Robert C. Byrd, West Virginia.

Senator Byrd discussed the Appalachian Developmental Highway System. While significant progress has been made, there is still 20

percent of the system to be completed. This last 20 percent will be the most costly due to the extreme topographical conditions of the remaining segments. Senator Byrd asked that the committee reauthorize the Appalachian Development Highway System to fund the program at $4,467 billion. This would provide the funding necessary to complete the remaining segments of the system as estimated by the Appalachian Commission.

PANEL II

Hon. Mary Peters, Administrator, Federal Highway Administration.

Mr. Joseph Perkins, Commissioner, Alaska Department of Transportation and Public Facilities.

Ms. JayEtta Hecker, Director, Infrastructure Group at the United States General Accounting Office.

In her testimony, Administrator Peters provided an overview of the Federal Highway Administration's Condition and Performance Report which assesses the physical condition and operating characteristics of our nation's roads, bridges, and transit systems. Administrator Peters provided some highlights of the findings of the report. She highlighted that the significant investments brought by TEA–21 has improved the physical condition and safety of our roads, bridges, and transit system. However, operational performance measured by congestion-worsened throughout the country.

Mr. Perkins provided the committee with an overview of the American Association of State Highway and Transportation Officials "Transportation Invest in America" commonly referred to as the "Bottom Line" report. Mr. Perkins made four key points regarding the report. These are: (1) An annual capital investment level of $92 billion by all levels of government for highways and bridges is necessary to maintain both the physical condition and performance of the system over the next 20 years; (2) An annual capital investment of $125.6 billion by all levels of government for highways and bridges is necessary to improve both the physical condition and performance of the system over the next 20 years; (3) An annual capital investment of $18.9 billion is required between 2004 and 2009 from all levels of government just to maintain the existing physical condition and service performance of the nation's transit systems; and (4) An annual capital investment of $43.9 billion is required to improve the current physical condition and service performance of the nation's transit systems.

Ms. Hecker testified about the General Accounting Office's examination of the challenges and strategies for enhancing mobility. Her key findings were: (1) Congestion is beginning to overwhelm the transportation system; (2) More work is needed to ensure access to transportation for certain underserved populations and to achieve a balance between enhancing mobility and giving due regard to environmental and other social goals; (4) There is no one solution for the mobility challenges facing the Nation; and (5) There needs to be a broad range of strategies to tackle our nation's mobility challenges. These include focusing on the entire surface transportation system regardless of mode, using a full range of techniques to achieve mobility outcomes, and provide more options for financing mobility improvement regardless of the mode.

PANEL III

Mr. Gordon Proctor, Director, Ohio Department of Transportation.

Mr. Thomas Jackson, President, American Society of Civil Engineers.

Dr. William Buechner, Vice-President of Economic and Research for the American Road and Transportation Builders Association.

Mr. Proctors's testified on the state of the highway network in Ohio. Ohio is experiencing trends that reflect conditions around the country. In the past 25 years, truck volumes have increased 89 percent on the interstate highways. Mr. Proctor recommended four ways to address the worsening condition and performance of the nation's roadways: (1) basic core highway programs should not be diluted because they are the backbone for maintaining our highway system; (2) as the interstates approach 50 years in age, do not treat them as historical artifacts subject to historical preservation requirements; (3) Congress needs to recognize that the Nation needs to restore capacity at critical bottlenecks; and (4) a national commission is needed to evaluate the future of our interstate system.

Mr. Jackson's testimony highlighted the key findings of the America Society of Civil Engineer's "Report Card for America's Infrastructure". In 2001, ASCE gave the nation's infrastructure a grade of "D+". Roads received a grade of "D", bridges "C" and transit "C-". These grades show slight improvement from the first report card given by ASCE before the reauthorization of TEA–21. Mr. Jackson recommended that Congress use the following concepts to guide its reauthorization process: (1) expand infrastructure investment; (2) enhance the delivery of infrastructure; and (3) maximize infrastructure

Dr. Buechner, discussed the reauthorization principles of the American Road and Transportation Builders Association. ARTBA would like to see implementation of its "Two Cents Makes Sense" Proposal. Under this plan, revenues would be generated to double the annual Federal investment in highways to $60 billion and mass transit-to almost $14 billion by fiscal year 2009.

LEGISLATIVE HISTORY

Senators Inhofe, Jeffords, Bond and Reid introduced S. 1072, a bill to reauthorize the Federal-aid highway program, on behalf of the Administration on May 15, 2003. In addition to the hearings held in the 107th Congress, listed above, hearings were held in the 108th Congress as follows: February 7, 2003, on the Department of Transportation's highway budget for fiscal year 2004; and three field hearings: held on April 7, 2003, in Chicago, IL, on August 11, 2003 in Brownsville, TX, and on August 14, 2003 in Medford, OR. A full committee business meeting was held on November 12, 2003, and the bill was ordered reported with an amendment in the nature of a substitute.

ROLLCALL VOTES

The Senate Committee on Environment and Public Works met to consider S. 1072 on November 12, 2003. During consideration of

the bill, the following amendments were agreed to by a voice vote: the Managers' amendment; an amendment offered Senator Crapo on rail grade crossings; an amendment offered by Senator Wyden to allow all States the option of establishing a State infrastructure bank.

Disagreed to by a voice vote: an amendment offered by Senator Murkowski to focus the project development process on major requirements of the National Environmental Policy Act; an amendment offered by Senator Wyden to establish prioritization of projects that receive funding from the national corridor planning and development program; an amendment offered by Senator Clinton to modify the multistate corridor program to make all designated high priority corridors eligible for funding; an amendment offered by Senator Clinton to establish a research program to encourage transportation equity.

Amendments adopted by roll call vote: an amendment offered by Senator Warner to modify the set-aside percentage for Metropolitan Planning Organizations by a vote of 12 years, 7 nays. Voting in favor of the amendment were Senators Allard, Baucus, Boxer, Carper, Chafee, Clinton, Cornyn, Graham, Lieberman, Murkowski and Warner. Voting against the Warner amendment were Senators Inhofe, Bond, Crapo, Jeffords, Reid, Thomas and Voinovich. An amendment offered by Senator Warner to establish a highway stormwater discharge mitigation program by a vote of 10 yeas, 9 nays. Voting for the amendment were Senators Allard, Baucus, Boxer, Carper, Chafee, Clinton, Graham, Lieberman, Warner and Wyden. Voting against the amendment were Senators Inhofe, Bond, Cornyn, Crapo, Jeffords, Murkowski, Reid, Thomas, and Voinovich. An amendment offered by Senator Murkowski to clarify that the study of "thermal collapse" includes changes related to melting of permafrost by a vote of 12 yeas, 6 nays, one not voting. Voting for the Murkowski amendment were Allard, Baucus, Boxer, Carper, Clinton, Crapo, Graham, Lieberman, Murkowski, Thomas, Voinovich and Wyden. Voting against the amendment were Senators Inhofe, Bond, Jeffords, Reid, and Warner. Not voting on the amendment was Senator Cornyn. An amendment offered by Senator Carper to clarify that the national surface transportation system study should address passenger, as well as freight, rail conditions and needs by a vote of 12 yeas, 7 nays. Voting for the Carper amendment were Senators Baucus, Boxer, Carper, Chafee, Clinton, Cornyn, Crapo, Graham, Lieberman, Thomas, Warner and Wyden. Voting against the amendment were Senators Inhofe, Allard, Bond, Jeffords, Murkowski, Reid and Voinovich. An amendment offered by Senator Clinton to maintain the existing sub-allocations of surface transportation program funds to areas of a State by population and to the entire State by a vote of 10 yeas, 9 nays. Voting for the Clinton amendment were Senators Baucus, Boxer, Carper, Chafee, Clinton, Graham, Lieberman, Voinovich, Warner and Wyden. Voting against the amendment were Senators Inhofe, Allard, Bond, Cornyn, Crapo, Jeffords, Murkowski, Reid, and Thomas.

Amendments disagreed to by a roll call vote: an amendment offered by Senator Clinton to combine the future of the Federal-aid system study with the modified revenue source commission by a vote of 8 ayes, 11 nays. Voting against the amendment were Sen-

ators Inhofe, Allard, Bond, Carper, Chafee, Crapo, Jeffords, Murkowski, Reid, Thomas and Voinovich. Voting for the amendment were Senators Baucus, Boxer, Clinton, Cornyn, Graham, Lieberman, Warner and Wyden. An amendment offered by Senator Allard to provide State and local authorities the means to eliminate congestion by a vote of 9 yeas, 10 nays. Voting against the amendment were Senators Inhofe, Bond, Boxer, Carper, Chafee, Clinton, Jeffords, Lieberman, Reid, and Voinovich. Voting for the amendment were Senators Allard, Baucus, Cornyn, Crapo, Graham, Murkowski, Thomas, Warner and Wyden. An amendment offered by Senator Clinton to provide for a border planning, operations, and technology program by a vote of 6 yeas, 13 nays. Voting against the amendment were Senators Inhofe, Allard, Bond, Carper, Chafee, Crapo, Jeffords, Murkowski, Reid, Thomas, Voinovich, Warner and Wyden. Voting for the amendment were Senators Baucus, Boxer, Clinton, Cornyn, Graham and Lieberman.

The Committee disagree to a motion by Senator Graham to further amend the bill by a of 4 yeas, 15 nays. Voting against the Graham motion were Senators Inhofe, Allard, Bond, Boxer, Carper, Chafee, Clinton, Cornyn, Crapo, Jeffords, Murkowski, Reid, Thomas, Voinovich, and Warner.

The bill was ordered reported to the Senate, as amended by a vote of 17 yeas, 2 nays. Voting to report the bill were Senators Inhofe, Allard, Baucus, Bond, Boxer, Carper, Chafee, Clinton, Cornyn, Crapo, Jeffords, Lieberman, Murkowski, Reid, Thomas, Voinovich, and Warner. Voting nay were Senators Graham and Wyden.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact of the reported bill. The regulatory impact of the reported bill is expected to be minimal. This will not have any effect on the personal privacy of individuals.

Other than current regulations and those regulations affecting the eligibility and use of funds provided in this bill, the provisions having a regulatory impact of significance are sections 1408, 1513, 1514, 1615, 1618, and 1619. Section 1408 directs the Secretary to promulgate regulations requiring workers near a Federal-aid highway to wear high-visibility clothing, and to require any other worker-safety measures that the Secretary deems necessary to minimize worker injuries and maintain the free flow of vehicular traffic.

Section 1513 establishes a pilot program for not more than five States to assume the Secretary's responsibility for environmental review for a project. A State wishing to participate in the pilot must submit a detailed application. This section includes minimum application requirements and a directive to the Secretary to promulgate, within 270 days of enactment, regulations establishing complete application requirements consistent with the section.

Section 1514 directs the Secretary of Transportation to promulgate, within 1 year of enactment, regulations necessary to implement the transportation planning provisions in sections 1501–5 and the project delivery provisions in sections 1511–13. These provisions call for enhanced consideration of environmental concerns

during the planning process and establish a process for completing the environmental review process faster and more efficiently.

Section 1615 directs the Secretary of Transportation promulgate regulations, within 18 months, adjusting the application of the latest travel models. The new regulations must ensure that travel models can account for the effects of the most recent population, economic, employment, travel, transit ridership, congestion, and induced travel demand.

Section 1618 directs the Administrator of the EPA to promulgate proposed regulations by March 1, 2005 and final regulations within 1 year, governing the handling of air quality monitoring data influenced by exceptional events. These regulations will allow Governors to petition EPA to exclude air quality data directly due to exceptional events such as forest fires or volcanic eruptions.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee finds that S. 1072 would impose no Federal intergovernmental unfunded mandates on State, local, or tribal governments. All of its governmental directives are imposed on Federal agencies. The bill does not directly impose any private sector mandates.

COST OF LEGISLATION

A cost estimate has been requested from the Congressional Budget Office, but it was not received at the filing date of the report. The information will be printed in the Congressional Record when it becomes available.

MINORITY VIEWS OF SENATOR GRAHAM

Since I began my service in the U.S. Senate in 1987, I have had the honor and privilege to serve on the Environment and Public Works Committee. Increasing investment in our nation's infrastructure through our surface transportation policy has long been a top priority for me. Transportation is an integral part of every American's daily life and Federal investments in transportation infrastructure increase our economic vitality and international competitiveness.

I am concerned that this legislation fails to authorize a level of spending to maintain the condition of our existing infrastructure, reduce the backlog of deferred maintenance, and begin to improve the condition and performance of the system. Additionally, I remain strongly opposed to the approval of legislation that authorizes nearly $255 billion over the next 6 years without a full disclosure of how those funds would be distributed to the States. As a member of the committee, our direct responsibility is to deliberately study and debate all aspects of legislation before us. With regard to this legislation, members of the EPW Committee simply did not have that option. The legislation was developed behind closed doors, without full input from committee members; and the most vital section of the bill, the allocation of funds to the States, has been left blank.

Importance of Funding Infrastructure Needs

By approving the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA), this committee continues a disturbing trend of short changing the surface transportation system in America. The American Association of State Highway Transportation Officials (AASHTO) estimates that the cost of just maintaining the system at its current level of congestion and repair would require investments of approximately $92 billion a year by Federal, State and local governments. Although SAFETEA may get close to the Federal portion of this estimate, we must go beyond to not just maintain the current system, but address new capacity needs. AASHTO estimates that enhancing the system by reducing congestion and adding new capacity will require an annual investment level of $126 billion a year an additional $34 billion above the $92 billion level to maintain current conditions.

In addition, we must address the deferred maintenance, which has accumulated over the years of under investing in the system. The United States Department of Transportation estimated a backlog totaling $271 billion for highways and $55 billion for bridges a total of $326 billion in 2000. AASHTO estimates by 2004 that backlog could grow as high as $400 billion.

The backlog even more clearly represents the consequences of under investing. How many lives have been lost? How much time with family has been lost? How much economic prosperity and competitiveness have been lost, due to under investment in our nation's infrastructure?

We, as a Congress, need to carefully weigh the consequences of this chronic under-funding of a basic part of our national infrastructure. In passing this legislation, we are not guaranteeing that

at the end of this 6 year process, the system will be better than it is today; in fact, we are guaranteeing it will be worse.

We need to be more creative in using the funds we do have so we can stretch them as far as possible. For example, innovative financing techniques, such as tolling, the Transportation Infrastructure Finance and Innovation Act (TIFIA) and the State Infrastructure Bank program (SIBs) are a good start. I am pleased these options will continue to be available to our States and localities to help supplement traditional grant funds. Additionally, we have to continue to develop new ways to make Federal dollars, in combination with private funds and alternative sources of revenue, as efficient as possible.

There has been much discussion over the last few months about United States trade policy and how the United States can compete in the global economy with a dramatically higher wage rate and standard of living than most of the rest of the world. It is going to be difficult, but two investments that are critical to our ability to be globally competitive, include significant investment in our infrastructure, particularly transportation, as well as a major investment in education and job training so we can continue to be the most efficient economy with the best trained and the most productive work force.

We are losing billions of dollars a year of productivity because of congestion. According to the Texas Transportation Institute, congestion adds an additional one and one half work weeks to Americans' yearly commute, costing our economy over $69 billion.

We need to focus the discussion on what solutions we are doing to ensure that this fundamental part of our economy and what can be done to maintain a level of efficiency that will allow the United States to compete in the world. If we are not satisfied that this legislation will move us in this direction, what are the options before us to try to get closer to those goals?

Lack of Information

When the EPW committee debated the Senate version of the Transportation Equity Act for the 21st Century (TEA-21) in September 1997, the legislation, S. 1173, contained not only policy changes for the nation's surface transportation program, but also the basis for the distribution of the apportioned funds authorized in the bill. At the mark-up of SAFETEA on November 12, 2003, there was tremendous confusion among members of the committee and the United States Department of Transportation as to whether S. 1173 included a formula. For the record, section 1102 of S. 1173, as voted on and reported by the EPW committee, pages 8 39, contains the State by State distribution formulas for: Interstate and National Highway System Program, Congestion Mitigation and Air Quality Program, and Surface Transportation Program; and the "equity calculations" including ISTEA Transition and Minimum Guarantee. The section appears as follows:

ATTACHMENT (S. 1173 SECTION 1102, INCLUDING NEW SECTION 105 MINIMUM GUARANTEE)

* * * * * * *

SEC. 1102. APPORTIONMENTS.

(a) IN GENERAL.—Section 104 of title 23, United States Code, is amended by striking subsection (b) and inserting the following:

"(b) APPORTIONMENTS.—On October 1 of each fiscal year, the Secretary, after making the deduction authorized by subsection (a) and the set-asides authorized by subsection (f), shall apportion the remainder of the sums authorized to be appropriated for expenditure on the National Highway System, the congestion mitigation and air quality improvement program, and the surface transportation program, for that fiscal year, among the States in the following manner:

"(1) INTERSTATE AND NATIONAL HIGHWAY SYSTEM PROGRAM.—

"(A) INTERSTATE MAINTENANCE COMPONENT.—For resurfacing, restoring, rehabilitating, and reconstructing the Interstate System—

"(i) 50 percent in the ratio that—

"(I) the total lane miles on Interstate System routes designated under—

"(aa) section 103;

"(bb) section 139(a) before March 9, 1984 (other than routes on toll roads not subject to a Secretarial agreement under section 105 of the Federal-Aid Highway Act of 1978 (92 Stat. 2692)); and

"(cc) section 139(c) (as in effect on the day before the date of enactment of the Intermodal *Surface* Transportation *Efficiency* Act of 1997);

in each State; bears to

"(II) the total of all such lane miles in all States; and

"(ii) 50 percent in the ratio that—

"(I) the total vehicle miles traveled on lanes on Interstate System routes designated under—

"(aa) section 103;

"(bb) section 139(a) before March 9, 1984 (other than routes on toll roads not subject to a Secretarial agreement under section 105 of the Federal-Aid Highway Act of 1978 (92 Stat. 2692)); and

"(cc) section 139(c) (as in effect on the day before the date of enactment of the Intermodal *Surface* Transportation *Efficiency* Act of 1997);

in each State; bears to

"(II) the total of all such vehicle miles traveled in all States.

"(B) INTERSTATE BRIDGE COMPONENT.—For resurfacing, restoring, rehabilitating, and reconstructing bridges on the Interstate System, in the ratio that—

"(i) the total square footage of structurally deficient and functionally obsolete bridges on the Interstate System (other than bridges on toll roads not sub-

ject to a Secretarial agreement under section 105 of the Federal-Aid Highway Act of 1978 (92 Stat. 2692)) in each State; bears to

"(ii) the total square footage of structurally deficient and functionally obsolete bridges on the Interstate System (other than bridges on toll roads not subject to a Secretarial agreement under section 105 of the Federal-Aid Highway Act of 1978 (92 Stat. 2692)) in all States.

"(C) OTHER NATIONAL HIGHWAY SYSTEM COMPONENT.—

"(i) IN GENERAL.—For the National Highway System (excluding activities for which funds are apportioned under subparagraph (A) or (B)), $36,400,000 for each fiscal year to the Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands and the remainder apportioned as follows:

"(I) 20 percent of the apportionments in the ratio that—

"(aa) the total lane miles of principal arterial routes (excluding Interstate System routes) in each State; bears to

"(bb) the total lane miles of principal arterial routes (excluding Interstate System routes) in all States.

"(II) 29 percent of the apportionments in the ratio that—

"(aa) the total vehicle miles traveled on lanes on principal arterial routes (excluding Interstate System routes) in each State; bears to

"(bb) the total vehicle miles traveled on lanes on principal arterial routes (excluding Interstate System routes) in all States.

"(III) 18 percent of the apportionments in the ratio that—

"(aa) the total square footage of structurally deficient and functionally obsolete bridges on principal arterial routes (excluding bridges on Interstate System routes (other than bridges on toll roads not subject to a Secretarial agreement under section 105 of the Federal-Aid Highway Act of 1978 (92 Stat. 2692))) in each State; bears to

"(bb) the total square footage of structurally deficient and functionally obsolete bridges on principal arterial routes (excluding bridges on Interstate System routes (other than bridges on toll roads not subject to a Secretarial agreement under section 105 of the Federal-Aid Highway Act of 1978 (92 Stat. 2692))) in all States.

"(IV) 24 percent of the apportionments in the ratio that—

"(aa) the total diesel fuel used on highways in each State; bears to

"(bb) the total diesel fuel used on highways in all States.

"(V) 9 percent of the apportionments in the ratio that—

"(aa) the quotient obtained by dividing the total lane miles on principal arterial highways in each State by the total population of the State; bears to

"(bb) the quotient obtained by dividing the total lane miles on principal arterial highways in all States by the total population of all States.

"(ii) DATA.—Each calculation under clause (i) shall be based on the latest available data.

"(D) MINIMUM APPORTIONMENT.—Notwithstanding subparagraphs (A) through (C), each State shall receive a minimum of ½ of 1 percent of the funds apportioned under this paragraph.

"(2) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—

"(A) IN GENERAL.—For the congestion mitigation and air quality improvement program, in the ratio that—

"(i) the total of all weighted nonattainment and maintenance area populations in each State; bears to

"(ii) the total of all weighted nonattainment and maintenance area populations in all States.

"(B) CALCULATION OF WEIGHTED NONATTAINMENT AND MAINTENANCE AREA POPULATION.—Subject to subparagraph (C), for the purpose of subparagraph (A), the weighted nonattainment and maintenance area population shall be calculated by multiplying the population of each area in a State that was a nonattainment area or maintenance area as described in section 149(b) for ozone or carbon monoxide by a factor of—

"(i) 0.8 if—

"(I) at the time of the apportionment, the area is a maintenance area; *or*

"(II) at the time of the apportionment, the area is classified as a submarginal ozone nonattainment area under that Act; or *the Clean Air Act (42 U.S.C. 7401 et seq.);*

"(III) as of the date of enactment of the Intermodal Transportation Act of 1997, the area is considered by the Administrator of the Environmental Protection Agency to be a flexible attainment region;

"(ii) 1.0 if, at the time of the apportionment, the area is classified as a marginal ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.);

"(iii) 1.1 if, at the time of the apportionment, the area is classified as a moderate ozone nonattainment area under that subpart;

"(iv) 1.2 if, at the time of the apportionment, the area is classified as a serious ozone nonattainment area under that subpart;

"(v) 1.3 if, at the time of the apportionment, the area is classified as a severe ozone nonattainment area under that subpart;

"(vi) 1.4 if, at the time of the apportionment, the area is classified as an extreme ozone nonattainment area under that subpart; or

"(vii) 1.0 if, at the time of the apportionment, the area is not a nonattainment or maintenance area as described in section 149(b) for ozone, but is classified under subpart 3 of part D of title I of that Act (42 U.S.C. 7512 et seq.) as a nonattainment area described in section 149(b) for carbon monoxide.

"(C) ADDITIONAL ADJUSTMENT FOR CARBON MONOXIDE AREAS.—

"(i) CARBON MONOXIDE NONATTAINMENT AREAS.—If, in addition to being classified as a nonattainment or maintenance area for ozone, the area was also classified under subpart 3 of part D of title I of that Act (42 U.S.C. 7512 et seq.) as a nonattainment area described in section 149(b) for carbon monoxide, the weighted nonattainment or maintenance area population of the area, as determined under clauses (i) through (vi) of subparagraph (B), shall be further multiplied by a factor of 1.2.

"(ii) CARBON MONOXIDE MAINTENANCE AREAS.—If, in addition to being classified as a nonattainment or maintenance area for ozone, the area was at one time also classified under subpart 3 of part D of title I of that Act (42 U.S.C. 7512 et seq.) as a nonattainment area described in section 149(b) for carbon monoxide but has been redesignated as a maintenance area, the weighted nonattainment or maintenance area population of the area, as determined under clauses (i) through (vi) of subparagraph (B), shall be further multiplied by a factor of 1.1.

"(D) MINIMUM APPORTIONMENT.—Notwithstanding any other provision of this paragraph, each State shall receive a minimum of ½ of 1 percent of the funds apportioned under this paragraph.

"(E) DETERMINATIONS OF POPULATION.—In determining population figures for the purposes of this paragraph, the Secretary shall use the latest available annual estimates prepared by the Secretary of Commerce.

"(3) SURFACE TRANSPORTATION PROGRAM.—

"(A) IN GENERAL.—For the surface transportation program, in accordance with the following formula:

"(i) 20 percent of the apportionments in the ratio that—

"(I) the total lane miles of Federal-aid highways in each State; bears to

"(II) the total lane miles of Federal-aid highways in all States.

"(ii) 30 percent of the apportionments in the ratio that—

"(I) the total vehicle miles traveled on lanes on Federal-aid highways in each State; bears to

"(II) the total vehicle miles traveled on lanes on Federal-aid highways in all States.

"(iii) 25 percent of the apportionments in the ratio that—

"(I) the total square footage of structurally deficient and functionally obsolete bridges on Federal-aid highways (excluding bridges described in subparagraphs (B) and (C)(i)(III) of paragraph (1)) in each State; bears to

"(II) the total square footage *of* structurally deficient and functionally obsolete bridges on Federal-aid highways (excluding bridges described in subparagraphs (B) and (C)(i)(III) of paragraph (1)) in all States.

"(iv) 25 percent of the apportionments in the ratio that—

"(I) the estimated tax payments attributable to highway users in each State paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available; bears to

"(II) the estimated tax payments attributable to highway users in all States paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available.

"(B) DATA.—Each calculation under subparagraph (A) shall be based on the latest available data.

"(C) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), each State shall receive a minimum of ½ of 1 percent of the funds apportioned under this paragraph.".

(b) EFFECT OF CERTAIN AMENDMENTS.—Section 104 of title 23, United States Code, is amended by striking subsection (h) and inserting the following:

"(h) EFFECT OF CERTAIN AMENDMENTS.—Notwithstanding any other provision of law, deposits into the Highway Trust Fund resulting from the amendments made by section 901 of the Taxpayer Relief Act of 1997 shall not be taken into account in determining the apportionments and allocations that any State shall be entitled to receive under the Intermodal *Surface* Transportation *Efficiency* Act of 1997 and *this* title 23, United States Code.".

(c) ISTEA TRANSITION.—

(1) IN GENERAL.—For each of fiscal years 1998 through 2003, the Secretary shall determine, with respect to each State—

(A) the total apportionments for the fiscal year under section 104 of title 23, United States Code, for the Interstate and National Highway System program, the surface transportation program, metropolitan planning, and the congestion mitigation and air quality improvement program;

(B) the annual average of the total apportionments during the period of fiscal years 1992 through 1997 for all Federal-aid highway programs (as defined in section 101 of title 23, United States Code), excluding apportionments for the Federal lands highways program under section 204 of that title;

(C) the annual average of the total apportionments during the period of fiscal years 1992 through 1997 for all Federal-aid highway programs (as defined in section 101 of title 23, United States Code), excluding—

(i) apportionments authorized under section 104 of that title for construction of the Interstate System;

(ii) apportionments for the Interstate substitute program under section 103(e)(4) of that title (as in effect on the day before the date of enactment of this Act);

(iii) apportionments for the Federal lands highways program under section 204 of that title; and

(iv) adjustments to sums apportioned under section 104 of that title due to the hold harmless adjustment under section 1015(a) of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 104 note; 105 Stat. 1943);

(D) the product obtained by multiplying—

(i) the annual average of the total apportionments determined under subparagraph (B); by

(ii) the applicable percentage determined under paragraph (2); and

(E) the product obtained by multiplying—

(i) the annual average of the total apportionments determined under subparagraph (C); by

(ii) the applicable percentage determined under paragraph (2).

(2) APPLICABLE PERCENTAGES.—

(A) FISCAL YEAR 1998.—For fiscal year 1998—

(i) the applicable percentage referred to in paragraph (1)(D)(ii) shall be 145 percent; and

(ii) the applicable percentage referred to in paragraph (1)(E)(ii) shall be 107 percent.

(B) FISCAL YEARS THEREAFTER.—For each of fiscal years 1999 through 2003, the applicable percentage referred to in paragraph (1)(D)(ii) or (1)(E)(ii), respectively, shall be a percentage equal to the product obtained by multiplying—

(i) the percentage specified in clause (i) or (ii), respectively, of subparagraph (A); by

(ii) the percentage that—

(I) the total contract authority made available under this Act and title 23, United States Code, for Federal-aid highway programs for the fiscal year; bears to

(II) the total contract authority made available under this Act and title 23, United States Code, for Federal-aid highway programs for fiscal year 1998.

(3) MAXIMUM TRANSITION.—

(A) IN GENERAL.—For each of fiscal years 1998 through 2003, in the case of each State with respect to which the total apportionments determined under paragraph (1)(A) is greater than the product determined under paragraph (1)(D), the Secretary shall reduce proportionately the apportionments to the State under section 104 of title 23, United States Code, for the National Highway System component of the Interstate and National Highway System program, the surface transportation program, and the congestion mitigation and air quality improvement program so that the total of the apportionments is equal to the product determined under paragraph (1)(D).

(B) REDISTRIBUTION OF FUNDS.—

(i) IN GENERAL.—Subject to clause (ii), funds made available under subparagraph (A) shall be redistributed proportionately under section 104 of title 23, United States Code, for the Interstate and National Highway System program, the surface transportation program, and the congestion mitigation and air quality improvement program, to States not subject to a reduction under subparagraph (A).

(ii) LIMITATION.—The ratio that—

(I) the total apportionments to a State under section 104 of title 23, United States Code, for the Interstate and National Highway System program, the surface transportation program, *metropolitan planning,* and the congestion mitigation and air quality improvement program, after the application of clause (i); bears to

(II) the annual average of the total apportionments determined under paragraph (1)(B) with respect to the State;

may not exceed, in the case of fiscal year 1998, 145 percent, and, in the case of each of fiscal years 1999 through 2003, 145 percent as adjusted in the manner described in paragraph (2)(B).

(4) MINIMUM TRANSITION.—

(A) IN GENERAL.—For each of fiscal years 1998 through 2003, the Secretary shall apportion to each State such additional amounts as are necessary to ensure that—

(i) the total apportionments to the State under section 104 of title 23, United States Code, for the Interstate and National Highway System program, the surface transportation program, metropolitan planning, and the congestion mitigation and air quality im-

provement program, after the application of paragraph (3); is equal to

(ii) the greater of—

(I) the product determined with respect to the State under paragraph (1)(E); or

(II) the total apportionments to the State for fiscal year 1997 for all Federal-aid highway programs, excluding—

(aa) apportionments for the Federal lands highways program under section 204 of title 23, United States Code;

(bb) adjustments to sums apportioned under section 104 of that title due to the hold harmless adjustment under section 1015(a) of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 104 note; 105 Stat. 1943); and

(cc) demonstration projects under the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240).

(B) OBLIGATION.—Amounts apportioned under subparagraph (A)—

(i) shall be considered to be sums made available for expenditure on the surface transportation program, except that—

(I) the amounts shall not be subject to paragraphs (1) and (2) of section 133(d) of title 23, United States Code; and

(II) 50 percent of the amounts shall be subject to section 133(d)(3) of that title;

(ii) shall be available for any purpose eligible for funding under section 133 of that title; and

(iii) shall remain available for obligation for a period of 3 years after the last day of the fiscal year for which the amounts are apportioned.

(C) AUTHORIZATION OF CONTRACT AUTHORITY.—

(i) IN GENERAL.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) such sums as are necessary to carry out this paragraph.

(ii) CONTRACT AUTHORITY.—Funds authorized under this subparagraph shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code.

(d) MINIMUM GUARANTEE.—

(1) IN GENERAL.—Section 105 of title 23, United States Code, is amended to read as follows:

"§ 105. Minimum guarantee

"(a) ADJUSTMENT.—

"(1) IN GENERAL.—In fiscal year 1998 and each fiscal year thereafter on October 1, or as soon as practicable thereafter, the Secretary shall allocate among the States amounts sufficient to ensure that—

"(A) the ratio that—

"(i) each State's percentage of the total apportionments for the fiscal year—

"(I) under section 104 for the Interstate and National Highway System program, the surface transportation program, metropolitan planning, and the congestion mitigation and air quality improvement program; and

"(II) under *this section and* section 1102(c) of the Intermodal *Surface* Transportation *Efficiency* Act of 1997 for ISTEA transition; bears to

"(ii) each State's percentage of estimated tax payments attributable to highway users in the State paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available;

is not less than 0.90; and

"(B) in the case of a State specified in paragraph (2), the State's percentage of the total apportionments for the fiscal year described in subclauses (I) and (II) of subparagraph (A)(i) is—

"(i) not less than the percentage specified for the State in paragraph (2); but

"(ii) not greater than the product determined for the State under section 1102(c)(1)(D) of the Intermodal *Surface* Transportation *Efficiency* Act of 1997 for the fiscal year.

"(2) STATE PERCENTAGES.—The percentage referred to in paragraph (1)(B) for a specified State shall be determined in accordance with the following table:

"State	**Percentage**
Alaska	1.24
Arkansas	1.33
Delaware	0.47
Hawaii	0.55
Idaho	0.82
Montana	1.06
Nevada	0.73
New Hampshire	0.52
New Jersey	2.41
New Mexico	1.05
North Dakota	0.73
Rhode Island	0.58
South Dakota	0.78
Vermont	0.47
Wyoming	0.76.

"(b) TREATMENT OF ALLOCATIONS.—

"(1) OBLIGATION.—Amounts allocated under subsection (a)—

"(A) shall be available for obligation when allocated and shall remain available for obligation for a period of 3 years after the last day of the fiscal year for which the amounts are allocated; and

"(B) shall be available for any purpose eligible for funding under this title.

"(2) SET-ASIDE.—Fifty percent of the amounts allocated under subsection (a) shall be subject to section 133(d)(3).

"(c) TREATMENT OF WITHHELD APPORTIONMENTS.—For the purpose of subsection (a), any funds that, but for section 158(b) or any other provision of law under which Federal-aid highway funds are withheld from apportionment, would be apportioned to a State for a fiscal year under a section referred to in subsection (a) shall be treated as being apportioned in that fiscal year.

"(d) AUTHORIZATION OF CONTRACT AUTHORITY.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) such sums as are necessary to carry out this section.".

(2) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 105 and inserting the following:

"105. Minimum guarantee.".

(e) AUDITS OF HIGHWAY TRUST FUND.—Section 104 of title 23, United States Code, is amended by striking subsection (i) and inserting the following:

"(i) AUDITS OF HIGHWAY TRUST FUND.—From available administrative funds deducted under subsection (a), the Secretary may reimburse the Office of Inspector General of the Department of Transportation for the conduct of annual audits of financial statements in accordance with section 3521 of title 31.".

(f) TECHNICAL AMENDMENTS.—Section 104 of title 23, United States Code, is amended—

(1) in subsection (e)—

(A) by inserting "NOTIFICATION TO STATES.—" after "(e)";

(B) in the first sentence—

(i) by striking "(other than under subsection (b)(5) of this section)"; and

(ii) by striking "and research";

(C) by striking the second sentence; and

(D) in the last sentence, by striking ", except that" and all that follows through "such funds"; and

(2) in subsection (f)—

(A) by striking "(f)(1) On" and inserting the following: "(f) METROPOLITAN PLANNING.—

"(1) SET-ASIDE.—On";

(B) by striking "(2) These" and inserting the following: "(2) APPORTIONMENT TO STATES OF SET-ASIDE FUNDS.—These";

(C) by striking "(3) The" and inserting the following: "(3) USE OF FUNDS.—The"; and

(D) by striking "(4) The" and inserting the following:

"(4) DISTRIBUTION OF FUNDS WITHIN STATES.—The".

(g) CONFORMING AMENDMENTS.—

(1) Section 146(a) of title 23, United States Code, is amended in the first sentence by striking ", 104(b)(2), and 104(b)(6)" and inserting "and 104(b)(2)".

(2)(A) Section 150 of title 23, United States Code, is repealed.

(B) The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 150.

(3) Section 158 of title 23, United States Code, is amended—

(A) in subsection (a)—

(i) by striking paragraph (1);

(ii) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively;

(iii) in paragraph (1) (as so redesignated)—

(I) by striking "AFTER THE FIRST YEAR" and inserting "IN GENERAL"; and

(II) by striking ", 104(b)(2), 104(b)(5), and 104(b)(6)" and inserting "and 104(b)(2)"; and

(iv) in paragraph (2) (as redesignated by clause (ii)), by striking "paragraphs (1) and (2) of this subsection" and inserting "paragraph (1)"; and

(B) by striking subsection (b) and inserting the following:

"(b) EFFECT OF WITHHOLDING OF FUNDS.—No funds withheld under this section from apportionment to any State after September 30, 1988, shall be available for apportionment to that State.".

(4)(A) Section 157 of title 23, United States Code, is repealed.

(B) The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 157.

(5)(A) Section 115(b)(1) of title 23, United States Code, is amended by striking "or 104(b)(5), as the case may be,".

(B) Section 137(f)(1) of title 23, United States Code, is amended by striking "section 104(b)(5)(B) of this title" and inserting "section 104(b)(1)(A)".

(C) Section 141(c) of title 23, United States Code, is amended by striking "section 104(b)(5) of this title" each place it appears and inserting "section 104(b)(1)(A)".

(D) Section 142(c) of title 23, United States Code, is amended by striking "(other than section 104(b)(5)(A))".

(E) Section 159 of title 23, United States Code, is amended—

(i) by striking "(5) of" each place it appears and inserting "(5) (as in effect on the day before the date of enactment of the Intermodal *Surface* Transportation *Efficiency* Act of 1997) of"; and

(ii) in subsection (b)—

(I) in paragraphs (1)(A)(i) and (3)(A), by striking "section 104(b)(5)(A)" each place it appears and inserting "section 104(b)(5)(A) (as in effect on the day before

the date of enactment of the Intermodal *Surface* Transportation *Efficiency* Act of 1997)";

(II) in paragraph (1)(A)(ii), by striking "section 104(b)(5)(B)" and inserting "section 104(b)(5)(B) (as in effect on the day before the date of enactment of the Intermodal *Surface* Transportation *Efficiency* Act of 1997)";

(III) in paragraph (3)(B), by striking "(5)(B)" and inserting "(5)(B) (as in effect on the day before the date of enactment of the Intermodal *Surface* Transportation *Efficiency* Act of 1997)"; and

(IV) in paragraphs (3) (B) and (4), by striking "section 104(b)(5)" each place it appears and inserting "section 104(b)(5) (as in effect on the day before the date of enactment of the Intermodal *Surface* Transportation *Efficiency* Act of 1997)".

(F) Section 161(a) of title 23, United States Code, is amended by striking "paragraphs (1), (3), and (5)(B) of section 104(b)" each place it appears and inserting "paragraphs (1) and (3) of section 104(b)".

(6)(A) Section 104(g) of title 23, United States Code, is amended—

(i) in the first sentence, by striking "sections 130, 144, and 152 of this title" and inserting "subsection (b)(1)(B) and sections 130 and 152";

(ii) in the first and second sentences—

(I) by striking "section" and inserting "provision"; and

(II) by striking "such sections" and inserting "those provisions"; and

(iii) in the third sentence—

(I) by striking "section 144" and inserting "subsection (b)(1)(B)"; and

(II) by striking "subsection (b)(1)" and inserting "subsection (b)(1)(C)".

(B) Section 115 of title 23, United States Code, is amended—

(i) in subsection (a)(1)(A)(i), by striking "104(b)(2), 104(b)(3), 104(f), 144," and inserting "104(b)(1)(B), 104(b)(2), 104(b)(3), 104(f),"; and

(ii) in subsection (c), by striking "144,,".

(C) Section 120(e) of title 23, United States Code, is amended in the last sentence by striking "and in section 144 of this title".

(D) Section 151(d) of title 23, United States Code, is amended by striking "section 104(a), section 307(a), and section 144 of this title" and inserting "subsections (a) and (b)(1)(B) of section 104 and section 307(a)".

(E) Section 204(c) of title 23, United States Code, is amended in the first sentence by striking "or section 144 of this title".

(F) Section 303(g) of title 23, United States Code, is amended by striking "section 144 of this title" and inserting "section 104(b)(1)(B)".

* * * * * * *

During the SAFETEA proceedings, I requested that the EPW staff deliver an analysis to members of the committee that contained the formula, including the percentage and absolute dollar change by State between TEA-21 and SAFETEA. The Chairman objected to this request. Later in the proceedings, I requested the Chairman conduct a public business meeting of the committee to consider the formula portions of the SAFETEA bill and allow for debate and amendment. This request was also rejected. Last, I requested that the relevant section of S. 1173 relating to the formula be inserted into the record of the business meeting. Again, there was an objection.

The distribution of funds to the States has long been a point of debate and contention in this committee and the Congress as a whole. My State, Florida, is a donor State. This means for every dollar of gasoline taxes collected from citizens in the State of Florida, roughly 86 cents is returned to Florida for transportation spending. Many other States in the Nation are also donor States, including the home States of both the Chairman of the full EPW committee and Chairman of the Transportation and Infrastructure Subcommittee. For many years, we have been fighting side by side to improve the rate of return for the donor States.

When the Intermodal Surface Transportation Efficiency Act (ISTEA) was considered in 1991, I was concerned the formulas in ISTEA and all of the "equity" categories would not actually achieve the donor State goal of a 90 percent rate of return, even though the sponsor assured us it would. I, unfortunately, was correct—the rate of return for donor States sunk way below the promise of 90 percent, with my State receiving only a 79 percent rate of return.

When developing TEA-21 in 1997, it was again vital for the donor States to not only increase our rate of return but to streamline the mechanism for achieving the goal. The donor States set out to achieve a true 95 percent rate of return, but ultimately agreed to 90.5 percent due to the amount of funding available for the legislation. We did however; change the way the new "Minimum Guarantee" was calculated so that each State has received a 90.5 percent rate of return on funds apportioned to the States. However, my State and many donor States, still receive less than 90.5 cents on the dollar. 90.5 is only a guarantee of roughly 90 percent of the total TEA-21 program. The remaining discretionary funds have been distributed by the Secretary and earmarked by Congress, essentially diluting our guarantee to 86 cents on the dollar.

This is why not only are the actual State percentages and dollar amounts important to donor States, but also why the methodology by which the formula is calculated is even more vital. Once again, the donor States are working to achieve a 95 percent rate of return. The Ranking Member has assured me that my State will achieve this long fought goal of 95 percent rate of return by the end of SAFETEA in 2009. However, since I have not been able to read and analyze any of the formula calculations, I am not sure how we will get there. I have numerous questions about the formula, which

I demand to have answered in January of 2004. How is the equity bonus calculated? What is the scope of the equity bonus? Is there enough revenue in SAFETEA to actually pay for a 95 percent rate of return? The Chairman informed members at the November 12 business meeting that all of the numbers would be revealed on the day of the President's State of the Union address. However, there will not be a mark-up of the formula sections; they will be added to the SAFETEA legislation as an amendment on the Senate floor.

The EPW committee should have an open mark-up of these provisions, so members of the committee have the opportunity to debate and amend the formula. That is our right and our responsibility as committee members. Once we proceed to the Senate floor, we will have less control over the situation and lack the expertise expected by our colleagues as members of the full committee to prepare for debate and possible amendment.

Many of the policies in SAFETEA will greatly benefit the traveling public. The committee has constructed a piece of legislation that is intermodal and focuses attention on pressing issues, such as congestion and environmental protection. However, I remain concerned that we are not investing enough in our nation's infrastructure and are again missing an opportunity to have a lasting impact on America's global competitiveness. Additionally, I will continue to object to the hurried, secret manner of the development of SAFETEA and hope to continue working with the Chairman and Ranking Member to make this process as open and positive as possible. We all share a common goal of greater investment in our nation's surface transportation program to help saves lives, reduce congestion, protect the environment and increase economic efficiency. With the gas tank insufficiently filled and the maps to guide us missing, this legislation does not put our nation on the right road to achieving these objectives.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in italic, existing law in which no change is proposed is shown in roman:

TITLE 23—UNITED STATES CODE

HIGHWAYS

Chap.		Sec.
1.	Federal-Aid Highways	101
2.	Other Highways	201
3.	General Provisions	301
4.	Highway Safety	401
5.	Research and Technology	501

CHAPTER 1—FEDERAL-AID HIGHWAYS

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
101. Definitions and declaration of policy.
102. Program efficiencies.
103. Federal-aid systems.
104. Apportionment.
105. Minimum guarantee.
106. Project approval and oversight.
107. Acquisition of rights-of-way—Interstate System.
108. Advance acquisition of real property.
109. Standards.
110. Revenue aligned budget authority.
111. Agreements relating to use of and access to rights-of-way—Interstate System.
112. Letting of contracts.
113. Prevailing rate of wage.
114. Construction.
115. Advance construction.
116. Maintenance.
117. High priority projects program.
118. Availability of funds.
119. Interstate maintenance program.
120. Federal share payable.
121. Payment to States for construction.
122. Payments to States for bond and other debt instrument financing.
123. Relocation of utility facilities.
124. Advances to States.
125. Emergency relief.
126. Uniform transferability of Federal-aid highway funds.
127. Vehicle weight limitations—Interstate System.
128. Public hearings.
129. Toll roads, bridges, tunnels, and ferries.
130. Railway-highway crossings.
131. Control of outdoor advertising.
132. Payments on Federal-aid projects undertaken by a Federal agency.
133. Surface transportation program.
134. Metropolitan planning.
135. Statewide planning.
136. Control of junkyards.
137. Fringe and corridor parking facilities.
138. Preservation of parklands.
[139. [Repealed]]
139. Infrastructure performance and maintenance program.
140. Nondiscrimination.
141. Enforcement of requirements.
142. Public transportation.

143. Highway use tax evasion projects.
[144. Highway bridge replacement and rehabilitation program.]
144. Highway bridge program.
145. Federal-State relationship.
146. Carpool and vanpool projects.
[147. Priority primary routes.]
147. Construction of ferry boats and ferry terminal facilities.
[148. Development of a national scenic and recreational highway.]
148. Highway safety improvement program.
149. Congestion mitigation and air quality improvement program.
[150. [Repealed]]
150. Safe routes to school program.
151. National bridge inspection program.
[152. Hazard elimination program.]
152. Purchases of equipment.
153. Use of safety belts and motorcycle helmets.
154. Open container requirements.
[155. Access highways to public recreation areas on certain lakes.]
155. State habitat, streams, and wetlands mitigation funds.
156. Proceeds from the sale or lease of real property.
157. Safety incentive grants for use of seat belts.
158. National minimum drinking age.
159. Revocation or suspension of drivers' licenses of individuals convicted of drug offenses.
160. Reimbursement for segments of the Interstate System constructed without Federal assistance.
161. Operation of motor vehicles by intoxicated minors.
162. National scenic byways program.
163. Safety incentives to prevent operation of motor vehicles by intoxicated persons.
164. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence.
165. Eligibility for environmental restoration and pollution abatement.
166. Control of invasive plant species and establishment of native species.
167. Highway stormwater discharge mitigation program.
168. Transportation systems management and operations.
169. Real-time system management information program.
170. Appalachian development highway system.
171. Multistate corridor program.
172. Border planning, operations, and technology program.
173. Puerto Rico highway program.
174. National historic covered bridge preservation.
175. Transportation and community and system preservation pilot program.

SUBCHAPTER II—INFRASTRUCTURE FINANCE

181. Definitions.
182. Determination of eligibility and project selection.
183. Secured loans.
184. Lines of credit.
[185. Project servicing.]
185. Program administration.
186. State and local permits.
187. Regulations.
188. Funding.
[189. Report to Congress.]

SUBCHAPTER I—GENERAL PROVISIONS

§ 101. Definitions and declaration of policy

[(a) DEFINITIONS.—In this title, the following definitions apply:

[(1) APPORTIONMENT.—The term "apportionment" includes unexpended apportionments made under prior authorization laws.

[(2) CARPOOL PROJECT.—The term "carpool project" means any project to encourage the use of carpools and vanpools, including provision of carpooling opportunities to the elderly and

individuals with disabilities, systems for locating potential riders and informing them of carpool opportunities, acquiring vehicles for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use for preferential parking for carpools.

[(3) CONSTRUCTION.—The term "construction" means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a highway, including bond costs and other costs relating to the issuance in accordance with section 122 of bonds or other debt financing instruments and costs incurred by the State in performing Federal-aid project related audits that directly benefit the Federal-aid highway program. Such term includes—

[(A) locating, surveying, and mapping (including the establishment of temporary and permanent geodetic markers in accordance with specifications of the National Oceanic and Atmospheric Administration of the Department of Commerce);

[(B) resurfacing, restoration, and rehabilitation;

[(C) acquisition of rights-of-way;

[(D) relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

[(E) elimination of hazards of railway grade crossings;

[(F) elimination of roadside obstacles;

[(G) improvements that directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas; and

[(H) capital improvements that directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses.

[(4) COUNTY.—The term "county" includes corresponding units of government under any other name in States that do not have county organizations and, in those States in which the county government does not have jurisdiction over highways, any local government unit vested with jurisdiction over local highways.

[(5) FEDERAL-AID HIGHWAY.—The term "Federal-aid highway" means a highway eligible for assistance under this chapter other than a highway classified as a local road or rural minor collector.

[(6) FEDERAL-AID SYSTEM.—The term "Federal-aid system" means any of the Federal-aid highway systems described in section 103.

[(7) FEDERAL LANDS HIGHWAY.—The term "Federal lands highway" means a forest highway, public lands highway, park road, parkway, refuge road, and Indian reservation road that is a public road.

[(8) FOREST DEVELOPMENT ROADS AND TRAILS.—The term "forest development roads and trails" means forest roads and trails under the jurisdiction of the Forest Service.

[(9) FOREST HIGHWAY.—The term "forest highway" means a forest road under the jurisdiction of, and maintained by, a public authority and open to public travel.

[(10) FOREST ROAD OR TRAIL.—The term "forest road or trail" means a road or trail wholly or partly within, or adjacent to, and serving the National Forest System that is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

[(11) HIGHWAY.—The term "highway" includes—

[(A) a road, street, and parkway;

[(B) a right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure, sign, guardrail, and protective structure, in connection with a highway; and

[(C) a portion of any interstate or international bridge or tunnel and the approaches thereto, the cost of which is assumed by a State transportation department, including such facilities as may be required by the United States Customs and Immigration Services in connection with the operation of an international bridge or tunnel.

[(12) INDIAN RESERVATION ROAD.—The term "Indian reservation road" means a public road that is located within or provides access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

[(13) INTERSTATE SYSTEM.—The term "Interstate System" means the Dwight D. Eisenhower National System of Interstate and Defense Highways described in section 103(c).

[(14) MAINTENANCE.—The term "maintenance" means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway.

[(15) MAINTENANCE AREA.—The term "maintenance area" means an area that was designated as a nonattainment area, but was later redesignated by the Administrator of the Environmental Protection Agency as an attainment area, under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

[(16) NATIONAL HIGHWAY SYSTEM.—The term "National Highway System" means the Federal-aid highway system described in section 103(b).

[(17) OPERATING COSTS FOR TRAFFIC MONITORING, MANAGEMENT, AND CONTROL.—The term "operating costs for traffic monitoring, management, and control" includes labor costs, administrative costs, costs of utilities and rent, and other costs associated with the continuous operation of traffic control, such as integrated traffic control systems, incident management programs, and traffic control centers.

[(18) OPERATIONAL IMPROVEMENT.—The term "operational improvement"—

[(A) means (i) a capital improvement for installation of traffic surveillance and control equipment, computerized signal systems, motorist information systems, integrated traffic control systems, incident management programs, and transportation demand management facilities, strategies, and programs, and (ii) such other capital improvements to public roads as the Secretary may designate, by regulation; and

[(B) does not include resurfacing, restoring, or rehabilitating improvements, construction of additional lanes, interchanges, and grade separations, and construction of a new facility on a new location.

[(19) PARK ROAD.—The term "park road" means a public road, including a bridge built primarily for pedestrian use, but with capacity for use by emergency vehicles, that is located within, or provides access to, an area in the National Park System with title and maintenance responsibilities vested in the United States.

[(20) PARKWAY.—The term "parkway", as used in chapter 2 of this title, means a parkway authorized by Act of Congress on lands to which title is vested in the United States.

[(21) PROJECT.—The term "project" means an undertaking to construct a particular portion of a highway, or if the context so implies, the particular portion of a highway so constructed or any other undertaking eligible for assistance under this title.

[(22) PROJECT AGREEMENT.—The term "project agreement" means the formal instrument to be executed by the State transportation department and the Secretary as required by section 106.

[(23) PUBLIC AUTHORITY.—The term "public authority" means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

[(24) PUBLIC LANDS DEVELOPMENT ROADS AND TRAILS.—The term "public lands development roads and trails" means those roads and trails that the Secretary of the Interior determines are of primary importance for the development, protection, administration, and utilization of public lands and resources under the control of the Secretary of the Interior.

[(25) PUBLIC LANDS HIGHWAY.—The term "public lands highway" means a forest road under the jurisdiction of and maintained by a public authority and open to public travel or any highway through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations under the jurisdiction of and maintained by a public authority and open to public travel.

[(26) PUBLIC LANDS HIGHWAYS.—The term "public lands highways" means those main highways through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations, which are on the Federal-aid systems.

[(27) PUBLIC ROAD.—The term "public road" means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

[(28) REFUGE ROAD.—The term "refuge road" means a public road that provides access to or within a unit of the National Wildlife Refuge System and for which title and maintenance responsibility is vested in the United States Government.

[(29) RURAL AREAS.—The term "rural areas" means all areas of a State not included in urban areas.

[(30) SAFETY IMPROVEMENT PROJECT.—The term "safety improvement project" means a project that corrects or improves high hazard locations, eliminates roadside obstacles, improves highway signing and pavement marking, installs priority control systems for emergency vehicles at signalized intersections, installs or replaces emergency motorist aid call boxes, or installs traffic control or warning devices at locations with high accident potential.

[(31) SECRETARY.—The term "Secretary" means Secretary of Transportation.

[(32) STATE.—The term "State" means any of the 50 States, the District of Columbia, or Puerto Rico.

[(33) STATE FUNDS.—The term "State funds" includes funds raised under the authority of the State or any political or other subdivision thereof, and made available for expenditure under the direct control of the State transportation department.

[(34) STATE TRANSPORTATION DEPARTMENT.—The term "State transportation department" means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction.

[(35) TRANSPORTATION ENHANCEMENT ACTIVITIES.—The term "transportation enhancement activities" means, with respect to any project or the area to be served by the project, any of the following activities if such activity relates to surface transportation: provision of facilities for pedestrians and bicycles, provision of safety and educational activities for pedestrians and bicyclists, acquisition of scenic easements and scenic or historic sites, scenic or historic highway programs (including the provision of tourist and welcome center facilities), landscaping and other scenic beautification, historic preservation, rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals), preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails), control and removal of outdoor advertising, archaeological planning and research, environmental mitigation to address water pollution due to highway runoff or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity, and establishment of transportation museums.

[(36) URBAN AREA.—The term "urban area" means an urbanized area or, in the case of an urbanized area encompassing more than one State, that part of the urbanized area in each such State, or urban place as designated by the Bureau of the Census having a population of 5,000 or more and not within

any urbanized area, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall encompass, at a minimum, the entire urban place designated by the Bureau of the Census, except in the case of cities in the State of Maine and in the State of New Hampshire.

[(37) URBANIZED AREA.—The term "urbanized area" means an area with a population of 50,000 or more designated by the Bureau of the Census, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall encompass, at a minimum, the entire urbanized area within a State as designated by the Bureau of the Census.]

(a) DEFINITIONS.—In this title:

(1) APPORTIONMENT.—The term "apportionment" includes an unexpended apportionment made under a law enacted before the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003.

(2) CARPOOL PROJECT.—

(A) IN GENERAL.—The term "carpool project" means any project to encourage the use of carpools and vanpools.

(B) INCLUSIONS.—The term "carpool project" includes a project—

(i) to provide carpooling opportunities to the elderly and individuals with disabilities;

(ii) to develop and implement a system for locating potential riders and informing the riders of carpool opportunities;

(iii) to acquire vehicles for carpool use;

(iv) to designate highway lanes as preferential carpool highway lanes;

(v) to provide carpool-related traffic control devices; and

(vi) to designate facilities for use for preferential parking for carpools.

(3) CONSTRUCTION.—

(A) IN GENERAL.—The term "construction" means the supervision, inspection, and actual building of, and incurring of all costs incidental to the construction or reconstruction of a highway, including bond costs and other costs relating to the issuance in accordance with section 122 of bonds or other debt financing instruments and costs incurred by the State in performing Federal-aid project related audits that directly benefit the Federal-aid highway program.

(B) INCLUSIONS.—The term "construction" includes—

(i) locating, surveying, and mapping (including the establishment of temporary and permanent geodetic markers in accordance with specifications of the National Oceanic and Atmospheric Administration);

(ii) resurfacing, restoration, and rehabilitation;

(iii) acquisition of rights-of-way;

(iv) relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

(v) elimination of hazards of railway grade crossings;

(vi) elimination of roadside obstacles;

(vii) improvements that directly facilitate and control traffic flow, such as—

(I) grade separation of intersections;

(II) widening of lanes;

(III) channelization of traffic;

(IV) traffic control systems; and

(V) passenger loading and unloading areas;

(viii) capital improvements that directly facilitate an effective vehicle weight enforcement program, such as—

(I) scales (fixed and portable);

(II) scale pits;

(III) scale installation; and

(IV) scale houses;

(ix) improvements directly relating to securing transportation infrastructures for detection, preparedness, response, and recovery;

(x) operating costs relating to traffic monitoring, management, and control;

(xi) operational movements; and

(xii) transportation system management and operations.

(4) COUNTY.—The term "county" includes—

(A) a corresponding unit of government under any other name in a State that does not have county organizations; and

(B) in those States in which the county government does not have jurisdiction over highways, any local government unit vested with jurisdiction over local highways.

(5) FEDERAL-AID HIGHWAY.—

(A) IN GENERAL.—The term "Federal-aid highway" means a highway eligible for assistance under this chapter.

(B) EXCLUSIONS.—The term "Federal-aid highway" does not include a highway classified as a local road or rural minor collector.

(6) FEDERAL-AID SYSTEM.—The term "Federal-aid system" means any of the Federal-aid highway systems described in section 103.

(7) FEDERAL LANDS HIGHWAY.—The term "Federal lands highway" means—

(A) a forest highway;

(B) a recreation road;

(C) a public Forest Service road;

(D) a park road;

(E) a parkway;

(F) a refuge road;

(G) an Indian reservation road that is a public road; and

(H) a public lands highway.

(8) FOREST HIGHWAY.—The term "forest highway" means a forest road that is—

(A) under the jurisdiction of, and maintained by, a public authority; and

(B) is open to public travel.

(9) FOREST ROAD OR TRAIL.—

(A) IN GENERAL.—The term "forest road or trail" means a road or trail wholly or partly within, or adjacent to, and serving National Forest System land that is necessary for the protection, administration, use, and development of the resources of that land.

(B) INCLUSIONS.—The term "forest road or trail" includes—

(i) a classified forest road;

(ii) an unclassified forest road;

(iii) a temporary forest road; and

(iv) a public forest service road.

(10) FREIGHT TRANSPORTATION GATEWAY.—

(A) IN GENERAL.—The term "freight transportation gateway" means a nationally or regionally significant transportation port of entry or hub for domestic and global trade or military mobilization.

(B) INCLUSIONS.—The term "freight transportation gateway" includes freight intermodal and Strategic Highway Network connections that provide access to and from a port or hub described in subparagraph (A).

(11) HIGHWAY.—The term "highway" includes—

(A) a road, street, and parkway;

(B) a right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure, sign, guardrail, and protective structure, in connection with a highway; and

(C) a portion of any interstate or international bridge or tunnel (including the approaches to the interstate or international bridge or tunnel, and such transportation facilities as may be required by the United States Customs Service and the Bureau of Citizenship and Immigration Services in connection with the operation of an international bridge or tunnel), the cost of which is assumed by a State transportation department.

(12) HIGHWAY SAFETY IMPROVEMENT PROJECT.—The term "highway safety improvement project" means a project that meets the requirements of section 148.

(13) INDIAN RESERVATION ROAD.—

(A) IN GENERAL.—The term "Indian reservation road" means a public road that is located within or provides access to an area described in subparagraph (B) on which or in which reside Indians or Alaskan Natives that, as determined by the Secretary of the Interior, are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

(B) AREAS.—The areas referred to in subparagraph (A) are—

(i) an Indian reservation;

(ii) Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government; and

(iii) an Indian or Alaska Native village, group, or community.

(14) INTERSTATE SYSTEM.—The term "Interstate System" means the Dwight D. Eisenhower National System of Interstate and Defense Highways described in section 103(c).

(15) MAINTENANCE.—

(A) IN GENERAL.—The term "maintenance" means the preservation of a highway.

(B) INCLUSIONS.—The term "maintenance" includes the preservation of—

(i) the surface, shoulders, roadsides, and structures of a highway; and

(ii) such traffic-control devices as are necessary for safe, secure, and efficient use of a highway.

(16) MAINTENANCE AREA.—The term "maintenance area" means an area that was designated as a nonattainment area, but was later redesignated by the Administrator of the Environmental Protection Agency as an attainment area, under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

(17) NATIONAL FOREST SYSTEM ROAD OR TRAIL.—The term "National Forest System road or trail" means a forest road or trail that is under the jurisdiction of the Forest Service.

(18) NATIONAL HIGHWAY SYSTEM.—The term "National Highway System" means the Federal-aid highway system described in section 103(b).

(19) OPERATING COSTS FOR TRAFFIC MONITORING, MANAGEMENT, AND CONTROL.—The term "operating costs for traffic monitoring, management, and control" includes—

(A) labor costs;

(B) administrative costs;

(C) costs of utilities and rent;

(D) costs incurred by transportation agencies for technology to monitor critical transportation infrastructure for security purposes; and

(E) other costs associated with transportation systems management and operations and the continuous operation of traffic control, such as—

(i) an integrated traffic control system;

(ii) an incident management program; and

(iii) a traffic control center.

(20) OPERATIONAL IMPROVEMENT.—

(A) IN GENERAL.—The term "operational improvement" means—

(i) a capital improvement for installation or implementation of—

(I) a transportation system management and operations program;

(II) traffic and transportation security surveillance and control equipment;

(III) a computerized signal system;

(IV) a motorist information system;I28 (V) an integrated traffic control system;

(VI) an incident management program;

(VII) equipment and programs for transportation response to manmade and natural disasters; or

(VIII) a transportation demand management facility, strategy, or program; and

(ii) such other capital improvements to a public road as the Secretary may designate by regulation.

(B) EXCLUSIONS.—The term "operational improvement" does not include—

(i) a resurfacing, restorative, or rehabilitative improvement;

(ii) construction of an additional lane, interchange, or grade separation; or

(iii) construction of a new facility on a new location.

(21) PARK ROAD.—The term "park road" means a public road (including a bridge built primarily for pedestrian use, but with capacity for use by emergency vehicles) that is located within, or provides access to, an area in the National Park System with title and maintenance responsibilities vested in the United States.

(22) PARKWAY.—The term "parkway" means a parkway authorized by an Act of Congress on land to which title is vested in the United States.

(23) PROJECT.—The term "project" means—

(A)(i) an undertaking to construct a particular portion of a highway; or

(ii) if the context so implies, a particular portion of a highway so constructed; and

(B) any other undertaking eligible for assistance under this title.

(24) PROJECT AGREEMENT.—The term "project agreement" means the formal instrument to be executed by the Secretary and a State transportation department under section 106.

(25) PUBLIC AUTHORITY.—The term "public authority" means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

(26) PUBLIC FOREST SERVICE ROAD.—The term "public Forest Service road" means a classified forest road—

(A) that is open to public travel;

(B) for which title and maintenance responsibility is vested in the Federal Government; and

(C) that has been designated a public road by the Forest Service.

(27) PUBLIC LANDS DEVELOPMENT ROADS AND TRAILS.—The term "public lands development roads and trails" means roads and trails that the Secretary of the Interior determines are of primary importance for the development, protection, adminis-

tration, and use of public lands and resources under the control of the Secretary of the Interior.

(28) PUBLIC LANDS HIGHWAY.—The term "public lands highway" means—

(A) a forest road that is—

(i) under the jurisdiction of, and maintained by, a public authority; and

(ii) open to public travel; and

(B) any highway through unappropriated or unreserved public land, nontaxable Indian land, or any other Federal reservation (including a main highway through such land or reservation that is on the Federal-aid system) that is—

(i) under the jurisdiction of, and maintained by, a public authority; and

(ii) open to public travel.

(29) PUBLIC ROAD.—The term "public road" means any road or street that is—

(A) under the jurisdiction of, and maintained by, a public authority; and

(B) open to public travel.

(30) RECREATIONAL ROAD.—The term "recreational road" means a public road—

(A) that provides access to a museum, lake, reservoir, visitors center, gateway to a major wilderness area, public use area, or recreational or historic site; and

(B) for which title is vested in the Federal Government.

(31) REFUGE ROAD.—The term "refuge road" means a public road—

(A) that provides access to or within a unit of the National Wildlife Refuge System or a national fish hatchery; and

(B) for which title and maintenance responsibility is vested in the United States Government.

(32) RURAL AREA.—The term "rural area" means an area of a State that is not included in an urban area.

(33) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

(34) STATE.—The term "State" means—

(A) a State;

(B) the District of Columbia; and

(C) the Commonwealth of Puerto Rico.

(35) STATE FUNDS.—The term "State funds" includes funds that are—

(A) raised under the authority of the State (or any political or other subdivision of a State); and

(B) made available for expenditure under the direct control of the State transportation department.

(36) STATE TRANSPORTATION DEPARTMENT.—The term "State transportation department" means the department, agency, commission, board, or official of any State charged by the laws of the State with the responsibility for highway construction.

(37) TERRITORIAL HIGHWAY SYSTEM.—The term "territorial highway system" means the system of arterial highways, collector roads, and necessary interisland connectors in American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin Islands that have been designated by the appropriate Governor or chief executive officer of a territory, and approved by the Secretary, in accordance with section 215.

(38) TRANSPORTATION ENHANCEMENT ACTIVITY.—The term "transportation enhancement activity" means, with respect to any project or the area to be served by the project, any of the following activities as the activities relate to surface transportation:

(A) Provision of facilities for pedestrians and bicycles.

(B) Provision of safety and educational activities for pedestrians and bicyclists.

(C) Acquisition of scenic easements and scenic or historic sites (including historic battlefields).

(D) Conduct of scenic or historic highway programs (including the provision of tourist and welcome center facilities).

(E) Landscaping and other scenic beautification.

(F) Historic preservation.

(G) Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals).

(H) Preservation of abandoned railway corridors (including the conversion and use of the corridors for pedestrian or bicycle trails).

(I) Control and removal of outdoor advertising.

(J) Archaeological planning and research.

(K) Environmental mitigation—

(i) to address water pollution due to highway runoff; or

(ii) reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.

(L) Establishment of transportation museums.

(39) TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.—

(A) IN GENERAL.—The term "transportation systems management and operations" means an integrated program to optimize the performance of existing infrastructure through the implementation of multimodal and intermodal, cross-jurisdictional systems, services, and projects designed to preserve capacity and improve security, safety, and reliability of the transportation system.

(B) INCLUSIONS.—The term "transportation systems management and operations" includes—

(i) regional operations collaboration and coordination activities between transportation and public safety agencies; and

(ii) improvements to the transportation system such as traffic detection and surveillance, arterial management, freeway management, demand manage-

ment, work zone management, emergency management, electronic toll collection, automated enforcement, traffic incident management, roadway weather management, traveler information services, commercial vehicle operations, traffic control, freight management, and coordination of highway, rail, transit, bicycle, and pedestrian operations.

(40) URBAN AREA.—The term "urban area" means—

(A) an urbanized area (or, in the case of an urbanized area encompassing more than 1 State, the portion of the urbanized area in each State); and

(B) an urban place designated by the Bureau of the Census that—

(i) has a population of 5,000 or more;

(ii) is not located within any urbanized area; and

(iii) is located within boundaries that—

(I) are fixed cooperatively by responsible State and local officials, subject to approval by the Secretary; and

(II) encompass, at a minimum, the entire urban place designated by the Bureau of the Census (except in the case of cities in the State of Maine and in the State of New Hampshire).

(41) URBANIZED AREA.—The term "urbanized area" means an area that—

(A) has a population of 50,000 or more;

(B) is designated by the Bureau of the Census; and

(C) is located within boundaries that—

(i) are fixed cooperatively by responsible State and local officials, subject to approval by the Secretary; and

(ii) encompass, at a minimum, the entire urbanized area within a State as designated by the Bureau of the Census.

[(b) It is hereby declared to be**]**

(b) DECLARATION OF POLICY.—

(1) ACCELERATION OF CONSTRUCTION OF FEDERAL-AID HIGHWAY SYSTEMS.—Congress declares that it is in the national interest to accelerate the construction of the Federal-aid highway systems, including the National System of Interstate and Defense Highways, since many of such highways, or portions thereof, are in fact inadequate to meet the needs of local and interstate commerce, for the national and civil defense. **[**It is hereby declared**]**

(2) COMPLETION OF INTERSTATE SYSTEM.—Congress declares that the prompt and early completion of the National System of Interstate and Defense Highways, so named because of its primary importance to the national defense and hereafter referred to as the "Interstate System", is essential to the national interest and is one of the most important objectives of this Act. It is the intent of Congress that the Interstate System be completed as nearly as practicable over the period of availability of the forty years' appropriations authorized for the purpose of expediting its construction, reconstruction, or improvement, inclusive of necessary tunnels and bridges, through the

fiscal year ending September 30, 1996, under section 108(b) of the Federal-Aid Highway Act of 1956 (70 Stat. 374), and that the entire system in all States be brought to simultaneous completion. Insofar as possible in consonance with this objective, existing highways located on an interstate route shall be used to the extent that such use is practicable, suitable, and feasible, it being the intent that local needs, to the extent practicable, suitable, and feasible, shall be given equal consideration with the needs of interstate commerce.

[It is further declared that since the Interstate System is now in the final phase of completion it shall be the national policy that increased emphasis be placed on the construction and reconstruction of the other Federal-aid systems in accordance with the first paragraph of this subsection, in order to bring all of the Federal-aid systems up to standards and to increase the safety of these systems to the maximum extent.]

(3) TRANSPORTATION NEEDS OF 21ST CENTURY.—Congress declares that—

(A) it is in the national interest to preserve and enhance the surface transportation system to meet the needs of the United States for the 21st Century;

(B) the current urban and long distance personal travel and freight movement demands have surpassed the original forecasts and travel demand patterns are expected to change;

(C) continued planning for and investment in surface transportation is critical to ensure the surface transportation system adequately meets the changing travel demands of the future;

(D) among the foremost needs that the surface transportation system must meet to provide for a strong and vigorous national economy are safe, efficient, and reliable—

(i) national and interregional personal mobility (including personal mobility in rural and urban areas) and reduced congestion;

(ii) flow of interstate and international commerce and freight transportation; and

(iii) travel movements essential for national security;

(E) special emphasis should be devoted to providing safe and efficient access for the type and size of commercial and military vehicles that access designated National Highway System intermodal freight terminals;

(F) it is in the national interest to seek ways to eliminate barriers to transportation investment created by the current modal structure of transportation financing;

(G) the connection between land use and infrastructure is significant;

(H) transportation should play a significant role in promoting economic growth, improving the environment, and sustaining the quality of life; and

(I) the Secretary should take appropriate actions to preserve and enhance the Interstate System to meet the needs of the 21st Century.

* * * * * * *

§ 102. Program efficiencies

[(a) HOV PASSENGER REQUIREMENTS.—

[(1) IN GENERAL.—A State transportation department shall establish the occupancy requirements of vehicles operating in high occupancy vehicle lanes; except that no fewer than 2 occupants per vehicle may be required and, subject to section 163 of the Surface Transportation Assistance Act of 1982, motorcycles and bicycles shall not be considered single occupant vehicles.

[(2) EXCEPTION FOR INHERENTLY LOW-EMISSION VEHICLES.—Notwithstanding paragraph (1), before September 30, 2003, a State may permit a vehicle with fewer than 2 occupants to operate in high occupancy vehicle lanes if the vehicle is certified as an Inherently Low-Emission Vehicle pursuant to title 40, Code of Federal Regulations, and is labeled in accordance with, section 88.312–93(c) of such title. Such permission may be revoked by the State should the State determine it necessary.]

(a) HIGH OCCUPANCY VEHICLE LANE PASSENGER REQUIREMENTS.—

(1) DEFINITIONS.—In this subsection:

(A) RESPONSIBLE AGENCY.—The term "responsible agency" means—

(i) a State transportation department; and

(ii) a local agency in a State that is responsible for transportation matters.

(B) SERIOUSLY DEGRADED.—The term "seriously degraded", with respect to a high occupancy vehicle lane, means, in the case of a high occupancy vehicle lane, the minimum average operating speed, performance threshold, and associated time period of the high occupancy vehicle lane, calculated and determined jointly by all applicable responsible agencies and based on conditions unique to the roadway, are unsatisfactory.

(2) REQUIREMENTS.—

(A) IN GENERAL.—Subject to subparagraph (B), for each State, 1 or more responsible agencies shall establish the occupancy requirements of vehicles operating on high occupancy vehicle lanes.

(B) MINIMUM NUMBER OF OCCUPANTS.—Except as provided in paragraph (3), an occupancy requirement established under subparagraph (A) shall—

(i) require at least 2 occupants per vehicle for a vehicle operating on a high occupancy vehicle lane; and

(ii) in the case of a high occupancy vehicle lane that traverses an adjacent State, be established in consultation with the adjacent State.

(3) EXCEPTIONS TO HOV OCCUPANCY REQUIREMENTS.—

(A) MOTORCYCLES.—For the purpose of this subsection, a motorcycle—

(i) shall not be considered to be a single occupant vehicle; and

(ii) shall be allowed to use a high occupancy vehicle lane unless a responsible agency—

(I) certifies to the Secretary the use of a high occupancy vehicle lane by a motorcycle would create a safety hazard; and

(II) restricts that the use of the high occupancy vehicle lane by motorcycles.

(B) LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—

(i) DEFINITION OF LOW EMISSION AND ENERGY-EFFICIENT VEHICLE.—In this subparagraph, the term "low emission and energy-efficient vehicle" means a vehicle that has been certified by the Administrator of the Environmental Protection Agency—

(I)(aa) to have a 45-mile per gallon or greater fuel economy highway rating; or

(bb) to qualify as an alternative fueled vehicle under section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211); and

(II) as meeting Tier II emission level established in regulations promulgated by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act (42 U.S.C. 7521(i)) for that make and model year vehicle.

(ii) EXEMPTION FOR LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—A responsible agency may permit qualifying low emission and energy-efficient vehicles that do not meet applicable occupancy requirements (as determined by the responsible agency) to use high occupancy vehicle lanes if the responsible agency—

(I) establishes a program that addresses how those qualifying low emission and energy-efficient vehicles are selected and certified;

(II) establishes requirements for labeling qualifying low emission and energy-efficient vehicles (including procedures for enforcing those requirements);

(III) continuously monitors, evaluates, and reports to the Secretary on performance; and

(IV) imposes such restrictions on the use on high occupancy vehicle lanes by vehicles that do not satisfy established occupancy requirements as are necessary to ensure that the performance of individual high occupancy vehicle lanes, and the entire high occupancy vehicle lane system, will not become seriously degraded.

(C) TOLLING OF VEHICLES.—

(i) IN GENERAL.—A responsible agency may permit vehicles, in addition to the vehicles described in paragraphs (A), (B), and (D) that do not satisfy established

occupancy requirements, to use a high occupancy vehicle lane only if the responsible agency charges those vehicles a toll.

(ii) APPLICABLE AUTHORITY.—In imposing a toll under clause (i), a responsible agency shall—

(I) be subject to section 129;

(II) establish a toll program that addresses ways in which motorists may enroll and participate in the program;

(III) develop, manage, and maintain a system that will automatically collect the tolls from covered vehicles;

(IV) continuously monitor, evaluate, and report on performance of the system;

(V) establish such policies and procedures as are necessary—

(aa) to vary the toll charged in order to manage the demand for use of high occupancy vehicle lanes; and

(bb) to enforce violations; and

(VI) establish procedures to impose such restrictions on the use of high occupancy vehicle lanes by vehicles that do not satisfy established occupancy requirements as are necessary to ensure that the performance of individual high occupancy vehicle lanes, and the entire high occupancy vehicle lane system, will not become seriously degraded.

(D) DESIGNATED PUBLIC TRANSPORTATION VEHICLES.—

(i) DEFINITION OF DESIGNATED PUBLIC TRANSPORTATION VEHICLE.—In this subparagraph, the term "designated public transportation vehicle" means a vehicle that—

(I) provides designated public transportation (as defined in section 221 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12141)); and

(II)(aa) is owned or operated by a public entity; or

(bb) is operated under a contract with a public entity.

(ii) USE OF HIGH OCCUPANCY VEHICLE LANES.—A responsible agency may permit designated public transportation vehicles that do not satisfy established occupancy requirements to use high occupancy vehicle lanes if the responsible agency—

(I) requires the clear and identifiable labeling of each designated public transportation vehicle operating under a contract with a public entity with the name of the public entity on all sides of the vehicle;

(II) continuously monitors, evaluates, and reports on performance of those designated public transportation vehicles; and

(III) imposes such restrictions on the use of high occupancy vehicle lanes by designated public transportation vehicles as are necessary to ensure that the performance of individual high occupancy vehicle lanes, and the entire high occupancy vehicle lane system, will not become seriously degraded.

(E) HOV LANE MANAGEMENT, OPERATION, AND MONITORING.—

(i) IN GENERAL.—A responsible agency that permits any of the exceptions specified in this paragraph shall comply with clauses (ii) and (iii).

(ii) PERFORMANCE MONITORING, EVALUATION, AND REPORTING.—A responsible agency described in clause (i) shall establish, manage, and support a performance monitoring, evaluation, and reporting program under which the responsible agency continuously monitors, assesses, and reports on the effects that any vehicle permitted to use a high occupancy vehicle lane under an exception under this paragraph may have on the operation of—

(I) individual high occupancy vehicle lanes; and

(II) the entire high occupancy vehicle lane system.

(iii) OPERATION OF HOV LANE OR SYSTEM.—A responsible agency described in clause (i) shall limit use of, or cease to use, any of the exceptions specified in this paragraph if the presence of any vehicle permitted to use a high occupancy vehicle lane under an exception under this paragraph seriously degrades the operation of—

(I) individual high occupancy vehicle lanes; and

(II) the entire high occupancy vehicle lane system.

(b) ACCESS OF MOTORCYCLES.—No State or political subdivision of a State may enact or enforce a law that applies only to motorcycles and the principal purpose of which is to restrict the access of motorcycles to any highway or portion of a highway for which Federal-aid highway funds have been utilized for planning, design, construction, or maintenance. Nothing in this subsection shall affect the authority of a State or political subdivision of a State to regulate motorcycles for safety.

(c) ENGINEERING COST REIMBURSEMENT.—If on-site construction of, or acquisition of right-of-way for, a highway project is not commenced within 10 years (or such longer period as the State requests and the Secretary determines to be reasonable) after the date on which Federal funds are first made available, out of the Highway Trust Fund (other than Mass Transit Account), for preliminary engineering of such project, the State shall pay an amount equal to the amount of Federal funds made available for such engi-

neering. The Secretary shall deposit in such Fund all amounts paid to the Secretary under this section.

* * * * * * *

§ 103. Federal-aid systems

(a) IN GENERAL.—For the purposes of this title, the Federal-aid systems are the Interstate System and the National Highway System.

(b) NATIONAL HIGHWAY SYSTEM.—

(1) * * *

* * * * * * *

(6) ELIGIBLE PROJECTS FOR NHS.—Subject to approval by the Secretary, funds apportioned to a State under section 104(b)(1) for the National Highway System may be obligated for any of the following:

(A) Construction, reconstruction, resurfacing, restoration, and rehabilitation of segments of the National Highway System.

(B) Operational improvements for segments of the National Highway System.

(C) Construction of, and operational improvements for, a Federal-aid highway not on the National Highway System, and construction of a transit project eligible for assistance under chapter 53 of title 49, if—

(i) the highway or transit project is in the same corridor as, and in proximity to, a fully access-controlled highway designated as a part of the National Highway System;

(ii) the construction or improvements will improve the level of service on the fully access-controlled highway described in clause (i) and improve regional traffic flow; and

(iii) the construction or improvements are more cost-effective than an improvement to the fully access-controlled highway described in clause (i).

(D) Highway safety improvements for segments of the National Highway System.

(E) Transportation planning in accordance with sections 134 and 135.

(F) Highway research and planning in accordance with chapter 5.

(G) Highway-related technology transfer activities.

(H) Capital and operating costs for traffic monitoring, management, and control facilities and programs.

(I) Fringe and corridor parking facilities.

(J) Carpool and vanpool projects.

(K) Bicycle transportation and pedestrian walkways in accordance with section 217.

(L) Development, establishment, and implementation of management systems under section 303.

(M)*(i)* In accordance with all applicable Federal law (including regulations), participation in natural habitat and wetland mitigation efforts related to projects funded

under this title, which may include participation in natural habitat and wetland mitigation banks, contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetland, and development of statewide and regional natural habitat and wetland conservation and mitigation plans, including any such banks, efforts, and plans authorized under the Water Resources Development Act of 1990 (Public Law 101–640) (including crediting provisions). Contributions to the mitigation efforts described in the preceding sentence may take place concurrent with or in advance of project construction; except that contributions in advance of project construction may occur only if the efforts are consistent with all applicable requirements of Federal law (including regulations) and State transportation planning processes. With respect to participation in a natural habitat or wetland mitigation effort related to a project funded under this title that has an impact that occurs within the service area of a mitigation bank, preference shall be given, to the maximum extent practicable, to the use of the mitigation bank if the bank contains sufficient available credits to offset the impact and the bank is approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605 (November 28, 1995)) or other applicable Federal law (including regulations).

(ii) State habitat, streams, and wetlands mitigation efforts under section 155.

(N) Publicly-owned intracity or intercity bus terminals.

(O) Infrastructure-based intelligent transportation systems capital improvements.

(P) In the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, any project eligible for assistance under section 133, any airport, and any seaport.

(Q) Environmental restoration and pollution abatement in accordance with section 165.

(R) Control of invasive plant species and establishment of native species in accordance with section 166.

(7) FREIGHT INTERMODAL CONNECTIONS TO THE NHS.—

(A) FUNDING SET-ASIDE.—Of the funds apportioned to a State for each fiscal year under section 104(b)(1), an amount determined in accordance with subparagraph (B) shall only be available to the State to be obligated for projects on—

(i) National Highway System routes connecting to intermodal freight terminals identified according to criteria specified in the report to Congress entitled "Pulling Together: The National Highway System and its Connections to Major Intermodal Terminals" dated May 24, 1996, referred to in paragraph (1), and any modifications to the connections that are consistent with paragraph (4);

(ii) strategic highway network connectors to strategic military deployment ports; and

(iii) projects to eliminate railroad crossings or make railroad crossing improvements.

(B) DETERMINATION OF AMOUNT.—The amount of funds for each State for a fiscal year that shall be set aside under subparagraph (A) shall be equal to the greater of—

(i) the product obtained by multiplying—

(I) the total amount of funds apportioned to the State under section 104(b)(1); by

(II) the percentage of miles that routes specified in subparagraph (A) constitute of the total miles on the National Highway System in the State; or

(ii) 2 percent of the annual apportionment to the State of funds under 104(b)(1).

(C) EXEMPTION FROM SET-ASIDE.—For any fiscal year, a State may obligate the funds otherwise set aside by this paragraph for any project that is eligible under paragraph (6) and is located in the State on a segment of the National Highway System specified in paragraph (2), if the State certifies and the Secretary concurs that—

(i) the designated National Highway System intermodal connectors described in subparagraph (A) are in good condition and provide an adequate level of service for military vehicle and civilian commercial vehicle use; and

(ii) significant needs on the designated National Highway System intermodal connectors are being met or do not exist.

* * * * * * *

(c) INTERSTATE SYSTEM.—

(1) DESCRIPTION.—

* * * * * * *

(4) INTERSTATE SYSTEM DESIGNATIONS.—

(A) ADDITIONS.—If the Secretary determines that a highway on the National Highway System meets all standards of a highway on the Interstate System and that the highway is a logical addition or connection to the Interstate System, the Secretary may, upon the affirmative recommendation of the State or States in which the highway is located, designate the highway as a route on the Interstate System.

(B) DESIGNATIONS AS FUTURE INTERSTATE SYSTEM ROUTES.—

(i) IN GENERAL.—If the Secretary determines that a highway on the National Highway System would be a logical addition or connection to the Interstate System and would qualify for designation as a route on the Interstate System under subparagraph (A) if the highway met all standards of a highway on the Interstate System, the Secretary may, upon the affirmative recommendation of the State or States in which the

highway is located, designate the highway as a future Interstate System route.

(ii) WRITTEN AGREEMENT OF STATES.—A designation under clause (i) shall be made only upon the written agreement of the State or States described in such clause that the highway will be constructed to meet all standards of a highway on the Interstate System by the date that is [12] *25* years after the date of the agreement.

(iii) REMOVAL OF DESIGNATION.—

(I) IN GENERAL.—If the State or States described in clause (i) have not substantially completed the construction of a highway designated under this subparagraph within the time provided for [in the agreement between the Secretary and the State or States] under clause (ii), the Secretary shall remove the designation of the highway as a future Interstate System route.

(II) EFFECT OF REMOVAL.—Removal of the designation of a highway under subclause (I) shall not preclude the Secretary from designating the highway as a route on the Interstate System under subparagraph (A) or under any other provision of law providing for addition to the Interstate System.

(III) EXISTING AGREEMENTS.—An agreement described in clause (ii) that is entered into before the date of enactment of this subparagraph shall be deemed to include the 25-year time limitation described in that clause, regardless of any earlier construction completion date in the agreement.

(iv) PROHIBITION ON REFERRAL AS INTERSTATE SYSTEM ROUTE.—No law, rule, regulation, map, document, or other record of the United States, or of any State or political subdivision of a State, shall refer to any highway designated as a future Interstate System route under this subparagraph, nor shall any such highway be signed or marked, as a highway on the Interstate System until such time as the highway is constructed to the geometric and construction standards for the Interstate System and has been designated as a route on the Interstate System.

(C) FINANCIAL RESPONSIBILITY.—Except as provided in this title, the designation of a highway under this paragraph shall create no additional Federal financial responsibility with respect to the highway.

(5) EXEMPTION OF INTERSTATE SYSTEM.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Interstate System shall not be considered to be a historic site under section 303 of title 49 or section 138 of this title, regardless of whether the Interstate System or portions of the Interstate System are listed on, or eligible for listing on, the National Register of Historic Places.

(B) INDIVIDUAL ELEMENTS.—A portion of the Interstate System that possesses an independent feature of historic significance, such as a historic bridge or a highly significant engineering feature, that would qualify independently for listing on the National Register of Historic Places, shall be considered to be a historic site under section 303 of title 49 or section 138 of this title, as applicable.

* * * * * * *

§ 104. Apportionment

[(a) ADMINISTRATIVE EXPENSES.—

[(1) IN GENERAL.—Whenever an apportionment is made of the sums made available for expenditure on each of the surface transportation program under section 133, the bridge program under section 144, the congestion mitigation and air quality improvement program under section 149, the Interstate and National Highway System program, the minimum guarantee program under section 105, the Federal lands highway program under section 204, or the Appalachian development highway system program under section 201 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.), the Secretary shall deduct a sum, in an amount not to exceed—

[(A) 1⅙ percent of all sums so made available, as the Secretary determines necessary—

[(i) to administer the provisions of law to be financed from appropriations for the Federal-aid highway program and programs authorized under chapter 2; and

[(ii) to make transfers of such sums as the Secretary determines to be appropriate to the Appalachian Regional Commission for administrative activities associated with the Appalachian development highway system; and

[(B) one-third of 1 percent of all sums so made available, as the Secretary determines necessary, to administer the provisions of law to be financed from appropriations for motor carrier safety programs and motor carrier safety research.

[(2) CONSIDERATION OF UNOBLIGATED BALANCES.—In making the determination described in paragraph (1), the Secretary shall take into account the unobligated balance of any sums deducted under this subsection in prior fiscal years.

[(3) AVAILABILITY.—The sum deducted under paragraph (1) shall remain available until expended.

[(4)LIMITATION ON TRANSFERABILITY.—Unless expressly authorized by law, the Secretary may not transfer any sums deducted under paragraph (1) to a Federal agency or entity other than the Federal Highway Administration and the Federal Motor Carrier Safety Administration.]

(a) ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to be made available to the Secretary of Transportation

for administrative expenses of the Federal Highway Administration—

(A) $450,000,000 for fiscal year 2004;

(B) $465,000,000 for fiscal year 2005;

(C) $480,000,000 for fiscal year 2006;

(D) $495,000,000 for fiscal year 2007;

(E) $510,000,000 for fiscal year 2008; and

(F) $525,000,000 for fiscal year 2009.

(2) PURPOSES.—The funds authorized by this subsection shall be used—

(A) to administer the provisions of law to be financed from appropriations for the Federal-aid highway program and programs authorized under chapter 2; and

(B) to make transfers of such sums as the Secretary determines to be appropriate to the Appalachian Regional Commission for administrative activities associated with the Appalachian development highway system.

(3) AVAILABILITY.—The funds made available under paragraph (1) shall remain available until expended.

(b) APPORTIONMENTS.—On October 1 of each fiscal year, the Secretary, after making [the deduction authorized by subsection (a) and] the set-aside authorized by subsection (f), shall apportion the remainder of the sums authorized to be appropriated for expenditure on the Interstate and National Highway System program, the Congestion Mitigation and Air Quality Improvement program, *the highway safety improvement program* and the Surface Transportation program for that fiscal year, among the several States in the following manner:

(1) NATIONAL HIGHWAY SYSTEM COMPONENT.—

(A) IN GENERAL.—For the National Highway System (excluding funds apportioned under paragraph (4)), $36,400,000 for each fiscal year to the Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands, $18,800,000 for each of fiscal years [1998 through 2002] *2004 through 2009* for the Alaska Highway, and the remainder apportioned as follows:

(i) 25 percent in the ratio that—

(I) the total lane miles of principal arterial routes (excluding Interstate System routes) in each State; bears to

(II) the total lane miles of principal arterial routes (excluding Interstate System routes) in all States.

(ii) 35 percent in the ratio that—

(I) the total vehicle miles traveled on lanes on principal arterial routes (excluding Interstate System routes) in each State; bears to

(II) the total vehicle miles traveled on lanes on principal arterial routes (excluding Interstate System routes) in all States.

(iii) 30 percent in the ratio that—

(I) the total diesel fuel used on highways in each State; bears to

(II) the total diesel fuel used on highways in all States.

(iv) 10 percent in the ratio that—

(I) the quotient obtained by dividing the total lane miles on principal arterial highways in each State by the total population of the State; bears to

(II) the quotient obtained by dividing the total lane miles on principal arterial highways in all States by the total population of all States.

(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A) and paragraph (4), each State shall receive a minimum of ½ of 1 percent of the funds apportioned under subparagraph (A) and paragraph (4).

(2) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—

(A) IN GENERAL.—For the congestion mitigation and air quality improvement program, in the ratio that—

(i) the total of all weighted nonattainment and maintenance area populations in each State; bears to

(ii) the total of all weighted nonattainment and maintenance area populations in all States.

(B) CALCULATION OF WEIGHTED NONATTAINMENT AND MAINTENANCE AREA POPULATION.—Subject to subparagraph (C), for the purpose of subparagraph (A), the weighted nonattainment and maintenance area population shall be calculated by multiplying the population of each area in a State that was a nonattainment area or maintenance area as described in section 149(b) for ⟦ozone or carbon monoxide⟧ *ozone, carbon monoxide, or fine particulate matter ($PM_{2.5}$)* by a factor of—

⟦(i) 0.8 if—⟧

(i) 1.0, if at the time of apportionment, the area is a maintenance area;

(I) at the time of the apportionment, the area is a maintenance area; or

(II) at the time of the apportionment, the area is classified as a submarginal ozone nonattainment area under the Clean Air Act (42 U.S.C. 7401 et seq.);

(ii) 1.0 if, at the time of the apportionment, the area is classified as a marginal ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.);

(iii) 1.1 if, at the time of the apportionment, the area is classified as a moderate ozone nonattainment area under such subpart;

(iv) 1.2 if, at the time of the apportionment, the area is classified as a serious ozone nonattainment area under such subpart;

(v) 1.3 if, at the time of the apportionment, the area is classified as a severe ozone nonattainment area under such subpart;

(vi) 1.4 if, at the time of the apportionment, the area is classified as an extreme ozone nonattainment area under such subpart; [or]

(vii) 1.0 if, at the time of the apportionment, the area is not a nonattainment or maintenance [area as described in section 149(b) for ozone] *area for ozone (as described in section 149(b)) or for PM–2.5*, but is classified under subpart 3 of part D of title I of such Act (42 U.S.C. 7512 et seq.) as a nonattainment area described in section 149(b) for carbon monoxide[.];

(viii) 1.0 if, at the time of apportionment, any county that is not designated as a nonattainment or maintenance area under the 1-hour ozone standard is designated as nonattainment under the 8-hour ozone standard;

(ix) 1.2 if, at the time of apportionment, the area is not a nonattainment or maintenance area as described in section 149(b) for ozone or carbon monoxide, but is an area designated nonattainment under the PM–2.5 standard.

[(C) ADDITIONAL ADJUSTMENT FOR CARBON MONOXIDE AREAS.—

[(i) CARBON MONOXIDE NONATTAINMENT AREAS.—If, in addition to being classified as a nonattainment or maintenance area for ozone, the area was also classified under subpart 3 of part D of title I of such Act (42 U.S.C. 7512 et seq.) as a nonattainment area described in section 149(b) for carbon monoxide, the weighted nonattainment or maintenance area population of the area, as determined under clauses (i) through (vi) of subparagraph (B), shall be further multiplied by a factor of 1.2.

[(ii) CARBON MONOXIDE MAINTENANCE AREAS.—If, in addition to being classified as a nonattainment or maintenance area for ozone, the area was at one time also classified under subpart 3 of part D of title I of such Act (42 U.S.C. 7512 et seq.) as a nonattainment area described in section 149(b) for carbon monoxide but has been redesignated as a maintenance area, the weighted nonattainment or maintenance area population of the area, as determined under clauses (i) through (vi) of subparagraph (B), shallfurther multiplied by a factor of 1.1.]

(C) ADDITIONAL ADJUSTMENT FOR CARBON MONOXIDE AREAS.—If, in addition to being designated as a nonattainment or maintenance area for ozone as described in section 149(b), any county within the area was also classified under subpart 3 of part D of title I of the Clean Air Act (42 U.S.C. 7512 et seq.) as a nonattainment or maintenance area described in section 149(b) for carbon monoxide, the weighted nonattainment or maintenance area population of the county, as determined under clauses (i) through (vi) or clause (viii) of subparagraph (B), shall be further multiplied by a factor of 1.2.

(D) ADDITIONAL ADJUSTMENT FOR PM 2.5 AREAS.—If, in addition to being designated as a nonattainment or maintenance area for ozone or carbon monoxide, or both as described in section 149(b), any county within the area was also designated under the PM–2.5 standard as a nonattainment or maintenance area, the weighted nonattainment or maintenance area population of those counties shall be further multiplied by a factor of 1.2.

[(D)**]** *(E)* MINIMUM APPORTIONMENT.—Notwithstanding any other provision of this paragraph, each State shall receive a minimum of ½ of 1 percent of the funds apportioned under this paragraph.

[(E)**]** *(F)* DETERMINATIONS OF POPULATION.—In determining population figures for the purposes of this paragraph, the Secretary shall use the latest available annual estimates prepared by the Secretary of Commerce.

(3) SURFACE TRANSPORTATION PROGRAM.—

(A) IN GENERAL.—For the surface transportation program, in accordance with the following formula:

(i) 25 percent of the apportionments in the ratio that—

(I) the total lane miles of Federal-aid highways in each State; bears to

(II) the total lane miles of Federal-aid highways in all States.

(ii) 40 percent of the apportionments in the ratio that—

(I) the total vehicle miles traveled on lanes on Federal-aid highways in each State; bears to

(II) the total vehicle miles traveled on lanes on Federal-aid highways in all States.

(iii) 35 percent of the apportionments in the ratio that—

(I) the estimated tax payments attributable to highway users in each State paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available; bears to

(II) the estimated tax payments attributable to highway users in all States paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available.

(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), each State shall receive a minimum of ½ of 1 percent of the funds apportioned under this paragraph.

(4) INTERSTATE MAINTENANCE COMPONENT.—For resurfacing, restoring, rehabilitating, and reconstructing the Interstate System—

(A) 33⅓ percent in the ratio that—

(i) the total lane miles on Interstate System routes open to traffic in each State; bears to

(ii) the total of all such lane miles in all States;

(B) 33⅓ percent in the ratio that—

(i) the total vehicle miles traveled on Interstate System routes open to traffic in each State; bears to

(ii) the total of all such vehicle miles traveled in all States; and

(C) 33⅓ percent in the ratio that—

(i) the total of each State's annual contributions to the Highway Trust Fund (other than the Mass Transit Account) attributable to commercial vehicles; bears to

(ii) the total of such annual contributions by all States.

(5) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—

(A) IN GENERAL.—For the highway safety improvement program, in accordance with the following formula:

(i) 25 percent of the apportionments in the ratio that—

(I) the total lane miles of Federal-aid highways in each State; bears to

(II) the total lane miles of Federal-aid highways in all States.

(ii) 40 percent of the apportionments in the ratio that—

(I) the total vehicle miles traveled on lanes on Federal-aid highways in each State; bears to

(II) the total vehicle miles traveled on lanes on Federal-aid highways in all States.

(iii) 35 percent of the apportionments in the ratio that—

(I) the estimated tax payments attributable to highway users in each State paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available; bears to

(II) the estimated tax payments attributable to highway users in all States paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available.

(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), each State shall receive a minimum of ½ of 1 percent of the funds apportioned under this paragraph.

* * * * * * *

(d) OPERATION LIFESAVER AND HIGH SPEED RAIL CORRIDORS.—

(1) OPERATION LIFESAVER.—Before making an apportionment under subsection [(b)(3)] *(b)(5)* of this section for a fiscal year, the Secretary shall set aside [$500,000] *$600,000* for such fiscal year for carrying out a public information and education program to help prevent and reduce motor vehicle accidents, injuries, and fatalities and to improve driver performance at railway-highway crossings.

* * * * * * *

(e) CERTIFICATION OF APPORTIONMENTS.—

(1) IN GENERAL.—On October 1 of each fiscal year the Secretary shall certify to each of the State transportation departments the sums which he has apportioned hereunder to each State for such fiscal year[, and also the sums which he has deducted for administration pursuant to subsection (a) of this section]. To permit the States to develop adequate plans for the utilization of apportioned sums the Secretary shall advise each State of the amount that will be apportioned each year under this section not later than ninety days before the beginning of the fiscal year for which the sums to be apportioned are authorized, except that in the case of the Interstate System the Secretary shall advise each State ninety days prior to the apportionment of such funds.

* * * * * * *

(f) METROPOLITAN PLANNING.—

[(1) SET-ASIDE.—On October 1 of each fiscal year, the Secretary, after making the deduction authorized by subsection (a) of this section, shall set aside not to exceed 1 percent of the remaining funds authorized to be appropriated for expenditure upon programs authorized under this title, for the purpose of carrying out the requirements of section 134 of this title.]

(1) SET-ASIDE.—On October 1 of each fiscal year, the Secretary shall set aside 1.5 percent of the funds authorized to be appropriated for expenditure upon programs authorized under this title to carry out the requirements of section 134.

(2) APPORTIONMENT TO STATES OF SET-ASIDE FUNDS.—These funds shall be apportioned to the States in the ratio which the population in urbanized areas or parts thereof, in each State bears to the total population in such urbanized areas in all the States as shown by the latest available census, except that no State shall receive less than one-half [per centum] *percent* of the amount apportioned.

(3) USE OF FUNDS.—[The funds]

(A) IN GENERAL.—The funds apportioned to any State under paragraph (2) of this subsection shall be made available by the State to the metropolitan planning organizations responsible for carrying out the provisions of section 134 of this title, except that States receiving the minimum apportionment under paragraph (2) may, in addition, subject to the approval of the Secretary, use the funds apportioned to finance transportation planning outside of urbanized areas. These funds shall be matched in accordance with section 120(b) unless the Secretary determines that the interests of the Federal-aid highway program would be best served without such matching.

(B) UNUSED FUNDS.—Any funds that are not used to carry out section 134 may be made available by a metropolitan planning organization to the State to fund activities under section 135.

* * * * * * *

(6) FEDERAL SHARE.—Funds apportioned to a State under this subsection shall be matched in accordance with section 120(b) unless the Secretary determines that the interests of the

Federal-aid highway program would be best served without the match.

* * * * * * *

(h) RECREATIONAL TRAILS PROGRAM.—

(1) ADMINISTRATIVE COSTS.—[Whenever]

(A) IN GENERAL.—In any case in which an apportionment is made of the sums authorized to be appropriated to carry out the recreational trails program under section 206, the Secretary shall deduct an amount, not to exceed 1½ percent of the sums authorized, to cover the cost to the Secretary for administration of and [research and technical assistance under the recreational trails program and for administration of the National Recreational Trails Advisory Committee] *research, technical assistance, and training under the recreational trails program*. [The Secretary]

(B) CONTRACTS AND AGREEMENTS.—The Secretary may enter into contracts with for-profit organizations or contracts, partnerships, or cooperative agreements with other government agencies, institutions of higher learning, or nonprofit organizations to perform these tasks.

(2) APPORTIONMENT TO THE STATES.—After making the deduction authorized by paragraph (1) of this subsection, the Secretary shall apportion the remainder of the sums authorized to be appropriated for expenditure on the recreational trails program for each fiscal year, among the States in the following manner:

(A) 50 percent of that amount shall be apportioned equally among eligible States.

(B) 50 percent of that amount shall be apportioned among eligible States in amounts proportionate to the degree of non-highway recreational fuel use in each of those States during the preceding year.

(3) ELIGIBLE STATE DEFINED.—In this section, the term "eligible State" means a State that meets the requirements of section 206(c).

* * * * * * *

(i) AUDITS OF HIGHWAY TRUST FUND.—From administrative funds [deducted] *made available* under subsection (a), the Secretary may reimburse the Office of Inspector General of the Department of Transportation for the conduct of annual audits of financial statements in accordance with section 3521 of title 31.

* * * * * * *

[(k) TRANSFER OF HIGHWAY AND TRANSIT FUNDS.—

[(1) TRANSFER OF HIGHWAY FUNDS.—Funds made available under this title and transferred for transit projects of a type described in section 133(b)(2) shall be administered by the Secretary in accordance with chapter 53 of title 49, except that the provisions of this title relating to the non-Federal share shall apply to the transferred funds.

[(2) TRANSFER OF TRANSIT FUNDS.—Funds made available under chapter 53 of title 49 and transferred for highway

projects shall be administered by the Secretary in accordance with this title, except that the provisions of such chapter relating to the non-Federal share shall apply to the transferred funds.

[(3) TRANSFER OF OBLIGATION AUTHORITY.—Obligation authority provided for projects described in paragraphs (1) and (2) shall be transferred in the same manner and amount as the funds for the projects are transferred.]

(k) TRANSFER OF HIGHWAY AND TRANSIT FUNDS.—

(1) TRANSFER OF HIGHWAY FUNDS FOR TRANSIT PROJECTS.—

(A) IN GENERAL.—Subject to subparagraph (B), funds made available for transit projects or transportation planning under this title may be transferred to and administered by the Secretary in accordance with chapter 53 of title 49.

(B) NON-FEDERAL SHARE.—The provisions of this title relating to the non-Federal share shall apply to the transferred funds.

(2) TRANSFER OF TRANSIT FUNDS FOR HIGHWAY PROJECTS.—Funds made available for highway projects or transportation planning under chapter 53 of title 49 may be transferred to and administered by the Secretary in accordance with this title.

(3) TRANSFER OF HIGHWAY FUNDS TO OTHER FEDERAL AGENCIES.—

(A) IN GENERAL.—Except as provided in clauses (i) and (ii) and subparagraph (B), funds made available under this title or any other Act that are derived from Highway Trust Fund (other than the Mass Transit account) may be transferred to another Federal agency if—

(i)(I) an expenditure is specifically authorized in Federal-aid highway legislation or as a line item in an appropriation act; or

(II) a State transportation department consents to the transfer of funds;

(ii) the Secretary determines, after consultation with the State transportation department (as appropriate), that the Federal agency should carry out a project with the funds; and

(iii) the other Federal agency agrees to accept the transfer of funds and to administer the project.

(B) ADMINISTRATION.—

(i) PROCEDURES.—A project carried out with funds transferred to a Federal agency under subparagraph (A) shall be administered by the Federal agency under the procedures of the Federal agency.

(ii) APPROPRIATIONS.—Funds transferred to a Federal agency under subparagraph (A) shall not be considered an augmentation of the appropriations of the Federal agency.

(iii) NON-FEDERAL SHARE.—The provisions of this title, or an Act described in subparagraph (A), relating to the non-Federal share shall apply to a project car-

ried out with the transferred funds, unless the Secretary determines that it is in the best interest of the United States that the non-Federal share be waived.

(4) TRANSFER OF FUNDS AMONG STATES OR TO FEDERAL HIGHWAY ADMINISTRATION.—

(A) IN GENERAL.—Subject to subparagraphs (B) through (D), the Secretary may, at the request of a State, transfer funds apportioned or allocated to the State to another State, or to the Federal Highway Administration, for the purpose of funding 1 or more specific projects.

(B) ADMINISTRATION.—The transferred funds shall be used for the same purpose and in the same manner for which the transferred funds were authorized.

(C) APPORTIONMENT.—The transfer shall have no effect on any apportionment formula used to distribute funds to States under this section or section 105 or 144.

(D) SURFACE TRANSPORTATION PROGRAM.—Funds that are apportioned or allocated to a State under subsection (b)(3) and attributed to an urbanized area of a State with a population of over 200,000 individuals under section 133(d)(2) may be transferred under this paragraph only if the metropolitan planning organization designated for the area concurs, in writing, with the transfer request.

(5) TRANSFER OF OBLIGATION AUTHORITY.—Obligation authority for funds transferred under this subsection shall be transferred in the same manner and amount as the funds for the projects are transferred under this subsection.

* * * * * * *

(m) PLANNING CAPACITY BUILDING INITIATIVE.—

(1) IN GENERAL.—The Secretary shall carry out a planning capacity building initiative to support enhancements in transportation planning to—

(A) strengthen the processes and products of metropolitan and statewide transportation planning under this title;

(B) enhance tribal capacity to conduct joint transportation planning under chapter 2;

(C) participate in the metropolitan and statewide transportation planning programs under this title; and

(D) increase the knowledge and skill level of participants in metropolitan and statewide transportation.

(2) PRIORITY.—The Secretary shall give priority to planning practices and processes that support—

(A) the transportation elements of homeland security planning, including—

(i) training and best practices relating to emergency evacuation;

(ii) developing materials to assist areas in coordinating emergency management and transportation officials; and

(iii) developing training on how planning organizations may examine security issues;

(B) performance-based planning, including—

(i) data and data analysis technologies to be shared with States, metropolitan planning organiza-

tions, local governments, and nongovernmental organizations that—

(I) participate in transportation planning;

(II) use the data and data analysis to engage in metropolitan, tribal, or statewide transportation planning;

(III) involve the public in the development of transportation plans, projects, and alternative scenarios; and

(IV) develop strategies to avoid, minimize, and mitigate the impacts of transportation facilities and projects; and

(ii) improvement of the quality of congestion management systems, including the development of—

(I) a measure of congestion;

(II) a measure of transportation system reliability; and

(III) a measure of induced demand;

(C) safety planning, including—

(i) development of State strategic safety plans consistent with section 148;

(ii) incorporation of work zone safety into planning; and

(iii) training in the development of data systems relating to highway safety;

(D) operations planning, including—

(i) developing training of the integration of transportation system operations and management into the transportation planning process; and

(ii) training and best practices relating to regional concepts of operations;

(E) freight planning, including—

(i) modeling of freight at a regional and statewide level; and

(ii) techniques for engaging the freight community with the planning process;

(F) air quality planning, including—

(i) assisting new and existing nonattainment and maintenance areas in developing the technical capacity to perform air quality conformity analysis;

(ii) providing training on areas such as modeling and data collection to support air quality planning and analysis;

(iii) developing concepts and techniques to assist areas in meeting air quality performance timeframes; and

(iv) developing materials to explain air quality issues to decisionmakers and the public; and

(G) integration of environment and planning.

(3) USE OF FUNDS.—The Secretary shall use amounts made available under paragraph (4) to make grants to, or enter into contracts, cooperative agreements, and other transactions with, a Federal agency, State agency, local agency, federally recognized Indian tribal government or tribal consortium, authority,

association, nonprofit or for-profit corporation, or institution of higher education for research, program development, information collection and dissemination, and technical assistance.

(4) SET-ASIDE.—

(A) IN GENERAL.—On October 1 of each fiscal year, of the funds made available under subsection (a), the Secretary shall set aside $4,000,000 to carry out this subsection.

(B) FEDERAL SHARE.—The Federal share of the cost of an activity carried out using funds made available under subparagraph (A) shall be 100 percent.

(C) AVAILABILITY.—Funds made available under subparagraph (A) shall remain available until expended.

(n) BICYCLE AND PEDESTRIAN SAFETY GRANTS.—On October 1 of each of fiscal years 2004 through 2009, the Secretary, after making the deductions authorized by subsections (a) and (f), shall set aside $500,000 of the remaining funds apportioned under subsection (b)(3) for use in carrying out the bicycle and pedestrian safety grant program under section 217.

* * * * * * *

§ 105. Minimum guarantee

[(a) GENERAL RULE.—For each of fiscal years 1998 through 2003, the Secretary shall allocate among the States amounts sufficient to ensure that each State's percentage of the total apportionments for such fiscal year of Interstate maintenance, national highway system, bridge, congestion mitigation and air quality improvement, surface transportation, metropolitan planning, minimum guarantee, high priority projects, Appalachian development highway system, and recreational trails programs shall equal the percentage listed for each State in subsection (b). The minimum amount allocated to a State under this section for a fiscal year shall be $1,000,000.

[(b) STATE PERCENTAGES.—The percentage for each State referred to in subsection (a) shall be determined in accordance with the following table:

[States:	Percentage
[Alabama	2.0269
[Alaska	1.1915
[Arizona	1.5581
[Arkansas	1.3214
[California	9.1962
[Colorado	1.1673
[Connecticut	1.5186
[Delaware	0.4424
[District of Columbia	0.3956
[Florida	4.6176
[Georgia	3.5104
[Hawaii	0.5177
[Idaho	0.7718
[Illinois	3.3819
[Indiana	2.3588
[Iowa	1.2020
[Kansas	1.1717
[Kentucky	1.7365
[Louisiana	1.5900
[Maine	0.5263
[Maryland	1.5087

[States:	Percentage
[Massachusetts	1.8638
[Michigan	3.1535
[Minnesota	1.4993
[Mississippi	1.2186
[Missouri	2.3615
[Montana	0.9929
[Nebraska	0.7768
[Nevada	0.7248
[New Hampshire	0.5163
[New Jersey	2.5816
[New Mexico	0.9884
[New York	5.1628
[North Carolina	2.8298
[North Dakota	0.6553
[Ohio	3.4257
[Oklahoma	1.5419
[Oregon	1.2183
[Pennsylvania	4.9887
[Rhode Island	0.5958
[South Carolina	1.5910
[South Dakota	0.7149
[Tennessee	2.2646
[Texas	7.2131
[Utah	0.7831
[Vermont	0.4573
[Virginia	2.5627
[Washington	1.7875
[West Virginia	1.1319
[Wisconsin	1.9916
[Wyoming	0.6951

[(c) TREATMENT OF FUNDS.—

[(1) PROGRAMMATIC DISTRIBUTION.—The Secretary shall apportion the amounts made available under this section that exceed $2,800,000,000 so that the amount apportioned to each State under this paragraph for each program referred to in subsection (a) (other than metropolitan planning, minimum guarantee, high priority projects, Appalachian development highway system, and recreational trails programs) is equal to the amount determined by multiplying the amount to be apportioned under this paragraph by the ratio that—

[(A) the amount of funds apportioned to each State for each program referred to in subsection (a) (other than metropolitan planning, minimum guarantee, high priority projects, Appalachian development highway system, and recreational trails programs) for a fiscal year; bears to

[(B) the total amount of funds apportioned to each State for such program for such fiscal year.

[(2) REMAINING DISTRIBUTION.—The Secretary shall administer the remainder of funds made available under this section to the States in accordance with section 104(b)(3); except that requirements of paragraphs (1), (2), and (3) of section 133(d) shall not apply to amounts administered pursuant to this paragraph.

[(d) AUTHORIZATION.—There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) such sums as may be necessary to carry out this section for each of fiscal years 1998 through 2003.

[(e) SPECIAL RULE.—If in any of fiscal years 1999 through 2003, the amount authorized under subsection (d) is more than 30

percent higher than the amount authorized under subsection (d) in fiscal year 1998, the Secretary shall use the apportionment factors under sections 104 and 144 as in effect on the date of enactment of this section.

[(f) GUARANTEE OF 90.5 RETURN.—

[(1) IN GENERAL.—Before making any apportionment under this title for each of fiscal years 1999 through 2003, the Secretary, subject to paragraph (2), shall adjust the percentages in the table in subsection (b) to reflect the estimated percentage of estimated tax payments attributable to highway users in each State paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data is available, to ensure that no State's percentage return from such Trust Fund is less than 90.5 percent.

[(2) ELIGIBILITY THRESHOLD FOR INITIAL ADJUSTMENT.—The Secretary may make an adjustment under paragraph (1) for a State for a fiscal year only if the State's percentage return from the Highway Trust Fund (other than the Mass Transit Account) in the table in subsection (b) was equal to 90.5 percent.

[(3) CONFORMING ADJUSTMENTS.—After making any adjustments under paragraph (1) for a fiscal year, the Secretary shall proportionately adjust the remaining percentages in the table in subsection (b) to ensure that the total of the percentages in the table is equal to 100 percent for such fiscal year.

[(4) LIMITATION ON ADJUSTMENTS.—After making any adjustments under paragraph (3) for a fiscal year, the Secretary shall determine whether or not any State's percentage return from the Highway Trust Fund (other than the Mass Transit Account) is less than 90.5 percent as a result of such adjustments and shall adjust the percentages in the table for such fiscal year accordingly. Adjustments of the percentages in the table under this paragraph may not result in the total of such percentages exceeding 100 percent.]

(a) GENERAL RULE.—For each of fiscal years 2004 through 2009, the Secretary shall ensure that the percentage of apportionments of each State is sufficient to ensure that, based on the percentage of tax payments attributable to highway users in each State paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available, no State's percentage return from the Highway Trust Fund is less than 90.5 percent.

(b) APPORTIONMENTS—In making an apportionment described in subsection (a) for a fiscal year, the Secretary shall ensure that the rate of return of each State from the Highway Trust Fund includes the total apportionments made for the fiscal year for—

(1) the Interstate maintenance program under section 119;

(2) the National Highway System under section 103;

(3) the bridge program under section 144;

(4) the surface transportation program under section 133;

(5) the congestion mitigation and air quality improvement program under section 149;

(6) the highway safety improvement program under section 148;

(7) the Appalachian development highway system program under section 170;

(8) the recreational trails program under section 206;

(9) the infrastructure performance and maintenance program under section 139;

(10) the metropolitan planning program under section 104(f);

(11) the equity bonus program under this section;

(12) the high priority projects program under section 1601 of the Transportation Equity Act for the 21st Century (112 Stat. 255);

(13) the safe routes to school program under section 150; and

(14) the railway-highway crossings under section 130.

* * * * * * *

§ 106. Project approval and oversight

(a) IN GENERAL.—

(1) SUBMISSION OF PLANS, SPECIFICATIONS, AND ESTIMATES.—Except as otherwise provided in this section, each State transportation department shall submit to the Secretary for approval such plans, specifications, and estimates for each proposed project as the Secretary may require.

(2) PROJECT AGREEMENT.—The Secretary shall act on the plans, specifications, and estimates as soon as practicable after the date of their submission and shall enter into a formal project agreement with the State transportation department formalizing the conditions of the project approval.

(3) CONTRACTUAL OBLIGATION.—The execution of the project agreement shall be deemed a contractual obligation of the Federal Government for the payment of the Federal share of the cost of the project.

(4) GUIDANCE.—In taking action under this subsection, the Secretary shall be guided by section 109.

(b) PROJECT AGREEMENT.—

(1) PROVISION OF STATE FUNDS.—The project agreement shall make provision for State funds required to pay the State's non-Federal share of the cost of construction of the project and to pay for maintenance of the project after completion of construction.

(2) REPRESENTATIONS OF STATE.—If a part of the project is to be constructed at the expense of, or in cooperation with, political subdivisions of the State, the Secretary may rely on representations made by the State transportation department with respect to the arrangements or agreements made by the State transportation department and appropriate local officials for ensuring that the non-Federal contribution will be provided under paragraph (1).

(c) ASSUMPTION BY STATES OF RESPONSIBILITIES OF THE SECRETARY.—

(1) NON-INTERSTATE NHS PROJECTS.—For projects under this title that are on the National Highway System but not on the Interstate System, the State may assume the responsibil-

ities of the Secretary under this title for design, plans, specifications, estimates, contract awards, and inspections of projects unless the State or the Secretary determines that such assumption is not appropriate.

(2) NON-NHS PROJECTS.—For projects under this title that are not on the National Highway System, the State shall assume the responsibilities of the Secretary under this title for design, plans, specifications, estimates, contract awards, and inspection of projects, unless the State determines that such assumption is not appropriate.

(3) AGREEMENT.—The Secretary and the State shall enter into an agreement relating to the extent to which the State assumes the responsibilities of the Secretary under this subsection.

(4) LIMITATION ON AUTHORITY OF SECRETARY.—The Secretary may not assume any greater responsibility than the Secretary is permitted under this title on September 30, 1997, except upon agreement by the Secretary and the State.

(d) RESPONSIBILITIES OF THE SECRETARY.—Nothing in this section, section 133, or section 149 shall affect or discharge any responsibility or obligation of the Secretary under—

(1) section 113 or 114; or

(2) any Federal law other than this title (including section 5333 of title 49).

[(e) VALUE ENGINEERING ANALYSIS.—For such projects as the Secretary determines advisable, plans, specifications, and estimates for proposed projects on any Federal-aid highway shall be accompanied by a value engineering analysis or other cost reduction analysis.**]**

(e) VALUE ENGINEERING ANALYSIS.—

(1) DEFINITION OF VALUE ENGINEERING ANALYSIS.—

(A) IN GENERAL.—In this subsection, the term 'value engineering analysis' means a systematic process of review and analysis of a project, during the design phase, by a multidisciplined team of persons not involved in the project, that is conducted to provide recommendations such as recommendations described in subparagraph (B) for—

(i) reducing the total cost of the project; and

(ii) improving the quality of the project.

(B) INCLUSIONS.—The recommendations referred to in subparagraph (A) include, with respect to a project—

(i) combining or eliminating otherwise inefficient use of expensive parts of the original proposal design for the project; and

(ii) completely redesigning the project using different technologies, materials, or methods so as to accomplish the original purpose of the project.

(2) ANALYSIS.—The State shall provide a value engineering analysis or other cost-reduction analysis for—

(A) each project on the Federal-Aid System with an estimated total cost of $25,000,000 or more;

(B) a bridge project with an estimated total cost of $20,000,000 or more; and

(C) any other project the Secretary determines to be appropriate.

(3) MAJOR PROJECTS.—The Secretary may require more than 1 analysis described in paragraph (2) for a major project described in subsection (h).

(4) REQUIREMENTS.—Analyses described in paragraph (1) for a bridge project shall—

(A) include bridge substructure requirements based on construction material; and

(B) be evaluated—

(i) on engineering and economic bases, taking into consideration acceptable designs for bridges; and

(ii) using an analysis of life-cycle costs and duration of project construction.

(f) LIFE-CYCLE COST ANALYSIS.—

(1) USE OF LIFE-CYCLE COST ANALYSIS.—The Secretary shall develop recommendations for the States to conduct life-cycle cost analyses. The recommendations shall be based on the principles contained in section 2 of Executive Order No. 12893 and shall be developed in consultation with the American Association of State Highway and Transportation Officials. The Secretary shall not require a State to conduct a life-cycle cost analysis for any project as a result of the recommendations required under this subsection.

(2) LIFE-CYCLE COST ANALYSIS DEFINED.—In this subsection, the term "life-cycle cost analysis" means a process for evaluating the total economic worth of a usable project segment by analyzing initial costs and discounted future costs, such as maintenance, user costs, reconstruction, rehabilitation, restoring, and resurfacing costs, over the life of the project segment.

[(g) VALUE ENGINEERING FOR NHS.—

[(1) REQUIREMENT.—The Secretary shall establish a program to require States to carry out a value engineering analysis for all projects on the National Highway System with an estimated total cost of $25,000,000 or more.

[(2) VALUE ENGINEERING DEFINED.—In this subsection, the term "value engineering analysis" means a systematic process of review and analysis of a project during its design phase by a multidisciplined team of persons not involved in the project in order to provide suggestions for reducing the total cost of the project and providing a project of equal or better quality. Such suggestions may include combining or eliminating otherwise inefficient or expensive parts of the original proposed design for the project and total redesign of the proposed project using different technologies, materials, or methods so as to accomplish the original purpose of the project.

[(h) FINANCIAL PLAN.—A recipient of Federal financial assistance for a project under this title with an estimated total cost of $1,000,000,000 or more shall submit to the Secretary an annual financial plan for the project. The plan shall be based on detailed annual estimates of the cost to complete the remaining elements of the project and on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project.]

(g) OVERSIGHT PROGRAM.—

(1) PROGRAM.—

(A) IN GENERAL.—The Secretary shall establish an oversight program to monitor the effective and efficient use of funds made available under this title.

(B) MINIMUM REQUIREMENTS.—At a minimum, the program shall monitor and respond to all areas relating to financial integrity and project delivery.

(2) FINANCIAL INTEGRITY.—

(A) FINANCIAL MANAGEMENT SYSTEMS.—

(i) IN GENERAL.—The Secretary shall perform annual reviews of the financial management systems of State transportation departments that affect projects approved under subsection (a).

(ii) REVIEW AREAS.—In carrying out clause (i), the Secretary shall use risk assessment procedures to identify areas to be reviewed.

(B) PROJECT COSTS.—The Secretary shall—

(i) develop minimum standards for estimating project costs; and

(ii) periodically evaluate practices of the States for—

(I) estimating project costs;

(II) awarding contracts; and

(III) reducing project costs.

(C) RESPONSIBILITY OF THE STATES.—

(i) IN GENERAL.—Each State shall be responsible for ensuring that subrecipients of Federal funds within the State under this section have—

(I) sufficient accounting controls to properly manage the Federal funds; and

(II) adequate project delivery systems for projects approved under this section.

(ii) REVIEW BY SECRETARY.—The Secretary shall periodically review monitoring by the States of those subrecipients.

(3) PROJECT DELIVERY.—The Secretary shall—

(A) perform annual reviews of the project delivery system of each State, including analysis of 1 or more activities that are involved in the life cycle of a project; and

(B) employ risk assessment procedures to identify areas to be reviewed.

(4) SPECIFIC OVERSIGHT RESPONSIBILITIES.—Nothing in this section discharges or otherwise affects any oversight responsibility of the Secretary—

(A) specifically provided for under this title or other Federal law; or

(B) for the design and construction of all Appalachian development highways under section 14501 of title 40 or section 170 of this title.

(h) MAJOR PROJECTS.—

(1) IN GENERAL.—Notwithstanding any other provision of this section, a recipient of Federal financial assistance for a project under this title with an estimated total cost of

$1,000,000,000 or more, and recipients for such other projects as may be identified by the Secretary, shall submit to the Secretary for each project—

(A) a project management plan; and

(B) an annual financial plan.

(2) PROJECT MANAGEMENT PLAN.—A project management plan shall document—

(A) the procedures and processes that are in effect to provide timely information to the project decisionmakers to effectively manage the scope, costs, schedules, and quality of, and the Federal requirements applicable to, the project; and

(B) the role of the agency leadership and management team in the delivery of the project.

(3) FINANCIAL PLAN.—A financial plan shall—

(A) be based on detailed estimates of the cost to complete the project; and

(B) provide for the annual submission of updates to the Secretary that are based on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project.

(i) OTHER PROJECTS.—A recipient of Federal financial assistance for a project under this title that receives $100,000,000 or more in Federal assistance for the project, and that is not covered by subsection (h), shall prepare, and make available to the Secretary at the request of the Secretary, an annual financial plan for the project.

* * * * * * *

§ 108. Advance acquisition of real property

(a) * * *

* * * * * * *

(d) CRITICAL REAL PROPERTY ACQUISITION.—

(1) IN GENERAL.—Subject to paragraph (2), funds apportioned to a State under this title may be used to pay the costs of acquiring any real property that is determined to be critical under paragraph (2) for a project proposed for funding under this title.

(2) REIMBURSEMENT.—The Federal share of the costs referred to in paragraph (1) shall be eligible for reimbursement out of funds apportioned to a State under this title if, before the date of acquisition, the Secretary determines that—

(A) the property is offered for sale on the open market;

(B) in acquiring the property, the State will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.); and

(C) immediate acquisition of the property is critical because—

(i) based on an appraisal of the property, the value of the property is increasing significantly;

(ii) there is an imminent threat of development or redevelopment of the property; and

(iii) the property is necessary for the implementation of the goals stated in the proposal for the project.

(3) APPLICABLE LAW.—An acquisition of real property under this section shall be considered to be an exempt project under section 176 of the Clean Air Act (42 U.S.C. 7506).

(4) ENVIRONMENTAL REVIEW.—

(A) IN GENERAL.—A project proposed to be conducted under this title shall not be conducted on property acquired under paragraph (1) until any required environmental reviews for the project have been completed.

(B) EFFECT ON CONSIDERATION OF PROJECT ALTERNATIVES.—The number of critical acquisitions of real property associated with a project shall not affect the consideration of project alternatives during the environmental review process.

(5) PROCEEDS FROM THE SALE OR LEASE OF REAL PROPERTY.—Section 156(c) shall not apply to the sale, use, or lease of any real property acquired under paragraph (1).

§ 109. Standards

(a) IN GENERAL.—The Secretary shall ensure that the plans and specifications for each proposed highway project under this chapter provide for a facility that will—

(1) adequately serve the existing and planned future traffic of the highway in a manner that is conducive to safety, durability, and economy of maintenance; **[**and**]**

(2) be designed and constructed in accordance with criteria best suited to accomplish the objectives described in paragraph (1) and to conform to the particular needs of each locality**[**.**]** *; and*

(3) consider the preservation, historic, scenic, natural environmental, and community values.

(b) The geometric and construction standards to be adopted for the Interstate System shall be those approved by the Secretary in cooperation with the State transportation departments. Such standards, as applied to each actual construction project, shall be adequate to enable such project to accommodate the types and volumes of traffic anticipated for such project for the twenty-year period commencing on the date of approval by the Secretary, under section 106 of this title, of the plans, specifications, and estimates for actual construction of such project. Such standards shall in all cases provide for at least four lanes of traffic. The right-of-way width of the Interstate System shall be adequate to permit construction of projects on the Interstate System to such standards. The Secretary shall apply such standards uniformly throughout all the States.

(c) DESIGN CRITERIA FOR NATIONAL HIGHWAY SYSTEM.—

(1) IN GENERAL.—A design for new construction, reconstruction, resurfacing (except for maintenance resurfacing), restoration, or rehabilitation of a highway on the National Highway System (other than a highway also on the Interstate System) may take into account, in addition to the criteria described in subsection (a)—

(A) the constructed and natural environment of the area;

(B) the environmental, scenic, aesthetic, historic, community, and preservation impacts of the activity; and

(C) access for other modes of transportation.

(2) DEVELOPMENT OF CRITERIA.—The Secretary, in cooperation with State transportation departments, may develop criteria to implement paragraph (1). In developing criteria under this paragraph, the Secretary shall [consider the results] *consider—*

(A) the results of the committee process of the American Association of State Highway and Transportation Officials as used in adopting and publishing "A Policy on Geometric Design of Highways and Streets", including comments submitted by interested parties as part of such process.

(B) the publication entitled "Flexibility in Highway Design" of the Federal Highway Administration;

(C) "Eight Characteristics of Process to Yield Excellence and the Seven Qualities of Excellence in Transportation Design" developed by the conference held during 1998 entitled "Thinking Beyond the Pavement National Workshop on Integrating Highway Development with Communities and the Environment while Maintaining Safety and Performance"; and

(D) any other material that the Secretary determines to be appropriate.

* * * * * * *

(g) [The Secretary shall issue within 30 days after the day of enactment of the Federal-Aid Highway Act of 1970] *Not later than January 30, 1971, the Secretary shall issue* guidelines for minimizing possible soil erosion from highway construction. Such guidelines shall apply to all proposed projects with respect to which plans, specifications, and estimates are approved by the Secretary after the issuance of such guidelines.

* * * * * * *

[(p) SCENIC AND HISTORIC VALUES.—Notwithstanding subsections (b) and (c), the Secretary may approve a project for the National Highway System if the project is designed to—

[(1) allow for the preservation of environmental, scenic, or historic values;

[(2) ensure safe use of the facility; and

[(3) comply with subsection (a).]

(p) CONTEXT SENSITIVE DESIGN.—

(1) IN GENERAL.—The Secretary shall encourage States to design projects funded under this title that—

(A) allow for the preservation of environmental, scenic, or historic values;

(B) ensure the safe use of the facility;

(C) provide for consideration of the context of the locality;

(D) encourage access for other modes of transportation; and

(E) comply with subsection (a).

(2) APPROVAL BY SECRETARY.—Notwithstanding subsections (b) and (c), the Secretary may approve a project described in paragraph (1) for the National Highway System if the project is designed to achieve the criteria specified in that paragraph.

* * * * * * *

§ 110. Revenue aligned budget authority

(a) IN GENERAL.—

(1) ALLOCATION.—On October 15 of fiscal year [2000] *2006* and each fiscal year thereafter, the Secretary shall allocate for such fiscal year an amount of funds equal to the amount determined pursuant to section 251(b)(1)(B)(ii)(I)(cc) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C 901(b)(2)(B)(ii)(I)(cc)) if the amount determined pursuant to such section for such fiscal year is greater than zero.

(2) REDUCTION.—If the amount determined pursuant to section 251(b)(1)(B)(ii)(I)(cc) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C 901(b)(2)(B)(ii)(I)(cc)) for fiscal year [2000] *2006* or any fiscal year thereafter is less than zero, the Secretary on October 1 of [the succeeding] *that* fiscal year shall reduce proportionately the amount of sums authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out each of the Federal-aid highway and highway safety construction programs (other than emergency relief) and [the motor carrier safety grant program] by an aggregate amount equal to the amount determined pursuant to such section.

(b) GENERAL DISTRIBUTION.—The Secretary shall—

(1) determine the ratio that—

[(A) the sums authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for each of the for Federal-aid highway and highway safety construction programs (other than the minimum guarantee program) and the motor carrier safety grant program for which funds are allocated from such Trust Fund by the Secretary under this title, the Transportation Equity Act for the 21st Century, and subchapter I of chapter 311 of title 49 for a fiscal year, bears to]

(A) the sums authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for each of the Federal-aid highway and highway safety construction programs (other than the equity bonus program) and for which funds are allocated from the Highway Trust Fund by the Secretary under this title and the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003; bears to

(B) the total of all sums authorized to be appropriated from such Trust Fund for such programs for such fiscal year;

(2) multiply the ratio determined under paragraph (1) by the total amount of funds to be allocated under subsection (a)(1) for such fiscal year;

(3) allocate the amount determined under paragraph (2) among such programs in the ratio that—

(A) the sums authorized to be appropriated from such Trust Fund for each of such programs for such fiscal year, bears to

(B) the sums authorized to be appropriated from such Trust Fund for all such programs for such fiscal year; and

(4) allocate the remainder of the funds to be allocated under subsection (a)(1) for such fiscal year to the States in the ratio that—

(A) the total of all funds authorized to be appropriated from such Trust Fund for Federal-aid highway and highway safety construction programs that are apportioned to each State for such fiscal year but for this section, bears to

(B) the total of all funds authorized to be appropriated from such Trust Fund for such programs that are apportioned to all States for such fiscal year but for this section.

(c) STATE PROGRAMMATIC DISTRIBUTION.—Of the funds to be apportioned to each State under subsection (b)(4) for a fiscal year, the Secretary shall ensure that such funds are apportioned for the Interstate and National Highway System program, the bridge program, the surface transportation program, *the highway safety improvement program* and the congestion mitigation air quality improvement program in the same ratio that each State is apportioned funds for such programs for such fiscal year but for this section.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as may be necessary to carry out this section for fiscal years beginning after September 30, 1998.

[(e) After making any calculation necessary to implement this section for fiscal year 2001, the amount available under paragraph (a)(1) shall be increased by $128,752,000. The amounts added under this subsection shall not apply to any calculation in any other fiscal year.

[(f) For fiscal year 2001, prior to making any distribution under this section, $22,029,000 of the allocation under paragraph (a)(1) shall be available only for each program authorized under chapter 53 of title 49, United States Code, and title III of Public Law 105–178, in proportion to each such program's share of the total authorization in section 5338 (other than 5338(h)) of such title and sections 3037 and 3038 of such Public Law, under the terms and conditions of chapter 53 of such title.

[(g) For fiscal year 2001, prior to making any distribution under this section, $399,000 of the allocation under paragraph (a)(1) shall be available only for motor carrier safety programs under sections 31104 and 31107 of title 49, United States Code; $274,000 for NHTSA operations and research under section 403 of title 23, United States Code; and $787,000 for NHTSA highway traffic safety grants under chapter 4 of title 23, United States Code.**]**

* * * * * * *

§ 111. Agreements relating to use of and access to rights-of-way—Interstate System

(a) IN GENERAL.—* * *

* * * * * * *

(d) IDLING REDUCTION FACILITIES IN INTERSTATE RIGHTS-OF-WAY.—

(1) IN GENERAL.—Notwithstanding subsection (a), a State may—

(A) permit electrification or other idling reduction facilities and equipment, for use by motor vehicles used for commercial purposes, to be placed in rest and recreation areas, and in safety rest areas, constructed or located on rights-of-way of the Interstate System in the State; and

(B) may charge, or permit charges, for the use of those facilities.

(2) PURPOSE.—The exclusive purpose of the facilities described in paragraph (1) (or similar technologies) shall be to enable operators of motor vehicles used for commercial purposes—

(A) to turn off their engines while parked; and

(B) to have heating, air conditioning, electricity, and communication services in the vehicle without use of the engine.

* * * * * * *

§ 112. Letting of contracts

(a) In all cases where the construction is to be performed by the State transportation department or under its supervision, a request for submission of bids shall be made by advertisement unless some other method is approved by the Secretary. The Secretary shall require such plans and specifications and such methods of bidding as shall be effective in securing competition.

(b) BIDDING REQUIREMENTS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), construction of each project, subject to the provisions of subsection (a) of this section, shall be performed by contract awarded by competitive bidding, unless the State transportation department demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective or that an emergency exists. Contracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility. No requirement or obligation shall be imposed as a condition precedent to the award of a contract to such bidder for a project, or to the Secretary's concurrence in the award of a contract to such bidder, unless such requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications.

(2) CONTRACTING FOR ENGINEERING AND DESIGN SERVICES.—

(A) GENERAL RULE.—Subject to paragraph (3), each contract for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related

services with respect to a project subject to the provisions of subsection (a) of this section shall be awarded in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40 or equivalent State qualifications-based requirements.

(B) APPLICABILITY.—

(i) IN A COMPLYING STATE.—If, on the date of the enactment of this paragraph, the services described in subparagraph (A) may be awarded in a State in the manner described in subparagraph (A), subparagraph (A) shall apply in such State beginning on such date of enactment.

(ii) IN A NONCOMPLYING STATE.—In the case of any other State, subparagraph (A) shall apply in such State beginning on the earlier of (I) August 1, 1989, or (II) the 10th day following the close of the 1st regular session of the legislature of a State which begins after the date of the enactment of this paragraph.

(C) PERFORMANCE AND AUDITS.—Any contract or subcontract awarded in accordance with subparagraph (A), whether funded in whole or in part with Federal-aid highway funds, shall be performed and audited in compliance with cost principles contained in the Federal Acquisition Regulations of part 31 of title 48, Code of Federal Regulations.

(D) INDIRECT COST RATES.—Instead of performing its own audits, a recipient of funds under a contract or subcontract awarded in accordance with subparagraph (A) shall accept indirect cost rates established in accordance with the Federal Acquisition Regulations for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently under dispute.

(E) APPLICATION OF RATES.—Once a firm's indirect cost rates are accepted under this paragraph, the recipient of the funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and shall not be limited by administrative or de facto ceilings of any kind.

(F) PRENOTIFICATION; CONFIDENTIALITY OF DATA.—A recipient of funds requesting or using the cost and rate data described in subparagraph (E) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided, in whole or in part, to another firm or to any government agency which is not part of the group of agencies sharing cost data under this paragraph, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

(G) STATE OPTION.—Subparagraphs (C), (D), (E), and (F) shall take effect 1 year after the date of the enactment of this subparagraph; except that if a State, during such 1-year period, adopts by statute an alternative process in-

tended to promote engineering and design quality and ensure maximum competition by professional companies of all sizes providing engineering and design services, such subparagraphs shall not apply with respect to the State. If the Secretary determines that the legislature of the State did not convene and adjourn a full regular session during such 1-year period, the Secretary may extend such 1-year period until the adjournment of the next regular session of the legislature.

(3) DESIGN-BUILD CONTRACTING.—

(A) IN GENERAL.—A State transportation department or local transportation agency may award a design-build contract for a qualified project described in subparagraph (C) using any procurement process permitted by applicable State and local law.

(B) LIMITATION ON FINAL DESIGN.—Final design under a design-build contract referred to in subparagraph (A) shall not commence before compliance with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

[(C) QUALIFIED PROJECTS.—A qualified project referred to in subparagraph (A) is a project under this chapter for which—

[(i) the Secretary has approved the use of design-build contracting described in subparagraph (A) under criteria specified in regulations issued by the Secretary; and

[(ii) the total costs are estimated to exceed—

[(I) in the case of a project that involves installation of an intelligent transportation system, $5,000,000; and

[(II) in the case of any other project, $50,000,000.]

(C) QUALIFIED PROJECTS.—A qualified project referred to in subparagraph (A) is a project under this chapter (including intermodal facilities) for which the Secretary has approved the use of design-build contracting under criteria specified in regulations promulgated by the Secretary.

(D) DESIGN-BUILD CONTRACT DEFINED.—In this paragraph, the term "design-build contract" means an agreement that provides for design and construction of a project by a contractor, regardless of whether the agreement is in the form of a design-build contract, a franchise agreement, or any other form of contract approved by the Secretary.

(c) The Secretary shall require as a condition precedent to his approval of each contract awarded by competitive bidding pursuant to subsection (b) of this section, and subject to the provisions of this section, a sworn statement, executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract.

(d) No contract awarded by competitive bidding pursuant to subsection (b) of this section, and subject to the provisions of this section, shall be entered into by any State transportation department or local subdivision of the State without compliance with the provisions of this section, and without the prior concurrence of the Secretary in the award thereof.

(e) STANDARDIZED CONTRACT CLAUSE CONCERNING SITE CONDITIONS.—

(1) GENERAL RULE.—The Secretary shall issue regulations establishing and requiring, for inclusion in each contract entered into with respect to any project approved under section 106 of this title a contract clause, developed in accordance with guidelines established by the Secretary, which equitably addresses each of the following:

(A) Site conditions.

(B) Suspensions of work ordered by the State (other than a suspension of work caused by the fault of the contractor or by weather).

(C) Material changes in the scope of work specified in the contract.

The guidelines established by the Secretary shall not require arbitration.

(2) LIMITATION ON APPLICABILITY.—

(A) STATE LAW.—Paragraph (1) shall apply in a State except to the extent that such State adopts or has adopted by statute a formal procedure for the development of a contract clause described in paragraph (1) or adopts or has adopted a statute which does not permit inclusion of such a contract clause.

(B) DESIGN-BUILD CONTRACTS.—Paragraph (1) shall not apply to any design-build contract approved under subsection (b)(3).

[(f) The provisions of this section shall not be applicable to contracts for projects on the Federal-aid secondary system in those States where the Secretary has discharged his responsibility pursuant to section 117 of this title, except where employees of a political subdivision of a State are working on a project outside of such political subdivision.**]**

[(g)**]** *(f)* SELECTION PROCESS.—A State may procure, under a single contract, the services of a consultant to prepare any environmental impact assessments or analyses required for a project, including environmental impact statements, as well as subsequent engineering and design work on the project if the State conducts a review that assesses the objectivity of the environmental assessment, environmental analysis, or environmental impact statement prior to its submission to the Secretary.

* * * * * * *

§ 114. Construction

(a) CONSTRUCTION WORK IN GENERAL.—The construction of any **[**highways or portions of highways located on a Federal-aid system**]** *Federal-aid highway or a portion of a Federal-aid highway* shall be undertaken by the respective State transportation depart-

ments or under their direct supervision. [Except as provided in section 117 of this title, such construction shall be subject to the inspection and approval of the Secretary. The construction work and labor in each State shall be performed under the direct supervision of the State transportation department and in accordance with the laws of that State and applicable Federal laws. Construction may be begun as soon as funds are available for expenditure pursuant to subsection (a) of section 118 of this title.] *The Secretary shall have the right to conduct such inspections and take such corrective action as the Secretary determines to be appropriate.* After July 1, 1973, the State transportation department shall not erect on any project where actual construction is in progress and visible to highway users any informational signs other than official traffic control devices conforming with standards developed by the Secretary of Transportation.

* * * * * * *

§ 115. Advance construction

[(a) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT, SURFACE TRANSPORTATION, BRIDGE, PLANNING, AND RESEARCH PROJECTS.—

[(1) GENERAL RULE.—Subject to paragraph (2), when a State—

[(A)(i) has obligated all funds apportioned or allocated to it under section 104(b)(2), 104(b)(3), 104(f), 144, or 505 of this title, or

[(ii) has used or demonstrates that it will use all obligation authority allocated to it for Federal-aid highways and highway safety construction, and

[(B) proceeds with a project funded under such an apportionment or allocation without the aid of Federal funds in accordance with all procedures and all requirements applicable to such a project, except insofar as such procedures and requirements limit the State to implementation of projects with the aid of Federal funds previously apportioned or allocated to it or limit a State to implementation of a project with obligation authority previously allocated to it for Federal-aid highways and highway safety construction,

[the Secretary, upon approval of an application of the State, is authorized to pay to the State the Federal share of the cost of the project when additional funds are apportioned or allocated to the State under such section or when additional obligation authority is allocated to it.]

(a) IN GENERAL.—The Secretary may authorize a State to proceed with a project authorized under this title—

(1) without the use of Federal funds; and

(2) in accordance with all procedures and requirements applicable to the project other than those procedures and requirements that limit the State to implementation of a project—

(A) with the aid of Federal funds previously apportioned or allocated to the State; or

(B) with obligation authority previously allocated to the State.

(b) OBLIGATION OF FEDERAL SHARE.—The Secretary, on the request of a State and execution of a project agreement, may obligate all or a portion of the Federal share of the project authorized under this section from any category of funds for which the project is eligible.

[(2)**]**

(c) PLANS, SPECIFICATIONS, AND APPLICABLE STANDARDS.—The Secretary may only make payments to a State with respect to a project if—

[(A)**]**

(1) prior to commencement of the project the Secretary approves the project in the same manner as the Secretary approves other projects, and

[(B)**]**

(2) the project conforms to the applicable standards under this title.

[(b) INTERSTATE AND NATIONAL HIGHWAY SYSTEM PROJECTS.—When a State proceeds to construct any project on the National Highway System or the Interstate System without the aid of Federal funds in accordance with all procedures and all requirements applicable to such a project, except insofar as such procedures and requirements limit the State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon approval of application of the State, is authorized to pay to the State the Federal share of the cost of construction of the project when additional funds are apportioned to the State under section 104(b)(1) or 104(b)(4), as the case may be, if—

[(1) prior to the construction of the project the Secretary approves the plans and specifications therefor in the same manner as other projects, and

[(2) the project conforms to the applicable standards under section 109 of this title.**]**

[(c)**]** *(d)* INCLUSION IN TRANSPORTATION IMPROVEMENT PROGRAM.—The Secretary may approve an application for a project under this section only if the project is included in the transportation improvement program of the State developed under section 135(f).

* * * * * * *

§ 117. High priority projects program

(a) AUTHORIZATION OF HIGH PRIORITY PROJECTS.—The Secretary is authorized to carry out high priority projects with funds made available to carry out the high priority projects program under this section. Of amounts made available to carry out this section, the Secretary, subject to subsection (b), shall make available to carry out each project described in section 1602 of the Transportation Equity Act for the 21st Century the amount listed for such project in such section. Any amounts made available to carry out such program that are not allocated for projects described in such section shall be available to the Secretary, subject to sub-

section (b), to carry out such other high priority projects as the Secretary determines appropriate.

(b) ALLOCATION PERCENTAGES.—For each project to be carried out with funds made available to carry out the high priority projects program under this section—

(1) 11 percent of such amount shall be available for obligation beginning in fiscal year 1998;

(2) 15 percent of such amount shall be available for obligation beginning in fiscal year 1999;

(3) 18 percent of such amount shall be available for obligation beginning in fiscal year 2000;

(4) 18 percent of such amount shall be available for obligation beginning in fiscal year 2001;

(5) 19 percent of such amount shall be available for obligation beginning in fiscal year 2002; and

(6) 19 percent of such amount shall be available for obligation beginning in fiscal year 2003.

(c) FEDERAL SHARE.—The Federal share payable on account of any project carried out with funds made available to carry out this section shall be 80 percent of the total cost thereof; except that the Federal share on account of the project to be carried out under item 1419 of the table contained in section 1602 of the Transportation Equity Act for the 21st Century (112 Stat. 309), relating to reconstruction of a road and causeway in Shiloh Military Park in Hardin County, Tennessee, shall be 100 percent of the total cost thereof.

[(d) DELEGATION TO STATES.—Subject to the provisions of this title, the Secretary shall delegate responsibility for carrying out a project or projects, with funds made available to carry out this section, to the State in which such project or projects are located upon request of such State.**]**

[(e)**]** *(d)* ADVANCE CONSTRUCTION.—When a State which has been delegated responsibility for a project under this section—

(1) has obligated all funds allocated under this section and section 1602 of the Transportation Equity Act for the 21st Century for such project; and

(2) proceeds to construct such project without the aid of Federal funds in accordance with all procedures and all requirements applicable to such project, except insofar as such procedures and requirements limit the State to the construction of projects with the aid of Federal funds previously allocated to it;

the Secretary, upon the approval of the application of a State, shall pay to the State the Federal share of the cost of construction of the project when additional funds are allocated for such project under this section and section 1602 of the Transportation Equity Act for the 21st Century.

[(f)**]** *(e)* PERIOD OF AVAILABILITY.—Funds made available to carry out this section shall remain available until expended.

[(g)**]** *(f)* AVAILABILITY OF OBLIGATION LIMITATION.—Obligation authority attributable to funds made available to carry out this section shall only be available for the purposes of this section and shall remain available until obligated pursuant to section 1102(g) of the Transportation Equity Act for the 21st Century.

[(h)] *(g)* TREATMENT.—Funds allocated to a State in accordance with this section shall be treated as amounts in addition to the amounts a State is apportioned under sections 104, 105, and 144 for programmatic purposes.

* * * * * * *

§ 118. Availability of funds

(a) DATE AVAILABLE FOR OBLIGATION.—Except as otherwise specifically provided, authorizations from the Highway Trust Fund (other than the Mass Transit Account) to carry out this title shall be available for obligation on the date of their apportionment or allocation or on October 1 of the fiscal year for which they are authorized, whichever occurs first.

(b) PERIOD OF AVAILABILITY.—

(1) INTERSTATE CONSTRUCTION FUNDS.—Funds apportioned or allocated for Interstate construction in a State (other than Massachusetts) shall remain available for obligation in that State until the last day of the fiscal year in which they are apportioned or allocated. Sums not obligated by the last day of the fiscal year in which they are apportioned or allocated shall be allocated to other States, except Massachusetts, at the discretion of the Secretary. All sums apportioned or allocated on or after October 1, 1994, shall remain available in the State until expended. All sums apportioned or allocated to Massachusetts on or after October 1, 1989, shall remain available until expended.

(2) OTHER FUNDS.—Except as otherwise specifically provided, funds apportioned or allocated pursuant to this title (other than for Interstate construction) in a State shall remain available for obligation in that State for a period of 3 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 shall lapse.

(c) SET-ASIDES FOR INTERSTATE DISCRETIONARY PROJECTS.—

(1) IN GENERAL.—Before any apportionment is made under section 104(b)(4), the Secretary shall set aside [$50,000,000 in fiscal year 1998 and $100,000,000 in each of fiscal years 1999 through 2003] *$100,000,000 for each of fiscal years 2004 through 2009* for obligation by the Secretary for projects for resurfacing, restoring, rehabilitating, and reconstructing any route or portion thereof on the Interstate System (other than any highway designated as a part of the Interstate System under section 139 (as in effect on the day before the date of enactment of the [Transportation Equity Act for the 21st Century)] *Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003*) and any toll road on the Interstate System not subject to an agreement under section 119(e) (as in effect on December 17, 1991).

(2) SELECTION CRITERIA.—The amounts set aside under paragraph (1) shall be made available by the Secretary to any State applying for such funds if the Secretary determines that—

(A) the State has obligated or demonstrates that it will obligate in the fiscal year all of its apportionments under section 104(b)(4) other than an amount that, by itself, is insufficient to pay the Federal share of the cost of a project for resurfacing, restoring, rehabilitating, and reconstructing the Interstate System that has been submitted by the State to the Secretary for approval; and

(B) the applicant is willing and able to—

(i) obligate the funds within 1 year of the date the funds are made available;

(ii) apply the funds to a ready-to-commence project; and

(iii) in the case of construction work, begin work within 90 days after obligation.

(3) PRIORITY CONSIDERATION FOR CERTAIN PROJECTS.—In selecting projects to fund under paragraph (1), the Secretary shall give priority consideration to any project the cost of which exceeds $10,000,000 on any high volume route in an urban area or a high truck-volume route in a rural area.

(4) PERIOD OF AVAILABILITY OF DISCRETIONARY FUNDS.—Sums made available pursuant to this subsection shall remain available until expended.

[(d) EFFECT OF RELEASE OF FUNDS.—Any Federal-aid highway funds released by the final payment on a project, or by the modification of the project agreement, shall be credited to the same program funding category previously apportioned to the State and shall be immediately available for expenditure.**]**

(d) OBLIGATION AND RELEASE OF FUNDS.—

(1) IN GENERAL.—Funds apportioned or allocated to a State for a particular purpose for any fiscal year shall be considered to be obligated if a sum equal to the total of the funds apportioned or allocated to the State for that purpose for that fiscal year and previous fiscal years is obligated.

(2) RELEASED FUNDS.—Any funds released by the final payment for a project, or by modifying the project agreement for a project, shall be—

(A) credited to the same class of funds previously apportioned or allocated to the State; and

(B) immediately available for obligation.

(3) NET OBLIGATIONS.—Notwithstanding any other provision of law (including a regulation), obligations recorded against funds made available under this section shall be recorded and reported as net obligations.

(e) Funds made available to the State of Alaska and the Commonwealth of Puerto Rico under this title may be expended for construction of access and development roads that will serve resource development, recreational, residential, commercial, industrial, or other like purposes.

* * * * * * *

§ 120. Federal share payable

(a) INTERSTATE SYSTEM PROJECTS.— * * *

* * * * * * *

[(d) The Secretary may rely on a statement from the Secretary of the Interior as to the area of the lands referred to in subsections (a) and (b) of this section. The Secretary of the Interior is authorized and directed to provide such statement annually.]

(d) INCREASED FEDERAL SHARE.—

(1) IN GENERAL.—The Federal share payable under subsection (a) or (b) may be increased for projects and activities in each State in which is located—

(A) nontaxable Indian land;

(B) public land (reserved or unreserved);

(C) a national forest; or

(D) a national park and monument.

(2) AMOUNT.—

(A) IN GENERAL.—The Federal share for States described in paragraph (1) shall be increased by a percentage of the remaining cost that—

(i) is equal to the percentage that—

(I) the area of all land described in paragraph (1) in a State; bears to

(II) the total area of the State; but

(ii) does not exceed 95 percent of the total cost of the project or activity for which the Federal share is provided.

(B) ADJUSTMENT.—The Secretary shall adjust the Federal share for States under subparagraph (A) as the Secretary determines necessary, on the basis of data provided by the Federal agencies that are responsible for maintaining the data.

(C) DECREASED FEDERAL SHARE.—Unless the State voluntarily agrees to a decreased Federal share, the Secretary shall provide the maximum Federal share allowable under subsections (a) and (b), as adjusted by this subsection.

(e) EMERGENCY RELIEF.—The Federal share payable on account of any repair or reconstruction provided for by funds made available under section 125 of this title on account of any project on a Federal-aid highway, including the Interstate System, shall not exceed the Federal share payable on a project on such system as provided in subsections (a) and (b) of this section; except that (1) the Federal share payable for eligible emergency repairs to minimize damage, protect facilities, or restore essential traffic accomplished within 180 days after the actual occurrence of the natural disaster or catastrophic failure may amount to 100 percent of the costs thereof; and (2) the Federal share payable on account of any repair or reconstruction of forest highways, [forest development roads] *National Forest System roads* and trails, park roads and trails, parkways, [public lands highways,] *public lands highways, recreation roads* public lands development roads and trails, and Indian reservation roads may amount to 100 percent of the cost thereof. The total cost of a project may not exceed the cost of repair or reconstruction of a comparable facility. As used in this section with respect to bridges and in section 144 of this title, "a comparable facility" shall mean a facility which meets the current geo-

metric and construction standards required for the types and volume of traffic which such facility will carry over its design life.

* * * * * * *

(k) USE OF FEDERAL LAND MANAGEMENT AGENCY FUNDS.—Notwithstanding any other provision of law, the funds appropriated to any Federal land management agency may be used to pay the non-Federal share of the cost of any [Federal-aid highway] project the Federal share of which is funded under [section 104] *this title or chapter 53 of title 49.*

(l) USE OF FEDERAL LANDS HIGHWAYS PROGRAM FUNDS.—Notwithstanding any other provision of law, the funds authorized to be appropriated to carry out the Federal lands highways program under section 204 may be used to pay the non-Federal share of the cost of any project that is funded under [section 104] *this title or chapter 53 of title 49* and that provides access to or within Federal or Indian lands.

(m) INCREASED FEDERAL SHARE FOR CONNECTORS.—In the case of a project to support a National Highway System intermodal freight connection or strategic highway network connector to a strategic military deployment port described in section 103(b)(7), the Federal share of the total cost of the project shall be 90 percent.

* * * * * * *

§ 125. Emergency relief

(a) GENERAL ELIGIBILITY.—Subject to this section and section 120, an emergency fund is authorized for expenditure by the Secretary for the repair or reconstruction of highways, roads, and trails, in any part of the United States, including Indian reservations, that the Secretary finds have suffered serious damage as a result of—

(1) natural disaster over a wide area, such as by a flood, hurricane, tidal wave, earthquake, severe storm, or landslide; or

(2) catastrophic failure from any external cause.

(b) RESTRICTION ON ELIGIBILITY.—In no event shall funds be used pursuant to this section for the repair or reconstruction of bridges that have been permanently closed to all vehicular traffic by the State or responsible local official because of imminent danger of collapse due to a structural deficiency or physical deterioration.

(c) FUNDING.—Subject to the following limitations, there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as may be necessary to establish the fund authorized by this section and to replenish it on an annual basis:

(1) Not more than [$100,000,000] *$300,000,000* is authorized to be obligated in any 1 fiscal year commencing after September 30, 1980, to carry out the provisions of this section; except that, if in any fiscal year the total of all obligations under this section is less than the amount authorized to be obligated in such fiscal year, the unobligated balance of such amount shall remain available until expended and shall be in addition

to amounts otherwise available to carry out this section each year.

(2) Pending such appropriation or replenishment, the Secretary may obligate from any funds heretofore or hereafter appropriated for obligation in accordance with this title, including existing Federal-aid appropriations, such sums as may be necessary for the immediate prosecution of the work herein authorized. Funds obligated under this paragraph shall be reimbursed from such appropriation or replenishment.

(d) The Secretary may expend funds from the emergency fund herein authorized for the repair or reconstruction of highways on Federal-aid highways in accordance with the provisions of this chapter: *Provided,* That (1) obligations for projects under this section, including those on highways, roads, and trails mentioned in subsection (e) of this section, resulting from a single natural disaster or a single catastrophic failure in a State shall not exceed $100,000,000, and (2) the total obligations for projects under this section in any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not exeed $20,000,000. Notwithstanding any provision of this chapter actual and necessary costs of maintenance and operation of ferryboats providing temporary substitute highway traffic service, less the amount of fares charged, may be expended from the emergency fund herein authorized on Federal-aid highways. Except as to highways, roads, and trails mentioned in subsection (e) of this section, no funds shall be so expended unless the Secretary has received an application therefor from the State transportation department, and unless an emergency has been declared by the Governor of the State and concurred in by the Secretary, except that if the President has declared such emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) concurrence of the Secretary is not required.

(e) The Secretary may expend funds from the emergency fund herein authorized, either independently or in cooperation with any other branch of the Government, State agency, organization, or person, for the repair or reconstruction of forest highways, [forest development roads] *National Forest System roads* and trails, park roads and trails, parkways, [public lands highways,] *public lands highways, recreation roads* public lands development roads and trails, and Indian reservation roads, whether or not such highways, roads, or trails are Federal-aid highways.

(f) TREATMENT OF TERRITORIES.—For purposes of this section, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be considered to be States and parts of the United States, and the chief executive officer of each such territory shall be considered to be a Governor of a State.

* * * * * * *

§ 129. Toll roads, bridges, tunnels, and ferries

(a) BASIC PROGRAM.— * * *

* * * * * * *

(d) INTERSTATE SYSTEM RECONSTRUCTION AND REHABILITATION PILOT PROGRAM.—

(1) *ESTABLISHMENT.—Notwithstanding section 301, the Secretary shall establish and implement an Interstate System reconstruction and rehabilitation pilot program under which the Secretary, notwithstanding sections 129 and 301, may permit a State to collect tolls on a highway, bridge, or tunnel on the Interstate System for the purpose of reconstructing and rehabilitating Interstate highway corridors.*

(2) *LIMITATION ON NUMBER OF FACILITIES.—The Secretary may permit the collection of tolls under this subsection on 3 facilities on the Interstate System. Each of such facilities shall be located in a different State.*

(3) *ELIGIBILITY.—To be eligible to participate in the pilot program, a State shall submit to the Secretary an application that contains, at a minimum, the following:*

(A) An identification of the facility on the Interstate System proposed to be a toll facility, including the age, condition, and intensity of use of the facility.

(B) In the case of a facility that affects a metropolitan area, an assurance that the metropolitan planning organization established under section 134, for the area has been consulted concerning the placement and amount of tolls on the facility.

(C) An analysis demonstrating that financing the reconstruction or rehabilitation of the facility with the collection of tolls under this pilot program is the most efficient, economical, or expeditious way to advance the project.

(D) A facility management plan that includes—

(i) a plan for implementing the imposition of tolls on the facility;

(ii) a schedule and finance plan for the reconstruction or rehabilitation of the facility using toll revenues;

(iii) a description of the public transportation agency that will be responsible for implementation and administration of the pilot program;

(iv) a description of whether consideration will be given to privatizing the maintenance and operational aspects of the facility, while retaining legal and administrative control of the portion of the Interstate route; and

(v) such other information as the Secretary may require.

(4) *SELECTION CRITERIA.—The Secretary may approve the application of a State under paragraph (3) only if the Secretary determines that—*

(A) the State's analysis showing that financing the reconstruction or rehabilitation of a facility with the collection of tolls under the pilot program is the most efficient, economical, or expeditious way to advance the project;

(B) the facility needs reconstruction or rehabilitation, including major work that may require replacing sections of the existing facility on new alignment;

(C) the State plan for reconstruction or rehabilitation of the facility using toll revenues is reasonable; and

(D) the State has given preference to the use of a public toll agency with demonstrated capability to build, operate, and maintain a toll expressway system meeting criteria for the Interstate System.

(5) *LIMITATIONS ON USE OF REVENUES; AUDITS.—Before the Secretary may permit a State to participate in the pilot program, the State must enter into an agreement with the Secretary that provides that—*

(A) all toll revenues received from operation of the toll facility will be used only for—

(i) debt service;

(ii) reasonable return on investment of any private person financing the project; and

(iii) any costs necessary for the improvement of and the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation of the toll facility; and

(B) regular audits will be conducted to ensure compliance with subparagraph (A) and the results of such audits will be transmitted to the Secretary.

(6) *LIMITATION ON USE OF INTERSTATE MAINTENANCE FUNDS.—During the term of the pilot program, funds apportioned for Interstate maintenance under section 104(b)(4), may not be used on a facility for which tolls are being collected under the program.*

(7) *PROGRAM TERM.—The Secretary shall conduct the pilot program under this subsection for a term to be determined by the Secretary, but not less than 10 years.*

(8) *INTERSTATE SYSTEM DEFINED.—In this subsection, the term "Interstate System" has the meaning such term has under section 101.*

(e) VARIABLE TOLL PRICING PROGRAM.—

(1) DEFINITIONS.—In this subsection:

(A) ELIGIBLE TOLL FACILITY.—The term "eligible toll facility" includes—

(i) a facility in existence on the date of enactment of this subsection that collects tolls;

(ii) a facility in existence on the date of enactment of this subsection that serves high occupancy vehicle lanes; and

(iii) a facility modified or constructed after the date of enactment of this subsection to create additional tolled capacity (including a facility constructed by a private entity or using private funds).

(B) NONATTAINMENT AREA.—The term "nonattainment area" has the meaning given the term in section 171 of the Clean Air Act (42 U.S.C. 7501).

(2) ESTABLISHMENT.—Notwithstanding sections 129 and 301, the Secretary may permit a State, public authority, or a public or private entity designated by a State, to collect a toll from motor vehicles at an eligible toll facility for any highway, bridge, or tunnel, including facilities on the Interstate System—

(A) to manage high levels of congestion; or

(B) to reduce emissions in a nonattainment area or maintenance area.

(3) LIMITATION ON USE OF REVENUES.—

(A) IN GENERAL.—All toll revenues received under paragraph (2) shall be used by a State or public authority for—

(i) debt service;

(ii) a reasonable return on investment of any private financing; and

(iii) the costs necessary for proper operation and maintenance of any facilities under paragraph (2) (including reconstruction, resurfacing, restoration, and rehabilitation); and

(iv) projects eligible for Federal assistance under this title.

(B) REQUIREMENTS.—

(i) VARIABLE PRICE REQUIREMENT.—The Secretary shall require, for each facility that charges tolls under this subsection, that the tolls vary in price according to time of day, as appropriate to manage congestion or improve air quality.

(ii) HOV PASSENGER REQUIREMENTS.—In addition to the exceptions to the high occupancy vehicle passenger requirements established under section 102(a)(2), a State may permit motor vehicles with fewer than 2 occupants to operate in high occupancy vehicle lanes as part of a variable toll pricing program established under this subsection.

(C) AGREEMENT.—

(i) IN GENERAL.—Before the Secretary may permit a facility to charge tolls under this subsection, the Secretary and the applicable State or public authority shall enter into an agreement for each facility incorporating the conditions described in subparagraphs (A) and (B).

(ii) TERMINATION.—An agreement under clause (i) shall terminate with respect to a facility upon the decision of the State or public authority to discontinue the variable tolling program under this subsection for the facility.

(iii) DEBT.—If there is any debt outstanding on a facility at the time at which the decision is made to discontinue the program under this subsection with respect to the facility, the facility may continue to charge tolls in accordance with the terms of the agreement until such time as the debt is retired.

(D) LIMITATION ON FEDERAL SHARE.—The Federal share of the cost of a project on a facility tolled under this subsection, including a project to install the toll collection facility shall be a percentage, not to exceed 80 percent, determined by the applicable State.

(4) ELIGIBILITY.—To be eligible to participate in the program under this subsection, a State or public authority shall provide to the Secretary—

(A) a description of the congestion or air quality problems sought to be addressed under the program;

(B) a description of—

(i) the goals sought to be achieved under the program; and

(ii) the performance measures that would be used to gauge the success made toward reaching those goals; and

(C) such other information as the Secretary may require.

(f) AUTOMATION.—A facility created or modified under this section shall use an electronic toll collection system that uses a transponder or other means to specify an account for the purposes of collecting a toll as a vehicle passes through the collection facility.

(g) INTEROPERABILITY.—

(1) RULE.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall promulgate a final rule specifying requirements, standards, or performance specifications for automated toll collection systems implemented under this section.

(B) DEVELOPMENT.—In developing that rule, which shall be designed to maximize the interoperability of electronic collection systems, the Secretary shall, to the maximum extent practicable—

(i) seek to accelerate progress toward the national goal of achieving a nationwide interoperable electronic toll collection system;

(ii) take into account the use of transponders currently deployed within an appropriate geographical area of travel and the transponders likely to be in use within the next 5 years; and

(iii) seek to minimize additional costs and maximize convenience to users of toll facility and to the toll facility owner or operator.

(2) FUTURE MODIFICATIONS.—As the state of technology progresses, the Secretary shall modify the rule promulgated under paragraph (1)(A), as appropriate.

* * * * * * *

§ 130. Railway-highway crossings

(a) * * *

* * * * * * *

(e) FUNDS FOR [PROTECTIVE DEVICES] *RAILWAY-HIGHWAY CROSSINGS*.—[At least ½ of the funds authorized for and expended under this section shall be available for the installation of protective devices at railway-highway crossings.]

(1) IN GENERAL.—For each fiscal year, at least $200,000,000 of the funds authorized and expended under section 148 shall be available for the elimination of hazards and

the installation of protective devices at railway-highway crossings. [Sums authorized]

(2) OBLIGATION.—Sums authorized to be appropriated to carry out this section shall be available for obligation in the same manner as funds apportioned under section 104(b)(1) of this title.

* * * * * * *

(g) ANNUAL REPORT.—Each State shall report to the Secretary not later than December 30 of each year on the progress being made to implement the railway-highway crossings program authorized by this section and the effectiveness of such improvements. Each State report shall contain an assessment of the costs of the various treatments employed and subsequent accident experience at improved locations. The Secretary shall submit a report to the Committee on Environment and Public Works *and the Committee on Commerce, Science, and Transportation* of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives [not later than April 1 of each year] *every other year*, on the progress being made by the State in implementing projects to improve railway-highway crossings. The report shall include, but not be limited to, the number of projects undertaken, their distribution by cost range, road system, nature of treatment, and subsequent accident experience at improved locations. In addition, the Secretary's report shall analyze and evaluate each State program, identify any State found not to be in compliance with the schedule of improvements required by subsection (d) and include recommendations for future implementation of the railroad highway crossings program.

* * * * * * *

(k) EXPENDITURE OF FUNDS; APPORTIONMENT.—Funds made available to carry out this section shall be—

(1) available for expenditure on compilation and analysis of data in support of activities carried out under subsection (g); and

(2) apportioned in accordance with section 104(b)(5).

* * * * * * *

§ 132. Payments on Federal-aid projects undertaken by a Federal agency

[Where a proposed Federal-aid project is to be undertaken by a Federal agency pursuant to an agreement between a State and such Federal agency and the State makes a deposit with or payment to such Federal agency as may be required in fulfillment of the State's obligation under such agreement for the work undertaken or to be undertaken by such Federal agency, the Secretary, upon execution of a project agreement with such State for the proposed Federal-aid project, may reimburse the State out of the appropriate appropriations the estimated Federal share under the provisions of this title of the State's obligation so deposited or paid by such State. Upon completion of such project and its acceptance by the Secretary, an adjustment shall be made in such Federal

share payable on account of such project based on the final cost thereof.]

(a) IN GENERAL.—In a case in which a proposed Federal-aid project is to be undertaken by a Federal agency in accordance with an agreement between a State and the Federal agency, the State may—

(1) direct the Secretary to transfer the funds for the Federal share of the project directly to the Federal agency; or

(2) make such deposit with, or payment to, the Federal agency as is required to meet the obligation of the State under the agreement for the work undertaken or to be undertaken by the Federal agency.

(b) REIMBURSEMENT.—On execution of a project agreement with a State described in subsection (a), the Secretary may reimburse the State, using any available funds, for the estimated Federal share under this title of the obligation of the State deposited or paid under subsection (a)(2). [Any sums]

(c) RECOVERY AND CREDITING OF FUNDS.—Any sums reimbursed to the State under this section which may be in excess of the Federal pro rata share under the provisions of this title of the State's share of the cost as set forth in the approved final voucher submitted by the State shall be recovered and credited to the same class of funds from which the Federal payment under this section was made.

* * * * * * *

§ 133. Surface transportation program

(a) ESTABLISHMENT.—The Secretary shall establish a surface transportation program in accordance with this section.

(b) ELIGIBLE PROJECTS.—A State may obligate funds apportioned to it under section 104(b)(3) for the surface transportation program only for the following:

(1) * * *

* * * * * * *

(11) *(A)* In accordance with all applicable Federal law and regulations, participation in natural habitat and wetlands mitigation efforts related to projects funded under this title, which may include participation in natural habitat and wetlands mitigation banks; contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands; and development of statewide and regional natural habitat and wetlands conservation and mitigation plans, including any such banks, efforts, and plans authorized pursuant to the Water Resources Development Act of 1990 (including crediting provisions). Contributions to such mitigation efforts may take place concurrent with or in advance of project construction. Contributions toward these efforts may occur in advance of project construction only if such efforts are consistent with all applicable requirements of Federal law and regulations and State transportation planning processes. With respect to participation in a natural habitat or wetland mitigation effort related to a project funded under this title that has an impact that occurs within the service area of a mitigation

bank, preference shall be given, to the maximum extent practicable, to the use of the mitigation bank if the bank contains sufficient available credits to offset the impact and the bank is approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605 (November 28, 1995)) or other applicable Federal law (including regulations).

(B) State habitat, streams, and wetlands mitigation efforts under section 155.

(12) Intermodal freight transportation projects in accordance with section 325(d)(2).

(13) Infrastructure-based intelligent transportation systems capital improvements.

[(14) Environmental restoration and pollution abatement projects (including the retrofit or construction of storm water treatment systems) to address water pollution or environmental degradation caused or contributed to by transportation facilities, which projects shall be carried out when the transportation facilities are undergoing reconstruction, rehabilitation, resurfacing, or restoration; except that the expenditure of funds under this section for any such environmental restoration or pollution abatement project shall not exceed 20 percent of the total cost of the reconstruction, rehabilitation, resurfacing, or restoration project.]

(14) Environmental restoration and pollution abatement in accordance with section 165.

(15) Control of invasive plant species and establishment of native species in accordance with section 166.

(16) Regional transportation operations collaboration and coordination activities that are associated with regional improvements, such as traffic incident management, technology deployment, emergency management and response, traveler information, and regional congestion relief.

(17) RUSH HOUR CONGESTION RELIEF.—

(A) IN GENERAL.—Subject to subparagraph (B), a State may spend not more than 2 percent of the funds apportioned under this section to reduce traffic delays caused by motor vehicle accidents and breakdowns on highways during peak driving times.

(B) USE OF FUNDS.—A State, metropolitan planning organization, or local government may use the funds under subparagraph (A)—

(i) to develop a region-wide coordinated plan to mitigate traffic delays caused by motor vehicle accidents and breakdowns;

(ii) to purchase or lease telecommunications equipment for first responders;

(iii) to purchase or lease towing and recovery services;

(iv) to pay contractors for towing and recovery;

(v) to rent vehicle storage areas adjacent to roadways;

(vi) to fund service patrols, equipment, and operations;

(vii) to purchase incident detection equipment;

(viii) to carry out training.

(18) Transportation and community system preservation to facilitate the planning, development, and implementation of strategies of metropolitan planning organizations and local governments to integrate transportation, community, and system preservation plans and practices that address the following:

(A) Improvement of the efficiency of the transportation system in the United States.

(B) Reduction of the impacts of transportation on the environment.

(C) Reduction of the need for costly future investments in public infrastructure.

(D) Provision of efficient access to jobs, services, and centers of trade.

(E) Examination of development patterns, and identification of strategies to encourage private sector development patterns, that achieve the goals identified in subparagraphs (A) through (D).

(19) Projects relating to intersections, including intersections—

(A) that—

(i) have disproportionately high accident rates;

(ii) have high levels of congestion, as evidenced by—

(I) interrupted traffic flow at the intersection; and

(II) a level of service rating, issued by the Transportation Research Board of the National Academy of Sciences in accordance with the Highway Capacity Manual, that is not better than 'F' during peak travel hours; and

(iii) are directly connected to or located on a Federal-aid highway; and

(B) improvements that are approved in the regional plan of the appropriate local metropolitan planning organization.

* * * * * * *

(d) ALLOCATIONS OF APPORTIONED FUNDS.—

[(1) FOR SAFETY PROGRAMS.—10 percent of the funds apportioned to a State under section 104(b)(3) for the surface transportation program for a fiscal year shall only be available for carrying out sections 130 and 152 of this title. Of the funds set aside under the preceding sentence, the State shall reserve in such fiscal year an amount of such funds for carrying out each such section which is not less than the amount of funds apportioned to the State in fiscal year 1991 under such section.**]**

[(2)**]** *(1)* FOR TRANSPORTATION ENHANCEMENT ACTIVITIES.—10 percent of the funds apportioned to a State under section 104(b)(3) for a fiscal year shall only be available for transportation enhancement activities.

[(3)**]** *(2)* DIVISION BETWEEN URBANIZED AREAS OF OVER 200,000 POPULATION AND OTHER AREAS.—

(A) GENERAL RULE.—Except as provided in [subparagraphs (C) and (D)] *subparagraph (C)*, 62.5 percent of the remaining [80 percent] *90 percent* of the funds apportioned to a State under section 104(b)(3) for a fiscal year shall be obligated under this section—

(i) in urbanized areas of the State with an urbanized area population of over 200,000, and

(ii) in other areas of the State,

in proportion to their relative share of the State's population. The remaining 37.5 percent may be obligated in any area of the State. Funds attributed to an urbanized area under clause (i) may be obligated in the metropolitan area established under section 134 which encompasses the urbanized area.

(B) SPECIAL RULE FOR AREAS OF LESS THAN 5,000 POPULATION.—Of the amounts required tobe obligated under subparagraph (A)(ii), the State shall obligate in areas of the State (other than urban areas with a population greater than 5,000) an amount which is not less than 110 percent of the amount of funds apportioned to the State for the Federal-aid secondary system for fiscal year 1991.

[(C) SPECIAL RULE FOR CERTAIN STATES.—In the case of a State in which—

[(i) greater than 80 percent of the population of the State is located in 1 or more metropolitan statistical areas, and

[(ii) greater than 80 percent of the land area of such State is owned by the United States,

[the 62.5 percentage specified in the first sentence of subparagraph (A) shall be 35 percent and the percentage specified in the second sentence of subparagraph (A) shall be 65 percent.]

[(D)] *(C)* NONCONTIGUOUS STATES EXEMPTION.—Subparagraph (A) shall not apply to Hawaii and Alaska.

[(E)] *(D)* DISTRIBUTION BETWEEN URBANIZED AREAS OF OVER 200,000 POPULATION.—The amount of funds which a State is required to obligate under subparagraph (A)(i) shall be obligated in urbanized areas described in subparagraph (A)(i) based on the relative population of such areas; except that the State may obligate such funds based on other factors if the State and the relevant metropolitan planning organizations jointly apply to the Secretary for the permission to do so and the Secretary grants the request.

[(4)] *(3)* APPLICABILITY OF PLANNING REQUIREMENTS.—Programming and expenditure of funds for projects under this section shall be consistent with the requirements of sections 134 and 135 of this title.

[(5)] *(4)* APPLICABILITY OF CERTAIN REQUIREMENTS TO THIRD PARTY SELLERS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), in the case of a transportation enhancement activity funded from the allocation required under [paragraph (2)] *paragraph (1)*, if real property or

an interest in real property is to be acquired from a qualified organization exclusively for conservation purposes (as determined under section 170(h) of the Internal Revenue Code of 1986), the organization shall be considered to be the owner of the property for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(B) FEDERAL APPROVAL PRIOR TO INVOLVEMENT OF QUALIFIED ORGANIZATION.—If Federal approval of the acquisition of the real property or interest predates the involvement of a qualified organization described in subparagraph (A) in the acquisition of the property, the organization shall be considered to be an acquiring agency or person as described in section 24.101(a)(2) of title 49, Code of Federal Regulations, for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(C) ACQUISITIONS ON BEHALF OF RECIPIENTS OF FEDERAL FUNDS.—If a qualified organization described in subparagraph (A) has contracted with a State transportation department or other recipient of Federal funds to acquire the real property or interest on behalf of the recipient, the organization shall be considered to be an agent of the recipient for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(5) HIGHWAY STORMWATER DISCHARGE MITIGATION PROJECTS.—Of the amount apportioned to a State under section 104(b)(3) for a fiscal year, 2 percent shall be available only for projects and activities carried out under section 167.

* * * * * * *

§ 134. Metropolitan planning

(a) GENERAL REQUIREMENTS.—

* * * * * * *

(f) SCOPE OF PLANNING PROCESS.—

(1) IN GENERAL.—The metropolitan transportation planning process for a metropolitan area under this section shall provide for consideration of projects and strategies that will—

(A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

(B) increase the safety and security of the transportation system for motorized and nonmotorized users;

(C) increase the accessibility and mobility options available to people and for freight;

(D) protect and enhance the environment *(including the protection of habitat, water quality, and agricultural and forest land, while minimizing invasive species)*, promote energy conservation, and improve quality of life *(including minimizing adverse health effects from mobile source air pollution and promoting the linkage of the transportation and development goals of the metropolitan area);*

(E) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

(F) promote efficient system management and operation; and

(G) emphasize the preservation *and efficient use* of the existing transportation system.

(2) SELECTION OF FACTORS.—After soliciting and considering any relevant public comments, the metropolitan planning organization shall determine which of the factors described in paragraph (1) are most appropriate for the metropolitan area to consider.

[(2)**]** *(3)* FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a transportation improvement plan, a project or strategy, or the certification of a planning process.

(g) DEVELOPMENT OF LONG-RANGE TRANSPORTATION PLAN.—

(1) IN GENERAL.—Each metropolitan planning organization shall prepare, and update **[**periodically, according to a schedule that the Secretary determines to be appropriate**]** *every 4 years in areas designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)), and in areas that were nonattainment that have been redesignated to attainment in accordance with section 107(d)(3) of that Act (42 U.S.C. 7407(d)(3)), with a maintenance plan under section 175A of that Act (42 U.S.C. 7505a), or every 5 years in areas designated as attainment (as defined in section 107(d) of that Act (42 U.S.C. 7407(d)))*, a long-range transportation plan for its metropolitan area in accordance with the requirements of this subsection.

(2) LONG-RANGE TRANSPORTATION PLAN.—A long-range transportation plan under this section shall be in a form that the Secretary determines to be appropriate and shall contain, at a minimum, the following:

(A) An identification of transportation facilities (including but not necessarily limited to major roadways, transit, and multimodal and intermodal facilities) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions. In formulating the long-range transportation plan, the metropolitan planning organization shall consider factors described in subsection (f) as such factors relate to a 20-year forecast period.

(B) MITIGATION ACTIVITIES.—

(i) IN GENERAL.—A long-range transportation plan shall include a discussion of—

(I) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetland, and other environmental functions; and

(II) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

(ii) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

[(B)] *(C)* A financial plan that demonstrates how the adopted long-range transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted long-range transportation plan if reasonable additional resources beyond those identified in the financial plan were available. For the purpose of developing the long-range transportation plan, the metropolitan planning organization and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

[(C)] *(D)* Assess capital investment and other measures necessary to—

(i) ensure the preservation of the existing metropolitan transportation system, including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit facilities; and

(ii) make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods.

[(D)] *(E)* Indicate as appropriate proposed transportation enhancement activities.

(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas which are in nonattainment for ozone or carbon monoxide under the Clean Air Act, the metropolitan planning organization shall coordinate the development of a long-range transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

(4) CONSULTATION.—

(A) IN GENERAL.—In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

(B) ISSUES.—The consultation shall involve—

(i) comparison of transportation plans with State conservation plans or with maps, if available;

(ii) comparison of transportation plans to inventories of natural or historic resources, if available; or

(iii) consideration of areas where wildlife crossing structures may be needed to ensure connectivity between wildlife habitat linkage areas.

[(4)**]** *(5)* PARTICIPATION BY INTERESTED PARTIES.—**[**Before approving**]**

(A) IN GENERAL.—Before approving a long-range transportation plan, each metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the long-range transportation plan, in a manner that the Secretary deems appropriate.

(B) METHODS.—In carrying out subparagraph (A), the metropolitan planning organization shall, to the maximum extent practicable—

(i) hold any public meetings at convenient and accessible locations and times;

(ii) employ visualization techniques to describe plans; and

(iii) make public information available in electronically accessible format and means, such as the World Wide Web.

[(5)**]** *(6)* PUBLICATION OF LONG-RANGE TRANSPORTATION PLAN.—Each long-range transportation plan prepared by a metropolitan planning organization shall be—

(i) published or otherwise made readily available for public review *, including (to the maximum extent practicable) in electronically accessible formats and means such as the World Wide Web*; and

(ii) submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

[(6)**]** *(7)* SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (2)(B), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B).

(h) METROPOLITAN TRANSPORTATION IMPROVEMENT PROGRAM.—

(1) DEVELOPMENT.—

(A) IN GENERAL.—In cooperation with the State and any affected public transit operator, the metropolitan planning organization designated for a metropolitan area shall develop a transportation improvement program for the area for which the organization is designated.

(B) OPPORTUNITY FOR COMMENT.—In developing the program, the metropolitan planning organization, in cooperation with the State and any affected public transit operator, shall provide citizens, affected public agencies, representatives of transportation agency employees, freight

shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the proposed program.

(C) FUNDING ESTIMATES.—For the purpose of developing the transportation improvement program, the metropolitan planning organization, public transit agency, and State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

(D) UPDATING AND APPROVAL.—The program shall be updated at least once every [2 years] *4 years* and shall be approved by the metropolitan planning organization and the Governor.

(2) CONTENTS.—The transportation improvement program shall include—

(A) a priority list of proposed federally supported projects and strategies to be carried out within each [3-year] *4-year* period after the initial adoption of the transportation improvement program; and

(B) a financial plan that—

(i) demonstrates how the transportation improvement program can be implemented;

(ii) indicates resources from public and private sources that are reasonably expected to be available to carry out the program;

(iii) identifies innovative financing techniques to finance projects, programs, and strategies; and

(iv) may include, for illustrative purposes, additional projects that would be included in the approved transportation improvement program if reasonable additional resources beyond those identified in the financial plan were available.

(3) INCLUDED PROJECTS.—

(A) PROJECTS UNDER THIS CHAPTER AND CHAPTER 53 OF TITLE 49.—A transportation improvement program developed under this subsection for a metropolitan area shall include the projects and strategies within the area that are proposed for funding under this chapter and chapter 53 of title 49.

(B) PROJECTS UNDER CHAPTER 2.—

(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

(C) CONSISTENCY WITH LONG-RANGE TRANSPORTATION PLAN.—Each project shall be consistent with the long-range transportation plan developed under subsection (g) for the area.

(D) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

(4) NOTICE AND COMMENT.—Before approving a transportation improvement program, a metropolitan planning organization shall, in cooperation with the State and any affected public transit operator, provide citizens, affected public agencies,

representatives of transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with reasonable notice of and an opportunity to comment on the proposed program.

(5) SELECTION OF PROJECTS.—

(A) IN GENERAL.—Except as otherwise provided in subsection (i)(4) and in addition to the transportation improvement program development required under paragraph (1), the selection of federally funded projects in metropolitan areas shall be carried out, from the approved transportation improvement program—

(i) by—

(I) in the case of projects under this chapter, the State; and

(II) in the case of projects under chapter 53 of title 49, the designated transit funding recipients; and

(ii) in cooperation with the metropolitan planning organization.

(B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved transportation improvement program in place of another project in the program.

(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

(A) NO REQUIRED SELECTION.—Notwithstanding paragraph (2)(B)(iv), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv).

(B) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv) for inclusion in an approved transportation improvement program.

(7) PUBLICATION.—

(A) PUBLICATION OF TRANSPORTATION IMPROVEMENT PROGRAMS.—A transportation improvement program involving Government participation shall be published or otherwise made readily available by the metropolitan planning organization for public review.

(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—An annual listing of projects for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the metropolitan planning organization for public review. The listing shall be consistent with the categories identified in the transportation improvement program.

* * * * * * *

§ 135. Statewide planning

(a) GENERAL REQUIREMENTS.—

* * * * * * *

(c) SCOPE OF PLANNING PROCESS.—

(1) IN GENERAL.—Each State shall carry out a transportation planning process that provides for consideration of projects and strategies that will—

(A) support the economic vitality of the United States, the States, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

(B) increase the safety and security of the transportation system for motorized and nonmotorized users;

(C) increase the accessibility and mobility options available to people and for freight;

(D) protect and enhance the environment *(including the protection of habitat, water quality, and agricultural and forest land, while minimizing invasive species)*, promote energy conservation, and improve quality of life *(including minimizing adverse health effects from mobile source air pollution and promoting the linkage of the transportation and development goals of the State);*

(E) enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

(F) promote efficient system management and operation; and

(G) emphasize the preservation *and efficient use* of the existing transportation system.

(2) SELECTION OF PROJECTS AND STRATEGIES.—After soliciting and considering any relevant public comments, the State shall determine which of the projects and strategies described in paragraph (1) are most appropriate for the State to consider.

[(2)**]** *(3)* FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a transportation improvement plan, a project or strategy, or the certification of a planning process.

* * * * * * *

(e) LONG-RANGE TRANSPORTATION PLAN.—

(1) DEVELOPMENT.—Each State shall develop a long-range transportation plan, with a minimum 20-year forecast period, for all areas of the State, that provides for the development

and implementation of the intermodal transportation system of the State.

(2) CONSULTATION WITH GOVERNMENTS.—

(A) METROPOLITAN AREAS.—With respect to each metropolitan area in the State, the long-range transportation plan shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134 of this title and section 5303 of title 49.

(B) NONMETROPOLITAN AREAS.—With respect to each nonmetropolitan area, the long-range transportation plan shall be developed in consultation with affected local officials with responsibility for transportation.

(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the long-range transportation plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

(D) CONSULTATION, COMPARISON, AND CONSIDERATION.—

(i) IN GENERAL.—The long-range transportation plan shall be developed, as appropriate, in consultation with State and local agencies responsible for—

(I) land use management;

(II) natural resources;

(III) environmental protection;

(IV) conservation; and

(V) historic preservation.

(ii) COMPARISON AND CONSIDERATION.—Consultation under clause (i) shall involve—

(I) comparison of transportation plans to State conservation plans or maps, if available;

(II) comparison of transportation plans to inventories of natural or historic resources, if available; or

(III) consideration of areas where wildlife crossing structures may be needed to ensure connectivity between wildlife habitat linkage areas.

(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the long-range transportation plan, the State shall—

(A) provide citizens, affected public agencies, representatives of transportation agency employees, freight shippers, private providers of transportation, representatives of users of public transit, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed plan; and

[(B) identify transportation strategies necessary to efficiently serve the mobility needs of people.**]**

(B) METHODS.—In carrying out subparagraph (A), the State shall, to the maximum extent practicable—

(i) hold any public meetings at convenient and accessible locations and times;

(ii) employ visualization techniques to describe plans; and

(iii) make public information available in electronically accessible format and means, such as the World Wide Web.

(4) MITIGATION ACTIVITIES.—

(A) IN GENERAL.—A long-range transportation plan shall include a discussion of—

(i) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetlands, and other environmental functions; and

(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

(B) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

(5) TRANSPORTATION STRATEGIES.—A long-range transportation plan shall identify transportation strategies necessary to efficiently serve the mobility needs of people.

[(4)**]** *(6)* FINANCIAL PLAN.—The long-range transportation plan may include a financial plan that demonstrates how the adopted long-range transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

[(5)**]** *(7)* SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (4), a State shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (4).

(8) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Each long-range transportation plan prepared by a State shall be published or otherwise made available, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

* * * * * * *

(f) STATE TRANSPORTATION IMPROVEMENT PROGRAM.—

(1) DEVELOPMENT.—

(A) IN GENERAL.—Each State shall develop a transportation improvement **[**program**]** *(which program shall cover a period of 4 years and be updated every 4 years)* for all areas of the State.

* * * * * * *

§ 137. Fringe and corridor parking facilities

(a) The Secretary may approve as a project [on the Federal-aid urban system] *on a Federal-aid highway* the acquisition of land adjacent to the right-of-way outside a central business district, as defined by the Secretary, and the construction of publicly owned parking facilities thereon or within such right-of-way, including the use of the air space above and below the established grade line of the highway pavement, to serve an urban area of fifty thousand population or more. Such parking facility shall be located and designed in conjunction with existing or planned public transportation facilities. In the event fees are charged for the use of any such facility, the rate thereof shall not be in excess of that required for maintenance and operation (including compensation to any person for operating such facility).

(b) The Secretary shall not approve any project under this section until—

(1) he has determined that the State, or the political subdivision thereof, where such project is to be located, or any agency, or instrumentality of such State or political subdivision, has the authority and capability of constructing, maintaining, and operating the facility;

(2) he has entered into an agreement governing the financing, maintenance, and operation of the parking facility with such State, political subdivision, agency or instrumentality, including necessary requirements to insure that adequate public transportation services will be available to persons using such facility; and

(3) he has approved design standards for constructing such facility developed in cooperation with the State transportation department.

(c) The term "parking facilities" for purposes of this section shall include access roads, buildings, structures, equipment, improvements, and interests in lands.

(d) Nothing in this section, or in any rule or regulation issued under this section, or in any agreement required by this section, shall prohibit (1) any State, political subdivision, or agency or instrumentality thereof, from contracting with any person to operate any parking facility constructed under this section, or (2) any such person from so operating such facility.

(e) The Secretary shall not approve any project under this section unless he determines that it is based on a continuing comprehensive transportation planning process carried on in accordance with section 134 of this title.

(f)(1) The Secretary may approve for Federal financial assistance from funds apportioned under section 104(b)(4), projects for designating existing facilities, or for acquisition of rights of way or construction of new facilities, for use as perferential parking for carpools, provided that such facilities (A) are located outside of a central business district and within an interstate highway corridor, and (B) have as their primary purpose the reduction of vehicular traffic on the interstate highway.

(2) Nothing in this subsection, or in any rule or regulation issued under this subsection, or in any agreement required by this subsection, shall prohibit (A) any State, political subdivision, or

agency or instrumentality thereof, from contracting with any person to operate any parking facility designated or constructed under this subsection, or (B) any such person from so operating such facility. Any fees charged for the use of any such facility in connection with the purpose of this subsection shall not be in excess of the amount required for operation and maintenance, including compensation to any person for operating the facility.

(3) For the purposes of this subsection, the terms "facilities" and "parking facilities" are synonymous and shall have the same meaning given "parking facilities" in subsection (c) of this section.

* * * * * * *

§ 139. Infrastructure performance and maintenance program

(a) ESTABLISHMENT.—The Secretary shall establish and implement an infrastructure performance and maintenance program in accordance with this section.

(b) ELIGIBLE PROJECTS.—

(1) IN GENERAL.—A State may obligate funds allocated to the State under this section only for projects eligible under the Interstate maintenance program under section 119, the National Highway System program under section 103, the surface transportation program under section 133, the highway safety improvement program under section 148, the highway bridge replacement and rehabilitation program under section 144, and the congestion mitigation and air quality improvement program under section 149 that will—

(A) preserve, maintain, or otherwise extend, in a cost-effective manner, the useful life of existing highway infrastructure elements; or

(B) provide operational improvements (including traffic management and intelligent transportation system strategies and limited capacity enhancements) at points of recurring highway congestion.

(2) SET-ASIDE.—Notwithstanding any other provision of law, of the amounts made available under section 1101(a)(14) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, $439,000,000 shall be available for obligation to carry out this section without further appropriation.

(c) PERIOD OF AVAILABILITY.—

(1) OBLIGATION WITHIN 180 DAYS.—

(A) IN GENERAL.—Funds allocated to a State under this section shall be obligated by the State not later than 180 days after the date of apportionment.

(B) UNOBLIGATED FUNDS.—Any amounts that remain unobligated at the end of that period shall be allocated in accordance with subsection (d).

(2) OBLIGATION BY END OF FISCAL YEAR.—

(A) IN GENERAL.—All funds allocated or reallocated under this section shall remain available for obligation until the last day of the fiscal year for which the funds are apportioned.

(B) UNOBLIGATED FUNDS.—Any amounts allocated that remain unobligated at the end of the fiscal year shall lapse.

(d) REDISTRIBUTION OF ALLOCATED FUNDS AND OBLIGATION AUTHORITY.—

(1) IN GENERAL.—On the date that is 180 days after the date of allocation, or as soon thereafter as practicable, for each fiscal year, the Secretary shall—

(A) withdraw—

(i) any funds allocated to a State under this section that remain unobligated; and

(ii) an equal amount of obligation authority provided for the use of the funds in accordance with section 1101(a)(14) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003; and

(B) reallocate the funds and redistribute the obligation authority to those States that—

(i) have fully obligated all amounts allocated under this section for the fiscal year; and

(ii) demonstrate that the State is able to obligate additional amounts for projects eligible under this section before the end of the fiscal year.

(2) EQUITY BONUS.—The calculation and distribution of funds under section 105 shall be adjusted as a result of the allocation of funds under this subsection.

(e) FEDERAL SHARE PAYABLE.—The Federal share payable for a project funded under this section shall be determined in accordance with section 120.

* * * * * * *

§ 140. Nondiscrimination

(a) Prior to approving any programs for projects as provided for in ⟦subsection (a) of section 105 of this title⟧ *section 135*, the Secretary shall require assurances from any State desiring to avail itself of the benefits of this chapter that employment in connection with proposed projects will be provided without regard to race, color, creed, national origin, or sex. ⟦He⟧ *The Secretary* shall require that each State shall include in the advertised specifications, notification of the specific equal employment opportunity responsibilities of the successful bidder. In approving programs for projects on any of the Federal-aid systems, the Secretary shall, ⟦where he considers it necessary to assure⟧ *if necessary to ensure* equal employment opportunity, require certification by any State desiring to avail itself of the benefits of this chapter that there are in existence and available on a regional, statewide, or local basis, apprenticeship, skill improvement or other upgrading programs, registered with the Department of Labor or the appropriate State agency, if any, which provide equal opportunity for training and employment without regard to race, color, creed, national origin, or sex. In implementing such programs, a State may reserve training positions for persons who receive welfare assistance from such State; except that the implementation of any such program shall not cause current employees to be displaced or current positions to be supplanted or preclude workers that are participating in an apprenticeship, skill improvement, or other upgrading program registered with the Department of Labor or the appropriate State

agency from being referred to, or hired on, projects funded under this title without regard to the length of time of their participation in such program. The Secretary shall periodically obtain from the Secretary of Labor and the respective State transportation departments information which will enable [him] *the Secretary* to judge compliance with the requirements of this section and the Secretary of Labor shall render to the Secretary such assistance and information as [he] *the Secretary* shall deem necessary to carry out the equal employment opportunity program required hereunder.

(b) The Secretary, in cooperation with any other department or agency of the Government, State agency, authority, association, institution, Indian tribal government, corporation (profit or nonprofit), or any other organization or person, is authorized to develop, conduct, and administer [highway construction] *surface transportation* and technology training, including skill improvement programs, and to develop and fund summer transportation institutes. Whenever apportionments are made under section 104(b)(3) of this title, the Secretary shall deduct such sums [as he may deem necessary] *as necessary*, [not to exceed $2,500,000 for the transition quarter ending September 30, 1976], and not to exceed $10,000,000 per fiscal year, for the administration of this subsection. Such sums so deducted shall remain available until expended. The provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), shall not be applicable to contracts and agreements made under the authority herein granted to the Secretary. Notwithstanding any other provision of law, not to exceed ½ of 1 percent of funds apportioned to a State for the surface transportation program under section 104(b) and the bridge program under section 144 may be available to carry out this subsection upon request of the State transportation department to the Secretary.

(c) The Secretary, in cooperation with any other department or agency of the Government, State agency, authority, association, institution, Indian tribal governments, corporation (profit or nonprofit), or any other organization or person, is authorized to develop, conduct, and administer training programs and assistance programs in connection with any program under this title in order that minority businesses may achieve proficiency to compete, on an equal basis, for contracts and subcontracts. Whenever apportionments are made under [subsection 104(b)(3) of this title] *subsection 104(b)(3)*, the Secretary shall deduct such sums as [he may deem] necessary, not to exceed $10,000,000 per fiscal year, for the administration of this subsection. The provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), shall not be applicable to contracts and agreements made under the authority herein granted to the Secretary notwithstanding the provisions of section 302(e) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(e)).

(d) INDIAN EMPLOYMENT [AND CONTRACTING].—Consistent with section 703(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2(i)), nothing in this section shall preclude the preferential employment of Indians living on or near a reservation on projects and contracts on Indian reservation roads. States may implement a preference for employment of Indians on projects carried out

under this title near Indian reservations. The Secretary shall cooperate with Indian tribal governments and the States to implement this subsection.

* * * * * * *

[§ 144. Highway bridge replacement and rehabilitation program

[(a) Congress hereby finds and declares it to be in the vital interest of the Nation that a highway bridge replacement and rehabilitation program be established to enable the several States to replace or rehabilitate highway bridges over waterways, other topographical barriers, other highways, or railroads when the States and the Secretary find that a bridge is significantly important and is unsafe because of structural deficiencies, physical deterioration, or functional obsolescence.**]**

§ ≠∞∞∞. Ηιγηςαυ βριδγε προγραμ

(a) CONGRESSIONAL STATEMENT.—Congress finds and declares that it is in the vital interest of the United States that a highway bridge program be established to enable States to improve the condition of their bridges through replacement, rehabilitation, and systematic preventative maintenance on highway bridges over waterways, other topographical barriers, other highways, or railroads at any time at which the States and the Secretary determine that a bridge is unsafe because of structural deficiencies, physical deterioration, or functional obsolescence.

(b) The Secretary, in consultation with the States, shall (1) inventory all those highway bridges on any Federal-aid system which are bridges over waterways, other topographical barriers, other highways, and railroads; (2) classify them according to serviceability, safety, and essentiality for public use; (3) based on that classification, assign each a priority for replacement or rehabilitation; and (4) determine the cost of replacing each such bridge with a comparable facility or by rehabilitating such bridge.

(c)(1) The Secretary, in consultation with the States, shall (1) inventory all those highway bridges on public roads, other than those on any Federal-aid system, which are bridges over waterways, other topographical barriers, other highways, and railroads, (2) classify them according to serviceability, safety, and essentiality for public use, (3) based on the classification, assign each a priority for replacement or rehabilitation and (4) determine the cost of replacing each such bridge with a comparable facility or of rehabilitating such bridge.

(2) The Secretary may, at the request of a State, inventory bridges, on and off the Federal-aid system, for historic significance.

(3) INVENTORY OF INDIAN RESERVATION AND PARK BRIDGES.—As part of the activities carried out under paragraph (1), the Secretary, in consultation with the Secretary of the Interior, shall (A) inventory all those highway bridges on Indian reservation roads and park roads which are bridges over waterways, other topographical barriers, other highways, and railroads, (B) classify them according to serviceability, safety, and essentiality for public use, (C) based on the classification,

assign each a priority for replacement or rehabilitation, and (D) determine the cost of replacing each such bridge with a comparable facility or of rehabilitating such bridge.

[(d) Whenever any State or States make application to the Secretary for assistance in replacing or rehabilitating a highway bridge which the priority system established under subsection (b) and (c) of this section shows to be eligible, the Secretary may approve Federal participation in replacing such bridge with a comparable facility or in rehabilitating such bridge. Whenever any State makes application to the Secretary for assistance in painting and seismic retrofit, or applying calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or installing scour countermeasures to, the structure of a highway bridge, the Secretary may approve Federal participation in the painting or seismic retrofit of, or application of such acetate or sodium acetate/formate or such anti-icing or de-icing composition or installation of such countermeasures to, such structure. The Secretary shall determine the eligibility of highway bridges for replacement or rehabilitation for each State based upon the unsafe highway bridges in such State, except that a State may carry out a project for seismic retrofit of a bridge under this section without regard to whether the bridge is eligible for replacement or rehabilitation under this section. In approving projects (other than projects for bridge structure painting or seismic retrofit or application of such acetate or sodium acetate/formate or such anti-icing or de-icing composition or installation of such countermeasures) under this section, the Secretary shall give consideration to those projects which will remove from service those highway bridges most in danger of failure.]

(d) PARTICIPATION IN PROGRAM.—

(1) IN GENERAL.—On application by a State to the Secretary for assistance in replacing or rehabilitating a highway bridge that has been determined to be eligible for replacement or rehabilitation under subsection (b) or (c), the Secretary may approve Federal participation in—

(A) replacing the bridge with a comparable bridge; or

(B) rehabilitating the bridge.

(2) SPECIFIC KINDS OF REHABILITATION.—On application by a State to the Secretary for assistance in painting, seismic retrofit, or preventative maintenance of, or installation of scour countermeasures or applying calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions to, the structure of a highway bridge, the Secretary may approve Federal participation in the painting, seismic retrofit, or preventative maintenance of, or installation of scour countermeasures or application of acetate or sodium acetate/formate or such anti-icing or de-icing composition to, the structure.

(3) ELIGIBILITY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall determine the eligibility of highway bridges for replacement or rehabilitation for each State based on the number of unsafe highway bridges in the State.

(B) PREVENTATIVE MAINTENANCE.—A State may carry out a project for preventative maintenance on a bridge, seismic retrofit of a bridge, or installation of scour countermeasures to a bridge under this section without regard to whether the bridge is eligible for replacement or rehabilitation under this section.

(e) Funds authorized to carry out this section shall be apportioned among the several States on October 1 of the fiscal year for which authorized in accordance with this subsection. Each deficient bridge shall be placed into one of the following categories: (1) Federal-aid system bridges eligible for replacement, (2) Federal-aid system bridges eligible for rehabilitation, (3) off-system bridges eligible for replacement, and (4) off-system bridges eligible for rehabilitation. The ⟦square footage⟧ *area* of deficient bridges in each category shall be multiplied by the respective unit price on a State-by-State basis, as determined by the Secretary; and the total cost in each State divided by the total cost of the deficient bridges in all States shall determine the apportionment factors. For purposes of the preceding sentence, the total cost of deficient bridges in a State and in all States shall be reduced by ⟦the total cost of any highway bridges constructed under subsection (m) in such State, relating to replacement of destroyed bridges and ferryboat services, and⟧, if a State transfers funds apportioned to the State under this section in a fiscal year beginning after September 30, ⟦1997⟧ *2003*, to any other apportionment of funds to such State under this title, the total cost of deficient bridges in such State and in all States to be determined for the succeeding fiscal year shall be reduced by the amount of such transferred funds. No State shall receive more than 10 per centum or less than 0.25 per centum of the total apportionment for any one fiscal year. The Secretary shall make these determinations based upon the latest available data, which shall be updated annually. Funds apportioned under this section shall be available for expenditure for the same period as funds apportioned for projects on ⟦the Federal-aid primary system⟧ *Federal-aid highways* under this title. Any funds not obligated at the expiration of such period shall be reapportioned by the Secretary to the other States in accordance with this subsection. The use of funds authorized under this section to carry out a project for the seismic retrofit of a bridge shall not affect the apportionment of funds under this section.

⟦(f) The Federal share payable on account of any project under this section shall be 80 per centum of the cost thereof.

⟦(g) SET ASIDES.—

⟦(1) DISCRETIONARY BRIDGE PROGRAM.—

⟦(A) FISCAL YEARS 1992 THROUGH 1997.—Of the amounts authorized for each of fiscal years 1992, 1993, 1994, 1995, 1996, and 1997 by section 103 of the Intermodal Surface Transportation Efficiency Act of 1991, all but $57,000,000 in the case of fiscal year 1992, $68,000,000 in the case of fiscal years 1993 and 1994, and $69,000,000 in the case of fiscal years 1995, 1996, and 1997 shall be apportioned as provided in subsection (e) of this section. $49,000,000 in the case of fiscal year 1992, $59,500,000 in the case of fiscal years 1993 and 1994, and

$60,500,000 in the case of fiscal years 1995, 1996, and 1997 of the amount authorized for each of such fiscal years shall be available for obligation on the date of each such apportionment in the same manner and to the same extent as the sums apportioned on such date, except that the obligation of $49,000,000 in the case of fiscal year 1992, $59,500,000 in the case of fiscal years 1993 and 1994, and $60,500,000 in the case of fiscal years 1995, 1996, and 1997 shall be at the discretion of the Secretary, and $8,500,000 per fiscal year ($8,000,000 in the case of fiscal year 1992) of the amount authorized for each of such fiscal years shall be available in accordance with section 1039 of the Intermodal Surface Transportation Efficiency Act of 1991, relating to highway timber bridges.

[(B) FISCAL YEAR 1998.—Of the amounts authorized to be appropriated to carry out the bridge program under this section for fiscal year 1998, all but $25,000,000 shall be apportioned as provided in subsection (e) of this section. Such $25,000,000 shall be available only for projects for the seismic retrofit of a bridge described in subsection (l).

[(C) FISCAL YEARS 1999 THROUGH 2003.—Of the amounts authorized to be appropriated to carry out the bridge program under this section for each of fiscal years 1999 through 2003, all but $100,000,000 shall be apportioned as provided in subsection (e). Such $100,000,000 shall be available at the discretion of the Secretary; except that not to exceed $25,000,000 shall be available only for projects for the seismic retrofit of bridges, including projects in the New Madrid fault region.

[(2) ELIGIBLE DISCRETIONARY PROJECTS.—Subject to section 149(d) of the Federal-Aid Highway Act of 1987, amounts made available by paragraph (1) for obligation at the discretion of the Secretary may be obligated only—

[(A) for a project for a highway bridge the replacement or rehabilitation cost of which is more than $10,000,000, and

[(B) for a project for a highway bridge the replacement or rehabilitation cost of which is less than $10,000,000 if such cost is at least twice the amount apportioned to the State in which such bridge is located under subsection (e) for the fiscal year in which application is made for a grant for such bridge.

[(3) OFF-SYSTEM BRIDGES.—Not less than 15 percent nor more than 35 percent of the amount apportioned to each State in each of fiscal years 1987 through 2003 shall be expended for projects to replace, rehabilitate, paint or seismic retrofit, or apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or install scour countermeasures to highway bridges located on public roads, other than those on a Federal-aid highway. The Secretary, after consultation with State and local officials, may, with respect to such State, reduce the requirement for expenditure for bridges not on a Federal-aid highway when the Secretary determines

that such State has inadequate needs to justify such expenditure.]

(f) SET ASIDES.—

(1) DISCRETIONARY BRIDGE PROGRAM.—

(A) IN GENERAL.—Of the amounts authorized to be appropriated to carry out the bridge program under this section for each of fiscal years 2004 through 2009, all but $150,000,000 shall be apportioned as provided in subsection (e).

(B) AVAILABILITY.—The $150,000,000 referred to in subparagraph (A) shall be available at the discretion of the Secretary, except that not to exceed $25,000,000 of that amount shall be available only for projects for the seismic retrofit of bridges.

(C) SET ASIDES.—For fiscal year 2004, the Secretary shall provide—

(i) $50,000,000 to the State of Nevada for construction of a replacement of the federally-owned bridge over the Hoover Dam in the Lake Mead National Recreation Area; and

(ii) $50,000,000 to the State of Missouri for construction of a structure over the Mississippi River to connect the city of St. Louis, Missouri, to the State of Illinois.

(2) OFF-SYSTEM BRIDGES.—

(A) IN GENERAL.—Not less than 15 percent of the amount apportioned to each State in each of fiscal years 2004 through 2009 shall be expended for projects to replace, rehabilitate, perform systematic preventative maintenance or seismic retrofit, or apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or install scour countermeasures to highway bridges located on public roads, other than those on a Federal-aid highway.

(B) REDUCTION OF EXPENDITURES.—The Secretary, after consultation with State and local officials, may, with respect to the State, reduce the requirement for expenditure for bridges not on a Federal-aid highway if the Secretary determines that the State has inadequate needs to justify the expenditure.

[(h)] *(g)* Notwithstanding any other provision of law, the General Bridge Act of 1946 (33 U.S.C. 525–533) shall apply to bridges authorized to be replaced, in whole or in part, by this section, except that subsection (b) of section 502 of such Act of 1946 and section 9 of the Act of March 3, 1899 (30 Stat. 1151) shall not apply to any bridge constructed, reconstructed, rehabilitated, or replaced with assistance under this title, if such bridge is over waters (1) which are not used and are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce, and (2) which are (a) not tidal, or (b) if tidal, used only by recreational boating, fishing, and other small vessels less than 21 feet in length.

[(i)] *(h)* INVENTORIES AND REPORTS.—The Secretary shall—

(1) report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on projects approved under this section;

(2) annually revise the current inventories authorized by subsections (b) and (c) of this section;

(3) report to such committees on such inventories; [and]

(4) report to such committees such recommendations as the Secretary may have for improvements of the program authorized by this section[.]; *and*

(5) biennially submit such reports as are required under this subsection to the appropriate committees of Congress simultaneously with the report required by section 502(g).

Such reports shall be submitted to such committees biennially at the same time as the report required by section 307(f) of this title is submitted to Congress.

[(j)] *(i)* Sums apportioned to a State under this section shall be made available for obligation throughout such State on a fair and equitable basis.

[(k)] *(j)* Not later than six months after the date of enactment of this subsection, and periodically thereafter, the Secretary shall review the procedure used in approving or disapproving applications submitted under this section to determine what changes, if any, may be made to expedite such procedure. Any such changes shall be implemented by the Secretary as soon as possible. Not later than nine months after the date of enactment of this subsection, the Secretary shall submit a report to Congress which describes such review and such changes, including any recommendations for legislative changes.

[(l)] *(k)* Notwithstanding any other provision of law, any bridge which is owned and operated by an agency (1) which does not have taxing powers, (2) whose functions include operating a federally assisted public transit system subsidized by toll revenues, shall be eligible for assistance under this section but the amount of such assistance shall in no event exceed the cumulative amount which such agency has expended for capital and operating costs to subsidize such transit system. Before authorizing an expenditure of funds under this subsection, the Secretary shall determine that the applicant agency has insufficient reserves, surpluses, and projected revenues (over and above those required for bridge and transit capital and operating costs) to fund the necessary bridge replacement or rehabilitation project. Any non-Federal funds expended for the seismic retrofit of the bridge may be credited toward the non-Federal share required as a condition of receipt of any Federal funds for seismic retrofit of the bridge made available after the date of the expenditure.

[(m)] *(l)* REPLACEMENT OF DESTROYED BRIDGES AND FERRYBOAT SERVICE.—

(1) GENERAL RULE.—Notwithstanding any other provision of this section or of any other provision of law, a State may utilize any of the funds provided under this section to construct any bridge which—

(A) replaces any low water crossing (regardless of the length of such low water crossing),

(B) replaces any bridge which was destroyed prior to 1965,

(C) replaces any ferry which was in existence on January 1, 1984, or

(D) replaces any road bridges rendered obsolete as a result of United States Corps of Engineers flood control or channelization projects and not rebuilt with funds from the United States Corps of Engineers.

(2) FEDERAL SHARE.—The Federal share payable on any bridge construction carried out under paragraph (1) shall be 80 percent of the cost of such construction.

[(n)] *(m)* OFF-SYSTEM BRIDGE PROGRAM.—Notwithstanding any other provision of law, with respect to any project not on a Federal-aid highway for the replacement of a bridge or rehabilitation of a bridge which is wholly funded from State and local sources, is eligible for Federal funds under this section, is noncontroversial, is certified by the State to have been carried out in accordance with [all standards] *all general engineering standards* applicable to such projects under this section, and is determined by the Secretary upon completion to be no longer a deficient bridge, any amount expended after the date of the enactment of this subsection from State and local sources for such project in excess of 20 percent of the cost of construction thereof may be credited to the non-Federal share of the cost of the projects in such State which are eligible for Federal funds under this section. Such crediting shall be in accordance with such procedures as the Secretary may establish.

[(o)] *(n)* HISTORIC BRIDGE PROGRAM.—

(1) COORDINATION.—The Secretary shall, in cooperation with the States, implement the programs described in this section in a manner that encourages the inventory, retention, rehabilitation, adaptive reuse, and future study of historic bridges.

(2) STATE INVENTORY.—The Secretary shall require each State to complete an inventory of all bridges on and off the Federal-aid system to determine their historic significance.

(3) ELIGIBILITY.—Reasonable costs associated with actions to preserve, or reduce the impact of a project under this chapter on, the historic integrity of historic bridges shall be eligible as reimbursable project costs under this [title (including this section)] *section* if the load capacity and safety features of the bridge are adequate to serve the intended use for the life of the bridge; except that in the case of a bridge which is no longer used for motorized vehicular traffic, the costs eligible as reimbursable project costs pursuant to this subsection shall not exceed *200 percent of* the estimated cost of demolition of such bridge.

(4) PRESERVATION.—Any State which proposes to demolish a historic bridge for a replacement project with funds made available to carry out this section shall first make the bridge available for donation to a State, locality, or responsible private entity if such State, locality, or responsible entity enters into an agreement to—

(A) maintain the bridge and the features that give it its historic significance; and

(B) assume all future legal and financial responsibility for the bridge, which may include an agreement to hold the State highway agency harmless in any liability action.

Costs incurred by the State to preserve the historic bridge, including funds made available to the State, locality, or private entity to enable it to accept the bridge, shall be eligible as reimbursable project costs under this chapter up to an amount not to exceed *200 percent of* the cost of demolition. Any bridge preserved pursuant to this paragraph shall thereafter not be eligible for any other funds authorized pursuant to this [title] *section.*

(5) HISTORIC BRIDGE DEFINED.—As used in this subsection, "historic bridge" means any bridge that is listed on, or eligible for listing on, the National Register of Historic Places.

[(p)] *(o)* APPLICABILITY OF STATE STANDARDS FOR PROJECTS.—A project not on a Federal-aid highway under this section shall be designed, constructed, operated, and maintained in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards.

[(q)] *(p)* As used in this section the term "rehabilitate" in any of its forms means major work necessary to restore the structural integrity of a bridge as well as work necessary to correct a major safety defect.

(q) FEDERAL SHARE.—The Federal share of the cost of a project payable from funds made available to carry out this section shall be the share applicable under section 120(b), as adjusted under subsection (d) of that section.

* * * * * * *

[§ 147. Priority primary routes

[(a) High traffic sections of highways on the Federal-aid primary system which connect to the Interstate System shall be selected by each State transportation department, in consultation with appropriate local officials, subject to approval by the Secretary, for priority of improvement to supplement the service provided by the Interstate System by furnishing needed adequate traffic collector and distributor facilities. For the purpose of this section such highways shall hereafter in this section be referred to as "priority primary routes".

[(b) The Federal share of any project on a priority primary route shall be that provided in section 120(a) of this title. All provisions of this title applicable to the Federal-aid primary system shall be applicable to the priority primary routes selected under this section.

[(c) The initial selection of the priority primary routes and the estimated cost of completing such routes shall be reported to Congress on or before July 1, 1974.

[(d) There is authorized to be appropriated out of the Highway Trust Fund to carry out this section not to exceed $100,000,000 for the fiscal year ending June 30, 1974, $200,000,000 for the fiscal

year ending June 30, 1975, and $300,000,000 for the fiscal year ending June 30, 1976.]

§ 147. Construction of ferry boats and ferry terminal facilities

(a) IN GENERAL.—The Secretary shall carry out a program for construction of ferry boats and ferry terminal facilities in accordance with section 129(c).

(b) FEDERAL SHARE.—The Federal share of the cost of construction of ferry boats and ferry terminals under this section shall be 80 percent.

(c) SET ASIDE FOR PROJECTS ON NATIONAL HIGHWAY SYSTEM.—Before any apportionment is made under section 104(b)(3), the Secretary shall set aside $20,000,000 for each of fiscal years 2004 through 2009, for obligation by the Secretary, for—

(1) the construction or refurbishment of ferry boats and ferry terminal facilities;

(2) the acquisition of zero- or low-emission ferry boats, or projects that advance the ship-building capacities of the United States through the introduction of new technology; and

(3) approaches to facilities described in paragraph (1) located within marine highway systems that are part of the National Highway System.

(d) FUNDING.—There shall be made available to the Secretary to carry out this section, out of the Highway Trust Fund (other than the Mass Transit Account), for obligation at the discretion of the Secretary and to remain available until expended, $38,000,000 for the period of fiscal years 2004 through 2009.

* * * * * * *

[§ 148. Development of a national scenic and recreational highway

[(a) As soon as possible after the date of enactment of this section, the Secretary shall establish criteria for the location and construction or reconstruction of the Great River Road by the ten States bordering the Mississippi River. Such criteria shall include requirements that—

[(1) priority be given in the location of the Great River Road near or easily accessible to the larger population centers of the State and further priority be given to the construction and improvement of the Great River Road in the proximity of the confluence of the Mississippi River and the Wisconsin River;

[(2) the Great River Road be connected with other Federal-aid highways and preferably with the Interstate System;

[(3) the Great River Road be marked with uniform identifying signs;

[(4) effective control, as defined in section 131 of this title, of signs, displays, and devices will be provided along the Great River Road;

[(5) the provisions of section 129(a) of this title shall not apply to any bridge or tunnel on the Great River Road and no fees shall be charged for the use of any facility constructed with assistance under this section, except for parks, rec-

reational areas, and historical sites operated by State or local governments where admission fees may be charged to cover operational costs.

[(b) For the purpose of this section, the term "construction" includes the acquisition of areas of historical, archeological, or scientific interest, necessary easements for scenic purposes, and the construction or reconstruction of roadside rest areas (including appropriate recreational facilities), scenic viewing areas, and other appropriate facilities as determined by the Secretary.

[(c) Highways constructed or reconstructed pursuant to this section (except subsection (f)) shall be part of the Federal-aid system.

[(d) Funds appropriated for each fiscal year pursuant to subsection (g) shall be apportioned among the ten States bordering the Mississippi River on the basis of their relative needs as determined by the Secretary for payments to carry out this section.

[(e) The Federal share of the cost of any project for any construction or reconstruction pursuant to the preceding subsections of this section shall be that provided in section 120 of this title for the Federal-aid system on which such project is located, and if such project is not on such a system, such share shall be 75 per centum of such cost.

[(f) The Secretary is authorized to consult with the heads of other Federal departments and agencies having jurisdiction over Federal lands open to the public in order to enter appropriate arrangements for necessary construction or reconstruction of highways on such lands to carry out this section. Highways constructed or reconstructed by a State pursuant to this section which are not on a Federal-aid system, and highways constructed or reconstructed under this subsection, shall be subject to the criteria applicable to highways constructed or reconstructed pursuant to subsection (c) of this section. Funds authorized pursuant to subsection (g) shall be used to pay the entire cost of construction or reconstruction pursuant to the first sentence of this subsection.

[(g) There is authorized to be appropriated to carry out this section, out of the Highway Trust Fund, for construction or reconstruction of roads on a Federal-aid highway system, not to exceed $10,000,000 for the fiscal year ending June 30, 1974, $25,000,000 for the fiscal year ending June 30, 1975, and $25,000,000 for the fiscal year ending June 30, 1976, for allocations to the States pursuant to this section, and there is authorized to be appropriated to carry out this section out of any money in the Treasury not otherwise appropriated, not to exceed $10,000,000 for each of the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976, for construction and reconstruction of roads not on a Federal-aid highway system.

[(h) The Secretary is authorized to provide for the construction of such spur highways as he determines necessary to connect the Great River Road, by the most direct feasible routes, with existing bridges across the Mississippi for the purpose of providing persons traveling such road with access to significant scenic, historical, recreational, or archeological features on the opposite side of the Mississippi River from the Great River Road.]

§ 148. Highway safety improvement program

(a) DEFINITIONS.—In this section:

(1) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term "highway safety improvement program" means the program carried out under this section.

(2) HIGHWAY SAFETY IMPROVEMENT PROJECT.—

(A) IN GENERAL.—The term "highway safety improvement project" means a project described in the State strategic highway safety plan that—

(i) corrects or improves a hazardous road location or feature; or

(ii) addresses a highway safety problem.

(B) INCLUSIONS.—The term "highway safety improvement project" includes a project for—

(i) an intersection safety improvement;

(ii) pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition);

(iii) installation of rumble strips or another warning device, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists and pedestrians;

(iv) installation of a skid-resistant surface at an intersection or other location with a high frequency of accidents;

(v) an improvement for pedestrian or bicyclist safety;

(vi)(I) construction of any project for the elimination of hazards at a railway-highway crossing that is eligible for funding under section 130, including the separation or protection of grades at railway-highway crossings;

(II) construction of a railway-highway crossing safety feature; or

(III) the conduct of a model traffic enforcement activity at a railway-highway crossing;

(vii) construction of a traffic calming feature;

(viii) elimination of a roadside obstacle;

(ix) improvement of highway signage and pavement markings;

(x) installation of a priority control system for emergency vehicles at signalized intersections;

(xi) installation of a traffic control or other warning device at a location with high accident potential;

(xii) safety-conscious planning;

(xiii) improvement in the collection and analysis of crash data;

(xiv) planning, equipment, operational activities, or traffic enforcement activities (including police assistance) relating to workzone safety;

(xv) installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of motorists and workers), and crash attenuators;

(xvi) the addition or retrofitting of structures or other measures to eliminate or reduce accidents involving vehicles and wildlife; or

(xvii) installation and maintenance of signs (including fluorescent, yellow-green signs) at pedestrian-bicycle crossings and in school zones.

(3) SAFETY PROJECT UNDER ANY OTHER SECTION.—

(A) IN GENERAL.—The term "safety project under any other section" means a project carried out for the purpose of safety under any other section of this title.

(B) INCLUSION.—The term "safety project under any other section" includes a project to—

(i) promote the awareness of the public and educate the public concerning highway safety matters; or

(ii) enforce highway safety laws.

(4) STATE HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term "State highway safety improvement program" means projects or strategies included in the State strategic highway safety plan carried out as part of the State transportation improvement program under section 135(f).

(5) STATE STRATEGIC HIGHWAY SAFETY PLAN.—The term "State strategic highway safety plan" means a plan developed by the State transportation department that—

(A) is developed after consultation with—

(i) a highway safety representative of the Governor of the State;

(ii) regional transportation planning organizations, if any;

(iii) representatives of major modes of transportation;

(iv) local traffic enforcement officials;

(v) persons responsible for administering section 130 at the State level;

(vi) representatives conducting Operation Lifesaver;

(vii) representatives conducting a motor carrier safety program under section 31104 or 31107 of title 49;

(viii) motor vehicle administration agencies; and

(ix) other major State and local safety stakeholders;

(B) analyzes and makes effective use of State, regional, or local crash data;

(C) addresses engineering, management, operation, education, enforcement, and emergency services elements of highway safety as key factors in evaluating highway projects;

(D) considers safety needs of, and high-fatality segments of, public roads;

(E) considers the results of State, regional, or local transportation and highway safety planning processes in existence as of the date of enactment of this section;

(F) describes a program of projects or strategies to reduce or eliminate safety hazards;

(G) is approved by the Governor of the State or a responsible State agency; and

(H) is consistent with the requirements of section 135(f).

(b) PROGRAM.—

(1) IN GENERAL.—The Secretary shall carry out a highway safety improvement program.

(2) PURPOSE.—The purpose of the highway safety improvement program shall be to achieve a significant reduction in traffic fatalities and serious injuries on public roads.

(c) ELIGIBILITY.—

(1) IN GENERAL.—To receive funds under this section, a State shall have in effect a State highway safety improvement program under which the State—

(A) develops and implements a State strategic highway safety plan that identifies and analyzes highway safety problems and opportunities as provided in paragraph (2);

(B) produces a program of projects or strategies to reduce identified safety problems; and

(C) evaluates the plan on a regular basis to ensure the accuracy of the data and priority of proposed improvements.

(2) IDENTIFICATION AND ANALYSIS OF HIGHWAY SAFETY PROBLEMS AND OPPORTUNITIES.—As part of the State strategic highway safety plan, a State shall—

(A) have in place a crash data system with the ability to perform safety problem identification and countermeasure analysis;

(B) based on the analysis required by subparagraph (A), identify hazardous locations, sections, and elements (including roadside obstacles, railway-highway crossing needs, and unmarked or poorly marked roads) that constitute a danger to motorists, bicyclists, pedestrians, and other highway users;

(C) adopt strategic and performance-based goals that—

(i) address traffic safety, including behavioral and infrastructure problems and opportunities on all public roads;

(ii) focus resources on areas of greatest need; and

(iii) are coordinated with other State highway safety programs;

(D) advance the capabilities of the State for traffic records data collection, analysis, and integration with other sources of safety data (such as road inventories) in a manner that—

(i) complements the State highway safety program under chapter 4 and the commercial vehicle safety plan under section 31102 of title 49;

(ii) includes all public roads; and

(iii) identifies hazardous locations, sections, and elements on public roads that constitute a danger to motorists, bicyclists, and pedestrians;

(E)(i) determine priorities for the correction of hazardous road locations, sections, and elements (including

railway-highway crossing improvements), as identified through crash data analysis;

(ii) identify opportunities for preventing the development of such hazardous conditions; and

(iii) establish and implement a schedule of highway safety improvement projects for hazard correction and hazard prevention; and

(F)(i) establish an evaluation process to analyze and assess results achieved by highway safety improvement projects carried out in accordance with procedures and criteria established by this section; and

(ii) use the information obtained under clause (i) in setting priorities for highway safety improvement projects.

(d) ELIGIBLE PROJECTS.—

(1) IN GENERAL.—A State may obligate funds apportioned to the State under this section to carry out—

(A) any highway safety improvement project on any public road or publicly owned bicycle or pedestrian pathway or trail; or

(B) as provided in subsection (e), for other safety projects.

(2) USE OF OTHER FUNDING FOR SAFETY.—

(A) EFFECT OF SECTION.—Nothing in this section prohibits the use of funds made available under other provisions of this title for highway safety improvement projects.

(B) USE OF OTHER FUNDS.—States are encouraged to address the full scope of their safety needs and opportunities by using funds made available under other provisions of this title (except a provision that specifically prohibits that use).

(e) FLEXIBLE FUNDING FOR STATES WITH A STRATEGIC HIGHWAY SAFETY PLAN.—

(1) IN GENERAL.—To further the implementation of a State strategic highway safety plan, a State may use up to 25 percent of the amount of funds made available under this section for a fiscal year to carry out safety projects under any other section as provided in the State strategic highway safety plan.

(2) OTHER TRANSPORTATION AND HIGHWAY SAFETY PLANS.—Nothing in this subsection requires a State to revise any State process, plan, or program in effect on the date of enactment of this section.

(f) REPORTS.—

(1) IN GENERAL.—A State shall submit to the Secretary a report that—

(A) describes progress being made to implement highway safety improvement projects under this section;

(B) assesses the effectiveness of those improvements; and

(C) describes the extent to which the improvements funded under this section contribute to the goals of—

(i) reducing the number of fatalities on roadways;

(ii) reducing the number of roadway-related injuries;

(iii) reducing the occurrences of roadway-related accidents;

(iv) mitigating the consequences of roadway-related accidents; and

(v) reducing the occurrences of roadway-railroad grade crossing accidents.

(2) CONTENTS; SCHEDULE.—The Secretary shall establish the content and schedule for a report under paragraph (1).

(g) FEDERAL SHARE OF HIGHWAY SAFETY IMPROVEMENT PROJECTS.—The Federal share of the cost of a highway safety improvement project carried out with funds made available under this section shall be 90 percent.

* * * * * * *

§ 149. Congestion mitigation and air quality improvement program

(a) ESTABLISHMENT.—The Secretary shall establish and implement a congestion mitigation and air quality improvement program in accordance with this section.

(b) ELIGIBLE PROJECTS.—Except as provided in subsection (c), a State may obligate funds apportioned to it under section 104(b)(2) for the congestion mitigation and air quality improvement program only for a transportation project or program if the project or program is for an area in the State that is or was designated as a nonattainment area for ozone, carbon monoxide, or particulate matter under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) and classified pursuant to section 181(a), 186(a), 188(a), or 188(b) of the Clean Air Act (42 U.S.C. 7511(a), 7512(a), 7513(a), or 7513(b)) or is or was designated as a nonattainment area under such section 107(d) after December 31, 1997, and—

(1)(A) if the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines, on the basis of information published by the Environmental Protection Agency pursuant to section 108(f)(1)(A) of the Clean Air Act (other than clause (xvi) of such section), that the project or program is likely to contribute to—

(i) the attainment of a national ambient air quality standard; or

(ii) the maintenance of a national ambient air quality standard in a maintenance area; or

(B) in any case in which such information is not available, if the Secretary, after such consultation, determines that the project or program is part of a program, method, or strategy described in such section;

(2) if the project or program is included in a State implementation plan that has been approved pursuant to the Clean Air Act and the project will have air quality benefits;

(3) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the project or program is likely to contribute to the attainment of a national ambient air quality standard, whether through reductions in vehicle miles traveled, fuel consumption, or through other factors;

(4) to establish or operate a traffic monitoring, management, and control facility or program if the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the facility or program is likely to contribute to the attainment of a national ambient air quality standard; [or]

(5) if the program or project improves traffic flow, including projects to improve signalization, construct high occupancy vehicle lanes, improve intersections, *improve transportation systems management and operations,* and implement intelligent transportation system strategies and such other projects that are eligible for assistance under this section on the day before the date of enactment of this paragraph[.] *or*

(6) if the project or program is for the purchase of alternative fuel (as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211)) or biodiesel.

No funds may be provided under this section for a project which will result in the construction of new capacity available to single occupant vehicles unless the project consists of a high occupancy vehicle facility available to single occupant vehicles only at other than peak travel times. In areas of a State which are nonattainment for ozone or carbon monoxide, or both, and for PM–10 resulting from transportation activities, the State may obligate such funds for any project or program under paragraph (1) or (2) without regard to any limitation of the Department of Transportation relating to the type of ambient air quality standard such project or program addresses.

(c) STATES RECEIVING MINIMUM APPORTIONMENT.—

(1) STATES WITHOUT A NONATTAINMENT AREA.—If a State does not have, and never has had, a nonattainment area designated under the Clean Air Act (42 U.S.C. 7401 et seq.), the State may use funds apportioned to the State under section 104(b)(2) [for any project eligible under the surface transportation program under section 133] *for any project in the State that—*

(A) would otherwise be eligible under this section as if the project were carried out in a nonattainment or maintenance area; or

(B) is eligible under the surface transportation program under section 133.

(2) STATES WITH A NONATTAINMENT AREA.—If a State has a nonattainment area or maintenance area and receives funds under section 104(b)(2)(D) above the amount of funds that the State would have received based on its nonattainment and maintenance area population under subparagraphs (B) and (C) of section 104(b)(2), the State may use that portion of the funds not based on its nonattainment and maintenance area population under subparagraphs (B) and (C) of section 104(b)(2) [for any project in the State eligible under section 133] *for any project in the State that—*

(A) would otherwise be eligible under this section as if the project were carried out in a nonattainment or maintenance area; or

(B) is eligible under the surface transportation program under section 133..

* * * * * * *

(g) INTERAGENCY CONSULTATION.—The Secretary shall encourage States and metropolitan planning organizations to consult with State and local air quality agencies in nonattainment and maintenance areas on the estimated emission reductions from proposed congestion mitigation and air quality improvement programs and projects.

(h) EVALUATION AND ASSESSMENT OF PROJECTS.—

(1) IN GENERAL.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall evaluate and assess a representative sample of projects funded under the congestion mitigation and air quality program to—

(A) determine the direct and indirect impact of the projects on air quality and congestion levels; and

(B) ensure the effective implementation of the program.

(2) DATABASE.—Using appropriate assessments of projects funded under the congestion mitigation and air quality program and results from other research, the Secretary shall maintain and disseminate a cumulative database describing the impacts of the projects.

(3) CONSIDERATION.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall consider the recommendations and findings of the report submitted to Congress under section 1110(e) of the Transportation Equity Act for the 21st Century (112 Stat. 144), including recommendations and findings that would improve the operation and evaluation of the congestion mitigation and air quality improvement program under section 149.

* * * * * * *

§ 150. Safe routes to schools program

(a) DEFINITIONS.—In this section:

(1) PRIMARY AND SECONDARY SCHOOL.—The term "primary and secondary school" means a school that provides education to children in any of grades kindergarten through 12.

(2) PROGRAM.—The term "program" means the safe routes to schools program established under subsection (b).

(3) VICINITY OF A SCHOOL.—The term "vicinity of a school" means the area within 2 miles of a primary or secondary school.

(b) ESTABLISHMENT.—The Secretary shall establish and carry out a safe routes to school program for the benefit of children in primary and secondary schools in accordance with this section.

(c) PURPOSES.—The purposes of the program shall be—

(1) to enable and to encourage children to walk and bicycle to school;

(2) to encourage a healthy and active lifestyle by making walking and bicycling to school safer and more appealing transportation alternatives; and

(3) to facilitate the planning, development, and implementation of projects and activities that will improve safety in the vicinity of schools.

(d) ELIGIBLE RECIPIENTS.—A State shall use amounts apportioned under this section to provide financial assistance to State, regional, and local agencies that demonstrate an ability to meet the requirements of this section.

(e) ELIGIBLE PROJECTS AND ACTIVITIES.—

(1) INFRASTRUCTURE-RELATED PROJECTS.—

(A) IN GENERAL.—Amounts apportioned to a State under this section may be used for the planning, design, and construction of infrastructure-related projects to encourage walking and bicycling to school, including—

(i) sidewalk improvements;

(ii) traffic calming and speed reduction improvements;

(iii) pedestrian and bicycle crossing improvements;

(iv) on-street bicycle facilities;

(v) off-street bicycle and pedestrian facilities;

(vi) secure bicycle parking facilities;

(vii) traffic signal improvements; and

(viii) pedestrian-railroad grade crossing improvements.

(B) LOCATION OF PROJECTS.—Infrastructure-related projects under subparagraph (A) may be carried out on—

(i) any public road in the vicinity of a school; or

(ii) any bicycle or pedestrian pathway or trail in the vicinity of a school.

(2) BEHAVIORAL ACTIVITIES.—

(A) IN GENERAL.—In addition to projects described in paragraph (1), amounts apportioned to a State under this section may be used for behavioral activities to encourage walking and bicycling to school, including—

(i) public awareness campaigns and outreach to press and community leaders;

(ii) traffic education and enforcement in the vicinity of schools; and

(iii) student sessions on bicycle and pedestrian safety, health, and environment.

(B) ALLOCATION.—Of the amounts apportioned to a State under this section for a fiscal year, not less than 10 percent shall be used for behavioral activities under this paragraph.

(f) FUNDING.—

(1) SET ASIDE.—Before apportioning amounts to carry out section 148 for a fiscal year, the Secretary shall set aside and use $70,000,000 to carry out this section.

(2) APPORTIONMENT.—Amounts made available to carry out this section shall be apportioned to States in accordance with section 104(b)(5).

(3) ADMINISTRATION OF AMOUNTS.—Amounts apportioned to a State under this section shall be administered by the State transportation department.

(4) FEDERAL SHARE.—The Federal share of the cost of a project or activity funded under this section shall be 90 percent.

(5) PERIOD OF AVAILABILITY.—Notwithstanding section 118(b)(2), amounts apportioned under this section shall remain available until expended.

* * * * * * *

[§ 152. Hazard elimination program

[(a) IN GENERAL.—

[(1) PROGRAM.—Each State shall conduct and systematically maintain an engineering survey of all public roads to identify hazardous locations, sections, and elements, including roadside obstacles and unmarked or poorly marked roads, which may constitute a danger to motorists, bicyclists, and pedestrians, assign priorities for the correction of such locations, sections, and elements, and establish and implement a schedule of projects for their improvement.

[(2) HAZARDS.—In carrying out paragraph (1), a State may, at its discretion—

[(A) identify, through a survey, hazards to motorists, bicyclists, pedestrians, and users of highway facilities; and

[(B) develop and implement projects and programs to address the hazards.

[(b) The Secretary may approve as a project under this section any safety improvement project, including a project described in subsection (a).

[(c) Funds authorized to carry out this section shall be available for expenditure on—

[(1) any public road;

[(2) any public surface transportation facility or any publicly owned bicycle or pedestrian pathway or trail; or

[(3) any traffic calming measure.

[(d) The Federal share payable on account of any project under this section shall be 90 percent of the cost thereof.

[(e) Funds authorized to be appropriated to carry out this section shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under section 104(b), except that the Secretary is authorized to waive provisions he deems inconsistent with the purposes of this section.

[(f) Each State shall establish an evaluation process approved by the Secretary, to analyze and assess results achieved by safety improvement projects carried out in accordance with procedures and criteria established by this section. Such evaluation process shall develop cost-benefit data for various types of corrections and treatments which shall be used in setting priorities for safety improvement projects.

[(g) Each State shall report to the Secretary of Transportation not later than December 30 of each year, on the progress being made to implement safety improvement projects for hazard elimination and the effectiveness of such improvements. Each State report shall contain an assessment of the cost of, and safety benefits derived from, the various means and methods used to mitigate or eliminate hazards and the previous and subsequent accident expe-

rience at these locations. The Secretary of Transportation shall submit a report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives not later than April 1 of each year on the progress being made by the States in implementing the hazard elimination program (including but not limited to any projects for pavement marking). The report shall include, but not be limited to, the number of projects undertaken, their distribution by cost range, road system, means and methods used, and the previous and subsequent accident experience at improved locations. In addition, the Secretary's report shall analyze and evaluate each State program, identify any State found not to be in compliance with the schedule of improvements required by subsection (a) and include recommendations for future implementation of the hazard elimination program.

[(h) For the purposes of this section the term "State" shall have the meaning given it in section 401 of this title.**]**

§ 152. Purchases of equipment

(a) IN GENERAL.—Subject to subsection (b), a State or other entity carrying out a project under this chapter shall purchase device, tool or other equipment needed for the project only after completing and providing a written analysis demonstrating the cost savings associated with purchasing the equipment compared with renting the equipment from a qualified equipment rental provider before the project commences

(b) APPLICABILITY.—This section shall apply to—

(1) earth moving, road machinery, and material handling equipment, or any other item, with a purchase price in excess of $75,000; and

(2) aerial work platforms with a purchase price in excess of $25,000.

* * * * * * *

§ 154. Open container requirements

(a) DEFINITIONS.— * * *

* * * * * * *

(c) TRANSFER OF FUNDS.—

(1) * * *

* * * * * * *

(3) USE FOR HAZARD ELIMINATION PROGRAM.—A State may elect to use all or a portion of the funds transferred under paragraph (1) or (2) for activities eligible under section **[**152**]** *148*.

* * * * * * *

[§ 155. Access highways to public recreation areas on certain lakes

[(a) The Secretary is authorized to construct or reconstruct access highways to public recreation areas on lakes in order to accommodate present and projected traffic density. The Secretary shall develop guidelines and standards for the designation of routes

and the allocation of funds for the purpose of this section which shall include the following criteria:

[(1) No portion of any access highway constructed or reconstructed under this section shall exceed thirty-five miles in length nor shall any portion of such highway be located more than thirty-five miles from the nearest part of such recreation area.

[(2) Routes shall be designated by the Secretary on the recommendation of the State and responsible local officials, after consultation with the head of the Federal agency (if any) having jurisdiction over the public recreation area involved.

[(b) The Federal share payable on account of any project authorized pursuant to this section shall not exceed 75 per centum of the cost of construction or reconstruction of such project.

[(c) All of the provisions of this title applicable to highways on the Federal-aid system (other than the Interstate System) determined appropriate by the Secretary, except those provisions which the Secretary determines are inconsistent with this section, shall apply to any highway designated under this section, which is not a part of the Federal-aid system when so designated.

[(d) For the purpose of this section the term "lake" means any lake, reservoir, pool, or other body of water resulting from the construction of any lock, dam, or similar structure by the Corps of Engineers, Department of the Army, or the Bureau of Reclamation, Department of the Interior, or the Tennessee Valley Authority, and any multipurpose lake resulting from construction assistance of the Soil Conservation Service, Department of Agriculture. This section shall apply to lakes heretofore or hereafter constructed or authorized for construction.

[(e) There is authorized to be appropriated not to exceed $25,000,000 for the fiscal year 1976 to carry out this section. Amounts authorized by this subsection for a fiscal year shall be available for that fiscal year and for the two succeeding fiscal years.]

§ 155. State habitat, streams, and wetlands mitigation funds

(a) ESTABLISHMENT.—A State should establish a habitat, streams, and wetlands mitigation fund (referred to in this section as a "State fund").

(b) PURPOSE.—The purpose of a State fund is to encourage efforts for habitat, streams, and wetlands mitigation in advance of or in conjunction with highway projects to—

(1) ensure that the best habitat, streams, and wetland mitigation sites now available are used; and

(2) accelerate transportation project delivery by making high-quality habitat, streams, and wetland mitigation credits available when needed.

(c) FUNDS.—A State may deposit into a State fund part of the funds apportioned to the State under—

(1) section 104(b)(1) for the National Highway System; and

(2) section 104(b)(3) for the surface transportation program.

(d) USE.—

(1) IN GENERAL.—Amounts deposited in a State fund shall be used (in a manner consistent with this section) for habitat,

streams, or wetlands mitigation related to 1 or more projects funded under this title, including a project under the transportation improvement program of the State developed under section 135(f).

(2) ENDANGERED SPECIES.—In carrying out this section, a State and cooperating agency shall give consideration to mitigation projects, on-site or off-site, that restore and preserve the best available sites to conserve biodiversity and habitat for—

(A) Federal or State listed threatened or endangered species of plants and animals; and

(B) plant or animal species warranting listing as threatened or endangered, as determined by the Secretary of the Interior in accordance with section 4(b)(3)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1533(b)(3)(B)).

(e) CONSISTENCY WITH APPLICABLE REQUIREMENTS.—Contributions from the State fund to mitigation efforts may occur in advance of project construction only if the efforts are consistent with all applicable requirements of Federal law (including regulations).

* * * * * * *

§ 162. National scenic byways program

(a) DESIGNATION OF ROADS.—

(1) IN GENERAL.—The Secretary shall carry out a national scenic byways program that recognizes roads having outstanding scenic, historic, cultural, natural, recreational, and archaeological qualities by designating the [roads as National Scenic Byways or All-American Roads.] *designated as—*

(A) National Scenic Byways;

(B) All-American Roads; or

(C) America's Byways.

(2) CRITERIA.—The Secretary shall designate roads to be recognized under the national scenic byways program in accordance with criteria developed by the Secretary.

(3) NOMINATION.—To be considered for the designation, a road must be nominated by a State or a Federal land management agency and must first be designated as a State scenic byway or, in the case of a road on Federal land, as a Federal land management agency byway.

(b) GRANTS AND TECHNICAL ASSISTANCE.—

(1) IN GENERAL.—The Secretary shall make grants and provide technical assistance to States to—

(A) implement projects on highways [designated as National Scenic Byways or All-American Roads, or as State scenic byways; and] *designated as—*

(i) National Scenic Byways;

(ii) All-American Roads; or

(iii) America's Byways; and

(B) plan, design, and develop a State scenic byway program.

(2) PRIORITIES.—In making grants, the Secretary shall give priority to—

(A) each eligible project that is associated with a highway that has been designated as a National Scenic

[Byway or All-American Road] *Byway, All-American Road, or 1 of America's Byways* and that is consistent with the corridor management plan for the byway;

(B) each eligible project along a State-designated scenic byway that is consistent with the corridor management plan for the byway, or is intended to foster the development of such a plan, and is carried out to make the byway eligible for [designation as a National Scenic Byway or All-American Road; and] *designation as—*

(i) a National Scenic Byway;

(ii) an All-American Road; or

(iii) 1 of America's Byways; and

(C) each eligible project that is associated with the development of a State scenic byway program.

(c) ELIGIBLE PROJECTS.—The following are projects that are eligible for Federal assistance under this section:

(1) An activity related to the planning, design, or development of a State scenic byway program.

(2) Development and implementation of a corridor management plan to maintain the scenic, historical, recreational, cultural, natural, and archaeological characteristics of a byway corridor while providing for accommodation of increased tourism and development of related amenities.

(3) Safety improvements to a State scenic byway, National Scenic Byway, or All-American Road to the extent that the improvements are necessary to accommodate increased traffic and changes in the types of vehicles using the highway as a result of the designation as a State scenic byway, National Scenic Byway, or All-American Road.

(4) Construction along a scenic byway of a facility for pedestrians and bicyclists, rest area, turnout, highway shoulder improvement, [passing lane,] overlook, or interpretive facility.

(5) An improvement to a scenic byway that will enhance access to an area for the purpose of recreation, including water-related recreation.

(6) Protection of scenic, historical, recreational, cultural, natural, and archaeological resources in an area adjacent to a scenic byway.

(7) Development and provision of tourist information to the public, including interpretive information about a scenic byway.

(8) Development and implementation of a scenic byway marketing program.

(d) RESEARCH, TECHNICAL ASSISTANCE, MARKETING, AND PROMOTION.—

(1) IN GENERAL.—The Secretary may carry out technical assistance, marketing, market research, and promotion with respect to State Scenic Byways, National Scenic Byways, All-American Roads, and America's Byways.

(2) COOPERATION, GRANTS, AND CONTRACTS.—The Secretary may make grants to, or enter into contracts, cooperative agreements, and other transactions with, any Federal agency, State agency, authority, association, institution, for-profit or nonprofit

corporation, organization, or person, to carry out projects and activities under this subsection.

(3) FUNDS.—The Secretary may use not more than $2,000,000 for each fiscal year of funds made available for the National Scenic Byways Program to carry out projects and activities under this subsection.

(4) PRIORITY.—The Secretary shall give priority under this subsection to partnerships that leverage Federal funds for research, technical assistance, marketing and promotion."; and

(3) in subsection (g) (as redesignated by paragraph (1)), by striking "80 percent" and inserting "the share applicable under section 120(b), as adjusted under subsection (d) of that section.

[(d)**]** *(e)* LIMITATION.—The Secretary shall not make a grant under this section for any project that would not protect the scenic, historical, recreational, cultural, natural, and archaeological integrity of a highway and adjacent areas.

[(e)**]** *(f)* SAVINGS CLAUSE.—The Secretary shall not withhold any grant or impose any requirement on a State as a condition of providing a grant or technical assistance for any scenic byway unless the requirement is consistent with the authority provided in this chapter.

[(f)**]** *(g)* FEDERAL SHARE.—The Federal share of the cost of carrying out a project under this section shall be 80 percent, except that, in the case of any scenic byway project along a public road that provides access to or within Federal or Indian land, a Federal land management agency may use funds authorized for use by the agency as the non-Federal share.

* * * * * * *

§ 164. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) ALCOHOL CONCENTRATION.—The term "alcohol concentration" means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(2) DRIVING WHILE INTOXICATED; DRIVING UNDER THE INFLUENCE.—The terms "driving while intoxicated" and "driving under the influence" mean driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State.

[(3) LICENSE SUSPENSION.—The term "license suspension" means the suspension of all driving privileges.**]**

(3) LICENSE SUSPENSION.—The term "license suspension" means—

(A) the suspension of all driving privileges of an individual for the duration of the suspension period; or

(B) a combination of suspension of all driving privileges of an individual for the first 90 days of the suspension period, followed by reinstatement of limited driving privileges requiring the individual to operate only motor vehicles equipped with an ignition interlock system or other de-

vice approved by the Secretary during the remainder of the suspension period.

(4) MOTOR VEHICLE.—The term "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.

(5) REPEAT INTOXICATED DRIVER LAW.—The term "repeat intoxicated driver law" means a State law that provides, as a minimum penalty, that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence after a previous conviction for that offense shall—

(A) receive a driver's license suspension for not less than 1 year;

(B) be subject to the impoundment or immobilization of each of the individual's motor vehicles or the installation of an ignition interlock system on each of the motor vehicles;

(C) receive an assessment of the individual's degree of abuse of alcohol and treatment as appropriate; and

(D) receive—

(i) in the case of the second offense—

(I) an assignment of not less than 30 days of community service; or

(II) not less than 5 days of imprisonment; and

(ii) in the case of the third or subsequent offense—

(I) an assignment of not less than 60 days of community service; or

(II) not less than 10 days of imprisonment.

(b) TRANSFER OF FUNDS.—

(1) * * *

* * * * * * *

(3) USE FOR HAZARD ELIMINATION PROGRAM.—A State may elect to use all or a portion of the funds transferred under paragraph (1) or (2) for activities eligible under section [152] *148*.

* * * * * * *

§ 165. Eligibility for environmental restoration and pollution abatement

(a) IN GENERAL.—Subject to subsection (b), environmental restoration and pollution abatement to minimize or mitigate the impacts of any transportation project funded under this title (including retrofitting and construction of storm water treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341, 1342)) may be carried out to address water pollution or environmental degradation caused wholly or partially by a transportation facility.

(b) MAXIMUM EXPENDITURE.—In a case in which a transportation facility is undergoing reconstruction, rehabilitation, resurfacing, or restoration, the expenditure of funds under this section for environmental restoration or pollution abatement described in sub-

section (a) shall not exceed 20 percent of the total cost of the reconstruction, rehabilitation, resurfacing, or restoration of the facility.

§ 166. Control of invasive plant species and establishment of native species

(a) DEFINITIONS.—In this section:

(1) INVASIVE PLANT SPECIES—The term "invasive plant species" means a nonindigenous species the introduction of which causes or is likely to cause economic or environmental harm or harm to human health.

(2) NATIVE PLANT SPECIES.—The term "native plant species" means, with respect to a particular ecosystem, a species that, other than as result of an introduction, historically occurred or currently occurs in that ecosystem.

(b) CONTROL OF SPECIES.—

(1) IN GENERAL.—In accordance with all applicable Federal law (including regulations), funds made available to carry out this section may be used for—

(A) participation in the control of invasive plant species; and

(B) the establishment of native species.

(2) INCLUDED ACTIVITIES.—The participation and establishment under paragraph (1) may include—

(A) participation in statewide inventories of invasive plant species and desirable plant species;

(B) regional native plant habitat conservation and mitigation;

(C) native revegetation; and

(D) training.

(3) CONTRIBUTIONS.—

(A) IN GENERAL.—Subject to subparagraph (B), an activity described in paragraph (1) may be carried out concurrently with, in advance of, or following the construction of a project funded under this title.

(B) CONDITION FOR ACTIVITIES CONDUCTED IN ADVANCE OF PROJECT CONSTRUCTION.—An activity described in paragraph (1) may be carried out in advance of construction of a project only if the activity is carried out in accordance with all applicable requirements of Federal law (including regulations) and State transportation planning processes.

§ 167. Highway stormwater discharge mitigation program

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) ELIGIBLE MITIGATION PROJECT.—The term "eligible mitigation project" means a practice or technique that—

(A) improves stormwater discharge water quality;

(B) attains preconstruction hydrology;

(C) promotes infiltration of stormwater into groundwater;

(D) recharges groundwater;

(E) minimizes stream bank erosion;

(F) promotes natural filters;

(G) otherwise mitigates water quality impacts of highway stormwater discharges, improves surface water quality, or enhances groundwater recharge; or

(H) reduces flooding caused by highway stormwater discharge.

(3) FEDERAL-AID HIGHWAY AND ASSOCIATED FACILITY.—The term "Federal-aid highway and associated facility" means—

(A) a Federal-aid highway; or

(B) a facility or land owned by a State (or political subdivision of a State) that is directly associated with the Federal-aid highway.

(4) HIGHWAY STORMWATER DISCHARGE.—The term "highway stormwater discharge" means stormwater discharge from a Federal-aid highway, or a Federal-aid highway and associated facility, that was constructed before the date of enactment of this section.

(5) HIGHWAY STORMWATER DISCHARGE MITIGATION.—The term "highway stormwater discharge mitigation" means—

(A) the reduction of water quality impacts of stormwater discharges from Federal-aid highways or Federal-aid highways and associated facilities; or

(B) the enhancement of groundwater recharge from stormwater discharges from Federal-aid highways or Federal-aid highways and associated facilities.

(6) PROGRAM.—The term "program" means the highway stormwater discharge mitigation program established under subsection (b).

(b) ESTABLISHMENT.—The Secretary shall establish a highway stormwater discharge mitigation program—

(1) to improve the quality of stormwater discharge from Federal-aid highways or Federal-aid highways and associated facilities; and

(2) to enhance groundwater recharge.

(c) PRIORITY OF PROJECTS.—For projects funded from the allocation under section 133(d)(6), a State shall give priority to projects sponsored by a State or local government that assist the State or local government in complying with the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(d) GUIDANCE.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Administrator, shall issue guidance to assist States in carrying out this section.

(2) REQUIREMENTS FOR GUIDANCE.—The guidance issued under paragraph (1) shall include information concerning innovative technologies and nonstructural best management practices to mitigate highway stormwater discharges.

§ 168. Transportation systems management and operations

(a) IN GENERAL.—The Secretary shall carry out a transportation systems management and operations program to—

(1) ensure efficient and effective transportation systems management and operations on Federal-aid highways through

collaboration, coordination, and real-time information sharing at a regional and Statewide level among—

(A) managers and operators of major modes of transportation;

(B) public safety officials; and

(C) the general public; and

(2) manage and operate Federal-aid highways in a coordinated manner to preserve the capacity and maximize the performance of highway and transit facilities for travelers and carriers.

(b) AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—In carrying out the program under subsection (a), the Secretary may carry out activities to—

(A) encourage managers and operators of major modes of transportation, public safety officials, and transportation planners in urbanized areas that are responsible for conducting the day-to-day management, operations, public safety, and planning of transportation facilities and services to collaborate on and coordinate, on a regional level and in a continuous and sustained manner, improved transportation systems management and operations; and

(B) encourage States to—

(i) establish a system of basic real-time monitoring for the surface transportation system; and

(ii) provide the means to share the data gathered under clause (i) among—

(I) highway, transit, and public safety agencies;

(II) jurisdictions (including States, cities, counties, and metropolitan planning organizations);

(III) private-sector entities; and

(IV) the general public.

(2) ACTIVITIES.—Activities to be carried out under paragraph (1) include—

(A) developing a regional concept of operations that defines a regional strategy shared by all transportation and public safety participants with respect to the manner in which the transportation systems of the region should be managed, operated, and measured;

(B) the sharing of information among operators, service providers, public safety officials, and the general public; and

(C) guiding, in a regionally-coordinated manner and in a manner consistent with and integrated into the metropolitan and statewide transportation planning processes and regional intelligent transportation system architecture, the implementation of regional transportation system management and operations initiatives, including—

(i) emergency evacuation and response;

(ii) traffic incident management;

(iii) technology deployment; and

(iv) traveler information systems delivery.

(c) COOPERATION.—In carrying out the program under subsection (a), the Secretary may assist and cooperate with other Federal agencies, State and local governments, metropolitan planning organizations, private industry, and other interested parties to improve regional collaboration and real-time information sharing between managers and operators of major modes of transportation, public safety officials, emergency managers, and the general public to increase the security, safety, and reliability of Federal-aid highways.

(d) GUIDANCE; REGULATIONS.—

(1) IN GENERAL.—In carrying out the program under subsection (a), the Secretary may issue guidance or promulgate regulations for the procurement of transportation system management and operations facilities, equipment, and services, including—

(A) equipment procured in preparation for natural disasters, disasters caused by human activity, and emergencies;

(B) system hardware;

(C) software; and

(D) software integration services.

(2) CONSIDERATIONS.—In developing the guidance or regulations under paragraph (1), the Secretary may consider innovative procurement methods that support the timely and streamlined execution of transportation system management and operations programs and projects.

(3) FINANCIAL ASSISTANCE.—The Secretary may authorize the use of funds made available under section 104(b)(3) to provide assistance for regional operations collaboration and coordination activities that are associated with regional improvements, such as—

(A) traffic incident management;

(B) technology deployment;

(C) emergency management and response;

(D) traveler information; and

(E) congestion relief.

§ 169. Real-time system management information program

(a) IN GENERAL.—The Secretary shall carry out a real-time system management information program to—

(1) provide a nationwide system of basic real-time information for managing and operating the surface transportation system;

(2)(A) identify long-range real-time highway and transit monitoring needs; and

(B) develop plans and strategies for meeting those needs;

(3) provide the capability and means to share the basic real-time information with State and local governments and the traveling public; and

(4) provide the nationwide capability to monitor, in real-time, the traffic and travel conditions of major highways in the United States, and to share that information with State and local governments and the traveling public, to—

(A) improve the security of the surface transportation system;

(B) address congestion problems;

(C) support improved response to weather events; and

(D) facilitate the distribution of national and regional traveler information.

(b) DATA EXCHANGE FORMATS.—Not later than 1 year after the date of enactment of this section, the Secretary shall establish data exchange formats to ensure that the data provided by highway and transit monitoring systems (including statewide incident reporting systems) can readily be exchanged between jurisdictions to facilitate the nationwide availability of information on traffic and travel conditions.

(c) STATEWIDE INCIDENT REPORTING SYSTEM.—Not later than 2 years after the date of enactment of this section, or not later than 5 years after the date of enactment of this section if the Secretary determines that adequate real-time communications capability will not be available within 2 years after the date of enactment of this section, each State shall establish a statewide incident reporting system to facilitate the real-time electronic reporting of highway and transit incidents to a central location for use in—

(1) monitoring an incident;

(2) providing accurate traveler information on the incident; and

(3) responding to the incident as appropriate.

(d) REGIONAL ITS ARCHITECTURE.—

(1) IN GENERAL.—In developing or updating regional intelligent transportation system architectures under section 940.9 of title 23, Code of Federal Regulations (or any successor regulation), States and local governments shall address—

(A) the real-time highway and transit information needs of the State or local government, including coverage, monitoring systems, data fusion and archiving, and methods of exchanging or sharing information; and

(B) the systems needed to meet those needs.

(2) DATA EXCHANGE FORMATS.—In developing or updating regional intelligent transportation system architectures, States and local governments are encouraged to incorporate the data exchange formats developed by the Secretary under subsection (b) to ensure that the data provided by highway and transit monitoring systems can readily be—

(A) exchanged between jurisdictions; and

(B) shared with the traveling public.

(e) ELIGIBLE FUNDING.—Subject to project approval by the Secretary, a State may—

(1) use funds apportioned to the State under section 505(a) to carry out activities relating to the planning of real-time monitoring elements; and

(2) use funds apportioned to the State under paragraphs (1) and (3) of section 104(b) to carry out activities relating to the planning and deployment of real-time monitoring elements.

§ 170. Appalachian development highway system

(a) APPORTIONMENT.—

(1) IN GENERAL.—The Secretary shall apportion funds made available under section 1101(a)(7) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 for fiscal years 2004 through 2009 among States based on the latest available estimate of the cost to construct highways and access roads for the Appalachian development highway system program prepared by the Appalachian Regional Commission under section 14501 of title 40.

(2) AVAILABILITY.—Funds described in paragraph (1) shall be available to construct highways and access roads under chapter 145 of title 40.

(b) APPLICABILITY OF TITLE.—Funds made available under section 1101(a)(7) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 for the Appalachian development highway system shall be available for obligation in the same manner as if the funds were apportioned under this chapter, except that—

(1) the Federal share of the cost of any project under this section shall be determined in accordance with subtitle IV of title 40; and

(2) the funds shall remain available until expended.

§ 171. Multistate corridor program

(a) ESTABLISHMENT AND PURPOSE.—The Secretary shall carry out a program to—

(1) support and encourage multistate transportation planning and development; and

(2) facilitate transportation decisionmaking and coordinate project delivery involving multistate corridors.

(b) ELIGIBLE RECIPIENTS.—A State transportation department and a metropolitan planning organization may receive and administer funds provided under this section.

(c) ELIGIBLE ACTIVITIES.—The Secretary shall make allocations under this program for multistate highway and multimodal planning studies and construction.

(d) OTHER PROVISIONS REGARDING ELIGIBILITY.—

(1) STUDIES.—All studies funded under this program shall be consistent with the continuing, cooperative, and comprehensive planning processes required by sections 134 and 135.

(2) CONSTRUCTION.—All construction funded under this program shall be consistent with section 133(b)(1).

(e) SELECTION CRITERIA.—The Secretary shall select studies and projects to be carried out under the program based on—

(1) the existence and significance of signed and binding multijurisdictional agreements;

(2) endorsement of the study or project by applicable elected State and local representatives;

(3) prospects for early completion of the study or project; or

(4) whether the projects to be studied or constructed are located on corridors identified by section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240; 105 Stat. 2032).

(f) PROGRAM PRIORITIES.—In administering the program, the Secretary shall—

(1) encourage and enable States and other jurisdictions to work together to develop plans for multimodal and multijurisdictional transportation decisionmaking; and

(2) give priority to studies or projects that emphasize multimodal planning, including planning for operational improvements that—

(A) increase—

(i) mobility;

(ii) freight productivity;

(iii) access to marine or inland ports;

(iv) safety and security; and

(v) reliability; and

(B) enhance the environment.

(g) FEDERAL SHARE.—The Federal share of the cost of a study or project carried out under the program, using funds from all Federal sources, shall be 80 percent.

(h) APPLICABILITY.—Funds authorized to be appropriated under section 1101(10) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under this chapter.

§ 172. Border planning, operations, technology, and capacity program

(a) DEFINITIONS.—In this section:

(1) BORDER STATE.—The term 'border State' means any of the States of Alaska, Arizona, California, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New Mexico, New York, North Dakota, Texas, Vermont, and Washington.

(2) PROGRAM.—The term 'program' means the border planning, operations, technology, and capacity program established under subsection (b).

(b) ESTABLISHMENT AND PURPOSE.—The Secretary shall establish and carry out a border planning, operations, technology, and capacity improvement program to support coordination and improvement in bi-national transportation planning, operations, efficiency, information exchange, safety, and security at the international borders of the United States with Canada and Mexico.

(c) ELIGIBLE RECIPIENTS.—State transportation departments and metropolitan planning organizations at or near an international land border in a border State may receive and administer funds allocated under the program.

(d) ELIGIBLE ACTIVITIES.—

(1) IN GENERAL.—The Secretary shall make allocations under the program for projects to carry out eligible activities described in paragraph (2) at or near international land borders in border States.

(2) ELIGIBLE ACTIVITIES.—The eligible activities referred to in paragraph (1) are—

(A) highway and multimodal planning or environmental studies;

(B) cross-border port of entry and safety inspection improvements, including operational enhancements and technology applications;

(C) technology and information exchange activities; and

(D) right-of-way acquisition, design, and construction, as needed—

(i) to implement the enhancements or applications described in subparagraphs (B) and (C);

(ii) to decrease air pollution emissions from vehicles or inspection facilities at border crossings; or

(iii) to increase highway capacity at or near international borders.

(e) OTHER PROVISIONS REGARDING ELIGIBILITY.—

(1) IN GENERAL.—Each project funded under the program shall be carried out in accordance with the continuing, cooperative, and comprehensive planning processes required by sections 134 and 135.

(2) REGIONALLY SIGNIFICANT PROJECTS.—To be funded under the program, a regionally significant project shall be included on the applicable transportation plan and program required by sections 134 and 135.

(f) SELECTION CRITERIA.—The Secretary shall select projects to be carried out under the program based on—

(1) expected benefits, including air quality benefits, of the project in relation to the cost of the project;

(2) prospects for early completion of the project;

(3) endorsement of the project by formally constituted bi-national organizations with Federal and State or provincial representation;

(4) the existence and significance of signed and binding multijurisdictional agreements;

(5) contributions, in amounts at least equal to required minimums, of—

(A) Federal funds made available for other programs under this title; and

(B) Federal funds made available under a provision of law other than this title; and

(6) the extent to which the benefits of the project are multimodal.

(g) PROGRAM PRIORITIES.—In administering the program, the Secretary shall give priority to projects that emphasize—

(1) multimodal planning;

(2) improvements in infrastructure; and

(3) operational improvements that—

(A) increase safety, security, freight capacity, or highway access to rail, marine, and air services; and

(B) enhance the environment.

(h) FEDERAL SHARE.—The Federal share of the cost of a project carried out under the program shall be 80 percent.

(i) OBLIGATION.—Funds made available under section 1101(11) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 to carry out the program shall be available for obligation in the same manner as if the funds were apportioned under this chapter.

(j) INFORMATION EXCHANGE.—No individual project the scope of work of which is limited to information exchange shall receive an

allocation under the program in an amount that exceeds $500,000 for any fiscal year.

(k) PROJECTS IN CANADA OR MEXICO.—A project in Canada or Mexico, proposed by a border State to directly and predominantly facilitate cross-border vehicle and commercial cargo movements at an international gateway or port of entry into the border region of the State, may be constructed using funds made available under the program if, before obligation of those funds, Canada or Mexico, or the political subdivision of Canada or Mexico that is responsible for the operation of the facility to be constructed, provides assurances satisfactory to the Secretary that any facility constructed under this subsection will be—

(1) constructed in accordance with standards equivalent to applicable standards in the United States; and

(2) properly maintained and used over the useful life of the facility for the purpose for which the Secretary allocated funds to the project.

(l) TRANSFER OF FUNDS TO THE GENERAL SERVICES ADMINISTRATION.—

(1) STATE FUNDS.—At the request of a border State, funds made available under the program may be transferred to the General Services Administration for the purpose of funding 1 or more specific projects if—

(A) the Secretary determines, after consultation with the State transportation department of the border State, that the General Services Administration should carry out the project; and

(B) the General Services Administration agrees to accept the transfer of, and to administer, those funds.

(2) NON-FEDERAL SHARE.—

(A) IN GENERAL.—A border State that makes a request under paragraph (1) shall provide directly to the General Services Administration, for each project covered by the request, the non-Federal share of the cost of each project described in subsection (h).

(B) NO AUGMENTATION OF APPROPRIATIONS.—Funds provided by a border State under subparagraph (A)—

(i) shall not be considered to be an augmentation of the appropriations made available to the General Services Administration; and

(ii) shall be—

(I) administered in accordance with the procedures of the General Services Administration; but

(II) available for obligation in the same manner as if the funds were apportioned under this chapter.

(C) OBLIGATION AUTHORITY.—Obligation authority shall be transferred to the General Services Administration in the same manner and amount as the funds provided for projects under subparagraph (A).

(3) DIRECT TRANSFER OF AUTHORIZED FUNDS.—

(A) IN GENERAL.—In addition to allocations to States and metropolitan planning organizations under subsection (c), the Secretary may transfer funds made available to

carry out this section to the General Services Administration for construction of transportation infrastructure projects at or near the border in border States, if—

(i) the Secretary determines that the transfer is necessary to effectively carry out the purposes of this program; and

(ii) the General Services Administration agrees to accept the transfer of, and to administer, those funds.

(B) NO AUGMENTATION OF APPROPRIATIONS.—Funds transferred by the Secretary under subparagraph (A)—

(i) shall not be considered to be an augmentation of the appropriations made available to the General Services Administration; and

(ii) shall be—

(I) administered in accordance with the procedures of the General Services Administration; but

(II) available for obligation in the same manner as if the funds were apportioned under this chapter.

(C) OBLIGATION AUTHORITY.—Obligation authority shall be transferred to the General Services Administration in the same manner and amount as the funds transferred under subparagraph (A).

(D) NONAPPLICABILITY OF CERTAIN PROVISION.—Section 120 shall not apply to the transfer of funds under this paragraph.

§ 173. Puerto Rico highway program

(a) IN GENERAL.—The Secretary shall allocate funds authorized by section 1101(a)(15) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 for each of fiscal years 2004 through 2009 to the Commonwealth of Puerto Rico to carry out a highway program in the Commonwealth.

(b) APPLICABILITY OF TITLE.—

(1) IN GENERAL.—Amounts made available by section 1101(a)(15) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 shall be available for obligation in the same manner as if such funds were apportioned under this chapter.

(2) LIMITATION ON OBLIGATIONS.—The amounts shall be subject to any limitation on obligations for Federal-aid highway and highway safety construction programs.

(c) TREATMENT OF FUNDS.—Amounts made available to carry out this section for a fiscal year shall be administered as follows:

(1) APPORTIONMENT.—For purposes of this section, the amounts shall be treated as being apportioned to Puerto Rico under sections 104(b), 144, and 206, for each program funded under those sections in an amount determined by multiplying—

(A) the aggregate of the amounts for the fiscal year; by

(B) the ratio that—

(i) the amount of funds apportioned to Puerto Rico for each such program for fiscal year 2003; bears to

(ii) the total amount of funds apportioned to Puerto Rico for all such programs for fiscal year 2003.

(2) PENALTY.—The amounts treated as being apportioned to Puerto Rico under each section referred to in paragraph (1) shall be deemed to be required to be apportioned to Puerto Rico under that section for purposes of the imposition of any penalty under this title and title 49.

(3) EFFECT ON ALLOCATIONS AND APPORTIONMENTS.—Subject to paragraph (2), nothing in this section affects any allocation under section 105 and any apportionment under sections 104 and 144.

§ 174. National historic covered bridge preservation

(a) DEFINITION OF HISTORIC COVERED BRIDGE.—In this section, the term 'historic covered bridge' means a covered bridge that is listed or eligible for listing on the National Register of Historic Places.

(b) HISTORIC COVERED BRIDGE PRESERVATION.—Subject to the availability of appropriations, the Secretary shall—

(1) collect and disseminate information on historic covered bridges;

(2) conduct educational programs relating to the history and construction techniques of historic covered bridges;

(3) conduct research on the history of historic covered bridges; and

(4) conduct research on, and study techniques for, protecting historic covered bridges from rot, fire, natural disasters, or weight-related damage.

(c) GRANTS.—

(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall make a grant to a State that submits an application to the Secretary that demonstrates a need for assistance in carrying out 1 or more historic covered bridge projects described in paragraph (2).

(2) ELIGIBLE PROJECTS.—A grant under paragraph (1) may be made for a project—

(A) to rehabilitate or repair a historic covered bridge; or

(B) to preserve a historic covered bridge, including through—

(i) installation of a fire protection system, including a fireproofing or fire detection system and sprinklers;

(ii) installation of a system to prevent vandalism and arson; or

(iii) relocation of a bridge to a preservation site.

(3) AUTHENTICITY REQUIREMENTS.—A grant under paragraph (1) may be made for a project only if—

(A) to the maximum extent practicable, the project—

(i) is carried out in the most historically appropriate manner; and

(ii) preserves the existing structure of the historic covered bridge; and

(B) the project provides for the replacement of wooden components with wooden components, unless the use of wood is impracticable for safety reasons.

(4) FEDERAL SHARE.—The Federal share of the cost of a project carried out with a grant under this subsection shall be 80 percent.

(d) FUNDING.—There is authorized to be appropriated to carry out this section $14,000,000 for each of fiscal years 2004 through 2009, to remain available until expended.

§ 175. Transportation and community and system preservation pilot program

(a) ESTABLISHMENT.—The Secretary shall establish a comprehensive program to facilitate the planning, development, and implementation of strategies by States, metropolitan planning organizations, federally-recognized Indian tribes, and local governments to integrate transportation, community, and system preservation plans and practices that address the goals described in subsection (b).

(b) GOALS.—The goals of the program are—

(1) to improve the efficiency of the transportation system in the United States;

(2) to reduce the impacts of transportation on the environment;

(3) reduce the need for costly future investments in public infrastructure;

(4) to provide efficient access to jobs, services, and centers of trade; and

(5) to examine development patterns, and to identify strategies, to encourage private sector development patterns that achieve the goals identified in paragraphs (1) through (4).

(c) ALLOCATION OF FUNDS FOR IMPLEMENTATION.—

(1) IN GENERAL.—The Secretary shall allocate funds made available to carry out this subsection to States, metropolitan planning organizations, and local governments to carry out projects to address transportation efficiency and community and system preservation.

(2) CRITERIA.—In allocating funds made available to carry out this subsection, the Secretary shall give priority to applicants that—

(A) have instituted preservation or development plans and programs that—

(i) meet the requirements of this title and chapter 53 of title 49, United States Code; and

(ii)(I) are coordinated with State and local adopted preservation or development plans;

(II) are intended to promote cost-effective and strategic investments in transportation infrastructure that minimize adverse impacts on the environment; or

(III) are intended to promote innovative private sector strategies.

(B) have instituted other policies to integrate transportation and community and system preservation practices, such as—

(i) spending policies that direct funds to high-growth areas;

(ii) urban growth boundaries to guide metropolitan expansion;

(iii) 'green corridors' programs that provide access to major highway corridors for areas targeted for efficient and compact development; or

(iv) other similar programs or policies as determined by the Secretary;

(C) have preservation or development policies that include a mechanism for reducing potential impacts of transportation activities on the environment;

(D) examine ways to encourage private sector investments that address the purposes of this section; and

(E) propose projects for funding that address the purposes described in subsection (b)(2).

(3) EQUITABLE DISTRIBUTION.—In allocating funds to carry out this subsection, the Secretary shall ensure the equitable distribution of funds to a diversity of populations and geographic regions.

(4) USE OF ALLOCATED FUNDS.—

(A) IN GENERAL.—An allocation of funds made available to carry out this subsection shall be used by the recipient to implement the projects proposed in the application to the Secretary.

(B) TYPES OF PROJECTS.—The allocation of funds shall be available for obligation for—

(i) any project eligible for funding under this title or chapter 53 of title 49, United States Code; or

(ii) any other activity relating to transportation and community and system preservation that the Secretary determines to be appropriate, including corridor preservation activities that are necessary to implement—

(I) transit-oriented development plans;

(II) traffic calming measures; or

(III) other coordinated transportation and community and system preservation practices.

(d) FUNDING.—

(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $50,000,000 for each of fiscal years 2004 through 2009.

(2) CONTRACT AUTHORITY.—Funds authorized under this subsection shall be available for obligation in the same manner as if the funds were apportioned under this chapter.

* * * * * * *

§ 181. Definitions

In this subchapter, the following definitions apply:

(1) ELIGIBLE PROJECT COSTS.—The term "eligible project costs" means amounts substantially all of which are paid by, or for the account of, an obligor in connection with a project, including the cost of—

(A) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental re-

view, permitting, preliminary engineering and design work, and other preconstruction activities;

(B) construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and

(C) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

(2) FEDERAL CREDIT INSTRUMENT.—The term "Federal credit instrument" means a secured loan, loan guarantee, or line of credit authorized to be made available under this subchapter with respect to a project.

(3) INVESTMENT-GRADE RATING.—The term "investment-grade rating" means a rating ⟦category⟧ *offered into the capital markets* of BBB minus, Baa3, or higher assigned by a rating agency to project obligations offered into the capital markets.

(4) LENDER.—The term "lender" means any non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.)), including—

(A) a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986) that is a qualified institutional buyer; and

(B) a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) that is a qualified institutional buyer.

(5) LINE OF CREDIT.—The term "line of credit" means an agreement entered into by the Secretary with an obligor under section 184 to provide a direct loan at a future date upon the occurrence of certain events.

(6) LOAN GUARANTEE.—The term "loan guarantee" means any guarantee or other pledge by the Secretary to pay all or part of the principal of and interest on a loan or other debt obligation issued by an obligor and funded by a lender.

⟦(7) LOCAL SERVICER.—The term "local servicer" means—

⟦(A) a State infrastructure bank established under this title; or

⟦(B) a State or local government or any agency of a State or local government that is responsible for servicing a Federal credit instrument on behalf of the Secretary.⟧

⟦(8)⟧ *(7)* OBLIGOR.—The term "obligor" means a party primarily liable for payment of the principal of or interest on a Federal credit instrument, which party may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

⟦(9)⟧ *(8)* PROJECT.—The term "project" means—

(A) any surface transportation project eligible for Federal assistance under this title or chapter 53 of title 49;

(B) a project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible[.]*;*

(C) a project for intercity passenger bus or rail facilities and vehicles, including facilities and vehicles owned by the National Railroad Passenger Corporation and components of magnetic levitation transportation systems; and

[(D) a project for publicly owned intermodal surface freight transfer facilities, other than seaports and airports, if the facilities are located on or adjacent to National Highway System routes or connections to the National Highway System.]

(D) a project that—

(i)(I) is a project for—

(aa) a public freight rail facility or a private facility providing public benefit;

(bb) an intermodal freight transfer facility;

(cc) a means of access to a facility described in item (aa) or (bb);

(dd) a service improvement for a facility described in item (aa) or (bb) (including a capital investment for an intelligent transportation system); or

(II) comprises a series of projects described in subclause (I) with the common objective of improving the flow of goods;

(ii) may involve the combining of private and public sector funds, including investment of public funds in private sector facility improvements; and

(iii) if located within the boundaries of a port terminal, includes only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port.

[(10)] *(9)* PROJECT OBLIGATION.—The term "project obligation" means any note, bond, debenture, or other debt obligation issued by an obligor in connection with the financing of a project, other than a Federal credit instrument.

[(11)] *(10)* RATING AGENCY.—The term "rating agency" means a [bond] *credit* rating agency identified by the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization.

[(12)] *(11)* SECURED LOAN.—The term "secured loan" means a direct loan or other debt obligation issued by an obligor and funded by the Secretary in connection with the financing of a project under section 183.

[(13)] *(12)* STATE.—The term "State" has the meaning given the term in section 101.

[(14)] *(13)* SUBSIDY AMOUNT.—The term "subsidy amount" means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a Federal credit instrument, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the provi-

sions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

[(15)] *(14)* SUBSTANTIAL COMPLETION.—The term "substantial completion" means the opening of a project to vehicular or passenger traffic.

§ 182. Determination of eligibility and project selection

[(a) ELIGIBILITY.—To be eligible to receive financial assistance under this subchapter, a project shall meet the following criteria:

(1) INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.—The project—

[(A) shall be included in the State transportation plan required under section 135; and

[(B) at such time as an agreement to make available a Federal credit instrument is entered into under this subchapter, shall be included in the approved State transportation improvement program required under section 134.

[(2) APPLICATION.—A State, a local servicer identified under section 185(a), or the entity undertaking the project shall submit a project application to the Secretary.]

(1) INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.—The project shall satisfy the applicable planning and programming requirements of sections 134 and 135 at such time as an agreement to make available a Federal credit instrument is entered into under this subchapter.

(2) APPLICATION.—A State, local government, public authority, public-private partnership, or any other legal entity undertaking the project and authorized by the Secretary shall submit a project application to the Secretary.

(3) ELIGIBLE PROJECT COSTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), to be eligible for assistance under this subchapter, a project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of—

(i) [$100,000,000] *$50,000,000*; or

(ii) [50] *20* percent of the amount of Federal highway assistance funds apportioned for the most recently completed fiscal year to the State in which the project is located.

(B) INTELLIGENT TRANSPORTATION SYSTEM PROJECTS.—In the case of a project principally involving the installation of an intelligent transportation system, eligible project costs shall be reasonably anticipated to equal or exceed $30,000,000.

(4) DEDICATED REVENUE SOURCES.—[Project financing] *The Federal credit instrument* shall be repayable, in whole or in part, from tolls, user fees, or other dedicated revenue sources *that also secure the project obligations.*

(5) PUBLIC SPONSORSHIP OF PRIVATE ENTITIES.—In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking shall be publicly sponsored as provided in paragraphs (1) and (2).

(b) SELECTION AMONG ELIGIBLE PROJECTS.—

(1) ESTABLISHMENT.—The Secretary shall establish criteria for selecting among projects that meet the eligibility [criteria] *requirements* specified in subsection (a).

(2) SELECTION CRITERIA.—

(A) IN GENERAL.—The selection criteria shall include the following:

(i) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system.

(ii) The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment.

(iii) The extent to which assistance under this subchapter would foster innovative public-private partnerships and attract private debt or equity investment.

(iv) The likelihood that assistance under this subchapter would enable the project to proceed at an earlier date than the project would otherwise be able to proceed.

(v) The extent to which the project uses new technologies, including intelligent transportation systems, that enhance the efficiency of the project.

(vi) The amount of budget authority required to fund the Federal credit instrument made available under this subchapter.

(vii) The extent to which the project helps maintain or protect the environment.

(viii) The extent to which assistance under this chapter would reduce the contribution of Federal grant assistance to the project.

(B) PRELIMINARY RATING OPINION LETTER.—For purposes of subparagraph (A)(ii), the Secretary shall require each project applicant to provide a preliminary rating opinion letter from at least 1 rating agency indicating that the project's senior obligations *(which may be the Federal credit instrument)* have the potential to achieve an investment-grade rating.

(c) FEDERAL REQUIREMENTS.—In addition to the requirements of this title for highway projects, chapter 53 of title 49 for transit projects, and section 5333(a) of title 49 for rail projects, the following provisions of law shall apply to funds made available under this subchapter and projects assisted with the funds:

(1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(2) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

§ 183. Secured loans

(a) IN GENERAL.—

(1) AGREEMENTS.—Subject to paragraphs (2) through (4), the Secretary may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used—

(A) to finance eligible project costs *of any project selected under section 182*; or

(B) to refinance interim construction financing of eligible project costs *of any project selected under section 182*[;].

[of any project selected under section 182].

(2) LIMITATION ON REFINANCING OF INTERIM CONSTRUCTION FINANCING.—A loan under paragraph (1) shall not refinance interim construction financing under paragraph (1)(B) later than 1 year after the date of substantial completion of the project.

(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget and each rating agency providing a preliminary rating opinion letter under section 182(b)(2)(B), shall determine an appropriate capital reserve subsidy amount for each secured loan, taking into account such letter.

(4) INVESTMENT-GRADE RATING REQUIREMENT.—The [funding] *execution* of a secured loan under this section shall be contingent on the project's senior obligations receiving an investment-grade rating[, except that—].

(A) the Secretary may fund an amount of the secured loan not to exceed the capital reserve subsidy amount determined under paragraph (3) prior to the obligations receiving an investment-grade rating; and

(B) the Secretary may fund the remaining portion of the secured loan only after the obligations have received an investment-grade rating by at least 1 rating agency.

(b) TERMS AND LIMITATIONS.—

(1) IN GENERAL.—A secured loan under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate.

[(2) MAXIMUM AMOUNT.—The amount of the secured loan shall not exceed 33 percent of the reasonably anticipated eligible project costs.]

(2) MAXIMUM AMOUNT.—The amount of the secured loan shall not exceed the lesser of—

(A) 33 percent of the reasonably anticipated eligible project costs; or

(B) the amount of the senior project obligations.

(3) PAYMENT.—The secured loan—

(A) shall—

(i) be payable, in whole or in part, from tolls, user fees, or other dedicated revenue sources *that also secure the senior project obligations*; and

(ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

(B) may have a lien on revenues described in subparagraph (A) subject to any lien securing project obligations.

(4) INTEREST RATE.—The interest rate on the secured loan shall be not less than the yield on [marketable] United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement.

(5) MATURITY DATE.—The final maturity date of the secured loan shall be not later than 35 years after the date of substantial completion of the project.

(6) NONSUBORDINATION.—The secured loan shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

(7) FEES.—The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of making a secured loan under this section.

(8) NON-FEDERAL SHARE.—The proceeds of a secured loan under this subchapter may be used for any non-Federal share of project costs required under this title or chapter 53 of title 49, if the loan is repayable from non-Federal funds.

(c) REPAYMENT.—

(1) SCHEDULE.—The Secretary shall establish a repayment schedule for each secured loan under this section based on the projected cash flow from project revenues and other repayment sources.

(2) COMMENCEMENT.—Scheduled loan repayments of principal or interest on a secured loan under this section shall commence not later than 5 years after the date of substantial completion of the project.

[(3) SOURCES OF REPAYMENT FUNDS.—The sources of funds for scheduled loan repayments under this section shall include tolls, user fees, or other dedicated revenue sources.]

[(4)] *(3)* DEFERRED PAYMENTS.—

(A) AUTHORIZATION.—If, at any time [during the 10 years] after the date of substantial completion of the project, the project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal and interest on the secured loan, the Secretary may, subject to subparagraph (C), allow the obligor to add unpaid principal and interest to the outstanding balance of the secured loan.

(B) INTEREST.—Any payment deferred under subparagraph (A) shall—

(i) continue to accrue interest in accordance with subsection (b)(4) until fully repaid; and

(ii) be scheduled to be amortized over the remaining term of the loan [beginning not later than 10 years after the date of substantial completion of the project in accordance with paragraph (1)].

(C) CRITERIA.—

(i) IN GENERAL.—Any payment deferral under subparagraph (A) shall be contingent on the project meeting criteria established by the Secretary.

(ii) REPAYMENT STANDARDS.—The criteria established under clause (i) shall include standards for reasonable assurance of repayment.

[(5)] *(4)* PREPAYMENT.—

(A) USE OF EXCESS REVENUES.—Any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and secured loan and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations may be applied annually to prepay the secured loan without penalty.

(B) USE OF PROCEEDS OF REFINANCING.—The secured loan may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

(d) SALE OF SECURED LOANS.—

(1) IN GENERAL.—Subject to paragraph (2), as soon as practicable after substantial completion of a project and after notifying the obligor, the Secretary may sell to another entity or reoffer into the capital markets a secured loan for the project if the Secretary determines that the sale or reoffering can be made on favorable terms.

(2) CONSENT OF OBLIGOR.—In making a sale or reoffering under paragraph (1), the Secretary may not change the original terms and conditions of the secured loan without the written consent of the obligor.

(e) LOAN GUARANTEES.—

(1) IN GENERAL.—The Secretary may provide a loan guarantee to a lender in lieu of making a secured loan if the Secretary determines that the budgetary cost of the loan guarantee is substantially the same as that of a secured loan.

(2) TERMS.—The terms of a guaranteed loan shall be consistent with the terms set forth in this section for a secured loan, except that the rate on the guaranteed loan and any prepayment features shall be negotiated between the obligor and the lender, with the consent of the Secretary.

§ 184. Lines of credit

(a) IN GENERAL.—

(1) AGREEMENTS.—Subject to paragraphs (2) through (4), the Secretary may enter into agreements to make available lines of credit to 1 or more obligors in the form of direct loans to be made by the Secretary at future dates on the occurrence of certain events for any project selected under section 182.

(2) USE OF PROCEEDS.—The proceeds of a line of credit made available under this section shall be available to pay debt service on project obligations issued to finance eligible project costs, extraordinary repair and replacement costs, operation and maintenance expenses, and costs associated with unexpected Federal or State environmental restrictions.

(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the

Director of the Office of Management and Budget and each rating agency providing a preliminary rating opinion letter under section 182(b)(2)(B), shall determine an appropriate capital reserve subsidy amount for each line of credit, taking into account such letter.

(4) INVESTMENT-GRADE RATING REQUIREMENT.—The funding of a line of credit under this section shall be contingent on the project's senior obligations receiving an investment-grade rating from at least 1 rating agency.

(b) TERMS AND LIMITATIONS.—

(1) IN GENERAL.—A line of credit under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate.

(2) MAXIMUM AMOUNTS.—

(A) TOTAL AMOUNT.—The total amount of the line of credit shall not exceed 33 percent of the reasonably anticipated eligible project costs.

(B) 1-YEAR DRAWS.—The amount drawn in any 1 year shall not exceed 20 percent of the total amount of the line of credit.

(3) DRAWS.—Any draw on the line of credit shall represent a direct loan and shall be made only if net revenues from the project (including capitalized [interest, any debt service reserve fund, and any other available reserve] *interest (but not including reasonably required financing reserves)*) are insufficient to pay the costs specified in subsection (a)(2).

(4) INTEREST RATE.—The interest rate on a direct loan resulting from a draw on the line of credit shall be not less than the yield on 30-year [marketable United States Treasury securities as of the date on which the line of credit is obligated] *United States Treasury securities as of the date of execution of the line of credit agreement*.

(5) SECURITY.—The line of credit—

(A) shall—

(i) be payable, in whole or in part, from tolls, user fees, or other dedicated revenue sources *that also secure the senior project obligations*; and

(ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

(B) may have a lien on revenues described in subparagraph (A) subject to any lien securing project obligations.

(6) PERIOD OF AVAILABILITY.—The line of credit shall be available during the period beginning on the date of substantial completion of the project and ending not later than 10 years after that date.

(7) RIGHTS OF THIRD-PARTY CREDITORS.—

(A) AGAINST FEDERAL GOVERNMENT.—A third-party creditor of the obligor shall not have any right against the Federal Government with respect to any draw on the line of credit.

(B) ASSIGNMENT.—An obligor may assign the line of credit to 1 or more lenders or to a trustee on the lenders' behalf.

(8) NONSUBORDINATION.—A direct loan under this section shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

(9) FEES.—The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of providing a line of credit under this section.

(10) RELATIONSHIP TO OTHER CREDIT INSTRUMENTS.—A project that receives a line of credit under this section also shall not receive a secured loan or loan guarantee under section 183 of an amount that, combined with the amount of the line of credit, exceeds 33 percent of eligible project costs.

(c) REPAYMENT.—

(1) TERMS AND CONDITIONS.—The Secretary shall establish repayment terms and conditions for each direct loan under this section based on the projected cash flow from project revenues and other repayment sources.

(2) TIMING.—All ⟦scheduled⟧ repayments of principal or interest on a direct loan under this section shall*be scheduled to* commence not later than 5 years after the end of the period of availability specified in subsection (b)(6) and be ⟦fully repaid, with interest⟧ *to conclude, with full repayment of principal and interest,*, by the date that is 25 years after the end of the period of availability specified in subsection (b)(6).

⟦(3) SOURCES OF REPAYMENT FUNDS.—The sources of funds for scheduled loan repayments under this section shall include tolls, user fees, or other dedicated revenue sources.⟧

§ ⟦185. Project servicing

⟦(a) REQUIREMENT.—The State in which a project that receives financial assistance under this subchapter is located may identify a local servicer to assist the Secretary in servicing the Federal credit instrument made available under this subchapter.

⟦(b) AGENCY; FEES.—If a State identifies a local servicer under subsection (a), the local servicer—

⟦(1) shall act as the agent for the Secretary; and

⟦(2) may receive a servicing fee, subject to approval by the Secretary.

⟦(c) LIABILITY.—A local servicer identified under subsection (a) shall not be liable for the obligations of the obligor to the Secretary or any lender.

⟦(d) ASSISTANCE FROM EXPERT FIRMS.—The Secretary may retain the services of expert firms in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments.⟧

§ 185. Program administration

(a) REQUIREMENT.—The Secretary shall establish a uniform system to service the Federal credit instruments made available under this subchapter.

(b) FEES.—The Secretary may establish fees at a level to cover all or a portion of the costs to the Federal government of servicing the Federal credit instruments.

(c) SERVICER.—

(1) IN GENERAL.—The Secretary may appoint a financial entity to assist the Secretary in servicing the Federal credit instruments.

(2) DUTIES.—The servicer shall act as the agent for the Secretary.

(3) FEE.—The servicer shall receive a servicing fee, subject to approval by the Secretary.

(d) ASSISTANCE FROM EXPERT FIRMS.—The Secretary may retain the services of expert firms, including counsel, in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments.

* * * * * * *

§ 188. Funding

[(a) FUNDING.—

[(1) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subchapter—

[(A) $80,000,000 for fiscal year 1999;

[(B) $90,000,000 for fiscal year 2000;

[(C) $110,000,000 for fiscal year 2001;

[(D) $120,000,000 for fiscal year 2002; and

[(E) $130,000,000 for fiscal year 2003.

[(2) ADMINISTRATIVE COSTS.—From funds made available under paragraph (1), the Secretary may use, for the administration of this subchapter, not more than $2,000,000 for each of fiscal years 1999 through 2003.

[(3) AVAILABILITY.—Amounts made available under paragraph (1) shall remain available until expended.

[(b) CONTRACT AUTHORITY.—

[(1) IN GENERAL.—Notwithstanding any other provision of law, approval by the Secretary of a Federal credit instrument that uses funds made available under this subchapter shall be deemed to be acceptance by the United States of a contractual obligation to fund the Federal credit instrument.

[(2) AVAILABILITY.—Amounts authorized under this section for a fiscal year shall be available for obligation on October 1 of the fiscal year.

[(c) LIMITATIONS ON CREDIT AMOUNTS.—For each of fiscal years 1999 through 2003, principal amounts of Federal credit instruments made available under this subchapter shall be limited to the amounts specified in the following table:

[Fiscal year:	[Maximum amount [of credit:
[1999	$1,600,000,000
[2000	$1,800,000,000
[2001	$2,200,000,000
[2002	$2,400,000,000
[2003	$2,600,000,000.]

(a) FUNDING.—

(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subchapter $130,000,000 for each of fiscal years 2004 through 2009.

(2) COLLECTED FEES.—All fees collected under this subchapter shall be made available to the Secretary, without further appropriation, to carry out this subchapter.

(3) ADMINISTRATIVE COSTS.—Of amounts made available under paragraph (1), the Secretary may use for the administration of this subchapter not more than $2,000,000 for each of fiscal years 2004 through 2009.

(4) AVAILABILITY.—Amounts made available under paragraph (1) shall remain available until expended.

(b) CONTRACT AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, approval by the Secretary of a Federal credit instrument that uses funds made available under this subchapter shall be deemed to be acceptance by the United States of a contractual obligation to fund the Federal credit investment.

(2) AVAILABILITY.—Amounts authorized under this section for a fiscal year shall be available for obligation on October 1 of the fiscal year.

[§ 189. Report to Congress

[Not later than 4 years after the date of enactment of this subchapter, the Secretary shall submit to Congress a report summarizing the financial performance of the projects that are receiving, or have received, assistance under this subchapter, including a recommendation as to whether the objectives of this subchapter are best served—

[(1) by continuing the program under the authority of the Secretary;

[(2) by establishing a Government corporation or Government-sponsored enterprise to administer the program; or

[(3) by phasing out the program and relying on the capital markets to fund the types of infrastructure investments assisted by this subchapter without Federal participation.]

* * * * * * *

Chapter 2.—OTHER HIGHWAYS

Sec.
201. Authorizations.
202. Allocations.
203. Availability of funds.
204. Federal lands highways program.
[205. Forest development roads and trails.]
205. National Forest System roads and trails.
206. Recreational trails program.
207. Repealed.
208. Repealed.
209. Repealed.
210. Defense access roads.
211. [Repealed by P.L. 100–17.]
212. Inter-American Highway.
213. [Repealed by P.L. 100–17.]
214. Public lands development roads and trails.

[215. Territories highway development program.]
215. Territorial highway program.
216. Darien Gap Highway.
217. Bicycle transportation and pedestrian walkways.
218. Alaska Highway.

§ 201. Authorizations

The provision of this title shall apply to all unappropriated authorizations contained in prior Acts, and also to all unexpended appropriations heretofore made, providing for the expenditure of Federal funds on the following classes of highways: Forest highways, [forest development roads] *National Forest System roads* and trails, park road, parkways, Indian reservation roads, refuge roads, public lands highways, *recreation roads,* and defense access roads. All such authorizations and appropriations shall continue in full force and effect, but hereafter obligations entered into and expenditures made pursuant thereto shall be subject to the provisions of this title.

* * * * * * *

§ 202. Allocations

[(a) On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for [forest development roads] *National Forest System roads* and trails according to the relative needs of the various national forests. Such allocation]

(a) ALLOCATION BASED ON NEED.—

(1) IN GENERAL.—On October 1 of each fiscal year, the Secretary shall allocate sums authorized to be appropriated for the fiscal year for forest development roads and trails according to the relative needs of the various national forests and grassland.

(2) PLANNING.—The allocation under paragraph (1) shall be consistent with the renewable resource and land use planning for the various national forests.

[(b) On October 1 of each fiscal year, the Secretary shall allocate 34 percent of the sums authorized to be appropriated for such fiscal year for public lands highways among those States having unappropriated or unreserved public lands, nontaxable Indian lands or other Federal reservations, on the basis of need in such States, respectively, as determined by the Secretary upon application of the State transportation departments of the respective States. The Secretary shall give preference to those projects which are significantly impacted by Federal land and resource management activities which are proposed by a State which contains at least 3 percent of the total public lands in the Nation. The Secretary shall allocate 66 percent of the remainder of the authorization for public lands highways for each fiscal year as is provided in section 134 of the Federal-Aid Highway Act of 1987, and with respect to these allocations the Secretary shall give equal consideration to projects that provide access to and within the National Forest System, as identified by the Secretary of Agriculture through renewable resources and land use planning and the impact of such planning on existing transportation facilities.]

(b) ALLOCATION FOR PUBLIC LANDS HIGHWAYS.—

(1) PUBLIC LANDS HIGHWAYS.—

(A) IN GENERAL.—On October 1 of each fiscal year, the Secretary shall allocate 33⅓ percent of the sums authorized to be appropriated for that fiscal year for public lands highways among those States having unappropriated or unreserved public lands, or nontaxable Indian lands or other Federal reservations, on the basis of need in the States, respectively, as determined by the Secretary, on application of the State transportation departments of the respective States.

(B) PREFERENCE.—In making the allocation under subparagraph (A), the Secretary shall give preference to those projects that are significantly impacted by Federal land and resource management activities that are proposed by a State that contains at least 3 percent of the total public land in the United States.

(2) NATIONAL FOREST SYSTEM.—

(A) IN GENERAL.—On October 1 of each fiscal year, the Secretary shall allocate 66⅔ percent of the funds authorized to be appropriated for public lands highways for forest highways in accordance with section 134 of the Federal-Aid Highway Act of 1987 (23 U.S.C. 202 note; 101 Stat. 173).

(B) PUBLIC ACCESS TO AND WITHIN NATIONAL FOREST SYSTEM.—In making the allocation under subparagraph (A), the Secretary shall give equal consideration to projects that provide access to and within the National Forest System, as identified by the Secretary of Agriculture through—

(i) renewable resource and land use planning; and

(ii) assessments of the impact of that planning on transportation facilities.

[(c) On]

(c) PARK ROADS AND PARKWAYS.—

(1) IN GENERAL.—On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for park roads and parkways each according to the relative needs of the various elements of the national park system, taking into consideration the need for access as identified through land use planning and the impact of such planning on existing transportation facilities.

(2) PRIORITY.—

(A) DEFINITION OF QUALIFYING NATIONAL PARK.—In this paragraph, the term "qualifying national park" means a National Park that is used more than 1,000,000 recreational visitor days per year, based on an average of the 3 most recent years of available data from the National Park Service.

(B) PRIORITY.—Notwithstanding any other provision of law, with respect to funds authorized for park roads and parkways, the Secretary shall give priority in the allocation of funds to projects for highways that—

(i) are located in, or provide access to, a qualifying National Park; and

(ii) were initially constructed before 1940.

(C) PRIORITY CONFLICTS.—If there is a conflict between projects described in subparagraph (B), the Secretary shall give highest priority to projects that—

(i) are in, or that provide access to, parks that are adjacent to a National Park of a foreign country; or

(ii) are located in more than 1 State;

(d) INDIAN RESERVATION ROADS.—

(1) FOR FISCAL YEARS ENDING BEFORE OCTOBER 1, [1999]*2005*.—On October 1 of each fiscal year ending before October 1, [1999] *2005*, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for Indian reservation roads according to the relative needs of the various reservations as jointly identified by the Secretary and the Secretary of the Interior.

(2) FISCAL YEAR [2000] *2005* AND THEREAFTER.—

(A) IN GENERAL.—All funds authorized to be appropriated for Indian reservation roads shall be allocated among Indian tribes for fiscal year [2000] *2005* and each subsequent fiscal year in accordance with a formula established by the Secretary of the Interior under a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5.

(B) REGULATIONS.—Notwithstanding sections 563(a) and 565(a) of title 5, the Secretary of the Interior shall issue regulations governing the Indian reservation roads program, and establishing the funding formula for fiscal year 2000 and each subsequent fiscal year under this paragraph, in accordance with a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5. The regulations shall be issued in final form not later than April 1, [1999] *2004*, and shall take effect not later than October 1, 1999.

(C) NEGOTIATED RULEMAKING COMMITTEE.—In establishing a negotiated rulemaking committee to carry out subparagraph (B), the Secretary of the Interior shall—

(i) apply the procedures under subchapter III of chapter 5 of title 5 in a manner that reflects the unique government-to-government relationship between the Indian tribes and the United States; and

(ii) ensure that the membership of the committee includes only representatives of the Federal Government and of geographically diverse small, medium, and large Indian tribes.

(D) BASIS FOR FUNDING FORMULA.—The funding formula established for fiscal year 2000 and each subsequent fiscal year under this paragraph shall be based on factors that reflect—

(i) the relative needs of the Indian tribes, and reservation or tribal communities, for transportation assistance; and

(ii) the relative administrative capacities of, and challenges faced by, various Indian tribes, including the cost of road construction in each Bureau of Indian Affairs area, geographic isolation and difficulty in

maintaining all-weather access to employment, commerce, health, safety, and educational resources.

(E) TRANSFERRED FUNDS.—

(i) IN GENERAL.—Not later than 30 days after the date on which funds are made available to the Secretary of the Interior under this paragraph, the funds shall be distributed to, and available for immediate use by, the eligible Indian tribes, in accordance with the formula applicable for each fiscal year.

(ii) FORMULA.—If the Secretary of the Interior has not promulgated final regulations for the distribution of funds under clause (i) for a fiscal year by the date on which the funds for the fiscal year are required to be distributed under that clause, the Secretary of the Interior shall distribute the funds under clause (i) in accordance with the applicable funding formula for the preceding year.

(3) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.—

(A) IN GENERAL.—Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available [under this title] *under this chapter and section 125(e)* for Indian reservation roads and for highway bridges located on Indian reservation roads to pay for the costs of programs, services, functions, and activities, or portions thereof, that are specifically or functionally related to the cost of planning, research, engineering, and construction of any highway, road, bridge, parkway, or transit facility that provides access to or is located within the reservation or community of an Indian tribe shall be made available, upon request of the Indian tribal government, to the Indian tribal government for contracts and agreements for such planning, research, engineering, and construction in accordance with the Indian Self-Determination and Education Assistance Act *and the approved Indian reservation road transportation improvement program.*

(B) EXCLUSION OF AGENCY PARTICIPATION.—Funds for programs, functions, services, or activities, or portions thereof, including supportive administrative functions that are otherwise contractible to which subparagraph (A) applies, shall be paid in accordance with subparagraph (A) without regard to the organizational level at which the Department of the Interior that has previously carried out such programs, functions, services, or activities.

(4) RESERVATION OF FUNDS.—

(A) NATIONWIDE PRIORITY PROGRAM.—The Secretary shall establish a nationwide priority program for improving deficient Indian reservation road bridges.

[(B) RESERVATION.—Of the amounts authorized to be appropriated for Indian reservation roads for each fiscal year, the Secretary, in cooperation with the Secretary of the Interior, shall reserve not less than $13,000,000 for projects to replace,]

(B) FUNDING.—

(i) RESERVATION OF FUNDS.—Of the amounts authorized to be appropriated for Indian reservation roads for each fiscal year, the Secretary, in cooperation with the Secretary of the Interior, shall reserve not less than $15,000,000 for each of fiscal years 2004 through 2009 to carry out planning, design, engineering, preconstruction, construction, and inspection of projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or install scour countermeasures for deficient Indian reservation road bridges, including multiple-pipe culverts.

(ii) AVAILABILITY.—Funds made available to carry out this subparagraph shall be available for obligation in the same manner as if the funds were apportioned under chapter 1.

(C) ELIGIBLE BRIDGES.—To be eligible to receive funding under this subsection, a bridge described in subparagraph (A) must—

(i) have an opening of 20 feet or more;

(ii) be on an Indian reservation road;

(iii) be unsafe because of structural deficiencies, physical deterioration, or functional obsolescence; and

(iv) be recorded in the national bridge inventory administered by the Secretary under subsection (b).

[(D) APPROVAL REQUIREMENT.—Funds to carry out Indian reservation road bridge projects under this subsection shall be made available only on approval of plans, specifications, and estimates by the Secretary.]

(D) APPROVAL REQUIREMENT.—

(i) IN GENERAL.—Subject to clause (ii), on request by an Indian tribe or the Secretary of the Interior, the Secretary may make funds available under this subsection for preliminary engineering for Indian reservation road bridge projects.

(ii) CONSTRUCTION AND CONSTRUCTION ENGINEERING.—The Secretary may make funds available under clause (i) for construction and construction engineering only after approval by the Secretary of applicable plans, specifications, and estimates.

(e) REFUGE ROADS.—On October 1 of each fiscal year, the Secretary shall allocate the sums made available for that fiscal year for refuge roads according to the relative needs of the various refuges in the National Wildlife [Refuge System] *Refuge System and the various national fish hatcheries*, and taking into consideration—

(1) the comprehensive conservation plan for each refuge;

(2) the need for access as identified through land use planning; and

(3) the impact of land use planning on existing transportation facilities.

(f) ADMINISTRATION OF INDIAN RESERVATION ROADS.—Notwithstanding any other provision of law, for any fiscal year not more

than 6 percent of the contract authority amounts made available from the Highway Trust Fund to the Bureau of Indian Affairs under this title shall be used to pay the expenses incurred by the Bureau in administering the Indian reservation roads program (including the administrative expenses relating to individual projects associated with the Indian reservation roads program).

(g) SAFETY.—Subject to paragraph (2), on October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for the fiscal year for safety as follows:

(1) 12 percent to the Bureau of Reclamation.

(2) 18 percent to the Bureau of Indian Affairs.

(3) 17 percent to the Bureau of Land Management.

(4) 17 percent to the Forest Service.

(5) 7 percent to the United States Fish and Wildlife Service.

(6) 17 percent to the National Park Service.

(7) 12 percent to the Corps of Engineers.

(h) RECREATION ROADS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), on October 1 of each fiscal year, the Secretary, after completing the transfer under subsection 204(i), shall allocate the sums authorized to be appropriated for the fiscal year for recreation roads as follows:

(A) 8 percent to the Bureau of Reclamation.

(B) 9 percent to the Corps of Engineers.

(C) 13 percent to the Bureau of Land Management.

(D) 70 percent to the Forest Service.

(2) ALLOCATION WITHIN AGENCIES.—Recreation road funds allocated to a Federal agency under paragraph (1) shall be allocated for projects and activities of the Federal agency according to the relative needs of each area served by recreation roads under the jurisdiction of the Federal agency, as indicated in the approved transportation improvement program for each Federal agency.

* * * * * * *

§ 203. Availability of funds

Funds authorized for [forest development roads] *National Forest System roads* and trails, public lands development roads and trails, park road, parkways, refuge roads, *safety projects or activities* Indian reservation roads, *recreation roads* and public lands highways shall be available for contract upon apportionment, or on October 1, of the fiscal year for which authorized if no apportionment is required. Any amount remaining unexpended for a period of three years after the close of the fiscal year for which authorized shall lapse. The Secretary of the Department charged with the administration of such funds is granted authority to incur obligations, approve projects, and enter into contracts under such authorizations and his action in doing so shall be deemed a contractual obligation of the United States for the payment of the cost thereof and such funds shall be deemed to have been expended when so obligated. Any funds heretofore or hereafter authorized for any fiscal year for forest development roads and trails, public lands development roads and trails, park road, parkways, refuge roads, *safety*

projects or activities Indian roads*, recreation roads* and public lands highways shall be deemed to have been expended if a sum equal to the total of the sums authorized for such fiscal year and previous fiscal years since and including the fiscal year ending June 30, 1955, shall have been obligated. Any of such funds released by payment of final voucher or modification of project authorizations shall be credited to the balance of unobligated authorizations and be immediately available for expenditure. Notwithstanding any other provision of law, the authorization by the Secretary of engineering and related work for a Federal lands highways program project, or the approval by the Secretary of plans, specifications, and estimates for construction of a Federal lands highways program project, shall be deemed to constitute a contractual obligation of the Federal Government to pay the Federal share of the cost of the project.

* * * * * * *

§ 204. Federal Lands Highways Program

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Recognizing the need for all Federal roads that are public roads to be treated under uniform policies similar to the policies that apply to Federal-aid highways, there is established a coordinated Federal lands highways program that shall apply to [public lands highways,] *public lands highways, recreation roads, and forest highways* park roads and parkways,*refuge roads* and Indian reservation roads and bridges.

(2) TRANSPORTATION PLANNING PROCEDURES.—In consultation with the Secretary of each appropriate Federal land management agency, the Secretary shall develop, by rule, transportation planning procedures that are consistent with the metropolitan and statewide planning processes required under sections 134 and 135.

(3) APPROVAL OF TRANSPORTATION IMPROVEMENT PROGRAM.—The transportation improvement program developed as a part of the transportation planning process under this section shall be approved by the Secretary.

(4) INCLUSION IN OTHER PLANS.—All regionally significant Federal lands highways program projects—

(A) shall be developed in cooperation with States and metropolitan planning organizations; and

(B) shall be included in appropriate Federal lands highways program, State, and metropolitan plans and transportation improvement programs.

(5) INCLUSION IN STATE PROGRAMS.—The approved Federal lands highways program transportation improvement program shall be included in appropriate State and metropolitan planning organization plans and programs without further action on the transportation improvement program.

(6) DEVELOPMENT OF SYSTEMS.—The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, develop by rule safety,

bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program.

[(b) Funds available for public lands highways, park roads and parkways, and Indian reservation roads shall be used by the Secretary and the Secretary of the appropriate Federal land management agency to pay for the cost of transportation planning, research, engineering, and construction of the highways, roads, and parkways, or of transit facilities within public lands, national parks, and Indian reservations. In connection with activities under the preceding sentence, the Secretary and the Secretary of the appropriate Federal land management agency may enter into construction contracts and other appropriate contracts with a State or civil subdivision of a State or Indian tribe. In the case of Indian reservation roads, Indian labor may be employed in such construction and improvement under such rules and regulations as may be prescribed by the Secretary of the Interior. No ceiling on Federal employment shall be applicable to construction or improvement of Indian reservation roads. Funds available for each class of Federal lands highways shall be available for any kind of transportation project eligible for assistance under this title that is within or adjacent to or provides access to the areas served by the particular class of Federal lands highways. The Secretary of Interior may reserve funds from the Bureau of Indian Affairs' administrative funds associated with the Indian reservation roads program to finance the Indian technical centers authorized under section 504(b).]

(b) USE OF FUNDS.—

(1) IN GENERAL.—Funds available for public lands highways, recreation roads, park roads and parkways, forest highways, and Indian reservation roads shall be used by the Secretary and the Secretary of the appropriate Federal land management agency to pay the cost of transportation planning, research, engineering, operation and maintenance of transit facilities, and construction of the highways, roads, parkways, forest highways, and transit facilities located on public land, national parks, and Indian reservations.

(2) CONTRACT.—In connection with an activity described in paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency may enter into a construction contract or other appropriate agreement with—

(A) a State (including a political subdivision of a State); or

(B) an Indian tribe.

(3) INDIAN RESERVATION ROADS.—In the case of an Indian reservation road—

(A) Indian labor may be used, in accordance with such rules and regulations as may be promulgated by the Secretary of the Interior, to carry out any construction or other activity described in paragraph (1); and

(B) funds made available to carry out this section may be used to pay bridge preconstruction costs (including planning, design, and engineering).

(4) FEDERAL EMPLOYMENT.—No maximum on Federal employment shall be applicable to construction or improvement of Indian reservation roads.

(5) AVAILABILITY OF FUNDS.—Funds available under this section for each class of Federal lands highway shall be available for any kind of transportation project eligible for assistance under this title that is within or adjacent to, or that provides access to, the areas served by the particular class of Federal lands highway.

(6) RESERVATION OF FUNDS.—The Secretary of the Interior may reserve funds from administrative funds of the Bureau of Indian Affairs that are associated with the Indian reservation road program to finance the Indian technical centers authorized under section 504(b).

(c) Before approving as a project on an Indian reservation road any project eligible for funds apportioned under section 104 or section 144 of this title in a State, the Secretary must determine that the obligation of funds for such project is supplementary to and not in lieu of the obligation, for projects on Indian reservation roads, of a fair and equitable share of funds apportioned to such State under section 104 of this title. Notwithstanding any other provision of this title, Indian reservation roads under the jurisdiction of the Bureau of Indian Affairs of the Department of the Interior shall be eligible to expend not more than 15 percent funds apportioned for Indian reservation roads from the Highway Trust Fund for the purpose of road sealing projects. The Bureau of Indian Affairs shall continue to retain responsibility, including annual funding request responsibility, for road maintenance programs on Indian reservations.

(d) Cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement, and any funds received from a State, county, or local subdivision shall be credited to appropriations available for the class of Federal lands highways to which such funds were contributed.

(e) Construction of each project shall be performed by contract awarded by competitive bidding, unless the Secretary or the Secretary of the appropriate Federal land management agency shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest. Notwithstanding the foregoing, the provisions of section 23 of the "Buy Indian" Act of June 25, 1910 (36 Stat. 891), and the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (88 Stat. 2205) shall apply to all funds administered by the Secretary of the Interior which are appropriated for the construction and improvement of Indian reservation roads.

(f) All appropriations for the construction and improvement of each class of Federal lands highways shall be administered in conformity with regulations and agreements jointly approved by the Secretary and the Secretary of the appropriate Federal land managing agency.

(g) The Secretary shall transfer to the Secretary of Agriculture from appropriations for forest highways such amounts as may be needed to cover necessary administrative expenses of the Forest Service in connection with forest highways.

(h) ELIGIBLE PROJECTS.—Funds available for each class of Federal lands highways may be available for the following:

(1) Transportation planning for tourism and recreational travel including the National Forest Scenic Byways Program, Bureau of Land Management Back Country Byways Program, National Trail System Program, and other similar Federal programs that benefit recreational development.

(2) Adjacent vehicular parking areas.

(3) Interpretive signage.

(4) Acquisition of necessary scenic easements and scenic or historic sites.

(5) Provision for pedestrians and bicycles.

(6) Construction and reconstruction of roadside rest areas including sanitary and water facilities.

(7) Other appropriate public road facilities such as visitor centers as determined by the Secretary.

(8) A project to build a replacement of the federally owned bridge over the Hoover Dam in the Lake Mead National Recreation Area between Nevada and Arizona.

(i) TRANSFERS OF COSTS TO SECRETARIES OF FEDERAL LAND MANAGEMENT AGENCIES.—

(1) ADMINISTRATIVE COSTS.—The Secretary shall transfer to the appropriate Federal land management agency from amounts made available for [public lands highways] *public lands highways, recreation roads, and forest highways* such amounts as are necessary to pay necessary administrative costs of the agency in connection with public lands highways.

(2) TRANSPORTATION PLANNING COSTS.—The Secretary shall transfer to the appropriate Federal land management agency from amounts made available for [public lands highways] *public lands highways, recreation roads, and forest highways* such amounts as are necessary to pay the cost to the agency to conduct necessary transportation planning for Federal lands, if funding for the planning is not otherwise provided under this section.

(j) INDIAN RESERVATION ROADS PLANNING.—Up to 2 percent of funds made available for Indian reservation roads for each fiscal year shall be allocated to those Indian tribal governments applying for transportation planning pursuant to the provisions of the Indian Self-Determination and Education Assistance Act. The Indian tribal government, in cooperation with the Secretary of the Interior, and as appropriate, with a State, local government, or metropolitan planning organization, shall carry out a transportation planning process in accordance with subsection (a). Projects shall be selected by the Indian tribal government from the transportation improvement program and shall be subject to the approval of the Secretary of the Interior and the Secretary.

(k) REFUGE ROADS.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, funds made available for refuge roads shall be used by the Secretary and the Secretary of the Interior only to pay the cost of—

(A) maintenance and improvements of refuge roads;

(B) maintenance and improvements of eligible projects described in paragraphs [(2), (5),] *(2), (3), (5),* and (6) of subsection (h) that are located in or adjacent to wildlife refuges; [and]

(C) administrative costs associated with such maintenance and improvements[.];

(D) maintenance of public roads in national fish hatcheries under the jurisdiction of the United States Fish and Wildlife Service;

(E) the non-Federal share of the cost of any project funded under this title or chapter 53 of title 49 that provides access to or within a wildlife refuge; and

(F) maintenance and improvement of recreational trails (except that expenditures on trails under this subparagraph shall not exceed 5 percent of available funds for each fiscal year).

(2) CONTRACTS.—In carrying out paragraph (1), the Secretary and the Secretary of the Interior, as appropriate, may enter into contracts with a State or civil subdivision of a State or Indian tribe as is determined advisable.

(3) COMPLIANCE WITH OTHER LAW.—Funds made available for refuge roads shall be used only for projects that are in compliance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.).

(l) SAFETY ACTIVITIES.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, funds made available for safety under this title shall be used by the Secretary and the head of the appropriate Federal land management agency only to pay the costs of carrying out—

(A) transportation safety improvement activities;

(B) activities to eliminate high-accident locations;

(C) projects to implement protective measures at, or eliminate, at-grade railway-highway crossings;

(D) collection of safety information;

(E) transportation planning projects or activities;

(F) bridge inspection;

(G) development and operation of safety management systems;

(H) highway safety education programs; and

(I) other eligible safety projects and activities authorized under chapter 4.

(2) CONTRACTS.—In carrying out paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency may enter into contracts or agreements with—

(A) a State;

(B) a political subdivision of a State; or

(C) an Indian tribe.

(3) EXCEPTION.—The cost sharing requirements under the Federal Water Project Recreation Act (16 U.S.C. 460l–12 et seq.) shall not apply to funds made available to the Bureau of Reclamation under this subsection.

(m) RECREATION ROADS.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, funds made available for recreation roads under this title shall be used by the Secretary and the Secretary of the appropriate Federal land management agency only to pay the cost of—

(A) maintenance or improvements of existing recreation roads;

(B) maintenance and improvements of eligible projects described in paragraph (1), (2), (3), (5), or (6) of subsection (h) that are located in or adjacent to Federal land under the jurisdiction of—

(i) the Department of Agriculture

(ii) the Department of Defense; or

(iii) the Department of the Interior;

(C) transportation planning and administrative activities associated with those maintenance and improvements; and

(D) the non-Federal share of the cost of any project funded under this title or chapter 53 of title 49 that provides access to or within Federal land described in subparagraph (B).

(2) CONTRACTS.—In carrying out paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency may enter into contracts or agreements with—

(A) a State;

(B) a political subdivision of a State; or

(C) an Indian tribe.

(3) NEW ROADS.—No funds made available under this section shall be used to pay the cost of the design or construction of new recreation roads.

(4) COMPLIANCE WITH OTHER ENVIRONMENTAL LAWS.—A maintenance or improvement project that is funded under this subsection, and that is consistent with or has been identified in a land use plan for an area under the jurisdiction of a Federal agency, shall not require any additional environmental reviews or assessments under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if—

(A) the Federal agency that promulgated the land use plan analyzed the specific proposal for the maintenance or improvement project under that Act; and

(B) as of the date on which the funds are to be expended, there are—

(i) no significant changes to the proposal bearing on environmental concerns; and

(ii) no significant new information.

(5) EXCEPTION.—The cost sharing requirements under the Federal Water Project Recreation Act (16 U.S.C. 460l–12 et seq.) shall not apply to funds made available to the Bureau of Reclamation under this subsection.

(n) TRIBAL-STATE ROAD MAINTENANCE AGREEMENTS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, regulation, policy, or guideline, an Indian tribe and a State may enter into a road maintenance agreement under

which an Indian tribe assumes the responsibilities of the State for—

(A) Indian reservation roads; and

(B) roads providing access to Indian reservation roads.

(2) TRIBAL-STATE AGREEMENTS.—Agreements entered into under paragraph (1)—

(A) shall be negotiated between the State and the Indian tribe; and

(B) shall not require the approval of the Secretary.

(3) ANNUAL REPORT.—Effective beginning with fiscal year 2004, the Secretary shall prepare and submit to Congress an annual report that identifies—

(A) the Indian tribes and States that have entered into agreements under paragraph (1);

(B) the number of miles of roads for which Indian tribes have assumed maintenance responsibilities; and

(C) the amount of funding transferred to Indian tribes for the fiscal year under agreements entered into under paragraph (1).

(o) FOREST HIGHWAYS.—Of the amounts made available for forest highways, $15,000,000 for each fiscal year shall be used to repair culverts and bridges on forest highways to—I22 (1) facilitate appropriate fish passage and ensure reasonable flows; and

(2) maintain and remove such culverts and bridges as appropriate.

* * * * * * *

[§ 205. Forest development roads and trails]

§ 205. National Forest System roads and trails

(a) Funds available for [forest development roads] *National Forest System roads* and trails shall be used by the Secretary of Agriculture to pay for the costs of construction and maintenance thereof, including roads and trails on experimental and other areas under Forest Service administration. In connection therewith, the Secretary of Agriculture may enter into contracts with a State or civil subdivision thereof, and issue such regulations as he deems advisable.

(b) Cooperation of States, counties, or other local subdivisions may be accepted but shall not be required by the Secretary of Agriculture.

(c) Construction estimated to cost $50,000 or more per mile or $50,000 or more per project for projects with a length of less than one mile, exclusive of bridges and engineering, shall be advertised and let to contract. If such estimated cost is less than $50,000 per mile or $50,000 per project for projects with a length of less than one mile or if, after proper advertising, no acceptable bid is received or the bids are deemed excessive, the work may be done by the Secretary of Agriculture on his own account.

(d) Funds available for [forest development roads] *National Forest System roads* and trails shall be available for adjacent vehic-

ular parking areas and for sanitary, water, and fire control facilities.]

* * * * * * *

§ 206. Recreational trails program

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) MOTORIZED RECREATION.—The term "motorized recreation" means off-road recreation using any motor-powered vehicle, except for a motorized wheelchair.

(2) RECREATIONAL TRAIL.—The term "recreational trail" means a thoroughfare or track across land or snow, used for recreational purposes such as—

(A) pedestrian activities, including wheelchair use;

(B) skating or skateboarding;

(C) equestrian activities, including carriage driving;

(D) nonmotorized snow trail activities, including skiing;

(E) bicycling or use of other human-powered vehicles;

(F) aquatic or water activities; and

(G) motorized vehicular activities, including all-terrain vehicle riding, motorcycling, snowmobiling, use of off-road light trucks, or use of other off-road motorized vehicles.

(b) PROGRAM.—In accordance with this section, the Secretary, in consultation with the Secretary of the Interior and the Secretary of Agriculture, shall carry out a program to provide and maintain recreational trails.

(c) STATE RESPONSIBILITIES.—[To be eligible for apportionments under this section]

(1) IN GENERAL.—To be eligible for apportionments under this section—

[(1)] *(A)* the Governor of the State shall designate the State agency or agencies that will be responsible for administering apportionments made to the State under this section; and

[(2)] *(B)* the State shall establish a State recreational trail advisory committee that represents both motorized and nonmotorized recreational trail users, which shall meet not less often than once per fiscal year.

(2) OBLIGATION REQUIREMENT.—If a State does not meet the requirements under paragraph (1) within a fiscal year, the State shall not be eligible for an apportionment in the following fiscal year.

(d) USE OF APPORTIONED FUNDS.—

(1) IN GENERAL.—Funds apportioned to a State to carry out this section shall be obligated for recreational trails and related projects that—

(A) have been planned and developed under the laws, policies, and administrative procedures of the State; and

(B) are identified in, or further a specific goal of, a recreational trail plan, or a statewide comprehensive outdoor recreation plan required by the Land and Water Conserva-

tion Fund Act of 1965 (16 U.S.C. 460l–4 et seq.), that is in effect.

[(2) PERMISSIBLE USES.—Permissible uses of funds apportioned to a State for a fiscal year to carry out this section include—

[(A) maintenance and restoration of existing recreational trails;

[(B) development and rehabilitation of trailside and trailhead facilities and trail linkages for recreational trails;

[(C) purchase and lease of recreational trail construction and maintenance equipment;

[(D) construction of new recreational trails, except that, in the case of new recreational trails crossing Federal lands, construction of the trails shall be—

[(i) permissible under other law;

[(ii) necessary and required by a statewide comprehensive outdoor recreation plan that is required by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–4 et seq.) and that is in effect;

[(iii) approved by the administering agency of the State designated under subsection (c)(1); and

[(iv) approved by each Federal agency having jurisdiction over the affected lands under such terms and conditions as the head of the Federal agency determines to be appropriate, except that the approval shall be contingent on compliance by the Federal agency with all applicable laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);

[(E) acquisition of easements and fee simple title to property for recreational trails or recreational trail corridors;

[(F) payment of costs to the State incurred in administering the program, but in an amount not to exceed 7 percent of the apportionment made to the State for the fiscal year to carry out this section; and

[(G) operation of educational programs to promote safety and environmental protection as those objectives relate to the use of recreational trails, but in an amount not to exceed 5 percent of the apportionment made to the State for the fiscal year.]

(2) PERMISSIBLE USES.—Permissible uses of funds apportioned to a State for a fiscal year to carry out this section include—

(A) maintenance and restoration of recreational trails;

(B) development and rehabilitation of trailside and trailhead facilities and trail linkages for recreational trails;

(C) purchase and lease of recreational trail construction and maintenance equipment;

(D) construction of new recreational trails, except that, in the case of new recreational trails crossing Federal land, construction of the trails shall be—

(i) permissible under other law;

(ii) necessary and recommended by a statewide comprehensive outdoor recreation plan that is—

(I) required under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–4 et seq.); and

(II) in effect;

(iii) approved by the administering agency of the State designated under subsection (c)(1)(A); and

(iv) approved by each Federal agency having jurisdiction over the affected land, under such terms and conditions as the head of the Federal agency determines to be appropriate, except that the approval shall be contingent on compliance by the Federal agency with all applicable laws, including—

(I) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et. seq.);

(II) the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et. seq.); and

(III) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et. seq.);

(E) acquisition of easements and fee simple title to property for recreational trails or recreational trail corridors;

(F) assessment of trail conditions for accessibility and maintenance;

(G) use of trail crews, youth conservation or service corps, or other appropriate means to carry out activities under this section;

(H) development and dissemination of publications and operation of educational programs to promote safety and environmental protection, as those objectives relate to the use of recreational trails, supporting non-law enforcement trail safety and trail use monitoring patrol programs, and providing trail-related training, but in an amount not to exceed 5 percent of the apportionment made to the State for the fiscal year; and

(I) payment of costs to the State incurred in administering the program, but in an amount not to exceed 7 percent of the apportionment made to the State for the fiscal year to carry out this section.

(3) USE OF APPORTIONMENTS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B), (C), and (D), of the apportionments made to a State for a fiscal year to carry out this section—

(i) 40 percent shall be used for recreational trail or related projects that facilitate diverse recreational trail use within a recreational trail corridor, trailside, or trailhead, regardless of whether the project is for diverse motorized use, for diverse nonmotorized use,

or to accommodate both motorized and nonmotorized recreational trail use;

(ii) 30 percent shall be used for uses relating to motorized recreation; and

(iii) 30 percent shall be used for uses relating to nonmotorized recreation.

(B) SMALL STATE EXCLUSION.—Any State with a total land area of less than 3,500,000 acres shall be exempt from the requirements of clauses (ii) and (iii) of subparagraph (A).

(C) WAIVER AUTHORITY.—A State recreational trail advisory committee established under subsection (c)(2) may waive, in whole or in part, the requirements of clauses (ii) and (iii) of subparagraph (A) if the State recreational trail advisory committee determines and notifies the Secretary that the State does not have sufficient projects to meet the requirements of clauses (ii) and (iii) of subparagraph (A).

(D) STATE ADMINISTRATIVE COSTS.—State administrative costs eligible for funding under paragraph [(2)(F)] *(2)(I)* shall be exempt from the requirements of subparagraph (A).

(E) USE OF YOUTH CONSERVATION OR SERVICE CORPS.—A State shall make available not less than 10 percent of the apportionments of the State to provide grants to, or to enter into cooperative agreements or contracts with, qualified youth conservation or service corps to perform recreational trails program activities.

(4) GRANTS.—

(A) IN GENERAL.—A State may use funds apportioned to the State to carry out this section to make grants to private organizations, municipal, county, State, and Federal Government entities, and other government entities as approved by the State after considering guidance from the State recreational trail advisory committee established under subsection (c)(2), for uses consistent with this section.

(B) COMPLIANCE.—A State that makes grants under subparagraph (A) shall establish measures to verify that recipients of the grants comply with the conditions of the program for the use of grant funds.

(e) ENVIRONMENTAL BENEFIT OR MITIGATION.—To the extent practicable and consistent with the other requirements of this section, a State should give consideration to project proposals that provide for the redesign, reconstruction, nonroutine maintenance, or relocation of recreational trails to benefit the natural environment or to mitigate and minimize the impact to the natural environment.

(f) FEDERAL SHARE.—

(1) IN GENERAL.—Subject to the other provisions of this subsection, the Federal share of the cost of a project *and the Federal share of the administrative costs of a State* under this section shall [not exceed 80 percent] *be determined in accordance with section 120(b).*

(2) FEDERAL AGENCY PROJECT SPONSOR.—Notwithstanding any other provision of law, a Federal agency that sponsors a project under this section may contribute additional Federal funds toward the cost of a project, except that—

(A) the share attributable to the Secretary of Transportation may not exceed [80 percent of] *the amount determined in accordance with section 120(b) for* the cost of a project under this section; and

(B) the share attributable to the Secretary and the Federal agency *sponsoring the project* may not exceed 95 percent of the cost of a project under this section.

(3) USE OF FUNDS FROM FEDERAL PROGRAMS TO PROVIDE NON-FEDERAL SHARE.—Notwithstanding any other provision of law, the non-Federal share of the cost of the project may include amounts made available by the Federal Government under any Federal program that are—

(A) expended in accordance with the requirements of the Federal program relating to activities funded and populations served; and

(B) expended on a project that is eligible for assistance under this section.

(4) USE OF RECREATIONAL TRAILS PROGRAM FUNDS TO MATCH OTHER FEDERAL PROGRAM FUNDS.—Notwithstanding any other provision of law, funds made available under this section may be used to pay the non-Federal matching share for other Federal program funds that are—

(A) expended in accordance with the requirements of the Federal program relating to activities funded and populations served; and

(B) expended on a project that is eligible for assistance under this section.

[(4)] *(5)* PROGRAMMATIC NON-FEDERAL SHARE.—A State may allow adjustments to the non-Federal share of an individual project for a fiscal year under this section if the Federal share of the cost of all projects carried out by the State under the program (excluding projects funded under paragraph (2) or (3)) using funds apportioned to the State for the fiscal year does not exceed [80 percent] *the Federal share as determined in accordance with section 120(b).*

[(5) STATE ADMINISTRATIVE COSTS.—The Federal share of the administrative costs of a State under this subsection shall be determined in accordance with section 120(b).]

(g) USES NOT PERMITTED.—A State may not obligate funds apportioned to carry out this section for—

(1) condemnation of any kind of interest in property;

(2) construction of any recreational trail on National Forest System land for any motorized use unless—

(A) the land has been designated for uses other than wilderness by an approved forest land and resource management plan or has been released to uses other than wilderness by an Act of Congress; and

(B) the construction is otherwise consistent with the management direction in the approved forest land and resource management plan;

(3) construction of any recreational trail on Bureau of Land Management land for any motorized use unless the land—

(A) has been designated for uses other than wilderness by an approved Bureau of Land Management resource management plan or has been released to uses other than wilderness by an Act of Congress; and

(B) the construction is otherwise consistent with the management direction in the approved management plan; or

(4) upgrading, expanding, or otherwise facilitating motorized use or access to recreational trails predominantly used by nonmotorized recreational trail users and on which, as of May 1, 1991, motorized use was prohibited or had not occurred.

(h) PROJECT ADMINISTRATION.—

(1) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, SERVICES, OR NEW RIGHT-OF-WAY.—

(A) IN GENERAL.—Nothing in this title or other law shall prevent a project sponsor from offering to donate funds, materials, services, or a new right-of-way for the purposes of a project eligible for assistance under this section. Any funds, or the fair market value of any materials, services, or new right-of-way, may be donated by any project sponsor and shall be credited to the non-Federal share in accordance with subsection (f).

(B) FEDERAL PROJECT SPONSORS.—Any funds or the fair market value of any materials or services may be provided by a Federal project sponsor and shall be credited to the Federal agency's share in accordance with subsection (f).

(C) PLANNING AND ENVIRONMENTAL ASSESSMENT COSTS INCURRED PRIOR TO PROJECT APPROVAL.—A project funded under any of subparagraphs (A) through (H) of subsection (d)(2) may permit preapproval planning and environmental compliance costs incurred not more than 18 months before project approval to be credited toward the non-Federal share in accordance with subsection (f).

[(2) RECREATIONAL PURPOSE.—A project funded under this section is intended to enhance recreational opportunity and is not subject to section 138 of this title or section 303 of title 49.]

(2) WAIVER OF HIGHWAY PROGRAM REQUIREMENTS.—A project funded under this section—

(A) is intended to enhance recreational opportunity;

(B) is not considered to be a highway project; and

(C) is not subject to—

(i) section 112, 114, 116, 134, 135, 138, 217, or 301 of this title; or

(ii) section 303 of title 49.

(3) CONTINUING RECREATIONAL USE.—At the option of each State, funds apportioned to the State to carry out this section may be treated as Land and Water Conservation Fund apportionments for the purposes of section 6(f)(3) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–8(f)(3)).

(4) COOPERATION BY PRIVATE PERSONS.—

(A) WRITTEN ASSURANCES.—As a condition of making available apportionments for work on recreational trails that would affect privately owned land, a State shall obtain written assurances that the owner of the land will cooperate with the State and participate as necessary in the activities to be conducted.

(B) PUBLIC ACCESS.—Any use of the apportionments to a State to carry out this section on privately owned land must be accompanied by an easement or other legally binding agreement that ensures public access to the recreational trail improvements funded by the apportionments.

(i) CONTRACT AUTHORITY.—Funds authorized to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1, except that the Federal share of the cost of a project under this section shall be determined in accordance with this section.

* * * * * * *

[§ 215. Territorial highway program

[(a) Recognizing the mutual benefits that will accrue to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and to the United States from the improvement of highways in such territories of the United States, the Secretary is authorized to assist each such territorial government in a program for the construction and improvement of a system of arterial highways, and necessary interisland connectors designated by the Governor of such territory and approved by the Secretary. Federal financial assistance shall be granted under this subsection to such territories upon the basis of a Federal contribution of 100 per centum of the cost of any project.

[(b) In order to establish a long-range highway development program, the Secretary is authorized to provide technical assistance for the establishment of an appropriate agency to administer on a continuing basis highway planning, design, construction and maintenance operations, the development of a system of arterial and collector highways, including necessary interisland connectors, and the establishment of advance acquisition of right-of-way and relocation assistance programs.

[(c) No part of the appropriations authorized under this section shall be available for obligation or expenditure with respect to any territory until the Governor enters into an agreement with the Secretary providing that the government of such territory (1) will design and construct a system of arterial and collector highways, including necessary interisland connectors, built in accordance with standards approved by the Secretary; (2) will not impose any toll, or permit any such toll to be charged, for use by vehicles or persons of any portion of the facilities constructed or operated under the provisions of this section; (3) will provide for the maintenance of such facilities in a condition to adequately serve the needs of present and future traffic; (4) will implement standards for traffic

operations and uniform traffic control devices which are approved by the Secretary.

[(d)(1) Three per centum of the sums authorized to be appropriated for each fiscal year for carrying out subsection (a) of this section shall be available for expenditure only for engineering and economic surveys and investigations, for the planning of future highway programs and the financing thereof, for studies of the economy, safety, and convenience of highway usage and the desirable regulation and equitable taxation thereof, and for research and development, necessary in connection with the planning, design, and maintenance of the highway system, and the regulation and taxation of their use.

[(2) In addition to the percentage provided in paragraph (1) of the subsection, not to exceed 2 per centum of sums authorized to be appropriated for each fiscal year for carrying out subsection (a) of this section may be expended upon request of the Governor and with the approval of the Secretary for the purposes enumerated in paragraph (1) of this subsection.

[(e) None of the funds authorized to be appropriated for carrying out this section shall be obligated or expended for maintenance of the highway system.

[(f) The provisions of chapter 1 of this title that are applicable to Federal-aid primary highway funds, other than provisions relating to the apportionment formula and provisions limiting the expenditure of such funds to the Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section.]

§ 215. Territorial highway program

(a) DEFINITIONS.—In this section:

(1) PROGRAM.—The term 'program' means the territorial highway program established under subsection (b).

(2) TERRITORY.—The term 'territory' means the any of the following territories of the United States:

(A) American Samoa.

(B) The Commonwealth of the Northern Mariana Islands.

(C) Guam.

(D) The United States Virgin Islands.

(b) PROGRAM.—

(1) IN GENERAL.—Recognizing the mutual benefits that will accrue to the territories and the United States from the improvement of highways in the territories, the Secretary may carry out a program to assist each territorial government in the construction and improvement of a system of arterial and collector highways, and necessary inter-island connectors, that is—

(A) designated by the Governor or chief executive officer of each territory; and

(B) approved by the Secretary.

(2) FEDERAL ASSISTANCE.—The Secretary shall provide Federal financial assistance to territories under this section in accordance with section 120(h).

(c) TECHNICAL ASSISTANCE.—

(1) IN GENERAL.—To continue a long-range highway development program, the Secretary may provide technical assistance to the governments of the territories to enable the territories to, on a continuing basis—

(A) engage in highway planning;

(B) conduct environmental evaluations;

(C) administer right-of-way acquisition and relocation assistance programs; and

(D) design, construct, operate, and maintain a system of arterial and collector highways, including necessary inter-island connectors.

(2) FORM AND TERMS OF ASSISTANCE.—Technical assistance provided under paragraph (1), and the terms for the sharing of information among territories receiving the technical assistance, shall be included in the agreement required by subsection (e).

(d) NONAPPLICABILITY OF CERTAIN PROVISIONS.—

(1) IN GENERAL.—Except to the extent that provisions of chapter 1 are determined by the Secretary to be inconsistent with the needs of the territories and the intent of the program, chapter 1 (other than provisions of chapter 1 relating to the apportionment and allocation of funds) shall apply to funds authorized to be appropriated for the program.

(2) APPLICABLE PROVISIONS.—The specific sections of chapter 1 that are applicable to each territory, and the extent of the applicability of those section, shall be identified in the agreement required by subsection (e).

(e) AGREEMENT.—

(1) IN GENERAL.—Except as provided in paragraph (3), none of the funds made available for the program shall be available for obligation or expenditure with respect to any territory until the Governor or chief executive officer of the territory enters into a new agreement with the Secretary (which new agreement shall be entered into not later than 1 year after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003), providing that the government of the territory shall—

(A) implement the program in accordance with applicable provisions of chapter 1 and subsection (d);

(B) design and construct a system of arterial and collector highways, including necessary inter-island connectors, in accordance with standards that are—

(i) appropriate for each territory; and

(ii) approved by the Secretary;

(C) provide for the maintenance of facilities constructed or operated under this section in a condition to adequately serve the needs of present and future traffic; and

(D) implement standards for traffic operations and uniform traffic control devices that are approved by the Secretary.

(2) TECHNICAL ASSISTANCE.—The new agreement required by paragraph (1) shall—

(A) specify the kind of technical assistance to be provided under the program;

(B) include appropriate provisions regarding information sharing among the territories; and

(C) delineate the oversight role and responsibilities of the territories and the Secretary.

(3) REVIEW AND REVISION OF AGREEMENT.—The new agreement entered into under paragraph (1) shall be reevaluated and, as necessary, revised, at least every 2 years.

(4) EXISTING AGREEMENTS.—With respect to an agreement between the Secretary and the Governor or chief executive officer of a territory that is in effect as of the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003—

(A) the agreement shall continue in force until replaced by a new agreement in accordance with paragraph (1); and

(B) amounts made available for the program under the agreement shall be available for obligation or expenditure so long as the agreement, or a new agreement under paragraph (1), is in effect.

(f) PERMISSIBLE USES OF FUNDS.—

(1) IN GENERAL.—Funds made available for the program may be used only for the following projects and activities carried out in a territory:

(A) Eligible surface transportation program projects described in section 133(b).

(B) Cost-effective, preventive maintenance consistent with section 116.

(C) Ferry boats, terminal facilities, and approaches, in accordance with subsections (b) and (c) of section 129.

(D) Engineering and economic surveys and investigations for the planning, and the financing, of future highway programs.

(E) Studies of the economy, safety, and convenience of highway use.

(F) The regulation and equitable taxation of highway use.

(G) Such research and development as are necessary in connection with the planning, design, and maintenance of the highway system.

(2) PROHIBITION ON USE OF FUNDS FOR ROUTINE MAINTENANCE.—None of the funds made available for the program shall be obligated or expended for routine maintenance.

(g) LOCATION OF PROJECTS.—Territorial highway projects (other than those described in paragraphs (1), (3), and (4) of section 133(b)) may not be undertaken on roads functionally classified as local.

* * * * * * *

§ 217. Bicycle transportation and pedestrian walkways

(a) USE OF STP AND CONGESTION MITIGATION PROGRAM FUNDS.—Subject to project approval by the Secretary, a State may obligate funds apportioned to it under sections 104(b)(2) and 104(b)(3) of this title for construction of pedestrian walkways and

bicycle transportation facilities and for carrying out nonconstruction projects related to safe *pedestrian and* bicycle use.

(b) USE OF NATIONAL HIGHWAY SYSTEM FUNDS.—Subject to project approval by the Secretary, a State may obligate funds apportioned to it under section 104(b)(1) of this title for construction of pedestrian walkways and bicycle transportation facilities on land adjacent to any highway on the National Highway System.

(c) USE OF FEDERAL LANDS HIGHWAY FUNDS.—Funds authorized for forest highways, forest development roads and trails, public lands development roads and trails, park roads, parkways, Indian reservation roads, *refuge roads,* and public lands highways shall be available, at the discretion of the department charged with the administration of such funds, for the construction of pedestrian walkways and bicycle transportation facilities in conjunction with such trails, roads, highways, and parkways.

(d) STATE BICYCLE AND PEDESTRIAN COORDINATORS.—Each State receiving an apportionment under sections 104(b)(2) and 104(b)(3) of this title shall use such amount of the apportionment as may be necessary to fund in the State department of transportation a position of bicycle and pedestrian coordinator for promoting and facilitating the increased use of nonmotorized modes of transportation, including developing facilities for the use of pedestrians and bicyclists and public education, promotional, and safety programs for using such facilities.

(e) BRIDGES.—In any case where a highway bridge deck being replaced or rehabilitated with Federal financial participation is located on a highway on which [bicycles] *pedestrians or bicylists* are permitted to operate at each end of such bridge, and the Secretary determines that the safe accommodation of [bicycles] *pedestrians or bicylists* can be provided at reasonable cost as part of such replacement or rehabilitation, then such bridge shall be so replaced or rehabilitated as to provide such safe accommodations.

[(f) FEDERAL SHARE.—For all purposes of this title, construction of a pedestrian walkway and a bicycle transportation facility shall be deemed to be a highway project and the Federal share payable on account of such construction shall be determined in accordance with section 120(b).]

(f) FEDERAL SHARE.—The Federal share of the construction of bicycle transportation facilities and pedestrian walkways, and for carrying out nonconstruction projects relating to safe pedestrian and bicycle use, shall be determined in accordance with section 120(b).

(g) PLANNING AND DESIGN.—

(1) IN GENERAL.—Bicyclists and pedestrians shall be given due consideration in the comprehensive transportation plans developed by each metropolitan planning organization and State in accordance with sections 134 and 135, respectively. Bicycle transportation facilities and pedestrian walkways shall be considered, where appropriate, in conjunction with all new construction and reconstruction of transportation facilities, except where bicycle and pedestrian use are not permitted.

(2) SAFETY CONSIDERATIONS.—Transportation plans and projects shall provide due consideration for safety and contiguous routes for bicyclists and pedestrians. Safety considerations shall include the installation, where appropriate, and

maintenance of audible traffic signals and audible signs at street crossings.

(h) USE OF MOTORIZED VEHICLES.—Motorized vehicles may not be permitted on trails and pedestrian walkways under this section, except for—

(1) maintenance purposes;

(2) when snow conditions and State or local regulations permit, snowmobiles;

(3) motorized wheelchairs;

(4) when State or local regulations permit, electric bicycles; and

(5) such other circumstances as the Secretary deems appropriate.

(i) TRANSPORTATION PURPOSE.—No bicycle project may be carried out under this section unless the Secretary has determined that such bicycle project will be principally for transportation, rather than recreation, purposes.

(j) BICYCLE AND PEDESTRIAN SAFETY GRANTS.—

(1) IN GENERAL.—The Secretary shall select and make grants to a national, nonprofit organization engaged in promoting bicycle and pedestrian safety—

(A) to operate a national bicycle and pedestrian clearinghouse;

(B) to develop information and educational programs regarding walking and bicycling; and

(C) to disseminate techniques and strategies for improving bicycle and pedestrian safety.

(2) FUNDING.—The Secretary may use funds apportioned under section 104(n) to carry out this subsection.

(3) APPLICABILITY OF TITLE 23.—Funds authorized to be appropriated to carry out this subsection shall be available for obligation in the same manner as if the funds were apportioned under section 104, except that the funds shall remain available until expended.

(k) FUNDS FOR BICYCLE AND PEDESTRIAN SAFETY.—A State shall allocate for bicycle and pedestrian improvements in the State a percentage of the funds remaining after implementation of sections 130(e) and 150, in an amount that is equal to or greater than the percentage of all fatal crashes in the States involving bicyclists and pedestrians.

[(j)**]** *(l)* DEFINITIONS.—In this section, the following definitions apply:

(1) BICYCLE TRANSPORTATION FACILITY.—The term "bicycle transportation facility" means a new or improved lane, path, or shoulder for use by bicyclists and a traffic control device, shelter, or parking facility for bicycles.

(2) ELECTRIC BICYCLE.—The term "electric bicycle" means any bicycle or tricycle with a low-powered electric motor weighing under 100 pounds, with a top motor-powered speed not in excess of 20 miles per hour.

(3) PEDESTRIAN.—The term "pedestrian" means any person traveling by foot and any mobility-impaired person using a wheelchair.

(4) SHARED USE PATH.—The term "shared use path" means a multiuse trail or other path that is—

(A) physically separated from motorized vehicular traffic by an open space or barrier, either within a highway right-of-way or within an independent right-of-way; and

(B) usable for transportation purposes (including by pedestrians, bicyclists, skaters, equestrians, and other nonmotorized users).

[(4)**]** *(5)* WHEELCHAIR.—The term "wheelchair" means a mobility aid, usable indoors, and designed for and used by individuals with mobility impairments, whether operated manually or motorized.

* * * * * * *

Chapter 3.—GENERAL PROVISIONS

Sec.
301. Freedom from tolls.
302. State transportation department.
303. Management systems.
304. Participation by small business enterprises.
305. Archeological and paleontological salvage.
306. Mapping.
307. [Repealed P.L. 105–178.]
308. Cooperation with Federal and State agencies and foreign countries.
309. Cooperation with other American Republics.
310. Civil Defense.
311. Highway improvements strategically important to the national defense.
312. Detail of Army, Navy, and Air Force officers.
[313. [Repealed P.L. 89–564.]**]**
313. Buy America.
314. Relief of employees in hazardous work.
315. Rules, regulations, and recommendations.
316. Consent by United States to conveyance of property.
317. Appropriation for highway purposes of lands or interests in lands owned by the United States.
318. Highway relocation due to airport.
319. Landscaping and scenic enhancement.
320. Bridges on Federal dams.
[321. [Repealed P.L. 105–178.]**]**
321. Signs identifying funding sources.
322. Magnetic levitation transportation technology deployment program.
323. Donations and credits.
324. Prohibition of discrimination on the basis of sex.
[325. [Repealed P.L. 105–178.]**]**
325. Freight transportation gateways.
[326. [Repealed P.L. 105–178.]**]**
326. Transportation project development process.
327. Assumption of responsibility for categorical exclusions
328. Surface transportation projec delivery pilot program

* * * * * *
*

[313. [Repealed P.L. 89–564.]]

313. Buy America

[Note: Section 165 of the Highway Improvement Act of 1982(23 U.S.C. 101 note; 96 State. 2136) is transferred to title 23 U.S.C. and redesignated as section 313.]

* * * * * * *

[§ 321. [Repealed by P.L. 105–178.]]

§ 321. Signs identifying funding sources

If a State has a practice of erecting on projects under actual construction without Federal-aid highway assistance signs which indicate the source or sources of any funds used to carry out such projects, such State shall erect on all projects under actual construction with any funds made available out of the Highway Trust Fund (other than the Mass Transit Account) signs which are visible to highway users and which indicate each governmental source of funds being used to carry out such federally assisted projects and the amount of funds being made available by each such source.

§ 322. Magnetic levitation transportation technology deployment program

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) ELIGIBLE PROJECT COSTS.—The term "eligible project costs"—

(A) means the capital cost of the fixed guideway infrastructure of a MAGLEV project, including land, piers, guideways, propulsion equipment and other components attached to guideways, power distribution facilities (including substations), control and communications facilities, access roads, and storage, repair, and maintenance facilities, but not including costs incurred for a new station; and

(B) includes the costs of preconstruction planning activities.

(2) FULL PROJECT COSTS.—The term "full project costs" means the total capital costs of a MAGLEV project, including eligible project costs and the costs of stations, vehicles, and equipment.

(3) MAGLEV.—The term "MAGLEV" means transportation systems employing magnetic levitation that would be capable of safe use by the public at a speed in excess of 240 miles per hour.

(4) PARTNERSHIP POTENTIAL.—The term "partnership potential" has the meaning given the term in the commercial feasibility study of high-speed ground transportation conducted under section 1036 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1978).

(b) FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—The Secretary shall make available financial assistance to pay the Federal share of full project costs of eligible projects selected under this section. Financial assistance made available under this section and projects assisted with the assistance shall be subject to section 5333(a) of title 49, United States Code.

(2) FEDERAL SHARE.—The Federal share of full project costs under paragraph (1) shall be not more than ⅔.

(3) USE OF ASSISTANCE.—Financial assistance provided under paragraph (1) shall be used only to pay eligible project costs of projects selected under this section.

(c) SOLICITATION OF APPLICATIONS FOR ASSISTANCE.—[Not later than]

(1) INITIAL SOLICITATION.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall solicit applications from States, or authorities designated by 1 or more States, for financial assistance authorized by subsection (b) for planning, design, and construction of eligible MAGLEV projects.

(2) ADDITIONAL SOLICITATION.—Not later than 1 year after the date of enactment of this paragraph, the Secretary may solicit additional applications from States, or authorities designated by 1 or more States, for financial assistance authorized by subsection (b) for planning, design, and construction of eligible MAGLEV projects.

(d) PROJECT ELIGIBILITY.—To be eligible to receive financial assistance under subsection (b), a project shall—

(1) involve a segment or segments of a high-speed ground transportation corridor that exhibit partnership potential;

(2) require an amount of Federal funds for project financing that will not exceed the sum of—

(A) the amounts made available under subsection (h)(1); and

(B) the amounts made available by States under subsection (h)(3);

(3) result in an operating transportation facility that provides a revenue producing service;

(4) be undertaken through a public and private partnership, with at least ⅓ of full project costs paid using non-Federal funds;

(5) satisfy applicable statewide and metropolitan planning requirements;

(6) be approved by the Secretary based on an application submitted to the Secretary by a State or authority designated by 1 or more States;

(7) to the extent that non-United States MAGLEV technology is used within the United States, be carried out as a technology transfer project; and

(8) be carried out using materials at least 70 percent of which are manufactured in the United States.

(e) PROJECT SELECTION CRITERIA.—[Prior to soliciting applications, the Secretary] *The Secretary* shall establish criteria for selecting which eligible projects under subsection (d) will receive financial assistance under subsection (b). The criteria shall include the extent to which—

(1) a project is nationally significant, including the extent to which the project will demonstrate the feasibility of deployment of MAGLEV technology throughout the United States;

(2) timely implementation of the project will reduce congestion in other modes of transportation and reduce the need for additional highway or airport construction;

(3) States, regions, and localities financially contribute to the project;

(4) implementation of the project will create new jobs in traditional and emerging industries;

(5) the project will augment MAGLEV networks identified as having partnership potential;

(6) financial assistance would foster public and private partnerships for infrastructure development and attract private debt or equity investment;

(7) financial assistance would foster the timely implementation of a project; and

(8) life-cycle costs in design and engineering are considered and enhanced.

(f) PROJECT SELECTION.—

(1) PRECONSTRUCTION PLANNING ACTIVITIES.—Not later than 90 days after a deadline established by the Secretary for the receipt of applications, the Secretary shall evaluate the eligible projects in accordance with the selection criteria and select 1 or more eligible projects to receive financial assistance for preconstruction planning activities, including—

(A) preparation of such feasibility studies, major investment studies, and environmental impact statements and assessments as are required under State law;

(B) pricing of the final design, engineering, and construction activities proposed to be assisted under paragraph (2); and

(C) such other activities as are necessary to provide the Secretary with sufficient information to evaluate whether a project should receive financial assistance for final design, engineering, and construction activities under paragraph (2).

(2) FINAL DESIGN, ENGINEERING, AND CONSTRUCTION ACTIVITIES.—After completion of preconstruction planning activities for all projects assisted under paragraph (1), the Secretary shall select 1 of the projects to receive financial assistance for final design, engineering, and construction activities.

(g) JOINT VENTURES.—A project undertaken by a joint venture of United States and non-United States persons (including a project involving the deployment of non-United States MAGLEV technology in the United States) shall be eligible for financial assistance under this section if the project is eligible under subsection (d) and selected under subsection (f).

(h) FUNDING.—

(1) IN GENERAL.—

(A) CONTRACT AUTHORITY; AUTHORIZATION OF APPROPRIATIONS.—

[(i) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $15,000,000 for fiscal year 1999, $20,000,000 for fiscal year 2000, and $25,000,000 for fiscal year 2001.]

(i) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $15,000,000 for each of fiscal years 2004 through 2009.

(ii) CONTRACT AUTHORITY.—Funds authorized by this subparagraph shall be available for obligation in

the same manner as if the funds were apportioned under chapter 1, except that—

(I) the Federal share of the cost of a project carried out under this section shall be determined in accordance with subsection (b); and

(II) the availability of the funds shall be determined in accordance with paragraph (2).

(B) NONCONTRACT AUTHORITY AUTHORIZATION OF APPROPRIATIONS.—

[(i) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section (other than subsection (i)) $200,000,000 for each of fiscal years 2000 and 2001, $250,000,000 for fiscal year 2002, and $300,000,000 for fiscal year 2003.]

(i) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section—

(I) $375,000,000 for fiscal year 2004;

(II) $400,000,000 for fiscal year 2005;

(III) $415,000,000 for fiscal year 2006;

(IV) $425,000,000 for fiscal year 2007;

(V) $435,000,000 for fiscal year 2008; and

(VI) $450,000,000 for fiscal year 2009.

(ii) AVAILABILITY.—Notwithstanding section 118(a), funds made available under clause (i) shall not be available in advance of an annual appropriation.

(2) AVAILABILITY OF FUNDS.—Funds made available under paragraph (1) shall remain available until expended.

(3) OTHER FEDERAL FUNDS.—Notwithstanding any other provision of law, funds made available to a State to carry out the surface transportation program under section 133 and the congestion mitigation and air quality improvement program under section 149 may be used by the State to pay a portion of the full project costs of an eligible project selected under this section, without requirement for non-Federal funds.

(4) OTHER ASSISTANCE.—Notwithstanding any other provision of law, an eligible project selected under this section shall be eligible for other forms of financial assistance provided under this title and the Transportation Equity Act for the 21st Century, including loans, loan guarantees, and lines of credit.

(i) LOW-SPEED PROJECT.—

(1) IN GENERAL.—Notwithstanding any other provision of this section, of the funds made available by subsection (h)(1)(A) to carry out this section, $5,000,000 shall be made available to the Secretary to make grants for the research and development of low-speed superconductivity magnetic levitation technology for public transportation purposes in urban areas to demonstrate energy efficiency, congestion mitigation, and safety benefits.

(2) NONCONTRACT AUTHORITY AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the

Mass Transit Account) to carry out this subsection such sums as are necessary for each of fiscal years 2000 through 2003.

(B) AVAILABILITY.—Notwithstanding section 118(a), funds made available under subparagraph (A)—

(i) shall not be available in advance of an annual appropriation; and

(ii) shall remain available until expended.

§ 323. Donations and credits

(a) DONATIONS OF PROPERTY BEING ACQUIRED.—Nothing in this title, or in any other provision of law, shall be construed to prevent a person whose real property is being acquired in connection with a project under this title, after he has been fully informed of his right to receive just compensation for the acquisition of his property, from making a gift or donation of such property, or any part thereof, or of any of the compensation paid therefor, to a Federal agency, a State or a State agency, or a political subdivision of a State, as said person shall determine.

(b) CREDIT FOR ACQUIRED LANDS.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, the State share of the cost of a project with respect to which Federal assistance is provided from the Highway Trust Fund (other than the Mass Transit Account) may be credited in an amount equal to the fair market value of any land that—

(A) is lawfully obtained by the State or a unit of local government in the State;

(B) is incorporated into the project;

(C) is not land described in section 138; and

(D) the Secretary determines will not influence the environmental assessment of the project, including—

(i) the decision as to the need to construct the project;

(ii) the consideration of alternatives; and

(iii) the selection of a specific location.

(2) ESTABLISHMENT OF FAIR MARKET VALUE.—The fair market value of land incorporated into a project and credited under paragraph (1) shall be established in the manner determined by the Secretary, except that—

(A) the fair market value shall not include any increase or decrease in the value of donated property caused by the project; and

(B) the fair market value of donated land shall be established as of the earlier of—

(i) the date on which the donation becomes effective; or

(ii) the date on which equitable title to the land vests in the State.

(3) LIMITATION ON APPLICABILITY.—This subsection shall not apply to donations made by an agency of the Federal Government.

(4) LIMITATION ON AMOUNT OF CREDIT.—The credit received by a State pursuant to this subsection may not exceed the State's matching share for the project.

(c) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, OR SERVICES.—Nothing in this title or any other law shall prevent a person from offering to donate funds, materials, or services *, or a local government from offering to donate funds, materials, or services performed by local government employees,* in connection with a project eligible for assistance under this title. In the case of such a project with respect to which the Federal Government and the State share in paying the cost, any donated funds, or the fair market value of any donated materials or services, that are accepted and incorporated into the project by the State transportation department shall be credited against the State share.

(d) PROCEDURES.—A gift or donation in accordance with subsection (a) may be made at any time during the development of a project. Any document executed as part of such donation prior to the approval of an environmental document prepared pursuant to the National Environmental Policy Act of 1969 shall clearly indicate that—

(1) all alternatives to a proposed alignment will be studied and considered pursuant to such Act;

(2) acquisition of property under this section shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location; and

(3) any property acquired by gift or donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after public hearings, if required, and completion of the environmental document.

[(e) CREDITING OF CONTRIBUTIONS BY UNITS OF LOCAL GOVERNMENT TOWARD THE STATE SHARE.—A contribution by a unit of local government of real property, funds, or material in connection with a project eligible for assistance under this title shall be credited against the State share of the project at the fair market value of the real property, funds, or material.**]**

* * * * * * *

§ 325. Freight transportation gateways

(a) IN GENERAL.—

(1) ESTABLISHMENT.—The Secretary shall establish a freight transportation gateways program to improve productivity, security, and safety of freight transportation gateways, while mitigating congestion and community impacts in the area of the gateways.

(2) PURPOSES.—The purposes of the freight transportation gateways program shall be—

(A) to facilitate and support multimodal freight transportation initiatives at the State and local levels in order to improve freight transportation gateways and mitigate the impact of congestion on the environment in the area of the gateways;

(B) to provide capital funding to address infrastructure and freight operational needs at freight transportation gateways;

(C) to encourage adoption of new financing strategies to leverage State, local, and private investment in freight transportation gateways;

(D) to facilitate access to intermodal freight transfer facilities; and

(E) to increase economic efficiency by facilitating the movement of goods.

(b) STATE RESPONSIBILITIES.—

(1) PROJECT DEVELOPMENT PROCESS.—Each State, in coordination with metropolitan planning organizations, shall ensure that intermodal freight transportation, trade facilitation, and economic development needs are adequately considered and fully integrated into the project development process, including transportation planning through final design and construction of freight-related transportation projects.

(2) FREIGHT TRANSPORTATION COORDINATOR.—

(A) IN GENERAL.—Each State shall designate a freight transportation coordinator.

(B) DUTIES.—The coordinator shall—

(i) foster public and private sector collaboration needed to implement complex solutions to freight transportation and freight transportation gateway problems, including—

(I) coordination of metropolitan and statewide transportation activities with trade and economic interests;

(II) coordination with other States, agencies, and organizations to find regional solutions to freight transportation problems; and

(III) coordination with local officials of the Department of Defense and the Department of Homeland Security, and with other organizations, to develop regional solutions to military and homeland security transportation needs; and

(ii) promote programs that build professional capacity to better plan, coordinate, integrate, and understand freight transportation needs for the State.

(c) INNOVATIVE FINANCE STRATEGIES.—

(1) IN GENERAL.—States and localities are encouraged to adopt innovative financing strategies for freight transportation gateway improvements, including—

(A) new user fees;

(B) modifications to existing user fees, including trade facilitation charges;

(C) revenue options that incorporate private sector investment; and

(D) a blending of Federal-aid and innovative finance programs.

(2) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to States and localities with respect to the strategies.

(d) INTERMODAL FREIGHT TRANSPORTATION PROJECTS.—

(1) USE OF SURFACE TRANSPORTATION PROGRAM FUNDS.—A State may obligate funds apportioned to the State under section 104(b)(3) for publicly-owned intermodal freight transportation projects that provide community and highway benefits by addressing economic, congestion, system reliability, security, safety, or environmental issues associated with freight transportation gateways.

(2) ELIGIBLE PROJECTS.—A project eligible for funding under this section—

(A) may include publicly-owned intermodal freight transfer facilities, access to the facilities, and operational improvements for the facilities (including capital investment for intelligent transportation systems), except that projects located within the boundaries of port terminals shall only include the surface transportation infrastructure modifications necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port; and

(B) may involve the combining of private and public funds.

§ 326. Transportation project development process

(a) DEFINITIONS.—In this section:

(1) AGENCY.—The term "agency" means any agency, department, or other unit of Federal, State, local, or tribal government.

(2) ENVIRONMENTAL IMPACT STATEMENT.—The term "environmental impact statement" means a detailed statement of the environmental impacts of a project required to be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) ENVIRONMENTAL REVIEW PROCESS.—

(A) IN GENERAL.—The term "environmental review process" means the process for preparing, for a project—

(i) an environmental impact statement; or

(ii) any other document or analysis required to be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

(B) INCLUSIONS.—The term "environmental review process" includes the process for and completion of any environmental permit, approval, review, or study required for a project under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(4) PROJECT.—The term "project" means any highway or transit project that requires the approval of the Secretary.

(5) PROJECT SPONSOR.—The term "project sponsor" means an agency or other entity (including any private or public-private entity), that seeks approval of the Secretary for a project.

(6) STATE TRANSPORTATION DEPARTMENT.—The term "State transportation department" means any statewide agency of a State with responsibility for transportation.

(b) PROCESS.—

(1) LEAD AGENCY.—

(A) IN GENERAL.—The Department of Transportation shall be the lead Federal agency in the environmental review process for a project.

(B) JOINT LEAD AGENCIES.—Nothing in this section precludes another agency from being a joint lead agency in accordance with regulations under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(C) CONCURRENCE OF PROJECT SPONSOR.—The lead agency may carry out the environmental review process in accordance with this section only with the concurrence of the project sponsor.

(2) REQUEST FOR PROCESS.—

(A) IN GENERAL.—A project sponsor may request that the lead agency carry out the environmental review process for a project or group of projects in accordance with this section.

(B) GRANT OF REQUEST; PUBLIC NOTICE.—The lead agency shall—

(i) grant a request under subparagraph (A); and

(ii) provide public notice of the request.

(3) EFFECTIVE DATE.—The environmental review process described in this section may be applied to a project only after the date on which public notice is provided under subparagraph (B)(ii).

(c) ROLES AND RESPONSIBILITY OF LEAD AGENCY.—With respect to the environmental review process for any project, the lead agency shall have authority and responsibility to—

(A) identify and invite cooperating agencies in accordance with subsection (d);

(B) develop an agency coordination plan with review, schedule, and timelines in accordance with subsection (e);

(C) determine the purpose and need for the project in accordance with subsection (f);

(D) determine the range of alternatives to be considered in accordance with subsection (g);

(E) convene dispute-avoidance and decision resolution meetings and related efforts in accordance with subsection (h);

(F) take such other actions as are necessary and proper, within the authority of the lead agency, to facilitate the expeditious resolution of the environmental review process for the project; and

(G) prepare or ensure that any required environmental impact statement or other document required to be completed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is completed in accordance with this section and applicable Federal law.

(d) ROLES AND RESPONSIBILITIES OF COOPERATING AGENCIES.—

(1) IN GENERAL.—With respect to a project, each Federal agency shall carry out any obligations of the Federal agency in the environmental review process in accordance with this section and applicable Federal law.

(2) INVITATION.—

(A) IN GENERAL.—The lead agency shall—

(i) identify, as early as practicable in the environmental review process for a project, any other agencies that may have an interest in the project, including—

(I) agencies with jurisdiction over environmentally-related matters that may affect the project or may be required by law to conduct an environmental-related independent review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project; and

(II) agencies with special expertise relevant to the project;

(ii) invite the agencies identified in clause (i) to become participating agencies in the environmental review process for that project; and

(iii) grant requests to become cooperating agencies from agencies not originally invited.

(B) RESPONSES.—The deadline for receipt of a response from an agency that receives an invitation under subparagraph (A)(ii)—

(i) shall be 30 days after the date of receipt by the agency of the invitation; but

(ii) may be extended by the lead agency for good cause.

(3) DECLINING OF INVITATIONS.—A Federal agency that is invited by the lead agency to participate in the environmental review process for a project shall be designated as a cooperating agency by the lead agency, unless the invited agency informs the lead agency in writing, by the deadline specified in the invitation, that the invited agency—

(A) has no jurisdiction or authority with respect to the project;

(B) has no expertise or information relevant to the project; and

(C) does not intend to submit comments on the project.

(4) EFFECT OF DESIGNATION.—Designation as a cooperating agency under this subsection shall not imply that the cooperating agency—

(A) supports a proposed project; or

(B) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

(5) DESIGNATIONS FOR CATEGORIES OF PROJECTS.—

(A) IN GENERAL.—The Secretary may invite other agencies to become cooperating agencies for a category of projects.

(B) DESIGNATION.—An agency may be designated as a cooperating agency for a category of projects only with the consent of the agency.

(6) CONCURRENT REVIEWS.—Each Federal agency shall, to the maximum extent practicable—

(A) carry out obligations of the Federal agency under other applicable law concurrently, and in conjunction, with the review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), unless doing so

would impair the ability of the Federal agency to carry out those obligations; and

(B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

(e) DEVELOPMENT OF FLEXIBLE PROCESS AND TIMELINE.—

(1) COORDINATION PLAN.—

(A) IN GENERAL.—The lead agency shall establish a coordination plan, which may be incorporated into a memorandum of understanding, to coordinate agency and public participation in and comment on the environmental review process for a project or category of projects.

(B) WORKPLAN.—

(i) IN GENERAL.—The lead agency shall develop, as part of the coordination plan, a workplan for completing the collection, analysis, and evaluation of baseline data and future impacts modeling necessary to complete the environmental review process, including any data, analyses, and modeling necessary for related permits, approvals, reviews, or studies required for the project under other laws.

(ii) CONSULTATION.—In developing the workplan under clause (i), the lead agency shall consult with—

(I) each cooperating agency for the project;

(II) the State in which the project is located; and

(III) if the State is not the project sponsor, the project sponsor.

(C) SCHEDULE.—

(i) IN GENERAL.—The lead agency shall establish as part of the coordination plan, after consultation with each cooperating agency for the project and with the State in which the project is located (and, if the State is not the project sponsor, with the project sponsor), a schedule for completion of the environmental review process for the project.

(ii) FACTORS FOR CONSIDERATION.—In establishing the schedule, the lead agency shall consider factors such as—

(I) the responsibilities of cooperating agencies under applicable laws;

(II) resources available to the cooperating agencies;

(III) overall size and complexity of a project;

(IV) the overall schedule for and cost of a project; and

(V) the sensitivity of the natural and historic resources that could be affected by the project.

(D) CONSISTENCY WITH OTHER TIME PERIODS.—A schedule under subparagraph (C) shall be consistent with any other relevant time periods established under Federal law.

(E) MODIFICATION.—The lead agency may—

(i) lengthen a schedule established under subparagraph (C) for good cause; and

(ii) shorten a schedule only with the concurrence of the affected cooperating agencies.

(F) DISSEMINATION.—A copy of a schedule under subparagraph (C), and of any modifications to the schedule, shall be—

(i) provided to all cooperating agencies and to the State transportation department of the State in which the project is located (and, if the State is not the project sponsor, to the project sponsor); and

(ii) made available to the public.

(2) COMMENTS AND TIMELINES.—

(A) IN GENERAL.—A schedule established under paragraph (1)(C) shall include—

(i) opportunities for comment, deadline for receipt of any comments submitted, deadline for lead agency response to comments; and

(ii) except as otherwise provided under paragraph (1)—

(I) an opportunity to comment by agencies and the public on a draft or final environmental impact statement for a period of not more than 60 days longer than the minimum period required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(II) for all other comment periods established by the lead agency for agency or public comments in the environmental review process, a period of not more than the longer of—

(aa) 30 days after the final day of the minimum period required under Federal law (including regulations), if available; or

(bb) if a minimum period is not required under Federal law (including regulations), 30 days.

(B) EXTENSION OF COMMENT PERIODS.—The lead agency may extend a period of comment established under this paragraph for good cause.

(C) LATE COMMENTS.—A comment concerning a project submitted under this paragraph after the date of termination of the applicable comment period or extension of a comment period shall not be eligible for consideration by the lead agency unless the lead agency or project sponsor determines there was good cause for the delay or the lead agency is required to consider significant new circumstances or information in accordance with sections 1501.7 and 1502.9 of title 40, Code of Federal Regulations.

(D) DEADLINES FOR DECISIONS UNDER OTHER LAWS.—In any case in which a decision under any Federal law relating to a project (including the issuance or denial of a permit or license) is required to be made by the later of the date that is 180 days after the date on which the Secretary made all final decisions of the lead agency with respect to

the project, or 180 days after the date on which an application was submitted for the permit or license, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

(i) as soon as practicable after the 180-day period, an initial notice of the failure of the Federal agency to make the decision; and

(ii) every 60 day thereafter until such date as all decisions of the Federal agency relating to the project have been made by the Federal agency, an additional notice that describes the number of decisions of the Federal agency that remain outstanding as of the date of the additional notice.

(3) INVOLVEMENT OF THE PUBLIC.—Nothing in this subsection shall reduce any time period provided for public comment in the environmental review process under existing Federal law (including a regulation).

(f) DEVELOPMENT OF PROJECT PURPOSE AND NEED STATEMENT.—

(1) IN GENERAL.—With respect to the environmental review process for a project, the purpose and need for the project shall be defined in accordance with this subsection.

(2) AUTHORITY.—The lead agency shall define the purpose and need for a project, including the transportation objectives and any other objectives intended to be achieved by the project.

(3) INVOLVEMENT OF COOPERATING AGENCIES AND THE PUBLIC.—Before determining the purpose and need for a project, the lead agency shall solicit for 30 days, and consider, any relevant comments on the draft statement of purpose and need for a proposed project received from the public and cooperating agencies.

(4) EFFECT ON OTHER REVIEWS.—For the purpose of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and any other law requiring an agency that is not the lead agency to determine or consider a project purpose or project need, such an agency acting, permitting, or approving under, or otherwise applying, Federal law with respect to a project shall adopt the determination of purpose and need for the project made by the lead agency.

(5) SAVINGS.—Nothing in this subsection preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency under applicable law (including regulations) with respect to a project.

(6) CONTENTS.—

(A) IN GENERAL.—The statement of purpose and need shall include a clear statement of the objectives that the proposed project is intended to achieve.

(B) EFFECT ON EXISTING STANDARDS.—Nothing in this subsection shall alter existing standards for defining the purpose and need of a project.

(7) FACTORS TO CONSIDER.—The lead agency may determine that any of the following factors and documents are appropriate for consideration in determining the purpose of and need for a project:

(A) Transportation plans and related planning documents developed through the statewide and metropolitan transportation planning process under sections 134 and 135.

(B) Land use plans adopted by units of State, local, or tribal government (or, in the case of Federal land, by the applicable Federal land management agencies).

(C) Economic development plans adopted by—

(i) units of State, local, or tribal government; or

(ii) established economic development planning organizations or authorities.

(D) Environmental protection plans, including plans for the protection or treatment of—

(i) air quality;

(ii) water quality and runoff;

(iii) habitat needs of plants and animals;

(iv) threatened and endangered species;

(v) invasive species;

(vi) historic properties; and

(vii) other environmental resources.

(E) Any publicly available plans or policies relating to the national defense, national security, or foreign policy of the United States.

(g) DEVELOPMENT OF PROJECT ALTERNATIVES.—

(1) IN GENERAL.—With respect to the environmental review process for a project, the alternatives shall be determined in accordance with this subsection.

(2) AUTHORITY.—The lead agency shall determine the alternatives to be considered for a project.

(3) INVOLVEMENT OF COOPERATING AGENCIES AND THE PUBLIC.—

(A) IN GENERAL.—Before determining the alternatives for a project, the lead agency shall solicit for 30 days and consider any relevant comments on the proposed alternatives received from the public and cooperating agencies.

(B) ALTERNATIVES.—The lead agency shall consider—

(i) alternatives that meet the purpose and need of the project; and

(ii) the alternative of no action.

(C) EFFECT ON EXISTING STANDARDS.—Nothing in this subsection shall alter the existing standards for determining the range of alternatives.

(4) EFFECT ON OTHER REVIEWS.—Any other agency acting under or applying Federal law with respect to a project shall consider only the alternatives determined by the lead agency.

(5) SAVINGS.—Nothing in this subsection preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency under applicable law (including regulations) with respect to a project.

(6) FACTORS TO CONSIDER.—The lead agency may determine that any of the following factors and documents are appropriate for consideration in determining the alternatives for a project:

(A) The overall size and complexity of the proposed action.

(B) The sensitivity of the potentially affected resources.

(C) The overall schedule and cost of the project.

(D) Transportation plans and related planning documents developed through the statewide and metropolitan transportation planning process under sections 134 and 135 of title 23 of the United States Code.

(E) Land use plans adopted by units of State, local, or tribal government (or, in the case of Federal land, by the applicable Federal land management agencies).

(F) Economic development plans adopted by—

(i) units of State, local, or tribal government; or

(ii) established economic development planning organizations or authorities.

(G) environmental protection plans, including plans for the protection or treatment of—

(i) air quality;

(ii) water quality and runoff;

(iii) habitat needs of plants and animals;

(iv) threatened and endangered species;

(v) invasive species;

(vi) historic properties; and

(vii) other environmental resources.

(H) Any publicly available plans or policies relating to the national defense, national security, or foreign policy of the United States.

(h) PROMPT ISSUE IDENTIFICATION AND RESOLUTION PROCESS.—

(1) IN GENERAL.—The lead agency, the project sponsor, and the cooperating agencies shall work cooperatively, in accordance with this section, to identify and resolve issues that could—

(A) delay completion of the environmental review process; or

(B) result in denial of any approvals required for the project under applicable laws.

(2) LEAD AGENCY RESPONSIBILITIES.—

(A) IN GENERAL.—The lead agency, with the assistance of the project sponsor, shall make information available to the cooperating agencies, as early as practicable in the environmental review process, regarding—

(i) the environmental and socioeconomic resources located within the project area; and

(ii) the general locations of the alternatives under consideration.

(B) BASIS FOR INFORMATION.—Information about resources in the project area may be based on existing data sources, including geographic information systems mapping.

(3) COOPERATING AGENCY RESPONSIBILITIES.—

(A) IN GENERAL.—Based on information received from the lead agency, cooperating agencies shall promptly identify to the lead agency any major issues of concern regard-

ing the potential environmental or socioeconomic impacts of a project.

(B) MAJOR ISSUES OF CONCERN.—A major issue of concern referred to in subparagraph (A) may include any issue that could substantially delay or prevent an agency from granting a permit or other approval that is needed for a project, as determined by a cooperating agency.

(4) ISSUE RESOLUTION.—On identification of a major issue of concern under paragraph (3), or at any time upon the request of a project sponsor or the Governor of a State, the lead agency shall promptly convene a meeting with representatives of each of the relevant cooperating agencies, the project sponsor, and the Governor to address and resolve the issue.

(5) NOTIFICATION.—If a resolution of a major issue of concern under paragraph (4) cannot be achieved by the date that is 30 days after the date on which a meeting under that paragraph is convened, the lead agency shall provide notification of the failure to resolve the major issue of concern to—

(A) the heads of all cooperating agencies;

(B) the project sponsor;

(C) the Governor involved;

(D) the Committee on Environment and Public Works of the Senate; and

(E) the Committee on Transportation and Infrastructure of the House of Representatives.

(i) PERFORMANCE MEASUREMENT.—

(1) PROGRESS REPORTS.—The Secretary shall establish a program to measure and report on progress toward improving and expediting the planning and environmental review process.

(2) MINIMUM REQUIREMENTS.—The program shall include, at a minimum—

(A) the establishment of criteria for measuring consideration of—

(i) State and metropolitan planning, project planning, and design criteria; and

(ii) environmental processing times and costs;

(B) the collection of data to assess performance based on the established criteria; and

(C) the annual reporting of the results of the performance measurement studies.

(3) INVOLVEMENT OF THE PUBLIC AND COOPERATING AGENCIES.—

(A) IN GENERAL.—The Secretary shall biennially conduct a survey of agencies participating in the environmental review process under this section to assess the expectations and experiences of each surveyed agency with regard to the planning and environmental review process for projects reviewed under this section.

(B) PUBLIC PARTICIPATION.—In conducting the survey, the Secretary shall solicit comments from the public.

(j) ASSISTANCE TO AFFECTED FEDERAL AND STATE AGENCIES.—

(1) IN GENERAL.—The Secretary may approve a request by a State or recipient to provide funds, for a highway project made available under this title, or for a mass transit project

made available under chapter 53 of title 49 to the State or recipient for the project, subject to the coordinated environmental review process established under this section, to affected Federal and State agencies to provide the resources necessary to meet any time limits established under this section.

(2) AMOUNTS.—Such requests under paragraph (1) shall be approved only—

(A) for such additional amounts as the Secretary determines are necessary for the affected Federal and State agencies to meet the time limits for environmental review; and

(B) if those time limits are less than the customary time necessary for that review.

§ 327. Assumption of responsibility for categorical exclusions

(a) CATEGORICAL EXCLUSION DETERMINATIONS.—

(1) IN GENERAL.—The Secretary may assign, and a State may assume, responsibility for determining whether certain designated activities are included within classes of action identified in regulation by the Secretary that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations promulgated by the Council on Environmental Quality under part 1500 of title 40, Code of Federal Regulations (as in effect on October 1, 2003).

(2) SCOPE OF AUTHORITY.—A determination described in paragraph (1) shall be made by a State in accordance with criteria established by the Secretary and only for types of activities specifically designated by the Secretary.

(3) CRITERIA.—The criteria under paragraph (2) shall include provisions for public availability of information consistent with section 552 of title 5 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) OTHER APPLICABLE FEDERAL LAWS.—

(1) IN GENERAL.—If a State assumes responsibility under subsection (a), the Secretary may also assign and the State may assume all or part of the responsibilities of the Secretary for environmental review, consultation, or other related actions required under any Federal law applicable to activities that are classified by the Secretary as categorical exclusions, with the exception of government-to-government consultation with Indian tribes, subject to the same procedural and substantive requirements as would be required if that responsibility were carried out by the Secretary.

(2) SOLE RESPONSIBILITY.—A State that assumes responsibility under paragraph (1) with respect to a Federal law shall be solely responsible and solely liable for complying with and carrying out that law, and the Secretary shall have no such responsibility or liability.

(c) MEMORANDA OF UNDERSTANDING.—

(1) IN GENERAL.—The Secretary and the State, after providing public notice and opportunity for comment, shall enter into a memorandum of understanding setting forth the responsibilities to be assigned under this section and the terms and

conditions under which the assignments are made, including establishment of the circumstances under which the Secretary would reassume responsibility for categorical exclusion determinations.

(2) TERM.—A memorandum of understanding—

(A) shall have term of not more than 3 years; and

(B) shall be renewable.

(3) ACCEPTANCE OF JURISDICTION.—In a memorandum of understanding, the State shall consent to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

(4) MONITORING.—The Secretary shall—

(A) monitor compliance by the State with the memorandum of understanding and the provision by the State of financial resources to carry out the memorandum of understanding; and

(B) take into account the performance by the State when considering renewal of the memorandum of understanding.

(d) TERMINATION.—The Secretary may terminate any assumption of responsibility under a memorandum of understanding on a determination that the State is not adequately carrying out the responsibilities assigned to the State.

(e) STATE AGENCY DEEMED TO BE FEDERAL AGENCY.—A State agency that is assigned a responsibility under a memorandum of understanding shall be deemed to be a Federal agency for the purposes of the Federal law under which the responsibility is exercised.

§ 328. Surface transportation project delivery pilot program

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall carry out a surface transportation project delivery pilot program (referred to in this section as the "program").

(2) ASSUMPTION OF RESPONSIBILITY.—

(A) IN GENERAL.—Subject to the other provisions of this section, with the written agreement of the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign, and the State may assume, the responsibilities of the Secretary with respect to 1 or more highway projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ADDITIONAL RESPONSIBILITY.—If a State assumes responsibility under subparagraph (A)—

(i) the Secretary may assign to the State, and the State may assume, all or part of the responsibilities of the Secretary for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of a specific project; but

(ii) the Secretary may not assign—

(I) responsibility for any conformity determination required under section 176 of the Clean Air Act (42 U.S.C. 7506); or

(II) any responsibility imposed on the Secretary by section 134 or 135.

(C) PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.—A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary.

(D) FEDERAL RESPONSIBILITY.—Any responsibility of the Secretary not explicitly assumed by the State by written agreement under this section shall remain the responsibility of the Secretary.

(E) NO EFFECT ON AUTHORITY.—Nothing in this section preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency, other than the Department of Transportation, under applicable law (including regulations) with respect to a project.

(b) STATE PARTICIPATION.—

(1) NUMBER OF PARTICIPATING STATES.—The Secretary may permit not more than 5 States (including the State of Oklahoma) to participate in the program.

(2) APPLICATION.—Not later than 270 days after the date of enactment of this section, the Secretary shall promulgate regulations that establish requirements relating to information required to be contained in any application of a State to participate in the program, including, at a minimum—

(A) the projects or classes of projects for which the State anticipates exercising the authority that may be granted under the program;

(B) verification of the financial resources necessary to carry out the authority that may be granted under the program; and

(C) evidence of the notice and solicitation of public comment by the State relating to participation of the State in the program, including copies of comments received from that solicitation.

(3) PUBLIC NOTICE.—

(A) IN GENERAL.—Each State that submits an application under this subsection shall give notice of the intent of the State to participate in the program not later than 30 days before the date of submission of the application.

(B) METHOD OF NOTICE AND SOLICITATION.—The State shall provide notice and solicit public comment under this paragraph by publishing the complete application of the State in accordance with the appropriate public notice law of the State.

(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under this section only if—

(A) the regulatory requirements under paragraph (2) have been met;

(B) the Secretary determines that the State has the capability, including financial and personnel, to assume the responsibility; and

(C) the head of the State agency having primary jurisdiction over highway matters enters into a written agreement with the Secretary described in subsection (c).

(5) OTHER FEDERAL AGENCY VIEWS.—If a State applies to assume a responsibility of the Secretary that would have required the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency before approving the application.

(c) WRITTEN AGREEMENT.—A written agreement under this section shall—

(1) be executed by the Governor or the top-ranking transportation official in the State who is charged with responsibility for highway construction;

(2) be in such form as the Secretary may prescribe;

(3) provide that the State—

(A) agrees to assume all or part of the responsibilities of the Secretary described in subsection (a);

(B) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary assumed by the State;

(C) certifies that State laws (including regulations) are in effect that—

(i) authorize the State to take the actions necessary to carry out the responsibilities being assumed; and

(ii) are comparable to section 552 of title 5, including providing that any decision regarding the public availability of a document under those State laws is reviewable by a court of competent jurisdiction; and

(D) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed.

(d) JURISDICTION.—

(1) IN GENERAL.—The United States district courts shall have exclusive jurisdiction over any civil action against a State for failure to carry out any responsibility of the State under this section.

(2) LEGAL STANDARDS AND REQUIREMENTS.—A civil action under paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the Secretary had the Secretary taken the actions in question.

(3) INTERVENTION.—The Secretary shall have the right to intervene in any action described in paragraph (1).

(e) EFFECT OF ASSUMPTION OF RESPONSIBILITY.—A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of the Secretary, the responsibilities assumed under subsection (a)(2), until the program is terminated as provided in subsection (i).

(f) LIMITATIONS ON AGREEMENTS.—Nothing in this section permits a State to assume any rulemaking authority of the Secretary under any Federal law.

(g) AUDITS.—

(1) IN GENERAL.—To ensure compliance by a State with any agreement of the State under subsection (c)(1) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the program under this section, the Secretary shall conduct—

(A) semiannual audits during each of the first 2 years of State participation; and

(B) annual audits during each subsequent year of State participation.

(2) PUBLIC AVAILABILITY AND COMMENT.—

(A) IN GENERAL.—An audit conducted under paragraph (1) shall be provided to the public for comment.

(B) RESPONSE.—Not later than 60 days after the date on which the period for public comment ends, the Secretary shall respond to public comments received under subparagraph (A).

(h) REPORT TO CONGRESS.—The Secretary shall submit to Congress an annual report that describes the administration of the program.

(i) TERMINATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the program shall terminate on the date that is 6 years after the date of enactment of this section.

(2) TERMINATION BY SECRETARY.—The Secretary may terminate the participation of any State in the program if—

(A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;

(B) the Secretary provides to the State—

(i) notification of the determination of noncompliance; and

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

(C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by Secretary.

* * * * * * *

[§ 307. Safety information and intervention in Interstate Commerce Commission proceedings

[(a) The Secretary of Transportation shall inspect promptly the safety compliance record in the Department of Transportation of each person applying to the Interstate Commerce Commission for authority to provide transportation or freight forwarder service. The Secretary shall report the findings of the inspection to the Commission.

[(b) When the Secretary is not satisfied with the safety record of a person applying for permanent authority to provide transportation or freight forwarder service, or for approval of a proposed

transfer of permanent authority, the Secretary shall intervene and present evidence of the fitness of the person to the Commission in its proceedings.

[(c) When requested by the Commission, the Secretary shall—

[(1) provide the Commission with a complete report on the safety compliance of a carrier providing transportation or freight forwarder service subject to its jurisdiction;

[(2) provide promptly a statement of the safety record of a person applying to the Commission for temporary authority to provide transportation;

[(3) intervene and present evidence in a proceeding in which a finding of fitness is required; and

[(4) make additional safety compliance surveys and inspections the Commission decides are desirable to allow it to act on an application or to make a finding on the fitness of a carrier.]

§ 307. Contractor suspension and debarment policy; sharing fraud monetary recoveries

(a) MANDATORY ENFORCEMENT POLICY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary—

(A) shall debar any contractor or subcontractor convicted of a criminal or civil offense involving fraud relating to a project receiving Federal highway or transit funds for such period as the Secretary determines to be appropriate; and

(B) subject to approval by the Attorney General—

(i) except as provided in paragraph (2), shall suspend any contractor or subcontractor upon indictment for criminal or civil offenses involving fraud; and

(ii) may exclude nonaffiliated subsidiaries of a debarred business entity.

(2) NATIONAL SECURITY EXCEPTION.—If the Secretary finds that mandatory debarment or suspension of a contractor or subcontractor under paragraph (1) would be contrary to the national security of the United States, the Secretary—

(A) may waive the debarment or suspension; and

(B) in the instance of each waiver, shall provide notification to Congress of the waiver with appropriate details.

(b) SHARING OF MONETARY RECOVERIES.—

(1) IN GENERAL.—Notwithstanding any other provision of law—

(A) monetary judgments accruing to the Federal Government from judgments in Federal criminal prosecutions and civil judgments pertaining to fraud in highway and transit programs shall be shared with the State or local transit agency involved; and

(B) the State or local transit agency shall use the funds for transportation infrastructure and oversight activities relating to programs authorized under title 23 and this title.

(2) AMOUNT.—The amount of recovered funds to be shared with an affected State or local transit agency shall be—

(A) determined by the Attorney General, in consultation with the Secretary; and

(B) considered to be Federal funds to be used in compliance with other relevant Federal transportation laws (including regulations).

(3) FRAUDULENT ACTIVITY.—Paragraph (1) shall not apply in any case in which a State or local transit agency is found by the Attorney General, in consultation with the Secretary, to have been involved or negligent with respect to the fraudulent activities.

* * * * * * *

TITLE 49, UNITED STATES CODE

* * * * * * *

SUBTITLE VI—MOTOR VEHICLE AND DRIVER PROGRAMS

* * * * * * *

PART A—GENERAL

CHAPTER		Sec.
301.	MOTOR VEHICLE SAFETY	30101
303.	NATIONAL DRIVER REGISTER	30301
305.	NATIONAL MOTOR VEHICLE TITLE INFORMATION SYSTEM	30501

PART B—COMMERCIAL

311.	COMMERCIAL MOTOR VEHICLE SAFETY	31101
313.	COMMERCIAL MOTOR VEHICLE OPERATORS	31301
315.	MOTOR CARRIER SAFETY	31501
317.	PARTICIPATION IN INTERNATIONAL REGISTRATION PLAN AND INTERNATIONAL FUEL TAX AGREEMENT	31701

PART C—INFORMATION, STANDARDS, AND REQUIREMENTS

321.	GENERAL	32101
323.	CONSUMER INFORMATION	32301
325.	BUMPER STANDARDS	32501
327.	ODOMETERS	32701
329.	AUTOMOBILE FUEL ECONOMY	32901
331.	THEFT PREVENTION	33101

PART A—GENERAL

CHAPTER 301—MOTOR VEHICLE SAFETY

SUBCHAPTER I—GENERAL

Sec.
30101. Purpose and policy.
30102. Definitions.
30103. Relationship to other laws.
30104. Authorization of appropriations.
30105. Restriction on lobbying activities.

SUBCHAPTER II—STANDARDS AND COMPLIANCE

30111. Standards.

30112. Prohibitions on manufacturing, selling, and importing noncomplying motor vehicles and equipment.
30113. General exemptions.
30114. Special exemptions.
30115. Certification of compliance.
30116. Defects and noncompliance found before sale to purchaser.
30117. Providing information to, and maintaining records on, purchasers.
30118. Notification of defects and noncompliance.
30119. Notification procedures.
30120. Remedies for defects and noncompliance.
30121. Provisional notification and civil actions to enforce.
30122. Making safety devices and elements inoperative.
30123. Tires.
30124. Buzzers indicating nonuse of safety belts.
30125. Schoolbuses and schoolbus equipment.
30126. Used motor vehicles.
30127. Automatic occupant crash protection and seat belt use.

SUBCHAPTER III—IMPORTING NONCOMPLYING MOTOR VEHICLES AND EQUIPMENT

30141. Importing motor vehicles capable of complying with standards.
30142. Importing motor vehicles for personal use.
30143. Motor vehicles imported by individuals employed outside the United States.
30144. Importing motor vehicles on a temporary basis.
30145. Importing motor vehicles or equipment requiring further manufacturing.
30146. Release of motor vehicles and bonds.
30147. Responsibility for defects and noncompliance.

SUBCHAPTER IV—ENFORCEMENT AND ADMINISTRATIVE

30161. Judicial review of standards.
30162. Petitions by interested persons for standards and enforcement.
30163. Actions by the Attorney General.
30164. Service of process.
30165. Civil penalty.
30166. Inspections, investigations, and records.
30167. Disclosure of information by the Secretary of Transportation.
30168. Research, testing, development, and training.
30169. Annual reports.
30170. Criminal penalties.

* * * * * * *

§ 409. Discovery and admission as evidence of certain reports and surveys

Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for the purpose of identifying evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings, pursuant to sections 130, 144, and [152] *148* of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data.

* * * * * * *

[CHAPTER 5—RESEARCH AND TECHNOLOGY

[Sec.

501. Definitions.
[502. Surface transportation research.
503. Technology deployment program.[2]
504. Training and education.
[505. State planning and research.
[506. International highway transportation outreach program.
[507. Surface transportation-environment cooperative research program.
[508. Surface transportation research strategic planning.

[§ 501. Definitions

[In this chapter, the following definitions apply:

[(1) FEDERAL LABORATORY.—The term "Federal laboratory" includes a Government-owned, Government-operated laboratory and a Government-owned, contractor-operated laboratory.

[(2) SAFETY.—The term "safety" includes highway and traffic safety systems, research, and development relating to vehicle, highway, driver, passenger, bicyclist, and pedestrian characteristics, accident investigations, communications, emergency medical care, and transportation of the injured.

[§ 502. Surface transportation research

[(a) GENERAL AUTHORITY.—

[(1) RESEARCH, DEVELOPMENT, AND TECHNOLOGY TRANSFER ACTIVITIES.—The Secretary may carry out research, development, and technology transfer activities with respect to—

[(A) motor carrier transportation;

[(B) all phases of transportation planning and development (including construction, operation, modernization, development, design, maintenance, safety, financing, and traffic conditions); and

[(C) the effect of State laws on the activities described in subparagraphs (A) and (B).

[(2) TESTS AND DEVELOPMENT.—The Secretary may test, develop, or assist in testing and developing any material, invention, patented article, or process.

[(3) COOPERATION, GRANTS, AND CONTRACTS.—The Secretary may carry out this section—

[(A) independently;

[(B) in cooperation with other Federal departments, agencies, and instrumentalities and Federal laboratories; or

[(C) by making grants to, or entering into contracts, cooperative agreements, and other transactions with, the National Academy of Sciences, the American Association of State Highway and Transportation Officials, or any Federal laboratory, State agency, authority, association, institution, for-profit or nonprofit corporation, organization, foreign country, or person.

[(4) TECHNOLOGICAL INNOVATION.—The programs and activities carried out under this section shall be consistent with the surface transportation research and technology development strategic plan developed under section 508.

[(5) FUNDS.—

[2] So in law. Does not conform to section heading.

[(A) SPECIAL ACCOUNT.—In addition to other funds made available to carry out this section, the Secretary shall use such funds as may be deposited by any cooperating organization or person in a special account of the Treasury established for this purpose.

[(B) USE OF FUNDS.—The Secretary shall use funds made available to carry out this section to develop, administer, communicate, and promote the use of products of research, development, and technology transfer programs under this section.

[(b) COLLABORATIVE RESEARCH AND DEVELOPMENT.—

[(1) IN GENERAL.—To encourage innovative solutions to surface transportation problems and stimulate the deployment of new technology, the Secretary may carry out, on a cost-shared basis, collaborative research and development with—

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

[(B) Federal laboratories.

[(2) AGREEMENTS.—In carrying out this subsection, the Secretary may enter into cooperative research and development agreements (as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)).

[(3) FEDERAL SHARE.—

[(A) IN GENERAL.—The Federal share of the cost of activities carried out under a cooperative research and development agreement entered into under this subsection shall not exceed 50 percent, except that if there is substantial public interest or benefit, the Secretary may approve a greater Federal share.

[(B) NON-FEDERAL SHARE.—All costs directly incurred by the non-Federal partners, including personnel, travel, and hardware development costs, shall be credited toward the non-Federal share of the cost of the activities described in subparagraph (A).

[(4) USE OF TECHNOLOGY.—The research, development, or use of a technology under a cooperative research and development agreement entered into under this subsection, including the terms under which the technology may be licensed and the resulting royalties may be distributed, shall be subject to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

[(5) WAIVER OF ADVERTISING REQUIREMENTS.—Section 3709 of the Revised Statutes (41 U.S.C. 5) shall not apply to a contract or agreement entered into under this chapter.

[(c) CONTENTS OF RESEARCH PROGRAM.—The Secretary shall include in surface transportation research, technology development, and technology transfer programs carried out under this title coordinated activities in the following areas:

[(1) Development, use, and dissemination of indicators, including appropriate computer programs for collecting and analyzing data on the status of infrastructure facilities, to measure

the performance of the surface transportation systems of the United States, including productivity, efficiency, energy use, air quality, congestion, safety, maintenance, and other factors that reflect system performance.

[(2) Methods, materials, and testing to improve the durability of surface transportation infrastructure facilities and extend the life of bridge structures, including—

[(A) new and innovative technologies to reduce corrosion;

[(B) tests simulating seismic activity, vibration, and weather; and

[(C) the use of innovative recycled materials.

[(3) Technologies and practices that reduce costs and minimize disruptions associated with the construction, rehabilitation, and maintenance of surface transportation systems, including responses to natural disasters.

[(4) Development of nondestructive evaluation equipment for use with existing infrastructure facilities and with next-generation infrastructure facilities that use advanced materials.

[(5) Dynamic simulation models of surface transportation systems for—

[(A) predicting capacity, safety, and infrastructure durability problems;

[(B) evaluating planned research projects; and

[(C) testing the strengths and weaknesses of proposed revisions to surface transportation operations programs.

[(6) Economic highway geometrics, structures, and desirable weight and size standards for vehicles using the public highways and the feasibility of uniformity in State regulations with respect to such standards.

[(7) Telecommuting and the linkages between transportation, information technology, and community development and the impact of technological change and economic restructuring on travel demand.

[(8) Expansion of knowledge of implementing life cycle cost analysis, including—

[(A) establishing the appropriate analysis period and discount rates;

[(B) learning how to value and properly consider use costs;

[(C) determining tradeoffs between reconstruction and rehabilitation; and

[(D) establishing methodologies for balancing higher initial costs of new technologies and improved or advanced materials against lower maintenance costs.

[(9) Standardized estimates, to be developed in conjunction with the National Institute of Standards and Technology and other appropriate organizations, of useful life under various conditions for advanced materials of use in surface transportation.

[(10) Evaluation of traffic calming measures that promote community preservation, transportation mode choice, and safety.

[(11) Development and implementation of safety-enhancing equipment, including unobtrusive eyetracking technology.

[(d) ADVANCED RESEARCH.—

[(1) IN GENERAL.—The Secretary shall establish an advanced research program, consistent with the surface transportation research and technology development strategic plan developed under section 508, that addresses longer-term, higher-risk research that shows potential benefits for improving the durability, efficiency, environmental impact, productivity, and safety (including bicycle and pedestrian safety) of highway and intermodal transportation systems. In carrying out the program, the Secretary shall strive to develop partnerships with the public and private sectors.

[(2) RESEARCH AREAS.—In carrying out the program, the Secretary may make grants and enter into cooperative agreements and contracts in such areas as the Secretary determines appropriate, including the following:

[(A) Characterization of materials used in highway infrastructure, including analytical techniques, microstructure modeling, and the deterioration processes.

[(B) Diagnostics for evaluation of the condition of bridge and pavement structures to enable the assessment of risks of failure, including from seismic activity, vibration, and weather.

[(C) Design and construction details for composite structures.

[(D) Safety technology-based problems in the areas of pedestrian and bicycle safety, roadside hazards, and composite materials for roadside safety hardware.

[(E) Environmental research, including particulate matter source apportionment and model development.

[(F) Data acquisition techniques for system condition and performance monitoring.

[(G) Human factors, including prediction of the response of travelers to new technologies.

[(e) LONG-TERM PAVEMENT PERFORMANCE PROGRAM.—

[(1) AUTHORITY.—The Secretary shall complete the long-term pavement performance program tests initiated under the strategic highway research program established under section 307(d) (as in effect on the day before the date of enactment of this section) and continued by the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1914 et seq.) through the midpoint of a planned 20-year life of the long-term pavement performance program.

[(2) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—Under the program, the Secretary shall make grants and enter into cooperative agreements and contracts to—

[(A) monitor, material-test, and evaluate highway test sections in existence as of the date of the grant, agreement, or contract;

[(B) analyze the data obtained in carrying out subparagraph (A); and

[(C) prepare products to fulfill program objectives and meet future pavement technology needs.

[(f) SEISMIC RESEARCH PROGRAM.—

[(1) ESTABLISHMENT.—The Secretary shall establish a program to study the vulnerability of the Federal-aid highway system and other surface transportation systems to seismic activity and to develop and implement cost-effective methods to reduce such vulnerability.

[(2) COOPERATION WITH NATIONAL CENTER FOR EARTHQUAKE ENGINEERING RESEARCH.—The Secretary shall conduct the program in cooperation with the National Center for Earthquake Engineering Research at the University of Buffalo.

[(3) COOPERATION WITH AGENCIES PARTICIPATING IN NATIONAL EARTHQUAKE HAZARDS REDUCTION PROGRAM.—The Secretary shall conduct the program in consultation and cooperation with Federal departments and agencies participating in the National Earthquake Hazards Reduction Program established by section 5 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704) and shall take such actions as may be necessary to ensure that the program is consistent with—

[(A) planning and coordination activities of the Director of the Federal Emergency Management Agency under section 5(b)(1) of such Act (42 U.S.C. 7704(b)(1)); and

[(B) the plan developed by the Director of the Federal Emergency Management Agency under section 8(b) of such Act (42 U.S.C. 7705b(b)).

[(g) INFRASTRUCTURE INVESTMENT NEEDS REPORT.—

[(1) IN GENERAL.—Not later than January 31, 1999, and January 31 of every second year thereafter, the Secretary shall report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on—

[(A) estimates of the future highway and bridge needs of the United States; and

[(B) the backlog of current highway and bridge needs.

[(2) COMPARISON WITH PRIOR REPORTS.—Each report under paragraph (1) shall provide the means, including all necessary information, to relate and compare the conditions and service measures used in the 3 biannual reports published prior to the date of enactment of the Transportation Equity Act for the 21st Century.

[§ 503. Technology deployment

[(a) TECHNOLOGY DEPLOYMENT INITIATIVES AND PARTNERSHIPS PROGRAM.—

[(1) ESTABLISHMENT.—The Secretary shall develop and administer a national technology deployment initiatives and partnerships program.

[(2) PURPOSE.—The purpose of the program shall be to significantly accelerate the adoption of innovative technologies by the surface transportation community.

[(3) DEPLOYMENT GOALS.—

[(A) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this section, the Secretary shall establish not more than 5 deployment goals to carry out paragraph (1).

[(B) DESIGN.—Each of the goals and the program developed to achieve the goals shall be designed to provide tangible benefits, with respect to transportation systems, in the areas of efficiency, safety, reliability, service life, environmental protection, and sustainability.

[(C) STRATEGIES FOR ACHIEVEMENT.—For each goal, the Secretary, in cooperation with representatives of the transportation community such as States, local governments, the private sector, and academia, shall use domestic and international technology to develop strategies and initiatives to achieve the goal, including technical assistance in deploying technology and mechanisms for sharing information among program participants.

[(4) INTEGRATION WITH OTHER PROGRAMS.—The Secretary shall integrate activities carried out under this subsection with the efforts of the Secretary to disseminate the results of research sponsored by the Secretary and to facilitate technology transfer.

[(5) LEVERAGING OF FEDERAL RESOURCES.—In selecting projects to be carried out under this subsection, the Secretary shall give preference to projects that leverage Federal funds with other significant public or private resources.

[(6) CONTINUATION OF SHRP PARTNERSHIPS.—Under the program, the Secretary shall continue the partnerships established through the strategic highway research program established under section 307(d) (as in effect on the day before the date of enactment of this section).

[(7) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—Under the program, the Secretary may make grants and enter into cooperative agreements and contracts to foster alliances and support efforts to stimulate advances in transportation technology, including—

[(A) the testing and evaluation of products of the strategic highway research program;

[(B) the further development and implementation of technology in areas such as the Superpave system and the use of lithium salts and other alternatives to prevent and mitigate alkali silica reactivity;

[(C) the provision of support for long-term pavement performance product implementation and technology access; and

[(D) other activities to achieve the goals established under paragraph (3).

[(8) REPORTS.—Not later than 18 months after the date of enactment of this section, and biennially thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the progress and results of activities carried out under this section.

[(9) ALLOCATION.—To the extent appropriate to achieve the goals established under paragraph (3), the Secretary may further allocate funds made available to carry out this section to States for their use.

[(b) INNOVATIVE BRIDGE RESEARCH AND CONSTRUCTION PROGRAM.—

[(1) IN GENERAL.—The Secretary shall establish and carry out a program to demonstrate the application of innovative material technology in the construction of bridges and other structures.

[(2) GOALS.—The goals of the program shall include—

[(A) the development of new, cost-effective innovative material highway bridge applications;

[(B) the reduction of maintenance costs and life-cycle costs of bridges, including the costs of new construction, replacement, or rehabilitation of deficient bridges;

[(C) the development of construction techniques to increase safety and reduce construction time and traffic congestion;

[(D) the development of engineering design criteria for innovative products and materials for use in highway bridges and structures;

[(E) the development of cost-effective and innovative techniques to separate vehicle and pedestrian traffic from railroad traffic;

[(F) the development of highway bridges and structures that will withstand natural disasters, including alternative processes for the seismic retrofit of bridges; and

[(G) the development of new nondestructive bridge evaluation technologies and techniques.

[(3) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—

[(A) IN GENERAL.—Under the program, the Secretary shall make grants to, and enter into cooperative agreements and contracts with—

[(i) States, other Federal agencies, universities and colleges, private sector entities, and nonprofit organizations to pay the Federal share of the cost of research, development, and technology transfer concerning innovative materials; and

[(ii) States to pay the Federal share of the cost of repair, rehabilitation, replacement, and new construction of bridges or structures that demonstrate the application of innovative materials.

[(B) APPLICATIONS.—To receive a grant under this subsection, an entity described in subparagraph (A) shall submit an application to the Secretary. The application shall be in such form and contain such information as the Secretary may require. The Secretary shall select and approve the applications based on whether the project that is the subject of the grant meets the goals of the program described in paragraph (2).

[(4) TECHNOLOGY AND INFORMATION TRANSFER.—The Secretary shall take such action as is necessary to ensure that the information and technology resulting from research conducted under paragraph (3) is made available to State and local transportation departments and other interested parties as specified by the Secretary.

[(5) FEDERAL SHARE.—The Federal share of the cost of a project under this section shall be determined by the Secretary.

[§ 504. Training and education

[(a) NATIONAL HIGHWAY INSTITUTE.—

[(1) IN GENERAL.—The Secretary shall operate in the Federal Highway Administration a National Highway Institute (in this subsection referred to as the "Institute"). The Secretary shall administer, through the Institute, the authority vested in the Secretary by this title or by any other law for the development and conduct of education and training programs relating to highways.

[(2) DUTIES OF THE INSTITUTE.—In cooperation with State transportation departments, United States industry, and any national or international entity, the Institute shall develop and administer education and training programs of instruction for—

[(A) Federal Highway Administration, State, and local transportation agency employees;

[(B) regional, State, and metropolitan planning organizations;

[(C) State and local police, public safety, and motor vehicle employees; and

[(D) United States citizens and foreign nationals engaged or to be engaged in surface transportation work of interest to the United States.

[(3) COURSES.—The Institute may develop and administer courses in modern developments, techniques, methods, regulations, management, and procedures relating to surface transportation, environmental mitigation and compliance, acquisition of rights-of-way, relocation assistance, engineering, safety, construction, maintenance and operations, contract administration, motor carrier safety activities, inspection, and highway finance.

[(4) SET-ASIDE; FEDERAL SHARE.—Not to exceed ½ of 1 percent of the funds apportioned to a State under section 104(b)(3) for the surface transportation program shall be available for expenditure by the State transportation department for the payment of not to exceed 80 percent of the cost of tuition and direct educational expenses (excluding salaries) in connection with the education and training of employees of State and local transportation agencies in accordance with this subsection.

[(5) FEDERAL RESPONSIBILITY.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), education and training of employees of Federal, State, and local transportation (including highway) agencies authorized under this subsection may be provided—

[(i) by the Secretary at no cost to the States and local governments if the Secretary determines that provision at no cost is in the public interest; or

[(ii) by the State through grants, cooperative agreements, and contracts with public and private agencies, institutions, individuals, and the Institute.

[(B) PAYMENT OF FULL COST BY PRIVATE PERSONS.—Private agencies, international or foreign entities, and individuals shall pay the full cost of any education and training received by them unless the Secretary determines that a lower cost is of critical importance to the public interest.

[(6) TRAINING FELLOWSHIPS; COOPERATION.—The Institute may—

[(A) engage in training activities authorized under this subsection, including the granting of training fellowships; and

[(B) carry out its authority independently or in cooperation with any other branch of the Federal Government or any State agency, authority, association, institution, for-profit or nonprofit corporation, other national or international entity, or other person.

[(7) COLLECTION OF FEES.—

[(A) GENERAL RULE.—In accordance with this subsection, the Institute may assess and collect fees solely to defray the costs of the Institute in developing or administering education and training programs under this subsection.

[(B) LIMITATION.—Fees may be assessed and collected under this subsection only in a manner that may reasonably be expected to result in the collection of fees during any fiscal year in an aggregate amount that does not exceed the aggregate amount of the costs referred to in subparagraph (A) for the fiscal year.

[(C) PERSONS SUBJECT TO FEES.—Fees may be assessed and collected under this subsection only with respect to—

[(i) persons and entities for whom education or training programs are developed or administered under this subsection; and

[(ii) persons and entities to whom education or training is provided under this subsection.

[(D) AMOUNT OF FEES.—The fees assessed and collected under this subsection shall be established in a manner that ensures that the liability of any person or entity for a fee is reasonably based on the proportion of the costs referred to in subparagraph (A) that relate to the person or entity.

[(E) USE.—All fees collected under this subsection shall be used to defray costs associated with the development or administration of education and training programs authorized under this subsection.

[(8) RELATION TO FEES.—The funds made available to carry out this subsection may be combined with or held separate from the fees collected under paragraph (7).

[(b) LOCAL TECHNICAL ASSISTANCE PROGRAM.—

[(1) AUTHORITY.—The Secretary shall carry out a local technical assistance program that will provide access to surface transportation technology to—

[(A) highway and transportation agencies in urbanized areas with populations of between 50,000 and 1,000,000 individuals;

[(B) highway and transportation agencies in rural areas; and

[(C) contractors that do work for the agencies.

[(2) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—The Secretary may make grants and enter into cooperative agreements and contracts to provide education and training, technical assistance, and related support services to—

[(A) assist rural, local transportation agencies and tribal governments, and the consultants and construction personnel working for the agencies and governments, to—

[(i) develop and expand their expertise in road and transportation areas (including pavement, bridge, concrete structures, safety management systems, and traffic safety countermeasures);

[(ii) improve roads and bridges;

[(iii) enhance—

[(I) programs for the movement of passengers and freight; and

(II) intergovernmental transportation planning and project selection; and

[(iv) deal effectively with special transportation-related problems by preparing and providing training packages, manuals, guidelines, and technical resource materials;

[(B) develop technical assistance for tourism and recreational travel;

[(C) identify, package, and deliver transportation technology and traffic safety information to local jurisdictions to assist urban transportation agencies in developing and expanding their ability to deal effectively with transportation-related problems;

[(D) operate, in cooperation with State transportation departments and universities—

[(i) local technical assistance program centers designated to provide transportation technology transfer services to rural areas and to urbanized areas with populations of between 50,000 and 1,000,000 individuals; and

[(ii) local technical assistance program centers designated to provide transportation technical assistance to Indian tribal governments; and

[(E) allow local transportation agencies and tribal governments, in cooperation with the private sector, to enhance new technology implementation.

[(c) RESEARCH FELLOWSHIPS.—

[(1) GENERAL AUTHORITY.—The Secretary, acting either independently or in cooperation with other Federal departments, agencies, and instrumentalities, may make grants for research fellowships for any purpose for which research is authorized by this chapter.

[(2) DWIGHT DAVID EISENHOWER TRANSPORTATION FELLOWSHIP PROGRAM.—The Secretary shall establish and implement a transportation research fellowship program for the purpose of attracting qualified students to the field of transportation. The program shall be known as the "Dwight David Eisenhower Transportation Fellowship Program".

[§ 505. State planning and research

[(a) GENERAL RULE.—Two percent of the sums apportioned to a State for fiscal year 1998 and each fiscal year thereafter under section 104 (other than sections 104(f) and 104(h)) and under section 144 shall be available for expenditure by the State, in consultation with the Secretary, only for the following purposes:

[(1) Engineering and economic surveys and investigations.

[(2) The planning of future highway programs and local public transportation systems and the planning of the financing of such programs and systems, including metropolitan and statewide planning under sections 134 and 135.

[(3) Development and implementation of management systems under section 303.

[(4) Studies of the economy, safety, and convenience of surface transportation systems and the desirable regulation and equitable taxation of such systems.

[(5) Research, development, and technology transfer activities necessary in connection with the planning, design, construction, management, and maintenance of highway, public transportation, and intermodal transportation systems.

[(6) Study, research, and training on the engineering standards and construction materials for transportation systems described in paragraph (5), including the evaluation and accreditation of inspection and testing and the regulation and taxation of their use.

[(b) MINIMUM EXPENDITURES ON RESEARCH, DEVELOPMENT, AND TECHNOLOGY TRANSFER ACTIVITIES.—

[(1) IN GENERAL.—Subject to paragraph (2), not less than 25 percent of the funds subject to subsection (a) that are apportioned to a State for a fiscal year shall be expended by the State for research, development, and technology transfer activities described in subsection (a), relating to highway, public transportation, and intermodal transportation systems.

[(2) WAIVERS.—The Secretary may waive the application of paragraph (1) with respect to a State for a fiscal year if the State certifies to the Secretary for the fiscal year that total expenditures by the State for transportation planning under sections 134 and 135 will exceed 75 percent of the funds described in paragraph (1) and the Secretary accepts such certification.

[(3) NONAPPLICABILITY OF ASSESSMENT.—Funds expended under paragraph (1) shall not be considered to be part of the extramural budget of the agency for the purpose of section 9 of the Small Business Act (15 U.S.C. 638).

[(c) FEDERAL SHARE.—The Federal share of the cost of a project carried out using funds subject to subsection (a) shall be 80 percent unless the Secretary determines that the interests of the

Federal-aid highway program would be best served by decreasing or eliminating the non-Federal share.

[(d) ADMINISTRATION OF SUMS.—Funds subject to subsection (a) shall be combined and administered by the Secretary as a single fund and shall be available for obligation for the same period as funds apportioned under section 104(b)(1).

[§ 506. International highway transportation outreach program

[(a) ESTABLISHMENT.—The Secretary may establish an international highway transportation outreach program—

[(1) to inform the United States highway community of technological innovations in foreign countries that could significantly improve highway transportation in the United States;

[(2) to promote United States highway transportation expertise, goods, and services in foreign countries; and

[(3) to increase transfers of United States highway transportation technology to foreign countries.

[(b) ACTIVITIES.—Activities carried out under the program may include—

[(1) development, monitoring, assessment, and dissemination in the United States of information about highway transportation innovations in foreign countries that could significantly improve highway transportation in the United States;

[(2) research, development, demonstration, training, and other forms of technology transfer and exchange;

[(3) informing foreign countries about the technical quality of United States highway transportation goods and services through participation in trade shows, seminars, expositions, and other such activities;

[(4) offering technical services of the Federal Highway Administration that cannot be readily obtained from United States private sector firms to be incorporated into the proposals of United States private sector firms undertaking highway transportation projects outside the United States if the costs of such services will be recovered under the terms of the project;

[(5) conducting studies to assess the need for or feasibility of highway transportation improvements in countries that are not members of the Organization for Economic Cooperation and Development, as of December 18, 1991, and in Greece and Turkey; and

[(6) gathering and disseminating information on foreign transportation markets and industries.

[(c) COOPERATION.—The Secretary may carry out this section in cooperation with any appropriate Federal agency, State or local agency, authority, association, institution, corporation (profit or nonprofit), foreign government, multinational institution, or other organization or person.

[(d) FUNDS.—

[(1) CONTRIBUTIONS.—Funds available to carry out this section shall include funds deposited by any cooperating orga-

nization or person into a special account of the Treasury established for this purpose.

[(2) ELIGIBLE USES OF FUNDS.—The funds deposited into the account and other funds available to carry out this section shall be available to cover the cost of any activity eligible under this section, including the cost of promotional materials, travel, reception and representation expenses, and salaries and benefits.

[(3) REIMBURSEMENTS FOR SALARIES AND BENEFITS.—Reimbursements for salaries and benefits of Department of Transportation employees providing services under this section shall be credited to the account.

[(e) ELIGIBLE USE OF STATE PLANNING AND RESEARCH FUNDS.—A State, in coordination with the Secretary, may obligate funds made available to carry out section 505 for any activity authorized under subsection (a).

[§ 507. Surface transportation-environment cooperative research program

[(a) IN GENERAL.—The Secretary shall establish and carry out a surface transportation-environment cooperative research program.

[(b) CONTENTS.—The program to be carried out under this section shall include research designed—

[(1) to develop more accurate models for evaluating transportation control measures and transportation system designs that are appropriate for use by State and local governments, including metropolitan planning organizations, in designing implementation plans to meet Federal, State, and local environmental requirements;

[(2) to improve understanding of the factors that contribute to the demand for transportation, including transportation system design, demographic change, land use planning, and communications and other information technologies;

[(3) to develop indicators of economic, social, and environmental performance of transportation systems to facilitate analysis of potential alternatives;

[(4) to study the relationship between highway density and ecosystem integrity, including the impacts of highway density on habitat integrity and overall ecosystem health, and develop a rapid assessment methodology for use by transportation and regulatory agencies in determining the relationship between highway density and ecosystem integrity; and

[(5) to meet additional priorities as determined by the advisory board established under subsection (c), including recommendations of the National Research Council in the report entitled "Environmental Research Needs in Transportation".

[(c) ADVISORY BOARD.—

[(1) ESTABLISHMENT.—In consultation with the Secretary of Energy, the Administrator of the Environmental Protection Agency, and the heads of other appropriate Federal departments and agencies, the Secretary shall establish an advisory board to recommend environmental and energy conservation

research, technology, and technology transfer activities related to surface transportation.

[(2) MEMBERSHIP.—The advisory board shall include—

[(A) representatives of State transportation and environmental agencies;

[(B) transportation and environmental scientists and engineers; and

[(C) representatives of metropolitan planning organizations, transit operating agencies, and environmental organizations.

[(d) NATIONAL ACADEMY OF SCIENCES.—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities relating to the research, technology, and technology transfer activities described in subsection (b) as the Secretary determines appropriate.

[§ 508. Surface transportation research strategic planning

[(a) IN GENERAL.—The Secretary shall—

[(1) establish a strategic planning process, consistent with section 306 of title 5 for the Department of Transportation to determine national transportation research and technology development priorities related to surface transportation;

[(2) coordinate Federal surface transportation research and technology development activities;

[(3) measure the results of those activities and how they impact the performance of the surface transportation systems of the United States; and

[(4) ensure that planning and reporting activities carried out under this section are coordinated with all other surface transportation planning and reporting requirements.

[(b) IMPLEMENTATION.—The Secretary shall—

[(1) provide for the integrated planning, coordination, and consultation among the operating administrations of the Department of Transportation, all other Federal agencies with responsibility for surface transportation research and technology development, State and local governments, institutions of higher education, industry, and other private and public sector organizations engaged in surface transportation-related research and development activities;

[(2) ensure that the surface transportation research and technology development programs of the Department do not duplicate other Federal, State, or private sector research and development programs; and

[(3) provide for independent validation of the scientific and technical assumptions underlying the surface transportation research and technology development programs of the Department.

[(c) SURFACE TRANSPORTATION RESEARCH AND TECHNOLOGY DEVELOPMENT STRATEGIC PLAN.—

[(1) DEVELOPMENT.—The Secretary shall develop an integrated surface transportation research and technology development strategic plan.

[(2) CONTENTS.—The plan shall include—

[(A) an identification of the general goals and objectives of the Department of Transportation for surface transportation research and development;

[(B) a description of the roles of the Department and other Federal agencies in achieving the goals identified under subparagraph (A), in order to avoid unnecessary duplication of effort;

[(C) a description of the overall strategy of the Department, and the role of each of the operating administrations of the Department, in carrying out the plan over the next 5 years, including a description of procedures for coordination of the efforts of the Secretary with the efforts of the operating administrations of the Department and other Federal agencies;

[(D) an assessment of how State and local research and technology development activities are contributing to the achievement of the goals identified under subparagraph (A);

[(E) details of the surface transportation research and technology development programs of the Department, including performance goals, resources needed to achieve those goals, and performance indicators as described in section 1115(a) of title 31, United States Code, for the next 5 years for each area of research and technology development;

[(F) significant comments on the plan obtained from outside sources; and

[(G) responses to significant comments obtained from the National Research Council and other advisory bodies, and a description of any corrective actions taken pursuant to such comments.

[(3) NATIONAL RESEARCH COUNCIL REVIEW.—The Secretary shall enter into an agreement for the review by the National Research Council of the details of each—

[(A) strategic plan or revision required under section 306 of title 5;

[(B) performance plan required under section 1115 of title 31; and

[(C) program performance report required under section 1116,

with respect to surface transportation research and technology development.

[(4) PERFORMANCE PLANS AND REPORTS.—In reports submitted under sections 1115 and 1116 of title 31, the Secretary shall include—

[(A) a summary of the results for the previous fiscal year of surface transportation research and technology development programs to which the Department of Transportation contributes, along with—

[(i) an analysis of the relationship between those results and the goals identified under paragraph (2)(A); and

[(ii) a description of the methodology used for assessing the results; and

[(B) a description of significant surface transportation research and technology development initiatives, if any, undertaken during the previous fiscal year that were not in the plan developed under paragraph (1), and any significant changes in the plan from the previous year's plan.

[(d) MERIT REVIEW AND PERFORMANCE MEASUREMENT.—Not later than 1 year after the date of enactment of this section, the Secretary shall transmit to Congress a report describing competitive merit review procedures for use in selecting grantees and contractors in the programs covered by the plan developed under subsection (c) and performance measurement procedures for evaluating the programs.

[(e) PROCUREMENT PROCEDURES.—The Secretary shall—

[(1) develop model procurement procedures that encourage the use of advanced technologies; and

[(2) develop model transactions for carrying out and coordinating Federal and State surface transportation research and technology development activities.

[(f) CONSISTENCY WITH GOVERNMENT PERFORMANCE AND RESULTS ACT OF 1993.—The plans and reports developed under this section shall be consistent with and incorporated as part of the plans developed under section 306 of title 5 and sections 1115 and 1116 of title 31.]

CHAPTER 5—RESEARCH AND TECHNOLOGY

Subchapter I—Surface Transportation

Sec.

501. Definitions.

502. Surface transportation research.

503. Technology application program.

504. Training and education.

505. State planning and research.

506. International highway transportation outreach program.

507. Surface transportation-environment cooperative research program.

508. Surface transportation research technology deployment and strategic planning.

509. New strategic highway research program.

510. University transportation centers.

SUBCHAPTER II—INTELLIGENT TRANSPORTATION SYSTEM RESEARCH AND TECHNICAL ASSISTANCE PROGRAM

521. Finding.

522. Goals and purposes.

523. Definitions.

524. General authorities and requirements.

525. National ITS Program Plan.

526. National ITS architecture and standards.

527. Commercial vehicle intelligent transportation system infrastructure program.

528. Research and development.

529. Use of funds.

SUBCHAPTER I—SURFACE TRANSPORTATION

§ 501. Definitions

In this subchapter:

(1) FEDERAL LABORATORY.—The term 'Federal laboratory' includes—

(A) a Government-owned, Government-operated laboratory; and

(B) a Government-owned, contractor-operated laboratory.

(2) SAFETY.—The term 'safety' includes highway and traffic safety systems, research, and development relating to—

(A) vehicle, highway, driver, passenger, bicyclist, and pedestrian characteristics;

(B) accident investigations;

(C) communications;

(D) emergency medical care; and

(E) transportation of the injured.

§ 502. Surface transportation research

(a) IN GENERAL.—

(1) RESEARCH, DEVELOPMENT, AND TECHNOLOGY TRANSFER ACTIVITIES.—The Secretary may carry out research, development, and technology transfer activities with respect to—

(A) all phases of transportation planning and development (including new technologies, construction, transportation systems management and operations development, design, maintenance, safety, security, financing, data collection and analysis, demand forecasting, multimodal assessment, and traffic conditions); and

(B) the effect of State laws on the activities described in subparagraph (A).

(2) TESTS AND DEVELOPMENT.—The Secretary may test, develop, or assist in testing and developing, any material, invention, patented article, or process.

(3) COOPERATION, GRANTS, AND CONTRACTS.—

(A) IN GENERAL.—The Secretary may carry out this section—

(i) independently;

(ii) in cooperation with—

(I) any other Federal agency or instrumentality; and

(II) any Federal laboratory; or

(iii) by making grants to, or entering into contracts, cooperative agreements, and other transactions with—

(I) the National Academy of Sciences;

(II) the American Association of State Highway and Transportation Officials;

(III) planning organizations;

(IV) a Federal laboratory;

(V) a State agency;

(VI) an authority, association, institution, or organization;

(VII) a for-profit or nonprofit corporation;

(VIII) a foreign country; or

(IX) any other person.

(B) COMPETITION; REVIEW.—All parties entering into contracts, cooperative agreements or other transactions with the Secretary, or receiving grants, to perform research or provide technical assistance under this section shall be selected, to the maximum extent practicable—

(i) on a competitive basis; and

(ii) on the basis of the results of peer review of proposals submitted to the Secretary.

(4) TECHNOLOGICAL INNOVATION.—The programs and activities carried out under this section shall be consistent with the surface transportation research and technology development strategic plan developed under section 508(c).

(5) FUNDS.—

(A) SPECIAL ACCOUNT.—In addition to other funds made available to carry out this section, the Secretary shall use such funds as may be deposited by any cooperating organization or person in a special account of the Treasury established for this purpose.

(B) USE OF FUNDS.—The Secretary shall use funds made available to carry out this section to develop, administer, communicate, and promote the use of products of research, development, and technology transfer programs under this section.

(b) COLLABORATIVE RESEARCH AND DEVELOPMENT.—

(1) IN GENERAL.—To encourage innovative solutions to surface transportation problems and stimulate the deployment of new technology, the Secretary may carry out, on a cost-shared basis, collaborative research and development with—

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

(B) Federal laboratories.

(2) AGREEMENTS.—In carrying out this subsection, the Secretary may enter into cooperative research and development agreements (as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)).

(3) FEDERAL SHARE.—

(A) IN GENERAL.—The Federal share of the cost of activities carried out under a cooperative research and development agreement entered into under this subsection shall not exceed 50 percent, except that if there is substantial public interest or benefit, the Secretary may approve a greater Federal share.

(B) NON-FEDERAL SHARE.—All costs directly incurred by the non-Federal partners, including personnel, travel, and hardware development costs, shall be credited toward the non-Federal share of the cost of the activities described in subparagraph (A).

(4) USE OF TECHNOLOGY.—The research, development, or use of a technology under a cooperative research and development agreement entered into under this subsection, including the terms under which the technology may be licensed and the resulting royalties may be distributed, shall be subject to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

(5) WAIVER OF ADVERTISING REQUIREMENTS.—Section 3709 of the Revised Statutes (41 U.S.C. 5) shall not apply to a contract or agreement entered into under this chapter.

(c) CONTENTS OF RESEARCH PROGRAM.—The Secretary shall include as priority areas of effort within the surface transportation research program—

(1) the development of new technologies and methods in materials, pavements, structures, design, and construction, with the objectives of—

(A)(i) increasing to 50 years the expected life of pavements;

(ii) increasing to 100 years the expected life of bridges; and

(iii) significantly increasing the durability of other infrastructure;

(B) lowering the life-cycle costs, including—

(i) construction costs;

(ii) maintenance costs;

(iii) operations costs; and

(vi) user costs.

(2) the development, and testing for effectiveness, of nondestructive evaluation technologies for civil infrastructure using existing and new technologies;

(3) the investigation of—

(A) the application of current natural hazard mitigation techniques to manmade hazards; and

(B) the continuation of hazard mitigation research combining manmade and natural hazards;

(4) the improvement of safety—

(A) at intersections;

(B) with respect to accidents involving vehicles run off the road; and

(C) on rural roads;

(5) the reduction of work zone incursions and improvement of work zone safety;

(6) the improvement of geometric design of roads for the purpose of safety;

(7) the examination of data collected through the national bridge inventory conducted under section 144 using the national bridge inspection standards established under section 151, with the objectives of determining whether—

(A) the most useful types of data are being collected; and

(B) any improvement could be made in the types of data collected and the manner in which the data is collected, with respect to bridges in the United States;

(8) the improvement of the infrastructure investment needs report described in subsection (g) through—

(A) the study and implementation of new methods of collecting better quality data, particularly with respect to performance, congestion, and infrastructure conditions;

(B) monitoring of the surface transportation system in a system-wide manner, through the use of—

(i) intelligent transportation system technologies of traffic operations centers; and

(ii) other new data collection technologies as sources of better quality performance data;

(C) the determination of the critical metrics that should be used to determine the condition and performance of the surface transportation system; and

(D) the study and implementation of new methods of statistical analysis and computer models to improve the prediction of future infrastructure investment requirements;

(9) the development of methods to improve the determination of benefits from infrastructure improvements, including—

(A) more accurate calculations of benefit-to-cost ratios, considering benefits and impacts throughout local and regional transportation systems;

(B) improvements in calculating life-cycle costs; and

(C) valuation of assets;

(10) the improvement of planning processes to better predict outcomes of transportation projects, including the application of computer simulations in the planning process to predict outcomes of planning decisions;

(11) the multimodal applications of Geographic Information Systems and remote sensing, including such areas of application as—

(A) planning;

(B) environmental decisionmaking and project delivery; and

(C) freight movement;

(12) the development and application of methods of providing revenues to the Highway Trust Fund with the objective of offsetting potential reductions in fuel tax receipts;

(13) the development of tests and methods to determine the benefits and costs to communities of major transportation investments and projects;

(14) the conduct of extreme weather research, including research to—

(A) reduce contraction and expansion damage;

(B) reduce or repair road damage caused by freezing and thawing;

(C) improve deicing or snow removal techniques;

(D) develop better methods to reduce the risk of thermal collapse, including collapse from changes in underlying permafrost;

(E) improve concrete and asphalt installation in extreme weather conditions; and

(F) make other improvements to protect highway infrastructure or enhance highway safety or performance;

(15) the improvement of planning processes and project development through the development and application of collaboration tools and strategies for finding transportation solutions; and

(16) any other surface transportation research topics that the Secretary determines, in accordance with the strategic planning process under section 508, to be critical.

(d) ADVANCED, HIGH-RISK RESEARCH.—

(1) IN GENERAL.—The Secretary shall establish and carry out, in accordance with the surface transportation research and technology development strategic plan developed under section

508(c) and research priority areas described in subsection (c), an advanced research program that addresses longer-term, higher-risk research with potentially dramatic breakthroughs for improving the durability, efficiency, environmental impact, productivity, and safety (including bicycle and pedestrian safety) aspects of highway and intermodal transportation systems.

(2) PARTNERSHIPS.—In carrying out the program, the Secretary shall seek to develop partnerships with the public and private sectors.

(3) REPORT.—The Secretary shall include in the strategic plan required under section 508(c) a description of each of the projects, and the amount of funds expended for each project, carried out under this subsection during the fiscal year.

(e) LONG-TERM PAVEMENT PERFORMANCE PROGRAM.—

(1) AUTHORITY.—The Secretary shall continue, through September 30, 2009, the long-term pavement performance program tests, monitoring, and data analysis.

(2) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—Under the program, the Secretary shall make grants and enter into cooperative agreements and contracts to—

(A) monitor, material-test, and evaluate highway test sections in existence as of the date of the grant, agreement, or contract;

(B) analyze the data obtained in carrying out subparagraph (A); and

(C) prepare products to fulfill program objectives and meet future pavement technology needs.

(3) CONCLUSION OF PROGRAM.—

(A) SUMMARY REPORT.—The Secretary shall include in the strategic plan required under section 508(c) a report on the initial conclusions of the long-term pavement performance program that includes—

(i) an analysis of any research objectives that remain to be achieved under the program;

(ii) an analysis of other associated longer-term expenditures under the program that are in the public interest;

(iii) a detailed plan regarding the storage, maintenance, and user support of the database, information management system, and materials reference library of the program;

(iv) a schedule for continued implementation of the necessary data collection and analysis and project plan under the program; and

(v) an estimate of the costs of carrying out each of the activities described in clauses (i) through (iv) for each fiscal year during which the program is carried out.

(B) DEADLINE; USEFULNESS OF ADVANCES.—The Secretary shall, to the maximum extent practicable—

(i) ensure that the long-term pavement performance program is concluded not later than September 30, 2009; and

(ii) make such allowances as are necessary to ensure the usefulness of the technological advances resulting from the program.

(f) SEISMIC RESEARCH.—The Secretary shall—

(1) in consultation and cooperation with Federal agencies participating in the National Earthquake Hazards Reduction Program established by section 5 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704), coordinate the conduct of seismic research; and

(2) take such actions as are necessary to ensure that the coordination of the research is consistent with—

(A) planning and coordination activities of the Director of the Federal Emergency Management Agency under section 5(b)(1) of that Act (42 U.S.C. 7704(b)(1)); and

(B) the plan developed by the Director of the Federal Emergency Management Agency under section 8(b) of that Act (42 U.S.C. 7705b(b)).

(g) INFRASTRUCTURE INVESTMENT NEEDS REPORT.—

(1) IN GENERAL.—Not later than July 31, 2004, and July 31 of every second year thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes—

(A) estimates of the future highway and bridge needs of the United States; and

(B) the backlog of current highway and bridge needs.

(2) COMPARISON WITH PRIOR REPORTS.—Each report under paragraph (1) shall provide the means, including all necessary information, to relate and compare the conditions and service measures used in the previous biennial reports.

(h) SECURITY RELATED RESEARCH AND TECHNOLOGY TRANSFER ACTIVITIES.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, the Secretary, in consultation with the Secretary of Homeland Security, with key stakeholder input (including State transportation departments) shall develop a 5-year strategic plan for research and technology transfer and deployment activities pertaining to the security aspects of highway infrastructure and operations.

(2) COMPONENTS OF PLAN.—The plan shall include—

(A) an identification of which agencies are responsible for the conduct of various research and technology transfer activities;

(B) a description of the manner in which those activities will be coordinated; and

(C) a description of the process to be used to ensure that the advances derived from relevant activities supported by the Federal Highway Administration are consistent with the operational guidelines, policies, recommendations, and regulations of the Department of Homeland Security; and

(D) a systematic evaluation of the research that should be conducted to address, at a minimum—

(i) vulnerabilities of, and measures that may be taken to improve, emergency response capabilities and evacuations;

(ii) recommended upgrades of traffic management during crises;

(iii) enhanced communications among the public, the military, law enforcement, fire and emergency medical services, and transportation agencies;

(iv) protection of critical, security-related infrastructure; and

(v) structural reinforcement of key facilities.

(3) SUBMISSION.—On completion of the plan under this subsection, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

(A) a copy of the plan developed under paragraph (1); and

(B) a copy of a memorandum of understanding specifying coordination strategies and assignment of responsibilities covered by the plan that is signed by the Secretary and the Secretary of Homeland Security.

§ 503. Technology application program

(a) TECHNOLOGY APPLICATION INITIATIVES AND PARTNERSHIPS PROGRAM.—

(1) ESTABLISHMENT.—The Secretary, in consultation with interested stakeholders, shall develop and administer a national technology application initiatives and partnerships program.

(2) PURPOSE.—The purpose of the program shall be to significantly accelerate the adoption of innovative technologies by the surface transportation community.

(3) APPLICATION GOALS.—

(A) ESTABLISHMENT.—Not later than 180 days after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, the Secretary, in consultation with the Surface Transportation Research Technology Advisory Committee, State transportation departments, and other interested stakeholders, shall establish, as part of the surface transportation research and technology development strategic plan under section 508(c), goals to carry out paragraph (1).

(B) DESIGN.—Each of the goals and the program developed to achieve the goals shall be designed to provide tangible benefits, with respect to transportation systems, in the areas of efficiency, safety, reliability, service life, environmental protection, and sustainability.

(C) STRATEGIES FOR ACHIEVEMENT.—For each goal, the Secretary, in cooperation with representatives of the transportation community, such as States, local governments, the private sector, and academia, shall use domestic and international technology to develop strategies and initiatives to achieve the goal, including technical assistance in

deploying technology and mechanisms for sharing information among program participants.

(4) INTEGRATION WITH OTHER PROGRAMS.—The Secretary shall integrate activities carried out under this subsection with the efforts of the Secretary to—

(A) disseminate the results of research sponsored by the Secretary; and

(B) facilitate technology transfer.

(5) LEVERAGING OF FEDERAL RESOURCES.—In selecting projects to be carried out under this subsection, the Secretary shall give preference to projects that leverage Federal funds with other significant public or private resources.

(6) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—Under the program, the Secretary may make grants and enter into cooperative agreements and contracts to foster alliances and support efforts to stimulate advances in transportation technology.

(7) REPORTS.—The results and progress of activities carried out under this section shall be published as part of the annual transportation research report prepared by the Secretary under section 508(c)(5).

(8) ALLOCATION.—To the extent appropriate to achieve the goals established under paragraph (3), the Secretary may further allocate funds made available to carry out this section to States for use by those States.

(b) INNOVATIVE SURFACE TRANSPORTATION INFRASTRUCTURE RESEARCH AND CONSTRUCTION PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish and carry out a program for the application of innovative material, design, and construction technologies in the construction, preservation, and rehabilitation of elements of surface transportation infrastructure.

(2) GOALS.—The goals of the program shall include—

(A) the development of new, cost-effective, and innovative materials;

(B) the reduction of maintenance costs and life-cycle costs of elements of infrastructure, including the costs of new construction, replacement, and rehabilitation;

(C) the development of construction techniques to increase safety and reduce construction time and traffic congestion;

(D) the development of engineering design criteria for innovative products and materials for use in surface transportation infrastructure;

(E) the development of highway bridges and structures that will withstand natural disasters and disasters caused by human activity; and

(F) the development of new, nondestructive technologies and techniques for the evaluation of elements of transportation infrastructure.

(3) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—

(A) IN GENERAL.—Under the program, the Secretary shall make grants to, and enter into cooperative agreements and contracts with—

(i) States, other Federal agencies, universities and colleges, private sector entities, and nonprofit organizations, to pay the Federal share of the cost of research, development, and technology transfer concerning innovative materials and methods; and

(ii) States, to pay the Federal share of the cost of repair, rehabilitation, replacement, and new construction of elements of surface transportation infrastructure that demonstrate the application of innovative materials and methods.

(B) APPLICATIONS.—

(i) IN GENERAL.—To receive a grant under this subsection, an entity described in subparagraph (A) shall submit to the Secretary an application in such form and containing such information as the Secretary may require.

(ii) APPROVAL.—The Secretary shall select and approve an application based on whether the proposed project that is the subject of the application would meet the goals described in paragraph (2).

(4) TECHNOLOGY AND INFORMATION TRANSFER.—The Secretary shall take such action as is necessary to—

(A) ensure that the information and technology resulting from research conducted under paragraph (3) is made available to State and local transportation departments and other interested parties, as specified by the Secretary; and

(B) encourage the use of the information and technology.

(5) FEDERAL SHARE.—The Federal share of the cost of a project under this section shall be determined by the Secretary.

§ 504. Training and education

(a) NATIONAL HIGHWAY INSTITUTE.—

(1) IN GENERAL.—The Secretary shall—

(A) operate, in the Federal Highway Administration, a National Highway Institute (referred to in this subsection as the 'Institute'); and

(B) administer, through the Institute, the authority vested in the Secretary by this title or by any other law for the development and conduct of education and training programs relating to highways.

(2) DUTIES OF THE INSTITUTE.—In cooperation with State transportation departments, industries in the United States, and national or international entities, the Institute shall develop and administer education and training programs of instruction for—

(A) Federal Highway Administration, State, and local transportation agency employees;

(B) regional, State, and metropolitan planning organizations;

(C) State and local police, public safety, and motor vehicle employees; and

(D) United States citizens and foreign nationals engaged or to be engaged in surface transportation work of interest to the United States.

(3) COURSES.—

(A) IN GENERAL.—The Institute shall—

(i) develop or update existing courses in asset management, including courses that include such components as—

(I) the determination of life-cycle costs;

(II) the valuation of assets;

(III) benefit-to-cost ratio calculations; and

(IV) objective decisionmaking processes for project selection; and

(ii) continually develop courses relating to the application of emerging technologies for—

(I) transportation infrastructure applications and asset management;

(II) intelligent transportation systems;

(III) operations (including security operations);

(IV) the collection and archiving of data;

(V) expediting the planning and development of transportation projects; and

(VI) the intermodal movement of individuals and freight.

(B) ADDITIONAL COURSES.—In addition to the courses developed under subparagraph (A), the Institute, in consultation with State transportation departments, metropolitan planning organizations, and the American Association of State Highway and Transportation Officials, may develop courses relating to technology, methods, techniques, engineering, construction, safety, maintenance, environmental mitigation and compliance, regulations, management, inspection, and finance.

(C) REVISION OF COURSES OFFERED.—The Institute shall periodically—

(i) review the course inventory of the Institute; and

(ii) revise or cease to offer courses based on course content, applicability, and need.

(4) ELIGIBILITY; FEDERAL SHARE.—The funds apportioned to a State under section 104(b)(3) for the surface transportation program shall be expended by the State transportation department for the payment of not to exceed 80 percent of the cost of tuition and direct educational expenses (excluding salaries) in connection with the education and training of employees of State and local transportation agencies in accordance with this subsection.

(5) FEDERAL RESPONSIBILITY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), education and training of employees of Federal, State, and local transportation (including highway) agencies authorized under this subsection may be provided—

(i) by the Secretary, at no cost to the States and local governments, if the Secretary determines that provision at no cost is in the public interest; or

(ii) by the State, through grants, cooperative agreements, and contracts with public and private agencies, institutions, individuals, and the Institute.

(B) PAYMENT OF FULL COST BY PRIVATE PERSONS.—Private agencies, international or foreign entities, and individuals shall pay the full cost of any education and training (including the cost of course development) received by the agencies, entities, and individuals, unless the Secretary determines that payment of a lesser amount of the cost is of critical importance to the public interest.

(6) TRAINING FELLOWSHIPS; COOPERATION.—The Institute may—

(A) engage in training activities authorized under this subsection, including the granting of training fellowships; and

(B) exercise the authority of the Institute independently or in cooperation with any—

(i) other Federal or State agency;

(ii) association, authority, institution, or organization;

(iii) for-profit or nonprofit corporation;

(iv) national or international entity;

(v) foreign country; or

(vi) person.

(7) COLLECTION OF FEES.—

(A) IN GENERAL.—In accordance with this subsection, the Institute may assess and collect fees to defray the costs of the Institute in developing or administering education and training programs under this subsection.

(B) PERSONS SUBJECT TO FEES.—Fees may be assessed and collected under this subsection only with respect to—

(i) persons and entities for whom education or training programs are developed or administered under this subsection; and

(ii) persons and entities to whom education or training is provided under this subsection.

(C) AMOUNT OF FEES.—The fees assessed and collected under this subsection shall be established in a manner that ensures that the liability of any person or entity for a fee is reasonably based on the proportion of the costs referred to in subparagraph (A) that relate to the person or entity.

(D) USE.—All fees collected under this subsection shall be used, without further appropriation, to defray costs associated with the development or administration of education and training programs authorized under this subsection.

(8) RELATION TO FEES.—The funds made available to carry out this subsection may be combined with or held separate from the fees collected under—

(A) paragraph (7);

(B) memoranda of understanding;

(C) regional compacts; and

(D) other similar agreements.

(b) LOCAL TECHNICAL ASSISTANCE PROGRAM.—

(1) AUTHORITY.—The Secretary shall carry out a local technical assistance program that will provide access to surface transportation technology to—

(A) highway and transportation agencies in urbanized areas;

(B) highway and transportation agencies in rural areas;

(C) contractors that perform work for the agencies; and

(D) infrastructure security.

(2) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—The Secretary may make grants and enter into cooperative agreements and contracts to provide education and training, technical assistance, and related support services to—

(A) assist rural, local transportation agencies and tribal governments, and the consultants and construction personnel working for the agencies and governments, to—

(i) develop and expand expertise in road and transportation areas (including pavement, bridge, concrete structures, intermodal connections, safety management systems, intelligent transportation systems, incident response, operations, and traffic safety countermeasures);

(ii) improve roads and bridges;

(iii) enhance—

(I) programs for the movement of passengers and freight; and

(II) intergovernmental transportation planning and project selection; and

(iv) deal effectively with special transportation-related problems by preparing and providing training packages, manuals, guidelines, and technical resource materials;

(B) develop technical assistance for tourism and recreational travel;

(C) identify, package, and deliver transportation technology and traffic safety information to local jurisdictions to assist urban transportation agencies in developing and expanding their ability to deal effectively with transportation-related problems (particularly the promotion of regional cooperation);

(D) operate, in cooperation with State transportation departments and universities—

(i) local technical assistance program centers designated to provide transportation technology transfer services to rural areas and to urbanized areas; and

(ii) local technical assistance program centers designated to provide transportation technical assistance to tribal governments; and

(E) allow local transportation agencies and tribal governments, in cooperation with the private sector, to enhance new technology implementation.

(c) RESEARCH FELLOWSHIPS.—

(1) GENERAL AUTHORITY.—The Secretary, acting independently or in cooperation with other Federal agencies and instru-

mentalities, may make grants for research fellowships for any purpose for which research is authorized by this chapter.

(2) DWIGHT DAVID EISENHOWER TRANSPORTATION FELLOWSHIP PROGRAM.—The Secretary shall establish and implement a transportation research fellowship program, to be known as the 'Dwight David Eisenhower Transportation Fellowship Program', for the purpose of attracting qualified students to the field of transportation.

§ 505. State planning and research

(a) IN GENERAL.—Two percent of the sums apportioned to a State for fiscal year 2004 and each fiscal year thereafter under sections 104 (other than subsections (f) and (h)) and 144 shall be available for expenditure by the State, in consultation with the Secretary, only for—

(1) the conduct of engineering and economic surveys and investigations;

(2) the planning of—

(A) future highway programs and local public transportation systems; and

(B) the financing of those programs and systems, including metropolitan and statewide planning under sections 134 and 135;

(3) the development and implementation of management systems under section 303;

(4) the conduct of studies on—

(A) the economy, safety, and convenience of surface transportation systems; and

(B) the desirable regulation and equitable taxation of those systems;

(5) research, development, and technology transfer activities necessary in connection with the planning, design, construction, management, and maintenance of highway, public transportation, and intermodal transportation systems;

(6) the conduct of studies, research, and training relating to the engineering standards and construction materials for surface transportation systems described in paragraph (5) (including the evaluation and accreditation of inspection and testing and the regulation of and charging for the use of the standards and materials); and

(7) the conduct of activities relating to the planning of real-time monitoring elements.

(b) MINIMUM EXPENDITURES ON RESEARCH, DEVELOPMENT, AND TECHNOLOGY TRANSFER ACTIVITIES.—

(1) IN GENERAL.—Subject to paragraph (2), not less than 25 percent of the funds subject to subsection (a) that are apportioned to a State for a fiscal year shall be expended by the State for research, development, and technology transfer activities that—

(A) are described in subsection (a); and

(B) relate to highway, public transportation, and intermodal transportation systems.

(2) WAIVERS.—The Secretary may waive the application of paragraph (1) with respect to a State for a fiscal year if—

(A) the State certifies to the Secretary for the fiscal year that total expenditures by the State for transportation planning under sections 134 and 135 will exceed 75 percent of the funds described in paragraph (1); and

(B) the Secretary accepts the certification of the State.

(3) NONAPPLICABILITY OF ASSESSMENT.—Funds expended under paragraph (1) shall not be considered to be part of the extramural budget of the agency for the purpose of section 9 of the Small Business Act (15 U.S.C. 638).

(c) FEDERAL SHARE.—The Federal share of the cost of a project carried out using funds subject to subsection (a) shall be the share applicable under section 120(b), as adjusted under subsection (d) of that section.

(d) ADMINISTRATION OF SUMS.—Funds subject to subsection (a) shall be—

(1) combined and administered by the Secretary as a single fund; and

(2) available for obligation for the period described in section 118(b)(2).

(e) ELIGIBLE USE OF STATE PLANNING AND RESEARCH FUNDS.—A State, in coordination with the Secretary, may obligate funds made available to carry out this section for any purpose authorized under section 506(a).

§ 506. International highway transportation outreach program

(a) ESTABLISHMENT.—The Secretary may establish an international highway transportation outreach program—

(1) to inform the United States highway community of technological innovations in foreign countries that could significantly improve highway transportation in the United States;

(2) to promote United States highway transportation expertise, goods, and services in foreign countries; and

(3) to increase transfers of United States highway transportation technology to foreign countries.

(b) ACTIVITIES.—Activities carried out under the program may include—

(1) the development, monitoring, assessment, and dissemination in the United States of information about highway transportation innovations in foreign countries that could significantly improve highway transportation in the United States;

(2) research, development, demonstration, training, and other forms of technology transfer and exchange;

(3) the provision to foreign countries, through participation in trade shows, seminars, expositions, and other similar activities, of information relating to the technical quality of United States highway transportation goods and services;

(4) the offering of technical services of the Federal Highway Administration that cannot be readily obtained from private sector firms in the United States for incorporation into the proposals of those firms undertaking highway transportation projects outside the United States, if the costs of the technical services will be recovered under the terms of the project;

(5) the conduct of studies to assess the need for, or feasibility of, highway transportation improvements in foreign countries; and

(6) the gathering and dissemination of information on foreign transportation markets and industries.

(c) COOPERATION.—The Secretary may carry out this section in cooperation with any appropriate—

(1) Federal, State, or local agency;

(2) authority, association, institution, or organization;

(3) for-profit or nonprofit corporation;

(4) national or international entity;

(5) foreign country; or

(6) person.

(d) FUNDS.—

(1) CONTRIBUTIONS.—Funds available to carry out this section shall include funds deposited by any cooperating organization or person into a special account of the Treasury established for this purpose.

(2) ELIGIBLE USES OF FUNDS.—The funds deposited into the account, and other funds available to carry out this section, shall be available to cover the cost of any activity eligible under this section, including the cost of—

(A) promotional materials;

(B) travel;

(C) reception and representation expenses; and

(D) salaries and benefits.

(3) REIMBURSEMENTS FOR SALARIES AND BENEFITS.—Reimbursements for salaries and benefits of Department of Transportation employees providing services under this section shall be credited to the account.

(e) REPORT—For each fiscal year, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes the destinations and individual trip costs of international travel conducted in carrying out activities described in this section.

§ 507. Surface transportation-environment cooperative research program

(a) IN GENERAL.—The Secretary shall establish and carry out a surface transportation-environment cooperative research program.

(b) CONTENTS.—The program carried out under this section may include research—

(1) to develop more accurate models for evaluating transportation control measures and transportation system designs that are appropriate for use by State and local governments (including metropolitan planning organizations) in designing implementation plans to meet Federal, State, and local environmental requirements;

(2) to improve understanding of the factors that contribute to the demand for transportation;

(3) to develop indicators of economic, social, and environmental performance of transportation systems to facilitate analysis of potential alternatives;

(4) to meet additional priorities as determined by the Secretary in the strategic planning process under section 508; and

(5) to refine, through the conduct of workshops, symposia, and panels, and in consultation with stakeholders (including the Department of Energy, the Environmental Protection Agency, and other appropriate Federal and State agencies and associations) the scope and research emphases of the program.

(c) PROGRAM ADMINISTRATION.—The Secretary shall—

(1) administer the program established under this section; and

(2) ensure, to the maximum extent practicable, that—

(A) the best projects and researchers are selected to conduct research in the priority areas described in subsection (b)—

(i) on the basis of merit of each submitted proposal; and

(ii) through the use of open solicitations and selection by a panel of appropriate experts;

(B) a qualified, permanent core staff with the ability and expertise to manage a large multiyear budget is used;

(C) the stakeholders are involved in the governance of the program, at the executive, overall program, and technical levels, through the use of expert panels and committees; and

(D) there is no duplication of research effort between the program established under this section and the new strategic highway research program established under section 509.

(d) NATIONAL ACADEMY OF SCIENCES.—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities relating to the research, technology, and technology transfer activities described in subsections (b) and (c) as the Secretary determines to be appropriate.

§ 508. Surface transportation research technology deployment and strategic planning

(a) PLANNING.—

(1) ESTABLISHMENT.—The Secretary shall—

(A) establish, in accordance with section 306 of title 5, a strategic planning process that—

(i) enhances effective implementation of this section through the establishment in accordance with paragraph (2) of the Surface Transportation Research Technology Advisory Committee; and

(ii) focuses on surface transportation research funded through paragraphs (1), (2), (4), and (5) of section 2001(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, taking into consideration national surface transportation system needs and intermodality requirements;

(B) coordinate Federal surface transportation research, technology development, and deployment activities;

(C) at such intervals as are appropriate and practicable, measure the results of those activities and the ways in which the activities affect the performance of the surface transportation systems of the United States; and

(D) ensure, to the maximum extent practicable, that planning and reporting activities carried out under this section are coordinated with all other surface transportation planning and reporting requirements.

(2) SURFACE TRANSPORTATION RESEARCH TECHNOLOGY ADVISORY COMMITTEE.—

(A) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, the Secretary shall establish a committee to be known as the 'Surface Transportation Research Technology Advisory Committee' (referred to in this section as the 'Committee').

(B) MEMBERSHIP.—The Committee shall be composed of 12 members appointed by the Secretary—

(i) each of which shall have expertise in a particular area relating to Federal surface transportation programs, including—

(I) safety;

(II) operations;

(III) infrastructure (including pavements and structures);

(IV) planning and environment;

(V) policy; and

(VI) asset management; and

(ii) of which—

(I) 3 members shall be individuals representing the Federal Government;

(II) 3 members—

(aa) shall be exceptionally qualified to serve on the Committee, as determined by the Secretary, based on education, training, and experience; and

(bb) shall not be officers or employees of the United States;

(III) 3 members—

(aa) shall represent the transportation industry (including the pavement industry); and

(bb) shall not be officers or employees of the United States; and

(IV) 3 members shall represent State transportation departments from 3 different geographical regions of the United States.

(C) MEETINGS.—The advisory subcommittees shall meet on a regular basis, but not less than twice each year.

(D) DUTIES.—The Committee shall provide to the Secretary, on a continuous basis, advice and guidance relating to—

(i) the determination of surface transportation research priorities;

(ii) the improvement of the research planning and implementation process;

(iii) the design and selection of research projects;

(iv) the review of research results;

(v) the planning and implementation of technology transfer activities and

(vi) the formulation of the surface transportation research and technology deployment and deployment strategic plan required under subsection (c).

(E) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this paragraph $200,000 for each fiscal year.

(b) IMPLEMENTATION.—The Secretary shall—

(1) provide for the integrated planning, coordination, and consultation among the operating administrations of the Department of Transportation, all other Federal agencies with responsibility for surface transportation research and technology development, State and local governments, institutions of higher education, industry, and other private and public sector organizations engaged in surface transportation-related research and development activities; and

(2) ensure that the surface transportation research and technology development programs of the Department do not duplicate other Federal, State, or private sector research and development programs.

(c) SURFACE TRANSPORTATION RESEARCH AND TECHNOLOGY DEPLOYMENT STRATEGIC PLAN.—

(1) IN GENERAL.—After receiving, and based on, extensive consultation and input from stakeholders representing the transportation community and the Surface Transportation Research Advisory Committee, the Secretary shall, not later than 1 year after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, complete, and shall periodically update thereafter, a strategic plan for each of the core surface transportation research areas, including—

(A) safety;

(B) operations;

(C) infrastructure (including pavements and structures);

(D) planning and environment; and

(E) policy.

(2) COMPONENTS.—The strategic plan shall specify—

(A) surface transportation research objectives and priorities;

(B) specific highway research projects to be conducted;

(C) recommended technology transfer activities to promote the deployment of advances resulting from the highway research conducted; and

(D) short- and long-term technology development and deployment activities.

(3) REVIEW AND SUBMISSION OF FINDINGS.—The Secretary shall enter into a contract with the Transportation Research

Board of the National Academy of Sciences, on behalf of the Research and Technology Coordinating Committee of the National Research Council, under which—

(A) the Transportation Research Board shall—

(i) review the research and technology planning and implementation process used by Federal Highway Administration; and

(ii) evaluate each of the strategic plans prepared under this subsection—

(I) to ensure that sufficient stakeholder input is being solicited and considered throughout the preparation process; and

(II) to offer recommendations relevant to research priorities, project selection, and deployment strategies; and

(B) the Secretary shall ensure that the Research and Technology Coordinating Committee, in a timely manner, informs the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of the findings of the review and evaluation under subparagraph (A).

(4) RESPONSES OF SECRETARY.—Not later than 60 days after the date of completion of the strategic plan under this subsection, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives written responses to each of the recommendations of the Research and Technology Coordinating Committee under paragraph (3)(A)(ii)(II).

(d) CONSISTENCY WITH GOVERNMENT PERFORMANCE AND RESULTS ACT OF 1993.—The plans and reports developed under this section shall be consistent with and incorporated as part of the plans developed under section 306 of title 5 and sections 1115 and 1116 of title 31.

§ 509. New strategic highway research program

(a) IN GENERAL.—The National Research Council shall establish and carry out, through fiscal year 2009, a new strategic highway research program.

(b) BASIS; PRIORITIES.—With respect to the program established under subsection (a)—

(1) the program shall be based on—

(A) National Research Council Special Report No. 260, entitled 'Strategic Highway Research'; and

(B) the results of the detailed planning work subsequently carried out to scope the research areas through National Cooperative Research Program Project 20–58.

(2) the scope and research priorities of the program shall—

(A) be refined through stakeholder input in the form of workshops, symposia, and panels; and

(B) include an examination of—

(i) the roles of highway infrastructure, drivers, and vehicles in fatalities on public roads;

(ii) high-risk areas and activities associated with the greatest numbers of highway fatalities;

(iii) the roles of various levels of government agencies and non-governmental organizations in reducing highway fatalities (including recommendations for methods of strengthening highway safety partnerships);

(iv) measures that may save the greatest number of lives in the short- and long-term;

(v) renewal of aging infrastructure with minimum impact on users of facilities;

(vi) driving behavior and likely crash causal factors to support improved countermeasures;

(vii) reduction in congestion due to nonrecurring congestion;

(viii) planning and designing of new road capacity to meet mobility, economic, environmental, and community needs;

(3) the program shall consider, at a minimum, the results of studies relating to the implementation of the Strategic Highway Safety Plan prepared by the American Association of State Highway and Transportation Officials; and

(4) the research results of the program, expressed in terms of technologies, methodologies, and other appropriate categorizations, shall be disseminated to practicing engineers as soon as practicable for their use.

(c) PROGRAM ADMINISTRATION.—In carrying out the program under this section, the National Research Council shall ensure, to the maximum extent practicable, that—

(1) the best projects and researchers are selected to conduct research for the program and priorities described in subsection (b)—

(A) on the basis of the merit of each submitted proposal; and

(B) through the use of open solicitations and selection by a panel of appropriate experts;

(2) the National Research Council acquires a qualified, permanent core staff with the ability and expertise to manage a large research program and multiyear budget;

(3) the stakeholders are involved in the governance of the program, at the executive, overall program, and technical levels, through the use of expert panels and committees; and

(4) there is no duplication of research effort between the program established under this section and the surface transportation-environment cooperative research program established under section 507 or any other research effort of the Department.

(d) NATIONAL ACADEMY OF SCIENCES.—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities relating to research, technology, and technology transfer described in subsections (b) and (c) as the Secretary determines to be appropriate.

(e) REPORT ON IMPLEMENTATION OF RESULTS.—

(1) IN GENERAL.—Not later than October 1, 2007, the Secretary shall enter into a contract with the Transportation Research Board of the National Academy of Sciences under which the Transportation Research Board shall complete a report on

the strategies and administrative structure to be used for implementation of the results of new strategic highway research program.

(2) COMPONENTS.—The report under paragraph (1) shall include, with respect to the new strategic highway research program—

(A) an identification of the most promising results of research under the program (including the persons most likely to use the results);

(B) a discussion of potential incentives for, impediments to, and methods of, implementing those results;

(C) an estimate of costs that would be incurred in expediting implementation of those results; and

(D) recommendations for the way in which implementation of the results of the program under this section should be conducted, coordinated, and supported in future years, including a discussion of the administrative structure and organization best suited to carry out those responsibilities.

(3) CONSULTATION.—In developing the report, the Transportation Research Board shall consult with a wide variety of stakeholders, including—

(A) the American Association of State highway Officials;

(B) the Federal Highway Administration; and

(C) the Surface Transportation Research Technology Advisory Committee.

(4) SUBMISSION.—Not later than February 1, 2009, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives the report under this subsection.

§ 510. University transportation centers

(a) CENTERS.—

(1) IN GENERAL.—During fiscal year 2004, the Secretary shall provide grants to 40 nonprofit institutions of higher learning (or consortia of institutions of higher learning) to establish centers to address transportation design, management, research, development, and technology matters, especially the education and training of greater numbers of individuals to enter into the professional field of transportation.

(2) DISTRIBUTION OF CENTERS.—Not more than 1 university transportation center (or lead university in a consortia of institutions of higher learning), other than a center or university selected through a competitive process, may be located in any State.

(3) IDENTIFICATION OF CENTERS.—The university transportation centers established under this section shall—

(A) comply with applicable requirements under subsection (c); and

(B) be located at the institutions of higher learning specified in paragraph (4).

(4) IDENTIFICATION OF GROUPS.—For the purpose of making grants under this subsection, the following grants are identified:

(A) GROUP A.—Group A shall consist of the 10 regional centers selected under subsection (b).

(B) GROUP B.—Group B shall consist of the following:

(i) [_____].
(ii) [_____].
(iii) [_____].
(iv) [_____].
(v) [_____].
(vi) [_____].
(vii) [_____].
(viii) [_____]
(ix) [_____].
(x) [_____].
(xi) [_____].

(C) GROUP C.—Group C shall consist of the following:

(i) [_____].
(ii) [_____].
(iii) [_____].
(iv) [_____].
(v) [_____].
(vi) [_____].
(vii) [_____].
(viii) [_____].
(ix) [_____].
(x) [_____].
(xi) [_____].

(D) GROUP D.—Group D shall consist of the following:

(i) [_____].
(ii) [_____].
(iii) [_____].
(iv) [_____].
(v) [_____].
(vi) [_____].
(vii) [_____].
(viii) [_____].

(b) REGIONAL CENTERS.—

(1) IN GENERAL.—Not later than September 30, 2004, the Secretary shall provide to nonprofit institutions of higher learning (or consortia of institutions of higher learning) grants to be used during the period of fiscal years 2005 through 2009 to establish and operate 1 university transportation center in each of the 10 Federal regions that comprise the Standard Federal Regional Boundary System.

(2) SELECTION OF REGIONAL CENTERS.—

(A) PROPOSALS.—In order to be eligible to receive a grant under this subsection, an institution described in paragraph (1) shall submit to the Secretary a proposal, in response to any request for proposals that shall be made by the Secretary, that is in such form and contains such information as the Secretary shall prescribe.

(B) REQUEST SCHEDULE.—The Secretary shall request proposals once for the period of fiscal years 2004 through 2006 and once for the period of fiscal years 2007 through 2009.

(C) ELIGIBILITY.—Any institution of higher learning (or consortium of institutions of higher learning) that meets the criteria described in subsection (c) (including any institution identified in subsection (a)(4)) may apply for a grant under this subsection.

(D) SELECTION CRITERIA.—The Secretary shall select each recipient of a grant under this subsection through a competitive process on the basis of—

(i) the location of the center within the Federal region to be served;

(ii) the demonstrated research capabilities and extension resources available to the recipient to carry out this section;

(iii) the capability of the recipient to provide leadership in making national and regional contributions to the solution of immediate and long-range transportation problems;

(iv) the demonstrated ability of the recipient to disseminate results of transportation research and education programs through a statewide or regionwide continuing education program; and

(v) the strategic plan that the recipient proposes to carry out using funds from the grant.

(E) SELECTION PROCESS.—In selecting the recipients of grants under this subsection, the Secretary shall consult with, and consider the advice of—

(i) the Research and Special Programs Administration;

(ii) the Federal Highway Administration; and

(iii) the Federal Transit Administration.

(c) CENTER REQUIREMENTS.—

(1) IN GENERAL.—With respect to a university transportation center established under subsection (a) or (b), the institution or consortium that receives a grant to establish the center—

(A) shall annually contribute at least $250,000 to the operation and maintenance of the center, except that payment by the institution or consortium of the salary required for transportation-related faculty and staff for a period greater than 90 days may not be counted against that contribution;

(B) shall have established, as of the date of receipt of the grant, undergraduate or graduate programs in—

(i) civil engineering;

(ii) transportation engineering;

(iii) transportation systems management and operations; or

(iv) any other field significantly related to surface transportation systems, as determined by the Secretary; and

(C) not later than 120 days after the date on which the institution or consortium receives notice of selection as a site for the establishment of a university transportation center under this section, shall submit to the Secretary a 6-year program plan for the university transportation center that includes, with respect to the center—

(i) a description of the purposes of programs to be conducted by the center;

(ii) a description of the undergraduate and graduate transportation education efforts to be carried out by the center;

(iii) a description of the nature and scope of research to be conducted by the center;

(iv) a list of personnel, including the roles and responsibilities of those personnel within the center; and

(v) a detailed budget, including the amount of contributions by the institution or consortium to the center; and

(D) shall establish an advisory committee that—

(i) is composed of a representative from each of the State transportation department of the State in which the institution or consortium is located, the Department of Transportation, and the institution or consortia, as appointed by those respective entities;

(ii) in accordance with paragraph (2), shall review and approve or disapprove the plan of the institution or consortium under subparagraph (C); and

(iii) shall, to the maximum extent practicable, ensure that the proposed research to be carried out by the university transportation center will contribute to the national highway research and technology agenda, as periodically updated by the Secretary, in consultation with stakeholders representing the highway community.

(2) PEER REVIEW.—

(A) IN GENERAL.—The Secretary shall require peer review for each report on research carried out using funds made available for this section.

(B) PURPOSES OF PEER REVIEW.—Peer review of a report under this section shall be carried out to evaluate—

(i) the relevance of the research described in the report with respect to the strategic plan under, and the goals of, this section;

(ii) the research covered by the report, and to recommend modifications to individual project plans;

(iii) the results of the research before publication of those results; and

(iv) the overall outcomes of the research.

(C) INTERNET AVAILABILITY.—Each report under this section that is received by the Secretary shall be published—

(i) by the Secretary, on the Internet website of the Department of Transportation; and

(ii) by the University Transportation Center.

(3) APPROVAL OF PLANS—A plan of an institution or consortium described in paragraph (1)(C) shall not be submitted to the Secretary until such time as the advisory committee established under paragraph (1)(D) reviews and approves the plan.

(4) FAILURE TO COMPLY.—If a recipient of a grant under this subsection fails to submit a program plan acceptable to the Secretary and in accordance with paragraph (1)(C)—

(A) the recipient shall forfeit the grant and the selection of the recipient as a site for the establishment of a university transportation center; and

(B) the Secretary shall select a replacement recipient for the forfeited grant.

(5) APPLICABILITY.—This subsection does not apply to any research funds received in accordance with a competitive contract offered and entered into by the Federal Highway Administration.

(d) OBJECTIVES.—Each university transportation center established under subsection (a) or (b) shall carry out—

(1) undergraduate or graduate education programs that include—

(A) multidisciplinary coursework; and

(B) opportunities for students to participate in research;

(2) basic and applied research, the results and products of which shall be judged by peers or other experts in the field so as to advance the body of knowledge in transportation; and

(3) an ongoing program of technology transfer that makes research results available to potential users in such form as will enable the results to be implemented, used, or otherwise applied.

(e) MAINTENANCE OF EFFORT.—To be eligible to receive a grant under this section, an applicant shall—

(1) enter into an agreement with the Secretary to ensure that the applicant will maintain total expenditures from all other sources to establish and operate a university transportation center and related educational and research activities at a level that is at least equal to the average level of those expenditures during the 2 fiscal years before the date on which the grant is provided;

(2) provide the annual institutional contribution required under subsection (c)(1); and

(3) submit to the Secretary, in a timely manner, for use by the Secretary in the preparation of the annual research report under section 508(c)(5) of title 23, an annual report on the projects and activities of the university transportation center for which funds are made available under section 2001 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 that contains, at a minimum, for the fiscal year covered by the report, a description of—

(A) the goals of the center;

(B) the educational activities carried out by the center (including a detailed summary of the budget for those educational activities);

(C) teaching activities of faculty at the center;

(D) each research project carried out by the center, including—

(i) the identity and location of each investigator working on a research project;

(ii) the overall funding amount for each research project (including the amounts expended for the project as of the date of the report);

(iii) the current schedule for each research project; and

(iv) the results of each research project through the date of submission of the report, with particular emphasis on results for the fiscal year covered by the report; and

(E) overall technology transfer and implementation efforts of the center.

(f) PROGRAM COORDINATION.—The Secretary shall—

(1) coordinate the research, education, training, and technology transfer activities carried out by recipients of grants under this section; and

(2) establish and operate a clearinghouse for, and disseminate, the results of those activities.

(g) FUNDING.—

(1) NUMBER AND AMOUNT OF GRANTS.—The Secretary shall make the following grants under this subsection:

(A) GROUP A.—For each of fiscal years 2004 through 2009, the Secretary shall make a grant in the amount of $20,000,000 to each of the institutions in group A (as described in subsection (a)(4)(A)).

(B) GROUP B.—The Secretary shall make a grant to each of the institutions in group B (as described in subsection (a)(4)(B)) in the amount of—

(i) $4,000,000 for each of fiscal years 2004 and 2005; and

(ii) $6,000,000 for each of fiscal years 2006 and 2007.

(C) GROUP C.—For each of fiscal years 2004 through 2007, the Secretary shall make a grant in the amount of $10,000,000 to each of the institutions in group C (as described in subsection (a)(4)(C)).

(D) GROUP D.—For each of fiscal years 2004 through 2009, the Secretary shall make a grant in the amount of $25,000,000 to each of the institutions in group D (as described in subsection (a)(4)(D)).

(E) LIMITED GRANTS FOR GROUPS B AND C.—For each of fiscal years 2008 and 2009, of the institutions classified in groups B and C (as described in subsection (a)(4)(B)), the Secretary shall select and make a grant in the amount of $10,000,000 to each of not more than 15 institutions.

(2) USE OF FUNDS—

(A) IN GENERAL.—Of the funds made available for a fiscal year to a university transportation center established under subsection (a) or (b)—

(i) not less than $250,000 shall be used to establish and maintain new faculty positions for the teaching of undergraduate, transportation-related courses;

(ii) not more than $500,000 for the fiscal year, or $1,000,000 in the aggregate, may be used to construct or improve transportation-related laboratory facilities; and

(iii) not more than $300,000 for the fiscal year may be used for student internships of not more than 180 days in duration to enable students to gain experience by working on transportation projects as interns with design or construction firms.

(B) FACILITIES AND ADMINISTRATION FEE.—Not more than 10 percent of any grant made available to a university transportation center (or any institution or consortium that establishes such a center) for a fiscal year may be used to pay to the appropriate nonprofit institution of higher learning any administration and facilities fee (or any similar overhead fee) for the fiscal year.

(3) LIMITATION ON AVAILABILITY OF FUNDS.—Funds made available under this subsection shall remain available for obligation for a period of 2 years after September 30 of the fiscal year for which the funds are authorized.

§ 511. Multistate corridor operations and management

(a) IN GENERAL.—The Secretary shall encourage multistate cooperative agreements, coalitions, or other arrangements to promote regional cooperation, planning, and shared project implementation for programs and projects to improve transportation system management and operations.

(b) INTERSTATE ROUTE I–95 CORRIDOR COALITION TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.—

(1) IN GENERAL.—The Secretary shall make grants under this subsection to States to continue intelligent transportation system management and operations in the Interstate Route I–95 corridor coalition region initiated under the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240).

(2) FUNDING.—Of the amounts made available under section 2001(a)(4) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, the Secretary shall use to carry out this subsection—

(A) $8,000,000 for fiscal year 2004;
(B) $10,000,000 for fiscal year 2005;
(C) $12,000,000 for fiscal year 2006;
(D) $12,000,000 for fiscal year 2007;
(E) $12,000,000 for fiscal year 2008; and
(F) $12,000,000 for fiscal year 2009.

* * * * * * *

TITLE 49, UNITED STATES CODE

* * * * * * *

SUBTITLE VI—MOTOR VEHICLE AND DRIVER PROGRAMS

* * * * * * *

PART A—GENERAL

CHAPTER		Sec.
301.	MOTOR VEHICLE SAFETY	30101
303.	NATIONAL DRIVER REGISTER	30301
305.	NATIONAL MOTOR VEHICLE TITLE INFORMATION SYSTEM	30501

PART B—COMMERCIAL

311.	COMMERCIAL MOTOR VEHICLE SAFETY	31101
313.	COMMERCIAL MOTOR VEHICLE OPERATORS	31301
315.	MOTOR CARRIER SAFETY	31501
317.	PARTICIPATION IN INTERNATIONAL REGISTRATION PLAN AND INTERNATIONAL FUEL TAX AGREEMENT	31701

PART C—INFORMATION, STANDARDS, AND REQUIREMENTS

321.	GENERAL	32101
323.	CONSUMER INFORMATION	32301
325.	BUMPER STANDARDS	32501
327.	ODOMETERS	32701
329.	AUTOMOBILE FUEL ECONOMY	32901
331.	THEFT PREVENTION	33101

PART A—GENERAL

CHAPTER 301—MOTOR VEHICLE SAFETY

SUBCHAPTER I—GENERAL

Sec.
30101. Purpose and policy.
30102. Definitions.
30103. Relationship to other laws.
30104. Authorization of appropriations.
30105. Restriction on lobbying activities.

SUBCHAPTER II—STANDARDS AND COMPLIANCE

30111. Standards.
30112. Prohibitions on manufacturing, selling, and importing noncomplying motor vehicles and equipment.
30113. General exemptions.
30114. Special exemptions.
30115. Certification of compliance.
30116. Defects and noncompliance found before sale to purchaser.
30117. Providing information to, and maintaining records on, purchasers.
30118. Notification of defects and noncompliance.
30119. Notification procedures.
30120. Remedies for defects and noncompliance.
30121. Provisional notification and civil actions to enforce.
30122. Making safety devices and elements inoperative.
30123. Tires.
30124. Buzzers indicating nonuse of safety belts.
30125. Schoolbuses and schoolbus equipment.

30126. Used motor vehicles.
30127. Automatic occupant crash protection and seat belt use.

SUBCHAPTER III—IMPORTING NONCOMPLYING MOTOR VEHICLES AND EQUIPMENT

30141. Importing motor vehicles capable of complying with standards.
30142. Importing motor vehicles for personal use.
30143. Motor vehicles imported by individuals employed outside the United States.
30144. Importing motor vehicles on a temporary basis.
30145. Importing motor vehicles or equipment requiring further manufacturing.
30146. Release of motor vehicles and bonds.
30147. Responsibility for defects and noncompliance.

SUBCHAPTER IV—ENFORCEMENT AND ADMINISTRATIVE

30161. Judicial review of standards.
30162. Petitions by interested persons for standards and enforcement.
30163. Actions by the Attorney General.
30164. Service of process.
30165. Civil penalty.
30166. Inspections, investigations, and records.
30167. Disclosure of information by the Secretary of Transportation.
30168. Research, testing, development, and training.
30169. Annual reports.
30170. Criminal penalties.

* * * * * *
*

CHAPTER 3—GENERAL DUTIES AND POWERS

SUBCHAPTER I—DUTIES OF THE SECRETARY OF TRANSPORTATION

Sec.
301. Leadership, consultation, and cooperation.
302. Policy standards for transportation.
303. Policy on lands, wildlife and waterfowl refuges, and historic sites.
303a. Development of water transportation.
304. Joint activities with the Secretary of Housing and Urban Development.
305. Transportation investment standards and criteria.
306. Prohibited discrimination.
[307. Safety information and intervention in Interstate Commerce Commission proceedings.]
307. Contractor suspension and debarment policy; sharing fraud monetary recoveries.
308. Reports.
309. High-speed ground transportation.

SUBCHAPTER II—ADMINISTRATIVE

321. Definitions.
322. General powers.
323. Personnel.
324. Members of the armed forces.
325. Advisory committees.
326. Gifts.
327. Administrative working capital fund.
328. Transportation Systems Center working capital fund.
329. Transportation information.
330. Research contracts.
331. Service, supplies, and facilities at remote places.
332. Minority Resource Center.
333. Responsibility for rail transportation unification and coordination projects.
334. [Repealed]
335. [Repealed]
336. Civil penalty procedures.
337. Budget request for the Director of Intelligence and Security.

SUBCHAPTER III—MISCELLANEOUS

351. Judicial review of actions in carrying out certain transferred duties and powers.
352. Authority to carry out certain transferred duties and powers.
353. Toxicological testing of officers and employees.

* * * * * * *

§ 31111. Length limitations

(a) DEFINITIONS.—In this section, the following definitions apply:

* * * * * * *

(e) QUALIFYING HIGHWAYS.—[The]

(1) IN GENERAL.—The Secretary by regulation shall designate as qualifying Federal-aid Primary System highways those highways of the Federal-aid Primary System in existence on June 1, 1991, that can accommodate safely the applicable vehicle lengths provided in this section.

(2) LENGTH LIMITATIONS.—In the interests of economic competitiveness, security, and intermodal connectivity, not later than 3 years after the date of enactment of this paragraph, States shall update the list of Federal-aid system highways to include—

(A) strategic highway network connectors to strategic military deployment ports; and

(B) National Highway System intermodal freight connections serving military and commercial truck traffic going to major intermodal terminals as described in section 103(b)(7)(A)(i).

* * * * * * *

[Section 31708—repealed by P.L. 105–178]

§ 31708. Facilitation of international registration plans and international fuel tax agreements

The Secretary may provide assistance to any State that is participating in the International Registration Plan and International Fuel Tax Agreement, as provided in sections 31704 and 31705, respectively, and that serves as a base jurisdiction for motor carriers that are domiciled in Mexico, to assist the State with administrative costs resulting from serving as a base jurisdiction for motor carriers from Mexico.

* * * * * * *

subchapter iii—intermodal passenger facilities

Sec.
5571. Policy and Purposes.
5572. Definitions.
5573. Assurance of access to intermodal facilities.
5574. Intercity bus intermodal facility grants.
5575. Funding.

* * * * * * *

ΣΘΒΨΗΑΙΠΤΕΡ ΙΙΙ—ΙΝΤΕΡΜΟΔΑΛ ΠΑΣΣΕΝΓΕΡ ΦΑΨΙΛΙΤΙΕΣ

§ 5571. Policy and purposes

(a) DEVELOPMENT AND ENHANCEMENT OF INTERMODAL PASSENGER FACILITIES.—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.

(b) GENERAL PURPOSES.—The purposes of this subchapter are to accelerate intermodal integration among North America's passenger transportation modes through—

(1) ensuring intercity public transportation access to intermodal passenger facilities;

(2) encouraging the development of an integrated system of public transportation information; and

(3) providing intercity bus intermodal passenger facility grants.

§ 5572. Definitions

In this subchapter—

(1) 'capital project' means a project for—

(A) acquiring, constructing, improving, or renovating an intermodal facility that is related physically and functionally to intercity bus service and establishes or enhances coordination between intercity bus service and transportation, including aviation, commuter rail, intercity rail, public transportation, seaports, and the National Highway System, such as physical infrastructure associated with private bus operations at existing and new intermodal facilities, including special lanes, curb cuts, ticket kiosks and counters, baggage and package express storage, employee parking, office space, security, and signage; and

(B) establishing or enhancing coordination between intercity bus service and transportation, including aviation, commuter rail, intercity rail, public transportation, and the National Highway System through an integrated system of public transportation information.

(2) 'commuter service' means service designed primarily to provide daily work trips within the local commuting area.

(3) 'intercity bus service' means regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more urban areas not in close proximity, which has the capacity for transporting baggage carried by passengers, and which makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available and may include package express service, if incidental to passenger transportation, but does not include air, commuter, water or rail service.

(4) 'intermodal passenger facility' means passenger terminal that does, or can be modified to, accommodate several modes of transportation and related facilities, including some or all of the following: intercity rail, intercity bus, commuter rail, intracity rail transit and bus transportation, airport limousine service and airline ticket offices, rent-a-car facilities, taxis, private parking, and other transportation services.

(5) 'local governmental authority' includes—

(A) a political subdivision of a State;

(B) an authority of at least one State or political subdivision of a State;

(C) an Indian tribe; and

(D) a public corporation, board, or commission established under the laws of the State.

(6) 'owner or operator of a public transportation facility' means an owner or operator of intercity-rail, intercity-bus, commuter-rail, commuter-bus, rail-transit, bus-transit, or ferry services.

(7) 'recipient' means a State or local governmental authority or a nonprofit organization that receives a grant to carry out this section directly from the Federal government.

(8) 'Secretary' means the Secretary of Transportation.

(9) 'State' means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

(10) 'urban area' means an area that includes a municipality or other built-up place that the Secretary, after considering local patterns and trends of urban growth, decides is appropriate for a local public transportation system to serve individuals in the locality.

§ 5573. Assurance of access to intermodal passenger facilities

Intercity buses and other modes of transportation shall, to the maximum extent practicable, have access to publicly funded intermodal passenger facilities, including those passenger facilities seeking funding under section 5574.

§ 5574. Intercity bus intermodal passenger facility grants

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants under this section to recipients in financing a capital project, as defined in section 5572 of this chapter, only if the Secretary finds that the proposed project is justified and has adequate financial commitment.

(b) COMPETITIVE GRANT SELECTION.—The Secretary shall conduct a national solicitation for applications for grants under this section. Grantees shall be selected on a competitive basis.

(c) SHARE OF NET PROJECT COSTS.—A grant shall not exceed 50 percent of the net project cost, as determined by the Secretary.

(d) REGULATIONS.—The Secretary may promulgate such regulations as are necessary to carry out this section.

§ 5575. Funding

(a) HIGHWAY ACCOUNT.—

(1) There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subchapter $10,000,000 for each of fiscal years 2005 through 2009.

(2) The funding made available under paragraph (1) of this subsection shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23 and shall be subject to any obligation limitation imposed on funds for Federal-aid highways and highway safety construction programs.

(b) PERIOD OF AVAILABILITY.—Amounts made available by subsection (a) of this section shall remain available until expended.

* * * * * * *

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

[Public Law 102–240; December 18, 1991]

AN ACT To develop a national intermodal surface transportation system, to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes.

* * * * * * *

of the table of contents because they amend other laws.

Sec. 1. Short title.

* * * * * * *

[Sec. 1064. Construction of ferry boats and ferry terminal facilities.]

Sec. 1064. [Repealed.]

* * * * * * *

SEC. 1023. GROSS VEHICLE WEIGHT RESTRICTION.

(a) * * *

* * * * * * *

[(h) PUBLIC TRANSIT VEHICLES.—

[(1) TEMPORARY EXEMPTION.—The second sentence of section 127 of title 23, United States Code, relating to axle weight limitations for vehicles using the Dwight D. Eisenhower System of Interstate and Defense Highways, shall not apply, for

the period beginning on October 6, 1992, and ending on October 1, 2003, to any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus.

[(2) STUDY.—The Secretary shall conduct a study on the maximum axle weight limitations on the Dwight D. Eisenhower System of Interstate and Defense Highways established under section 127 of title 23, United States Code, or under State laws, as they apply to public transit vehicles. The study shall determine whether or not public transit vehicles should be exempted from the requirements of section 127 or State laws or if such laws should be modified with regard to public transit vehicles. In making such determination, the Secretary shall consider current transit vehicle design standards, the implications of the Americans with Disabilities Act and Clean Air Act requirements on such design standards, and the potential impact of revised design standards on transit ridership capacity, operating and replacement costs, air quality concerns, and highway wear and tear.

[(3) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall submit to the Congress a report on the result of the study conducted under paragraph (2), together with recommendations.]

(h) OVER-THE-ROAD BUS AND PUBLIC TRANSIT VEHICLE EXEMPTION.—

(1) IN GENERAL.—The second sentence of section 127 of title 23, United States Code (relating to axle weight limitations for vehicles using the Dwight D. Eisenhower System of Interstate and Defense Highways), shall not apply to—

(A) any over-the-road bus (as defined in section 301 of the Americans With Disabilities Act of 1990 (42 U.S.C. 12181)); or

(B) any vehicle that is regularly and exclusively used as an intrastate public agency transit passenger bus.

(2) STATE ACTION.—No State or political subdivision of a State, or any political authority of 2 or more States, shall impose any axle weight limitation on any vehicle described in paragraph (1) in any case in which such a vehicle is using the Dwight D. Eisenhower System of Interstate and Defense Highways.

* * * * * * *

[SEC. 1064. CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.

[(a) IN GENERAL.—The Secretary shall carry out a program for construction of ferry boats and ferry terminal facilities in accordance with section 129(c) of title 23, United States Code.

[(b) FEDERAL SHARE.—The Federal share payable for construction of ferry boats and ferry terminal facilities under this section shall be 80 percent of the cost thereof.

[(c) FUNDING.—There shall be available, out of the Highway Trust Fund (other than the Mass Transit Account), to the Secretary for obligation at the discretion of the Secretary $14,000,000 for fiscal year 1992, $17,000,000 per fiscal year for each of fiscal years 1993, 1994, 1995, and 1996, and $18,000,000 for fiscal year

1997 in carrying out this section. Sums made available to carry out this section shall remain available until expended.

[(d) SET-ASIDE FOR PROJECTS ON NHS.—

[(1) IN GENERAL.—$20,000,000 of the amount made available to carry out this section for each of fiscal years 1999 through 2003 shall be obligated for the construction or refurbishment of ferry boats and ferry terminal facilities and approaches to such facilities within marine highway systems that are part of the National Highway System.

[(2) ALASKA.—$10,000,000 of the $20,000,000 for a fiscal year made available under paragraph (1) shall be made available to the State of Alaska.

[(3) NEW JERSEY.—$5,000,000 of the $20,000,000 for a fiscal year made available under paragraph (1) shall be made available to the State of New Jersey.

[(4) WASHINGTON.—$5,000,000 of the $20,000,000 for a fiscal year made available under paragraph (1) shall be made available to the State of Washington.

[(e) APPLICABILITY OF TITLE 23.—All provisions of chapter 1 of title 23, United States Code, that are applicable to the National Highway System, other than provisions relating to apportionment formula and Federal share, shall apply to funds made available to carry out this section, except as determined by the Secretary to be inconsistent with this section.

[(f) TREATMENT OF CERTAIN ROADS.—For purposes of this section, North Carolina State Routes 12, 45, 306, 615, and 168 and United States Route 421 in the State of North Carolina shall be treated as principal arterials. For further purposes of this section, the access road from Interstate Business Route 75 to the Sugar Island Ferry Service in Chippewa County, Michigan, and the access road from United States Route 31 to the Beaver Island Ferry Service in Charlevoix County, Michigan, shall be treated as principal arterials.]

* * * * * * *

I72SEC. 1012. TOLL ROADS, BRIDGES, AND TUNNELS.

* * * * * * *

[(b) VALUE PRICING PILOT PROGRAM.—(1) The Secretary shall solicit the participation of State and local governments and public authorities for one or more value pricing pilot programs. The Secretary may enter into cooperative agreements with as many as 15 such State or local governments or public authorities to establish, maintain, and monitor value pricing programs.

[(2) Notwithstanding section 129 of title 23, United States Code, the Federal share payable for such programs shall be 80 percent. The Secretary shall fund all preimplementation costs and project design, and all of the development and other start up costs of such projects, including salaries and expenses, for a period of at least 1 year, and thereafter until such time that sufficient revenues are being generated by the program to fund its operating costs without Federal participation, except that the Secretary may not fund the preimplementation or implementation costs of any project for more than 3 years.

[(3) Revenues generated by any pilot project under this subsection must be applied to projects eligible under such title.

[(4) Notwithstanding sections 129 and 301 of title 23, United States Code, the Secretary shall allow the use of tolls on the Interstate System as part of any value pricing pilot program under this subsection.

[(5) The Secretary shall monitor the effect of such programs for a period of at least 10 years, and shall report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives every 2 years on the effects such programs are having on driver behavior, traffic volume, transit ridership, air quality, and availability of funds for transportation programs.

[(6) HOV PASSENGER REQUIREMENTS.—Notwithstanding section 102(a) of title 23, United States Code, a State may permit vehicles with fewer than 2 occupants to operate in high occupancy vehicle lanes if the vehicles are part of a value pricing pilot program under this subsection.

[(7) FINANCIAL EFFECTS ON LOW-INCOME DRIVERS.—Any value pricing pilot program under this subsection shall include, if appropriate, an analysis of the potential effects of the pilot program on low-income drivers and may include mitigation measures to deal with any potential adverse financial effects on low-income drivers.

[(8) FUNDING.—

[(A) AVAILABILITY.—Funds allocated by the Secretary to a State under this subsection shall remain available for obligation by the State for a period of 3 years after the last day of the fiscal year for which the funds are authorized.

[(B) USE OF UNALLOCATED FUNDS.—If the total amount of funds made available from the Highway Trust Fund to carry out this subsection for fiscal year 1998 and fiscal years thereafter but not allocated exceeds $8,000,000 as of September 30 of any year, the excess amount—

[(i) shall be apportioned in the following fiscal year by the Secretary to all States in accordance with section 104(b)(3) of title 23, United States Code;

[(ii) shall be considered to be a sum made available for expenditure on the surface transportation program, except that the amount shall not be subject to section 133(d) of such title; and

[(iii) shall be available for any purpose eligible for funding under section 133 of such title.

[(C) CONTRACT AUTHORITY.—Funds authorized to carry out this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code; except that the Federal share of the cost of any project under this subsection and the availability of funds authorized to carry out this subsection shall be determined in accordance with this subsection.]

* * * * * * *

NATIONAL HIGHWAY SYSTEM DESIGNATION ACT OF 1995

[Public Law 104–59; Approved November 28, 1995]

* * * * * * *

AN ACT To amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes.

* * * * * * *

SEC. 358. SAFETY RESEARCH INITIATIVES.

(a) OLDER DRIVERS AND OTHER SPECIAL DRIVER GROUPS.—

(1) * * *

* * * * * * *

(7) Recommending all federally-assisted projects in excess of $15,000,000 to enter into contracts only with work zone safety services contractors, traffic control contractors, and trench safety and shoring contractors that carry general liability insurance in an amount not less than $15,000,000.

(8) Recommending federally-assisted projects the costs of which exceed $15,000,000 to include work zone intelligent transportation systems that are—

(A) provided by a qualified vendor; and

(B) monitored continuously.

(9) Recommending federally-assisted projects to fully fund not less than 5 percent of project costs for work zone safety and temporary traffic control measures, in addition to the cost of the project, which measures shall be provided by a qualified work zone safety or traffic control provider.

TRANSPORTATION EQUITY ACT FOR THE 21st CENTURY

[Public Law 105–178]

* * * * * * *

AN ACT To authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

* * * * * * *

SEC. 1309. ENVIRONMENTAL STREAMLINING.

[(a) COORDINATED ENVIRONMENTAL REVIEW PROCESS.—

[(1) DEVELOPMENT AND IMPLEMENTATION.—The Secretary shall develop and implement a coordinated environmental review process for highway construction and mass transit projects that require—

[(A) the preparation of an environmental impact statement or environmental assessment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), except that the Secretary may decide not to apply this section to the preparation of an environmental assessment under such Act; or

[(B) the conduct of any other environmental review, analysis, opinion, or issuance of an environmental permit, license, or approval by operation of Federal law.

[(2) MEMORANDUM OF UNDERSTANDING.—

[(A) IN GENERAL.—The coordinated environmental review process for each project shall ensure that, whenever practicable (as specified in this section), all environmental reviews, analyses, opinions, and any permits, licenses, or approvals that must be issued or made by any Federal agency for the project concerned shall be conducted concurrently and completed within a cooperatively determined time period. Such process for a project or class of project may be incorporated into a memorandum of understanding between the Department of Transportation and Federal agencies (and, where appropriate, State agencies).

[(B) ESTABLISHMENT OF TIME PERIODS.—In establishing the time period referred to in subparagraph (A), and any time periods for review within such period, the Department and all such agencies shall take into account their respective resources and statutory commitments.

[(b) ELEMENTS OF COORDINATED ENVIRONMENTAL REVIEW PROCESS.—For each project, the coordinated environmental review process established under this section shall provide, at a minimum, for the following elements:

[(1) FEDERAL AGENCY IDENTIFICATION.—The Secretary shall, at the earliest possible time, identify all potential Federal agencies that—

[(A) have jurisdiction by law over environmental-related issues that may be affected by the project and the analysis of which would be part of any environmental document required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

[(B) may be required by Federal law to independently—

[(i) conduct an environmental-related review or analysis; or

[(ii) determine whether to issue a permit, license, or approval or render an opinion on the environmental impact of the project.

[(2) TIME LIMITATIONS AND CONCURRENT REVIEW.—The Secretary and the head of each Federal agency identified under paragraph (1)—

[(A)(i) shall jointly develop and establish time periods for review for—

[(I) all Federal agency comments with respect to any environmental review documents required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for the project; and

[(II) all other independent Federal agency environmental analyses, reviews, opinions, and decisions on any permits, licenses, and approvals that must be issued or made for the project;

[whereby each such Federal agency's review shall be undertaken and completed within such established time periods for review; or

[(ii) may enter into an agreement to establish such time periods for review with respect to a class of project; and

[(B) shall ensure, in establishing such time periods for review, that the conduct of any such analysis, review, opinion, and decision is undertaken concurrently with all other environmental reviews for the project, including the reviews required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); except that such review may not be concurrent if the affected Federal agency can demonstrate that such concurrent review would result in a significant adverse impact to the environment or substantively alter the operation of Federal law or would not be possible without information developed as part of the environmental review process.

[(3) FACTORS TO BE CONSIDERED.—Time periods for review established under this section shall be consistent with the time periods established by the Council on Environmental Quality under sections 1501.8 and 1506.10 of title 40, Code of Federal Regulations.

[(4) EXTENSIONS.—The Secretary shall extend any time periods for review under this section if, upon good cause shown, the Secretary and any Federal agency concerned determine that additional time for analysis and review is needed as a result of new information that has been discovered that could not reasonably have been anticipated when the Federal agency's time periods for review were established. Any memorandum of understanding shall be modified to incorporate any mutually agreed-upon extensions.

[(c) DISPUTE RESOLUTION.—When the Secretary determines that a Federal agency which is subject to a time period for its environmental review or analysis under this section has failed to complete such review, analysis, opinion, or decision on issuing any permit, license, or approval within the established time period or within any agreed-upon extension to such time period, the Secretary may, after notice and consultation with such agency, close the record on the matter before the Secretary. If the Secretary finds, after timely compliance with this section, that an environmental issue related to the project that an affected Federal agency has jurisdiction over by operation of Federal law has not been resolved, the Secretary and the head of the Federal agency shall resolve the matter not later than 30 days after the date of the finding by the Secretary.

[(d) PARTICIPATION OF STATE AGENCIES.—For any project eligible for assistance under chapter 1 of title 23, United States Code, or chapter 53 of title 49, United States Code, a State, by operation of State law, may require that all State agencies that have jurisdiction by State or Federal law over environmental-related issues that may be affected by the project, or that are required to issue any environmental-related reviews, analyses, opinions, or determinations on issuing any permits, licenses, or approvals for the project,

be subject to the coordinated environmental review process established under this section unless the Secretary determines that a State's participation would not be in the public interest. For a State to require State agencies to participate in the review process, all affected agencies of the State shall be subject to the review process.

[(e) ASSISTANCE TO AFFECTED FEDERAL AGENCIES.—

[(1) IN GENERAL.—The Secretary may approve a request by a State or recipient to provide funds for a highway project made available under chapter 1 of title 23, United States Code, or for a mass transit project made available under chapter 53 of title 49, United States Code, to the State for the project subject to the coordinated environmental review process established under this section to affected Federal agencies to provide the resources necessary to meet any time limits established under this section.

[(2) AMOUNTS.—Such requests under paragraph (1) shall be approved only—

[(A) for the additional amounts that the Secretary determines are necessary for the affected Federal agencies to meet the time limits for environmental review; and

[(B) if such time limits are less than the customary time necessary for such review.]

[(g)] *(a)* [FEDERAL AGENCY DEFINED] *DEFINITION OF FEDERAL AGENCY*.—In this section, the term "Federal agency" means any Federal agency or any State agency carrying out affected responsibilities required by operation of Federal law.

[(f)] *(b)* JUDICIAL REVIEW AND SAVINGS CLAUSE.—

(1) JUDICIAL REVIEW.—Nothing in this section shall affect the reviewability of any final Federal agency action in a district court of the United States or in the court of any State.

(2) SAVINGS CLAUSE.—Nothing in this section shall affect the applicability of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or any other Federal environmental statute or affect the responsibility of any Federal officer to comply with or enforce any such statute.

* * * * * * *

SEC. 1511. STATE INFRASTRUCTURE BANK PILOT PROGRAM.

(a) DEFINITIONS.— * * *

* * * * * * *

(b) COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—

(A) PURPOSE OF AGREEMENTS.—SUBJECT TO THIS SECTION, THE SECRETARY MAY ENTER INTO COOPERATIVE AGREEMENTS WITH THE STATES OF CALIFORNIA, FLORIDA, [MISSOURI, AND RHODE ISLAND FOR THE ESTABLISHMENT] *Missouri, Rhode Island, Texas, and any other State that seeks such an agreement for the establishment* of State infrastructure banks and multistate infrastructure banks for making loans and providing other assistance to public and private entities carrying

out or proposing to carry out projects eligible for assistance under this section.

* * * * * * *

SEC. 1216. INNOVATIVE SURFACE TRANSPORTATION FINANCING METHODS.

(a) * * *

* * * * * * *

[(b)**]***(d)* INTERSTATE SYSTEM RECONSTRUCTION AND REHABILITATION PILOT PROGRAM.—[1]

(1) ESTABLISHMENT.—**[**The Secretary**]** *Notwithstanding section 301, the Secretary* shall establish and implement an Interstate System reconstruction and rehabilitation pilot program under which the Secretary, notwithstanding sections 129 and 301 **[**of title 23, United States Code**]**, may permit a State to collect tolls on a highway, bridge, or tunnel on the Interstate System for the purpose of reconstructing and rehabilitating Interstate highway corridors **[**that could not otherwise be adequately maintained or functionally improved without the collection of tolls**]**.

(2) LIMITATION ON NUMBER OF FACILITIES.—The Secretary may permit the collection of tolls under this subsection on 3 facilities on the Interstate System. Each of such facilities shall be located in a different State.

(3) ELIGIBILITY.—To be eligible to participate in the pilot program, a State shall submit to the Secretary an application that contains, at a minimum, the following:

(A) An identification of the facility on the Interstate System proposed to be a toll facility, including the age, condition, and intensity of use of the facility.

(B) In the case of a facility that affects a metropolitan area, an assurance that the metropolitan planning organization established under section 134 **[**of title 23, United States Code**]**, for the area has been consulted concerning the placement and amount of tolls on the facility.

[(C) An analysis demonstrating that the facility could not be maintained or improved to meet current or future needs from the State's apportionments and allocations made available by this Act (including amendments made by this Act) and from revenues for highways from any other source without toll revenues.**]**

(C) An analysis demonstrating that financing the reconstruction or rehabilitation of the facility with the collection of tolls under this pilot program is the most efficient, economical, or expeditious way to advance the project.

(D) A facility management plan that includes—

(i) a plan for implementing the imposition of tolls on the facility;

(ii) a schedule and finance plan for the reconstruction or rehabilitation of the facility using toll revenues;

[1]Entire subparagraph moved to section 129(d) of title 23, United States Code.

(iii) a description of the public transportation agency that will be responsible for implementation and administration of the pilot program;

(iv) a description of whether consideration will be given to privatizing the maintenance and operational aspects of the facility, while retaining legal and administrative control of the portion of the Interstate route; and

(v) such other information as the Secretary may require.

(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under paragraph (3) only if the Secretary determines that—

[(A) the State is unable to reconstruct or rehabilitate the proposed toll facility using existing apportionments;]

(A) the State's analysis showing that financing the reconstruction or rehabilitation of a facility with the collection of tolls under the pilot program is the most efficient, economical, or expeditious way to advance the project;

[(B) the facility has a sufficient intensity of use, age, or condition to warrant the collection of tolls;]

(B) the facility needs reconstruction or rehabilitation, including major work that may require replacing sections of the existing facility on new alignment;

[(C) the State plan for implementing tolls on the facility takes into account the interests of local, regional, and interstate travelers;]

[(D)] *(C)* the State plan for reconstruction or rehabilitation of the facility using toll revenues is reasonable; and

[(E)] *(D)* the State has given preference to the use of a public toll agency with demonstrated capability to build, operate, and maintain a toll expressway system meeting criteria for the Interstate System.

(5) LIMITATIONS ON USE OF REVENUES; AUDITS.—Before the Secretary may permit a State to participate in the pilot program, the State must enter into an agreement with the Secretary that provides that—

(A) all toll revenues received from operation of the toll facility will be used only for—

(i) debt service;

(ii) reasonable return on investment of any private person financing the project; and

(iii) any costs necessary for the improvement of and the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation of the toll facility; and

(B) regular audits will be conducted to ensure compliance with subparagraph (A) and the results of such audits will be transmitted to the Secretary.

(6) LIMITATION ON USE OF INTERSTATE MAINTENANCE FUNDS.—During the term of the pilot program, funds apportioned for Interstate maintenance under section 104(b)(4) [of title 23, United States Code], may not be used on a facility for which tolls are being collected under the program.

(7) PROGRAM TERM.—The Secretary shall conduct the pilot program under this subsection for a term to be determined by the Secretary, but not less than 10 years.

(8) INTERSTATE SYSTEM DEFINED.—In this subsection, the term "Interstate System" has the meaning such term has under section 101 [of title 23, United States Code].

* * * * * * *

SEC. 6102. PARTICULATE MATTER MONITORING PROGRAM.

(a) * * *

* * * * * * *

[(e) The Administrator shall conduct a field study of the ability of the $PM_{2.5}$ Federal Reference Method to differentiate those particles that are larger than 2.5 micrograms in diameter. This study shall be completed and provided to the Committee on Commerce of the House of Representatives and the Committee on Environment and Public Works of the United States Senate no later than 2 years from the date of enactment of this Act.]

(e) FIELD STUDY.—Not later than 2 years after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, the Administrator shall—

(1) conduct a field study of the ability of the $PM_{2.5}$ Federal Reference Method to differentiate those particles that are larger than 2.5 micrometers in diameter;

(2) develop a Federal reference method to measure directly particles that are larger than 2.5 micrometers in diameter without reliance on subtracting from coarse particle measurements those particles that are equal to or smaller than 2.5 micrometers in diameter;

(3) develop a method of measuring the composition of coarse particles; and

(4) submit a report on the study and responsibilities of the Administrator under paragraphs (1) through (3) to—

(A) the Committee on Commerce of the House of Representatives; and

(B) the Committee on Environment and Public Works of the Senate.

* * * * * * *

THE CLEAN AIR ACT

TITLE I—AIR POLLUTION PREVENTION AND CONTROL

* * * * * * *

PART D—PLAN REQUIREMENTS FOR NONATTAINMENT AREAS

* * * * * * *

SEC. 101. (a) The Congress finds— * * *

* * * * * * *
*

LIMITATIONS ON CERTAIN FEDERAL ASSISTANCE

SEC. 176. [Subsections (a) and (b), repealed by Public Law 101–549, sec. 110(4), 104 Stat. 2470.]

(c)(1) No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan after it has been approved or promulgated under section 110. No metropolitan planning organization designated under section 134 of title 23, United States Code, shall give its approval to any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 110. The assurance of conformity to such an implementation plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality. Conformity to an implementation plan means—

(A) conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and

(B) that such activities will not—

(i) cause or contribute to any new violation of any standard in any area;

(ii) increase the frequency or severity of any existing violation of any standard in any area; or

(iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel and congestion estimates as determined by the metropolitan planning organization or other agency authorized to make such estimates.

(2) [Any transportation plan]

(2) TRANSPORTATION PLANS AND PROGRAMS.—Any transportation plan or program developed pursuant to title 23, United States Code, or the Urban Mass Transportation Act shall implement the transportation provisions of any applicable implementation plan approved under this Act applicable to all or part of the area covered by such transportation plan or program. No Federal agency may approve, accept or fund any transportation plan, program or project unless such plan, program or project has been found to conform to any applicable implementation plan in effect under this Act. In particular—

(A) no transportation plan or transportation improvement program may be adopted by a metropolitan planning organization designated under title 23, United States Code, or the Urban Mass Transportation Act, or be found to be in conformity by a metropolitan planning organization until a final determination has been made that emissions expected from implementation of such plans and programs are consistent with estimates of emissions from motor vehicles and necessary emissions reductions contained in the applicable implementation

plan, and that the plan or program will conform to the requirements of paragraph (1)(B);

(B) no metropolitan planning organization or other recipient of funds under title 23, United States Code, or the Urban Mass Transportation Act shall adopt or approve a transportation improvement program of projects until it determines that such program provides for timely implementation of transportation control measures consistent with schedules included in the applicable implementation plan;

(C) a transportation project may be adopted or approved by a metropolitan planning organization or any recipient of funds designated under title 23, United States Code, or the Urban Mass Transportation Act, or found in conformity by a metropolitan planning organization or approved, accepted, or funded by the Department of Transportation only if it meets either the requirements of subparagraph (D) or the following requirements—

(i) such a project comes from a conforming plan and program;

(ii) the design concept and scope of such project have not changed significantly since the conformity finding regarding the plan and program from which the project derived; and

(iii) the design concept and scope of such project at the time of the conformity determination for the program was adequate to determine emissions**[**.**]**;

(D) **[**Any project**]** *any transportation project* not referred to in subparagraph (C) shall be treated as conforming to the applicable implementation plan only if it is demonstrated that the projected emissions from such project, when considered together with emissions projected for the conforming transportation plans and programs within the nonattainment area, do not cause such plans and programs to exceed the emission reduction projections and schedules assigned to such plans and programs in the applicable implementation plan**[**.**]**;

(E) the appropriate metropolitan planning organization shall redetermine conformity of existing transportation plans and programs not later than 2 years after the date on which the Administrator—

(i) finds a motor vehicle emissions budget to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2003);

(ii) approves an implementation plan that establishes a motor vehicle emissions budget, if that budget has not yet been used in a conformity determination prior to approval; or

(iii) promulgates an implementation plan that establishes or revises a motor vehicle emissions budget.

[(3) Until such time as the implementation plan revision referred to in paragraph (4)(C) is approved, conformity of such plans, programs, and projects will be demonstrated if—

[(A) the transportation plans and programs—

[(i) are consistent with the most recent estimates of mobile source emissions;

[(ii) provide for the expeditious implementation of transportation control measures in the applicable implementation plan; and

[(iii) with respect to ozone and carbon monoxide nonattainment areas, contribute to annual emissions reductions consistent with sections 182(b)(1) and 187(a)(7); and

[(B) the transportation projects—

[(i) come from a conforming transportation plan and program as defined in subparagraph (A) or for 12 months after the date of the enactment of the Clean Air Act Amendments of 1990, from a transportation program found to conform within 3 years prior to such date of enactment; and

[(ii) in carbon monoxide nonattainment areas, eliminate or reduce the severity and number of violations of the carbon monoxide standards in the area substantially affected by the *transportation* project.

[With regard to subparagraph (B)(ii), such determination may be made as part of either the conformity determination for the transportation program or for the individual *transportation* project taken as a whole during the environmental review phase of project development.]

(3) METHODS OF CONFORMITY DETERMINATION BEFORE BUDGET IS AVAILABLE.—

(A) IN GENERAL.—Until such time as a motor vehicle emission budget from an implementation plan submitted for a national ambient air quality standard is determined to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2003), or the submitted implementation plan is approved, conformity of such a plan, program, or project shall be demonstrated, as selected through the consultation process required under paragraph (4)(B)(i), with—

(i) a motor vehicle emission budget that has been found adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2003), or that has been approved, from an implementation plan for the most recent prior applicable national ambient air quality standard addressing the same pollutant; or

(ii) other such tests as the Administrator shall determine to ensure that—

(I) the transportation plan or program—

(aa) is consistent with the most recent estimates of mobile source emissions;

(bb) provides for the expeditious implementation of transportation control measures in the applicable implementation plan; and

(cc) with respect to an ozone or carbon monoxide nonattainment area, contributes to annual emissions reductions consistent with sections 182(b)(1) and 187(a)(7); and

(II) the transportation project—

(aa) comes from a conforming transportation plan and program described in this subparagraph; and

(bb) in a carbon monoxide nonattainment area, eliminates or reduces the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.

(B) DETERMINATION FOR A TRANSPORTATION PROJECT IN A CARBON MONOXIDE NONATTAINMENT AREA.—A determination under subparagraph (A)(ii)(II)(bb) may be made as part of either the conformity determination for the transportation program or for the individual project taken as a whole during the environmental review phase of project development.

[(4)(A) No later than one year after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate]

(4) CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY.—

(A) IN GENERAL.—The Administrator shall promulgate, and periodically update, criteria and procedures for determining conformity (except in the case of transportation plans, programs, and projects) of, and for keeping the Administrator informed about, the activities referred to in paragraph (1). [No later than one year after such date of enactment, the Administrator, with the concurrence of the Secretary of Transportation, shall promulgate]

(B) TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS.—The Administrator, with the concurrence of the Secretary of Transportation, shall promulgate, and periodically update, criteria and procedures for demonstrating and assuring conformity in the case of transportation plans, programs, and projects. [A suit]

(C) CIVIL ACTION TO COMPEL PROMULGATION.—A civil action may be brought against the Administrator and the Secretary of Transportation under section 304 to compel promulgation of such criteria and procedures and the Federal district court shall have jurisdiction to order such promulgation.

[(B)] *(D)* The procedures and criteria shall, at a minimum—

(i) address the consultation procedures to be undertaken by metropolitan planning organizations and the Secretary of Transportation with State and local air quality agencies and State departments of transportation before such organizations and the Secretary make conformity determinations;

(ii) address the appropriate frequency for making conformity determinations, [but in no case shall such determinations for transportation plans and programs be less frequent than every three years; and] *but the frequency for making conformity determinations on updated transportation plans and programs shall be every 4 years, except in a case in which—*

(I) the metropolitan planning organization elects to update a transportation plan or program more frequently; or

(II) the metropolitan planning organization is required to determine conformity in accordance with paragraph (2)(E);

(iii) address how conformity determinations will be made with respect to maintenance plans**[**.**]***; and*

(iv) address the effects of the most recent population, economic, employment, travel, transit ridership, congestion, and induced travel demand information in the development and application of the latest travel and emissions models.

[(C) Such procedures shall also include a requirement that each State shall submit to the Administrator and the Secretary of Transportation within 24 months of such date of enactment, a revision to its implementation plan that includes criteria and procedures for assessing the conformity of any plan, program, or project subject to the conformity requirements of this subsection.**]**

(E) INCLUSION OF CRITERIA AND PROCEDURES IN SIP.—Not later than 2 years after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, the procedures under subparagraph (A) shall include a requirement that each State include in the State implementation plan criteria and procedures for consultation in accordance with the Administrator's criteria and procedures for consultation required by subparagraph (D)(i).

(F) INCLUSION OF CRITERIA AND PROCEDURES IN SIP.—Not later than 2 years after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003, the procedures under subparagraph (A) shall include a requirement that each State include in the State implementation plan criteria and procedures for consultation in accordance with the Administrator's criteria and procedures for consultation required by subparagraph (D)(i).

[(D)**]** *(F)* Compliance with the rules of the Administrator for determining the conformity of transportation plans, programs, and projects funded or approved under title 23 of the United States Code or the Federal Transit Act to State or Federal implementation plans shall not be required for traffic signal synchronization projects prior to the funding, approval or implementation of such projects. The supporting regional emissions analysis for any conformity determination made with respect to a transportation plan, program, or project shall consider the effect on emissions of any such project funded, approved, or implemented prior to the conformity determination.

(5) APPLICABILITY.—This subsection shall apply only with respect to—

(A) a nonattainment area and each pollutant for which the area is designated as a nonattainment area; and

(B) an area that was designated as a nonattainment area but that was later redesignated by the Administrator

as an attainment area and that is required to develop a maintenance plan under section 175A with respect to the specific pollutant for which the area was designated nonattainment.

(6) Notwithstanding paragraph 5, this subsection shall not apply with respect to an area designated nonattainment under section 107(d)(1) until 1 year after that area is first designated nonattainment for a specific national ambient air quality standard. This paragraph only applies with respect to the national ambient air quality standard for which an area is newly designated nonattainment and does not affect the area's requirements with respect to all other national ambient air quality standards for which the area is designated nonattainment or has been redesignated from nonattainment to attainment with a maintenance plan pursuant to section 175(A) (including any pre-existing national ambient air quality standard for a pollutant for which a new or revised standard has been issued).

(7) CONFORMITY HORIZON FOR TRANSPORTATION PLANS.—

(A) IN GENERAL.—For the purposes of this section, a transportation plan in a nonattainment or maintenance area shall be considered to be a transportation plan or a portion of a transportation plan that extends for the longest of the following periods:

(i) The first 10-year period of any such transportation plan.

(ii) The latest year in the implementation plan applicable to the area that contains a motor vehicle emission budget.

(iii) The year after the completion date of a regionally significant project, if the project requires approval before the subsequent conformity determination.

(B) EXCEPTION.—In a case in which an area has a revision to an implementation plan under section 175A(b) and the Administrator has found the motor vehicle emissions budgets from that revision to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2003), or has approved the revision, the transportation plan shall be considered to be a transportation plan or portion of a transportation plan that extends through the last year of the implementation plan required under section 175A(b).

(8) DEFINITIONS.—In this subsection:

(A) REGIONALLY SIGNIFICANT PROJECT.—

(i) IN GENERAL.—The term "regionally significant project" means a transportation project that is on a facility that serves a regional transportation need, including—

(I) access to and from the area outside of the region;

(II) access to and from major planned developments, including new retail malls, sports complexes, or transportation terminals; and

(III) most transportation terminals.

(ii) PRINCIPAL ARTERIALS AND FIXED GUIDEWAYS.—The term "regionally significant project" includes, at a minimum—

(I) all principal arterial highways; and

(II) all fixed guideway transit facilities that offer an alternative to regional highway travel.

(iii) ADDITIONAL PROJECTS.—The interagency consultation process and procedures described in section 93.105(c) of title 40, Code of Federal Regulations (as in effect on October 1, 2003), shall be used to make determinations as to whether minor arterial highways and other transportation projects should be considered "regionally significant projects".

(iv) EXCLUSIONS.—The term "regionally significant project" does not include any project of a type listed in sections 93.126 or 127 of title 40, Code of Federal Regulations (as in effect on October 1, 2003).

(B) SIGNIFICANT REVISION.—The term "significant revision" means—

(i) with respect to a regionally significant project, a significant change in design concept or scope to the project; and

(ii) with respect to any other kind of project, a change that converts a project that is not a regionally significant project into a regionally significant project.

(C) TRANSPORTATION PROJECT.—The term "transportation project" includes only a project that is—

(i) a regionally significant project; or

(ii) a project that makes a significant revision to an existing project.

(9) SUBSTITUTION FOR TRANSPORTATION CONTROL MEASURES.—

(A) IN GENERAL.—Transportation control measures that are specified in an implementation plan may be replaced or added to the implementation plan with alternate or additional transportation control measures if—

(i) the substitute measures achieve equivalent or greater emissions reductions than the control measure to be replaced, as demonstrated with an analysis that is consistent with the current methodology used for evaluating the replaced control measure in the implementation plan;

(ii) the substitute control measures are implemented—

(I) in accordance with a schedule that is consistent with the schedule provided for control measures in the implementation plan; or

(II) if the implementation plan date for implementation of the control measure to be replaced has passed, as soon as practicable after the implementation plan date but not later than the date on which emission reductions are necessary to achieve the purpose of the implementation plan;

(iii) the substitute and additional control measures are accompanied with evidence of adequate personnel, funding, and authority under State or local law to implement, monitor, and enforce the control measures;

(iv) the substitute and additional control measures were developed through a collaborative process that included—

(I) participation by representatives of all affected jurisdictions (including local air pollution control agencies, the State air pollution control agency, and State and local transportation agencies);

(II) consultation with the Administrator; and

(III) reasonable public notice and opportunity for comment; and

(v) the metropolitan planning organization, State air pollution control agency, and the Administrator concur with the equivalency of the substitute or additional control measures.

(B) ADOPTION.—After carrying out subparagraph (A), a State shall adopt the substitute or additional transportation control measure in the applicable implementation plan.

(C) NO REQUIREMENT FOR EXPRESS PERMISSION.—The substitution or addition of a transportation control measure in accordance with this paragraph shall not be contingent on there being any provision in the implementation plan that expressly permits such a substitution or addition.

(D) NO REQUIREMENT FOR NEW CONFORMITY DETERMINATION.—The substitution or addition of a transportation control measure in accordance with this paragraph shall not require—

(i) a new conformity determination for the transportation plan; or

(ii) a revision of the implementation plan.

(E) CONTINUATION OF CONTROL MEASURE BEING REPLACED.—A control measure that is being replaced by a substitute control measure under this paragraph shall remain in effect until the substitute control measure is approved.

(F) EFFECT OF ADOPTION.—Adoption of a substitute control measure shall constitute rescission of the previously applicable control measure.

(d) Each department, agency, or instrumentality of the Federal Government having authority to conduct or support any program with air-quality related transportation consequences shall give priority in the exercise of such authority, consistent with statutory requirements for allocation among States or other jurisdictions, to the implementation of those portions of plans prepared under this section to achieve and maintain the national primary ambient air quality standard. This paragraph extends to, but is not limited to, authority exercised under the Urban Mass Transportation Act, title

23 of the United States Code, and the Housing and Urban Development Act.

* * * * * * *

[AIR QUALITY MONITORING

[SEC. 319. Not later than one year after the date of enactment of the Clean Air Act Amendments of 1977 and after notice and opportunity for public heg],

SEC. 319. AIR QUALITY MONITORING.

(a) IN GENERAL.—After notice and opportunity for public hearing the Administrator shall promulgate regulations establishing an air quality monitoring system throughout the United States which—

(1) utilizes uniform air quality monitoring criteria and methodology and measures such air quality according to a uniform air quality index,

(2) provides for air quality monitoring stations in major urban areas and other appropriate areas throughout the United States to provide monitoring such as will supplement (but not duplicate) air quality monitoring carried out by the States required under any applicable implementation plan,

(3) provides for daily analysis and reporting of air quality based upon such uniform air quality index, and

(4) provides for recordkeeping with respect to such monitoring data and for periodic analysis and reporting to the general public by the Administrator with respect to air quality based upon such data.

The operation of such air quality monitoring system may be carried out by the Administrator or by such other departments, agencies, or entities of the Federal Government (including the National Weather Service) as the President may deem appropriate. Any air quality monitoring system required under any applicable implementation plan under section 110 shall, as soon as practicable following promulgation of regulations under this section, utilize the standard criteria and methodology, and measure air quality according to the standard index, established under such regulations.

(b) AIR QUALITY MONITORING DATA INFLUENCED BY EXCEPTIONAL EVENTS.—

(1) DEFINITION OF EXCEPTIONAL EVENT.—In this section:

(A) IN GENERAL.—The term "exceptional event" means an event that—

(i) affects air quality;

(ii) is not reasonably controllable or preventable;

(iii) is—

(I) a natural event; or

(II) an event caused by human activity that is unlikely to recur at a particular location; and

(iv) is determined by the Administrator through the process established in the regulations promulgated under paragraph (2) to be an exceptional event.

(B) EXCLUSIONS.—The term "exceptional event" does not include—

(i) stagnation of air masses or meteorological inversions;

(ii) a meteorological event involving high temperatures or lack of precipitation; or

(iii) air pollution relating to source noncompliance.

(2) REGULATIONS.—

(A) PROPOSED REGULATIONS.—Not later than March 1, 2005, after consultation with Federal land managers and State air pollution control agencies, the Administrator shall publish in the Federal Register proposed regulations governing the review and handling of air quality monitoring data influenced by exceptional events.

(B) FINAL REGULATIONS.—Not later than 1 year after the date on which the Administrator publishes proposed regulations under subparagraph (A), and after providing an opportunity for interested persons to make oral presentations of views, data, and arguments regarding the proposed regulations, the Administrator shall promulgate final regulations governing the review and handling or air quality monitoring data influenced by an exceptional event that are consistent with paragraph (3).

(3) PRINCIPLES AND REQUIREMENTS.—

(A) PRINCIPLES.—In promulgating regulations under this section, the Administrator shall follow—

(i) the principle that protection of public health is the highest priority;

(ii) the principle that timely information should be provided to the public in any case in which the air quality is unhealthy;

(iii) the principle that all ambient air quality data should be included in a timely manner, an appropriate Federal air quality database that is accessible to the public;

(iv) the principle that each State must take necessary measures to safeguard public health regardless of the source of the air pollution; and

(v) the principle that air quality data should be carefully screened to ensure that events not likely to recur are represented accurately in all monitoring data and analyses.

(B) REQUIREMENTS.—Regulations promulgated under this section shall, at a minimum, provide that—

(i) the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies;

(ii) a clear causal relationship must exist between the measured exceedances of a national ambient air quality standard and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location;

(iii) there is a public process for determining whether an event is exceptional; and

(iv) there are criteria and procedures for the Governor of a State to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in determinations by the Environmental Protection Agency with respect to exceedances or violations of the national ambient air quality standards.

(4) INTERIM PROVISION.—Until the effective date of a regulation promulgated under paragraph (2), the following guidance issued by the Administrator shall continue to apply:

(A) Guidance on the identification and use of air quality data affected by exceptional events (July 1986).

(B) Areas affected by PM–10 natural events, May 30, 1996.

(C) Appendices I, K, and N to part 50 of title 40, Code of Federal Regulations.

* * * * * * *

DINGELL-JOHNSON SPORT FISH RESTORATION ACT

AN ACT To provide that the United States shall aid the States in fish restoration and management projects, and for other purposes.

* * * * * * *

SEC. 3. To carry out the provisions of this Act for fiscal years after September 30, 1984, there are authorized to be appropriated from the Sport Fish Restoration Account established by section 9504(a) of the Internal Revenue Code of 1986 the amounts paid, transferred, or otherwise credited to that Account. For purposes of the provision of the Act of August 31, 1951, which refers to this section, such amounts shall be treated as the amounts that are equal to the revenues described in this section. The appropriation made under the provisions of this section for each fiscal year shall continue available during the [succeeding fiscal year]. So much of such appropriation apportioned to any State for any fiscal year as remains unexpended at the close thereof is authorized to be made available for expenditure in that State until the close of the succeeding fiscal year. Any amount apportioned to any State under the provisions of this Act which is unexpended or unobligated at the end of the period during which it is available for expenditure on any project is authorized to be made available for expenditure by the Secretary of the Interior [in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport and recreation] *to supplement the 55.3 percent of each annual appropriation to be apportioned among the States, as provided for in section 4(b) of this Act.*

SEC. 4. [(a) The Secretary of the Interior shall distribute 18 per centum of each annual appropriation made in accordance with the provisions of section 3 of this Act as provided in the Coastal Wetlands Planning, Protection, and Restoration Act (title III, Public Law 101–646). Notwithstanding the provisions of section 3 of this Act, such sums shall remain available to carry out such Act through fiscal year 2009.

[(b) USE OF BALANCE AFTER DISTRIBUTION.—

[(1) FISCAL YEAR 1998.—In fiscal year 1998, an amount equal to $20,000,000 of the balance remaining after the distribution under subsection (a) shall be transferred to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 13106(a)(1) of title 46, United States Code.

[(2) FISCAL YEAR 1999.—For fiscal year 1999, of the balance of each annual appropriation remaining after making the distribution under subsection (a), an amount equal to $74,000,000, reduced by 82 percent of the amount appropriated for that fiscal year from the Boat Safety Account of the Aquatic Resources Trust Fund established by section 9504 of the Internal Revenue Code of 1986 to carry out the purposes of section 13106(a) of title 46, United States Code, shall be used as follows:

[(A) $10,000,000 shall be available to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

[(B) The balance remaining after the application of subparagraph (A) shall be transferred to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 13106 of title 46, United States Code.

[(3) FISCAL YEARS 2000–2003.—For each of fiscal years 2000 through 2003, of the balance of each annual appropriation remaining after making the distribution under subsection (a), an amount equal to $82,000,000, reduced by 82 percent of the amount appropriated for that fiscal year from the Boat Safety Account of the Aquatic Resources Trust Fund established by section 9504 of the Internal Revenue Code of 1986 to carry out the purposes of section 13106(a) of title 46, United States Code, shall be used as follows:

[(A) $10,000,000 shall be available for each fiscal year to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

[(B) $8,000,000 shall be available for each fiscal year to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 7404(d) of the Sportfishing and Boating Safety Act of 1998.

[(C) The balance remaining after the application of subparagraphs (A) and (B) shall be transferred for each such fiscal year to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 13106 of title 46, United States Code.

[(4) TRANSFER OF CERTAIN FUNDS.—Amounts available under subparagraph (A) of paragraph (2) and subparagraphs (A) and (B) of paragraph (3) that are unobligated by the Secretary of the Interior after 3 fiscal years shall be transferred to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 13106(a) of title 46, United States Code.

[(c) NATIONAL OUTREACH AND COMMUNICATIONS PROGRAM.—Of the balance of each such annual appropriation remaining after making the distribution under subsections (a) and (b), respectively, an amount equal to—

[(1) $5,000,000 for fiscal year 1999;

[(2) $6,000,000 for fiscal year 2000;

[(3) $7,000,000 for fiscal year 2001;

[(4) $8,000,000 for fiscal year 2002; and

[(5) $10,000,000 for fiscal year 2003;

shall be used for the National Outreach and Communications Program under section 8(d). Such amounts shall remain available for 3 fiscal years, after which any portion thereof that is unobligated by the Secretary of the Interior for that program may be expended by the Secretary under subsection (e).

[(d) SET-ASIDE FOR EXPENSES FOR ADMINISTRATION OF THE DINGELL-JOHNSON SPORT FISH RESTORATION ACT.—

[(1) IN GENERAL.—

[(A) SET-ASIDE.—For fiscal year 2001 and each fiscal year thereafter, of the balance of each such annual appropriation remaining after the distribution and use under subsections (a), (b), and (c) and section 14, the Secretary of the Interior may use not more than the available amount specified in subparagraph (B) for the fiscal year for expenses for administration incurred in implementation of this Act, in accordance with this subsection and section 9.

[(B) AVAILABLE AMOUNTS.—The available amount referred to in subparagraph (A) is—

[(i) for each of fiscal years 2001 and 2002, $9,000,000;

[(ii) for fiscal year 2003, $8,212,000; and

[(iii) for fiscal year 2004 and each fiscal year thereafter, the sum of—

[(I) the available amount for the preceding fiscal year; and

[(II) the amount determined by multiplying—

[(aa) the available amount for the preceding fiscal year; and

[(bb) the change, relative to the preceding fiscal year, in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

[(2) PERIOD OF AVAILABILITY; APPORTIONMENT OF UNOBLIGATED AMOUNTS.—

[(A) PERIOD OF AVAILABILITY.—For each fiscal year, the available amount under paragraph (1) shall remain available for obligation for use under that paragraph until the end of the fiscal year.

[(B) APPORTIONMENT OF UNOBLIGATED AMOUNTS.—Not later than 60 days after the end of a fiscal year, the Secretary of the Interior shall apportion among the States any of the available amount under paragraph (1) that remains unobligated at the end of the fiscal year, on the same basis and in the same manner as other amounts made available

under this Act are apportioned among the States under subsection (e) for the fiscal year.]

(a) IN GENERAL.—For fiscal years 2004 through 2009, each annual appropriation made in accordance with the provisions of section 3 of this Act shall be distributed as follows:

(1) COASTAL WETLANDS.—18 percent to the Secretary of the Interior for distribution as provided in the Coastal Wetlands Planning, Protection, and Restoration Act (16 U.S.C. 3951 et seq.).

(2) BOATING SAFETY.—18 percent to the Secretary of Homeland Security for State recreational boating safety programs under section 13106 of title 46, United States Code.

(3) CLEAN VESSEL ACT.—1.9 percent to the Secretary of the Interior for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

(4) BOATING INFRASTRUCTURE.—1.9 percent to the Secretary of the Interior for obligation for qualified projects under section 7404(d) of the Sportfishing and Boating Safety Act of 1998 (16 U.S.C. 777g–1(d)).

(5) NATIONAL OUTREACH AND COMMUNICATIONS.—1.9 percent to the Secretary of the Interior for the National Outreach and Communications Program under section 8(d) of this Act. Such amounts shall remain available for 3 fiscal years, after which any portion thereof that is unobligated by the Secretary for that program may be expended by the Secretary under subsection (b) of this section.

(6) SET-ASIDE FOR EXPENSES FOR ADMINISTRATION OF THIS CHAPTER.—

(A) In general.—2.1 percent to the Secretary of the Interior for expenses for administration incurred in implementation of this Act, in accordance with this section, section 9, and section 14 of this Act.

(B) APPORTIONMENT OF UNOBLIGATED FUNDS.—If any portion of the amount made available to the Secretary under subparagraph (A) remains unexpended and unobligated at the end of a fiscal year, that portion shall be apportioned among the States, on the same basis and in the same manner as other amounts made available under this Act are apportioned among the States under subsection (b) of this section, within 60 days after the end of that fiscal year. Any amount apportioned among the States under this subparagraph shall be in addition to any amounts otherwise available for apportionment among the States under subsection (b) for the fiscal year.

[(e)] *(b)* The Secretary of the Interior, after the distribution, transfer, use, and deduction under subsections (a), (b), (c), and (d), respectively, and after deducting amounts used for grants under section 14, shall apportion the remainder of each such annual appropriation among the several States in the following manner: 40 per centum in the ratio which the area of each State including coastal and Great Lakes waters (as determined by the Secretary of the Interior) bears to the total area of all the States, and 60 per centum in the ratio which the number of persons holding paid licenses to fish for sport or recreation in the State in the second fis-

cal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments, bears to the number of such persons in all the States. Such apportionments shall be adjusted equitably so that no State shall receive less than 1 per centum nor more than 5 per centum of the total amount apportioned. Where the apportionment to any State under this section is less than $4,500 annually, the Secretary of the Interior may allocate not more than $4,500 of said appropriation to said State to carry out the purposes of this Act when said State certifies to the Secretary of the Interior that it has set aside not less than $1,500 from its fish-and-game funds or has made, through its legislature, an appropriation in this amount for said purposes.

[(f)**]** *(c)* So much of any sum not allocated under the provisions of this section for any fiscal year is hereby authorized to be made available for expenditure to carry out the purposes of this Act until the close of the succeeding fiscal year. The term fiscal year as used in this section shall be a period of twelve consecutive months from October 1 through the succeeding September 30, except that the period for enumeration of persons holding licenses to fish shall be a State's fiscal or license year.

[(g)**]** *(d)* EXPENSES FOR ADMINISTRATION OF CERTAIN PROGRAMS.—

(1) IN GENERAL.—For each fiscal year, of the amounts appropriated under section 3, the Secretary of the Interior shall use only funds authorized for use under **[**subsections (a), (b)(3)(A), (b)(3)(B), and (c)**]** *paragraphs (1), (3), (4), and (5) of subsection (a)* to pay the expenses for administration incurred in carrying out the provisions of law referred to in those subsections, respectively.

(e) TRANSFER OF CERTAIN FUNDS.—Amounts available under paragraphs (3) and (4) of subsection (a) that are unobligated by the Secretary after 3 fiscal years shall be transferred to the Secretary of Homeland Security and shall be expended for State recreational boating safety programs under section 13106(a) of title 46, United States Code.

(2) MAXIMUM AMOUNT.—For each fiscal year, the Secretary of the Interior may use not more than $900,000 in accordance with paragraph (1).

* * * * * * *

SEC. 8. (a) To maintain fish-restoration and management projects established under the provisions of this Act shall be the duty of the States according to their respective laws. Beginning July 1, 1953, maintenance of projects heretofore completed under the provisions of this Act may be considered as projects under this Act. Title to any real or personal property acquired by any State, and to improvements placed on State-owned lands through the use of funds paid to the State under the provisions of this Act, shall be vested in such State.

(b)(1) Each State shall allocate 15 percent of the funds apportioned to it for each fiscal year under section 4 of this Act for the payment of up to 75 per centum of the costs of the acquisition, development, renovation, or improvement of facilities (and auxiliary facilities necessary to insure the safe use of such facilities) that cre-

ate, or add to, public access to the waters of the United States to improve the suitability of such waters for recreational boating purposes. Notwithstanding this provision, States within a United States Fish and Wildlife Service Administrative Region may allocate more or less than 15 percent in a fiscal year, provided that the total regional allocation averages 15 percent over a 5 year period.

(2) So much of the funds that are allocated by a State under paragraph (1) in any fiscal year that remained unexpended or unobligated at the close of such year are authorized to be made available for the purposes described in paragraph (1) during the succeeding four fiscal years, but any portion of such funds that remain unexpended or unobligated at the close of such period are authorized to be made available for expenditure by the Secretary of the Interior [in carrying out the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation] *to supplement the 55.3 percent of each annual appropriation to be apportioned among the States under section 4(b) of this Act.*

(c) Each State may use not to exceed 15 percent of the funds apportioned to it under section 4 of this Act to pay up to 75 per centum of the costs of an aquatic resource education and outreach and communications program for the purpose of increasing public understanding of the Nation's water resources and associated aquatic life forms. The non-Federal share of such costs may not be derived from other Federal grant programs. The Secretary shall issue not later than the one hundred and twentieth day after the effective date of this subsection such regulations as he deems advisable regarding the criteria for such programs.

(d) NATIONAL OUTREACH AND COMMUNICATIONS PROGRAM.—

(1) IMPLEMENTATION.—Within 1 year after the date of enactment of the Sportfishing and Boating Safety Act of 1998, the Secretary of the Interior shall develop and implement, in cooperation and consultation with the Sport Fishing and Boating Partnership Council, a national plan for outreach and communications.

(2) CONTENT.—The plan shall provide—

(A) guidance, including guidance on the development of an administrative process and funding priorities, for outreach and communications programs; and

(B) for the establishment of a national program.

(3) SECRETARY MAY MATCH OR FUND PROGRAMS.—Under the plan, the Secretary may obligate amounts available under [subsection (c) or (d) of section 4] *paragraph (5) or (6) of section 4(a)* of this Act—

(A) to make grants to any State or private entity to pay all or any portion of the cost of carrying out any outreach and communications program under the plan; or

(B) to fund contracts with States or private entities to carry out such a program.

(4) REVIEW.—The plan shall be reviewed periodically, but not less frequently than once every 3 years.

(e) STATE OUTREACH AND COMMUNICATIONS PROGRAM.—Within 12 months after the completion of the national plan under subsection (d)(1), a State shall develop a plan for an outreach and com-

munications program and submit it to the Secretary. In developing the plan, a State shall—

(1) review the national plan developed under subsection (d);

(2) consult with anglers, boaters, the sportfishing and boating industries, and the general public; and

(3) establish priorities for the State outreach and communications program proposed for implementation.

(f) PUMPOUT STATIONS AND WASTE RECEPTION FACILITIES.—Amounts apportioned to States under section 4 of this Act may be used to pay not more than 75 percent of the costs of constructing, renovating, operating, or maintaining pumpout stations and waste reception facilities (as those terms are defined in the Clean Vessel Act of 1992).

(g) SURVEYS.—

(1) NATIONAL FRAMEWORK.—Within 6 months after the date of enactment of the Sportfishing and Boating Safety Act of 1998, the Secretary, in consultation with the States, shall adopt a national framework for a public boat access needs assessment which may be used by States to conduct surveys to determine the adequacy, number, location, and quality of facilities providing access to recreational waters for all sizes of recreational boats.

(2) STATE SURVEYS.—Within 18 months after such date of enactment, each State that agrees to conduct a public boat access needs survey following the recommended national framework shall report its findings to the Secretary for use in the development of a comprehensive national assessment of recreational boat access needs and facilities.

(3) EXCEPTION.—Paragraph (2) does not apply to a State if, within 18 months after such date of enactment, the Secretary certifies that the State has developed and is implementing a plan that ensures there are and will be public boat access adequate to meet the needs of recreational boaters on its waters.

(4) FUNDING.—A State that conducts a public boat access needs survey under paragraph (2) may fund the costs of conducting that assessment out of amounts allocated to it as funding dedicated to motorboat access to recreational waters under subsection (b)(1) of this section.

* * * * * * *

SEC. 9. REQUIREMENTS AND RESTRICTIONS CONCERNING USE OF AMOUNTS FOR EXPENSES FOR ADMINISTRATION.

(a) AUTHORIZED EXPENSES FOR ADMINISTRATION.—Except as provided in subsection (b), the Secretary of the Interior may use available amounts under [section 4(d)(1)] *section 4(a)(6)* only for expenses for administration that directly support the implementation of this Act that consist of—

(1) personnel costs of employees who directly administer this Act on a full-time basis;

(2) personnel costs of employees who directly administer this Act on a part-time basis for at least 20 hours each week, not to exceed the portion of those costs incurred with respect to the work hours of the employee during which the employee

directly administers this Act, as those hours are certified by the supervisor of the employee;

(3) support costs directly associated with personnel costs authorized under paragraphs (1) and (2), excluding costs associated with staffing and operation of regional offices of the United States Fish and Wildlife Service and the Department of the Interior other than for the purposes of this Act;

(4) costs of determining under section 6(a) whether State comprehensive plans and projects are substantial in character and design;

(5) overhead costs, including the costs of general administrative services, that are directly attributable to administration of this Act and are based on—

(A) actual costs, as determined by a direct cost allocation methodology approved by the Director of the Office of Management and Budget for use by Federal agencies; and

(B) in the case of costs that are not determinable under subparagraph (A), an amount per full-time equivalent employee authorized under paragraphs (1) and (2) that does not exceed the amount charged or assessed for costs per full-time equivalent employee for any other division or program of the United States Fish and Wildlife Service;

(6) costs incurred in auditing, every 5 years, the wildlife and sport fish activities of each State fish and game department and the use of funds under section 6 by each State fish and game department;

(7) costs of audits under subsection (d);

(8) costs of necessary training of Federal and State full-time personnel who administer this Act to improve administration of this Act;

(9) costs of travel to States, territories, and Canada by personnel who—

(A) administer this Act on a full-time basis for purposes directly related to administration of State programs or projects; or

(B) administer grants under section 6 or 14;

(10) costs of travel outside the United States (except travel to Canada), by personnel who administer this Act on a full-time basis, for purposes that directly relate to administration of this Act and that are approved directly by the Assistant Secretary for Fish and Wildlife and Parks;

(11) relocation expenses for personnel who, after relocation, will administer this Act on a full-time basis for at least 1 year, as certified by the Director of the United States Fish and Wildlife Service at the time at which the relocation expenses are incurred; and

(12) costs to audit, evaluate, approve, disapprove, and advise concerning grants under sections 6 and 14.

(b) REPORTING OF OTHER USES.—

(1) IN GENERAL.—Subject to paragraph (2), if the Secretary of the Interior determines that available amounts under ⟦section 4(d)(1)⟧ *section 4(a)(6)* should be used for an expense for

administration other than an expense for administration described in subsection (a), the Secretary—

* * * * * * *

SEC. 12. The Secretary of the Interior is authorized to cooperate with the Secretary of Agriculture of Puerto Rico, the Mayor of the District of Columbia, the Governor of Guam, the Governor of American Samoa, the Governor of the Commonwealth of the Northern Mariana Islands, and the Governor of the Virgin Islands, in the conduct of fish restoration and management projects as defined in section 2 of this Act, upon such terms and conditions as he shall deem fair, just, and equitable, and is authorized to apportion to Puerto Rico, the District of Columbia, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, out of money available for apportionment under this Act, such sums as he shall determine, not exceeding for Puerto Rico 1 per centum, for the District of Columbia one-third of 1 per centum, for Guam one-third of 1 per centum, for American Samoa one-third of 1 per centum, for the Commonwealth of the Northern Mariana Islands one-third of 1 per centum, and for the Virgin Islands one-third of 1 per centum of the total amount apportioned in any one year, but the Secretary shall in no event require any of said cooperating agencies to pay an amount which will exceed 25 per centum of the cost of any project. Any unexpended or unobligated balance of any apportionment made pursuant to this section shall be made available for expenditure in Puerto Rico, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, as the case may be, in the succeeding year, on any approved projects, and if unexpended or unobligated at the end of such year is authorized to be made available for expenditure by the Secretary of the Interior [in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation] *to supplement the 55.3 percent of each annual appropriation to be apportioned among the States under section 4(b) of this Act.*

* * * * * * *

SEC. 14. MULTISTATE CONSERVATION GRANT PROGRAM.

[(a) IN GENERAL.—

[(1) AMOUNT FOR GRANTS.—Of the balance of each annual appropriation made under section 3 remaining after the distribution and use under subsections (a), (b), and (c) of section 4 in a fiscal year, not more than $3,000,000 shall be available to the Secretary of the Interior for making multistate conservation project grants in accordance with this section.]

(a) IN GENERAL.—

(1) AMOUNT FOR GRANTS.—For each of fiscal years 2004 through 2009, 0.9 percent of each annual appropriation made in accordance with the provisions of section 3 of this Act shall be distributed to the Secretary of the Interior for making multistate conservation project grants in accordance with this section.";

(2) by striking "section 4(e)" each place it appears in subsection (a)(2)(B) and inserting "section 4(b)"; and

(3) by striking "Of the balance of each annual appropriation made under section 3 remaining after the distribution and use under subsections (a), (b), and (c) of section 4 for each fiscal year and after deducting amounts used for grants under subsection (a)—" in subsection (e) and inserting "Of amounts made available under section 4(a)(6) for each fiscal year—

(2) PERIOD OF AVAILABILITY; APPORTIONMENT.—

(A) PERIOD OF AVAILABILITY.—Amounts made available under paragraph (1) shall remain available for making grants only for the first fiscal year for which the amount is made available and the following fiscal year.

(B) APPORTIONMENT.—At the end of the period of availability under subparagraph (A), the Secretary of the Interior shall apportion any amounts that remain available among the States in the manner specified in section 4(e) for use by the States in the same manner as funds apportioned under section 4(e).

(b) SELECTION OF PROJECTS.—

(1) STATES OR ENTITIES TO BE BENEFITED.—A project shall not be eligible for a grant under this section unless the project will benefit—

(A) at least 26 States;

(B) a majority of the States in a region of the United States Fish and Wildlife Service; or

(C) a regional association of State fish and game departments.

(2) USE OF SUBMITTED PRIORITY LIST OF PROJECTS.—The Secretary of the Interior may make grants under this section only for projects identified on a priority list of sport fish restoration projects described in paragraph (3).

(3) PRIORITY LIST OF PROJECTS.—A priority list referred to in paragraph (2) is a priority list of sport fish restoration projects that the International Association of Fish and Wildlife Agencies—

(A) prepares through a committee comprised of the heads of State fish and game departments (or their designees), in consultation with—

(i) nongovernmental organizations that represent conservation organizations;

(ii) sportsmen organizations; and

(iii) industries that fund the sport fish restoration programs under this Act;

(B) approves by vote of a majority of the heads of State fish and game departments (or their designees); and

(C) not later than October 1 of each fiscal year, submits to the Assistant Director for Wildlife and Sport Fish Restoration Programs.

(4) PUBLICATION.—The Assistant Director for Wildlife and Sport Fish Restoration Programs shall publish in the Federal Register each priority list submitted under paragraph (3)(C).

(c) ELIGIBLE GRANTEES.—

(1) IN GENERAL.—The Secretary of the Interior may make a grant under this section only to—

(A) a State or group of States;

(B) the United States Fish and Wildlife Service, or a State or group of States, for the purpose of carrying out the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation; and

(C) subject to paragraph (2), a nongovernmental organization.

(2) NONGOVERNMENTAL ORGANIZATIONS.—

(A) IN GENERAL.—Any nongovernmental organization that applies for a grant under this section shall submit with the application to the International Association of Fish and Wildlife Agencies a certification that the organization—

(i) will not use the grant funds to fund, in whole or in part, any activity of the organization that promotes or encourages opposition to the regulated taking of fish; and

(ii) will use the grant funds in compliance with subsection (d).

(B) PENALTIES FOR CERTAIN ACTIVITIES.—Any nongovernmental organization that is found to use grant funds in violation of subparagraph (A) shall return all funds received under this section and be subject to any other applicable penalties under law.

(d) USE OF GRANTS.—A grant under this section shall not be used, in whole or in part, for an activity, project, or program that promotes or encourages opposition to the regulated taking of fish.

(e) FUNDING FOR OTHER ACTIVITIES.—Of the balance of each annual appropriation made under section 3 remaining after the distribution and use under subsections (a), (b), and (c) of section 4 for each fiscal year and after deducting amounts used for grants under subsection (a)—

(1) $200,000 shall be made available for each of—

(A) the Atlantic States Marine Fisheries Commission;

(B) the Gulf States Marine Fisheries Commission;

(C) the Pacific States Marine Fisheries Commission; and

(D) the Great Lakes Fisheries Commission; and

(2) $400,000 shall be made available for the Sport Fishing and Boating Partnership Council established by the United States Fish and Wildlife Service.

(f) NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any activity carried out under this section.

* * * * * * *

○