

This legislation will recognize the significance of the El Camino Real and preserve its historic importance, as well as direct the National Park Service to establish the El Camino Real trail as a National Historic Trail. It will also allow our state agencies such as the Texas Historical Commission to participate in the establishment and designation of the trail, while protecting the private property of landowners along its route. This legislation will allow Texans and the thousands who visit our state each year to learn more of the rich history that forged the Lone Star State.

I am proud to offer this legislation to pay homage to an important piece of Texas and U.S. History, and I urge my colleagues to support the El Camino Real de Los Tejas National Historic Trail Act.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2052

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "El Camino Real de los Tejas National Historic Trail Act of 2004".

#### SEC. 2. AUTHORIZATION AND ADMINISTRATION.

Section 5(a) of the National Trails System Act (16 U.S.C. 1244(a)) is amended by adding at the end the following:

"(23) EL CAMINO REAL DE LOS TEJAS.—

"(A) IN GENERAL.—Subject to subparagraph (B), El Camino Real de los Tejas (The Royal Road of historic Tejas) National Historic Trail, a combination of historic routes totaling 2,580 miles in length from the Rio Grande near Eagle Pass and Laredo, Texas, to Natchitoches, Louisiana, and including the Old San Antonio Road, as generally depicted on the maps entitled 'El Camino Real de los Tejas', contained in the report prepared pursuant to subsection (b) entitled 'National Historic Trail Feasibility Study and Environmental Assessment: El Camino Real de los Tejas, Texas-Louisiana', dated July 1998. The National Park Service is authorized to administer designated portions of this trail system as a national historic trail as set forth in this paragraph.

"(B) ESTABLISHMENT.—

"(i) PUBLICLY OWNED LANDS.—Congress authorizes the establishment of El Camino Real de los Tejas national historic trail and the respective administration on those portions of the historic trail routes and related historic sites within publicly owned lands when such trail related resources meet the purposes of this Act or certification criteria set by the Secretary of the Interior per section 3(a)(3) of this Act.

"(ii) PRIVATELY OWNED LANDS.—Congress authorizes the establishment of El Camino Real de los Tejas national historic trail and the respective administration on those portions of the historic trail routes and related historic sites within privately owned lands only through the voluntary and expressed consent of the owner and when such trails and sites qualify for certification as officially established components of the national historic trail. The owner's approval of a certification agreement satisfies the consent requirement. Certification agreements

are not legally binding and may be terminated at any time. Should land ownership change at a certified site, the certification will cease to be valid unless the new owner consents to a new agreement.

"(C) PRIVATE PROPERTY RIGHTS PROTECTION.—Nothing in this Act or in the establishment of any portion of the national historic trail authorizes any person to enter private property without the consent of the owner. Nothing in this Act or in the establishment of any portion of the national historic trail will authorize the Federal Government to restrict private property owner's use or enjoyment of their property subject to other laws or regulations. Authorization of El Camino Real de los Tejas National Historic Trail under this Act does not itself confer any additional authority to apply other Federal laws and regulations on non-Federal lands along the trail. Laws or regulations requiring public entities and agencies to take into consideration a national historic trail shall continue to apply notwithstanding the foregoing. Notwithstanding section 7(g) of this Act, the United States is authorized to acquire privately owned real property or an interest in such property for purposes of the national historic trail only with the consent of the owner of such property and shall have no authority to condemn or otherwise appropriate privately owned real property or an interest in such property for the purposes of El Camino Real de los Tejas National Historic Trail.

"(D) COORDINATION OF ACTIVITIES.—The Secretary of the Interior may coordinate with United States and Mexican public and nongovernmental organizations, academic institutions, and, in consultation with the Secretary of State, the Government of Mexico and its political subdivisions, for the purpose of exchanging trail information and research, fostering trail preservation and educational programs, providing technical assistance, and working to establish an international historic trail with complementary preservation and education programs in each nation.

"(E) CONSULTATION.—The Secretary of the Interior shall consult with appropriate State agencies in the the planning, development, and maintenance of El Camino Real de los Tejas National Historic Trail."

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 2269. Mr. SHELBY proposed an amendment to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

SA 2270. Ms. COLLINS submitted an amendment intended to be proposed by her to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2271. Mr. VOINOVICH submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

#### TEXT OF AMENDMENTS

**SA 2269.** Mr. SHELBY proposed an amendment to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; as follows:

At the appropriate place in the bill, insert the following:

#### TITLE III—PUBLIC TRANSPORTATION

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

This title may be cited as the Federal Public Transportation Act of 2004.

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

(a) AMENDMENTS TO TITLE 49.—Except as otherwise specifically provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision of law, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

(b) UPDATED TERMINOLOGY.—Except for sections 5301(f), 5302(a)(7), and 5315, chapter 53, including the chapter analysis, is amended by striking "mass transportation" each place it appears and inserting "public transportation".

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

(a) DEVELOPMENT AND REVITALIZATION OF PUBLIC TRANSPORTATION SYSTEMS.—Section 5301(a) is amended to read as follows:

"(a) DEVELOPMENT AND REVITALIZATION OF PUBLIC TRANSPORTATION SYSTEMS.—It is in the economic interest of the United States to foster the development and revitalization of public transportation systems that maximize the efficient, secure, and safe mobility of individuals and minimize environmental impacts."

(b) GENERAL FINDINGS.—Section 5301(b)(1) is amended—

(1) by striking "70 percent" and inserting "two-thirds"; and

(2) by striking "urban areas" and inserting "urbanized areas".

(c) PRESERVING THE ENVIRONMENT.—Section 5301(e) is amended—

(1) by striking "an urban" and inserting "a"; and

(2) by striking "under sections 5309 and 5310 of this title".

(d) GENERAL PURPOSES.—Section 5301(f) is amended—

(1) in paragraph (1)—

(A) by striking "improved mass" and inserting "improved public"; and

(B) by striking "public and private mass transportation companies" and inserting "public transportation companies and private companies engaged in public transportation";

(2) in paragraph (2)—

(A) by striking "urban mass" and inserting "public"; and

(B) by striking "public and private mass transportation companies" and inserting "public transportation companies and private companies engaged in public transportation";

(3) in paragraph (3)—

(A) by striking "urban mass" and inserting "public"; and

(B) by striking "public or private mass transportation companies" and inserting "public transportation companies or private companies engaged in public transportation"; and

(4) in paragraph (5), by striking "urban mass" and inserting "public".

##### SEC. 3004. DEFINITIONS.

Section 5302(a) is amended—

(1) in paragraph (1)—

(A) in subparagraph (G)(i), by inserting "including the intercity bus portions of such facility or mall," after "transportation mall,";

(B) in subparagraph (G)(ii), by inserting "except for the intercity bus portion of intermodal facilities or malls," after "commercial revenue-producing facility";

(C) in subparagraph (H)—

(i) by striking "and" after "innovative" and inserting "or"; and

(ii) by striking "or" after the semicolon at the end;

(D) in subparagraph (I), by striking the period at the end and inserting a semicolon; and

(E) by adding at the end the following:

“(J) crime prevention and security, including—

“(i) projects to refine and develop security and emergency response plans; or

“(ii) projects to detect chemical or biological agents in public transportation;

“(K) conducting emergency response drills with public transportation agencies and local first response agencies or security training for public transportation employees, except for expenses relating to operations; or

“(L) establishing a debt service reserve, made up of deposits with a bondholder's trustee, to ensure the timely payment of principal and interest on bonds issued by a grant recipient to finance an eligible project under this chapter.”;

(2) by striking paragraph (9);

(3) by redesignating paragraph (8) as paragraph (9);

(4) by striking paragraph (7) and inserting the following:

“(7) MASS TRANSPORTATION.—The term ‘mass transportation’ means public transportation.

“(8) MOBILITY MANAGEMENT.—The term ‘mobility management’ means a short-range planning or management activity or project that does not include operating public transportation services and—

“(A) improves coordination among public transportation providers, including private companies engaged in public transportation;

“(B) addresses customer needs by tailoring public transportation services to specific market niches; or

“(C) manages public transportation demand.”;

(5) by amending paragraph (10) to read as follows:

“(10) PUBLIC TRANSPORTATION.—The term ‘public transportation’ means transportation by a conveyance that provides local regular and continuing general or special transportation to the public, but does not include school bus, charter bus, intercity passenger rail, or sightseeing transportation.”;

(6) in subparagraphs (A) and (E) of paragraph (15), by striking “and” each place it appears and inserting “or”;

(7) by striking paragraph (16); and

(8) by redesignating paragraph (17) as paragraph (16), to read as follows:

“(16) URBANIZED AREA.—The term ‘urbanized area’ means an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an ‘urbanized area’ by the Secretary of Commerce.”.

#### SEC. 3005. METROPOLITAN TRANSPORTATION PLANNING.

Section 5303 is amended to read as follows:

##### “§ 5303. Metropolitan transportation planning

“(a) DEFINITIONS.—As used in this section and in section 5304, the following definitions shall apply:

“(1) CONSULTATION.—A ‘consultation’ occurs when 1 party—

“(A) confers with another identified party in accordance with an established process;

“(B) prior to taking action, considers that party's views; and

“(C) periodically informs that party about action taken.

“(2) METROPOLITAN PLANNING AREA.—The term ‘metropolitan planning area’ means the geographic area determined by agreement between the metropolitan planning organization and the Governor under subsection (d).

“(3) METROPOLITAN PLANNING ORGANIZATION.—The term ‘metropolitan planning organization’ means the Policy Board of the organization designated under subsection (c).

“(4) NON-METROPOLITAN AREA.—The term ‘non-metropolitan area’ means any geo-

graphic area outside all designated metropolitan planning areas.

“(5) NON-METROPOLITAN LOCAL OFFICIAL.—The term ‘non-metropolitan local official’ means any elected or appointed official of general purpose local government located in a non-metropolitan area who is responsible for transportation services for such local government.

“(b) GENERAL REQUIREMENTS.—

“(1) DEVELOPMENT OF PLANS.—To accomplish the objectives described in section 5301(a), each metropolitan planning organization, in cooperation with the State and public transportation operators, shall develop transportation plans for metropolitan planning areas of the State in which it is located.

“(2) CONTENTS.—The plans developed under paragraph (1) for each metropolitan planning area shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

“(3) PROCESS OF DEVELOPMENT.—The process for developing the plans shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

“(4) PLANNING AND PROJECT DEVELOPMENT.—The metropolitan planning organization, the State Department of Transportation, and the appropriate public transportation provider shall agree upon the approaches that will be used to evaluate alternatives and identify transportation improvements that address the most complex problems and pressing transportation needs in the metropolitan area.

“(c) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

“(1) IN GENERAL.—To carry out the transportation planning process under this section, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 50,000 residents—

“(A) by agreement between the Governor and units of general purpose local government that combined represent not less than 75 percent of the affected population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area); or

“(B) in accordance with procedures established by applicable State or local law.

“(2) STRUCTURE.—Each metropolitan planning organization designated under paragraph (1) that serves an area identified as a transportation management area shall consist of—

“(A) local elected officials;

“(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; and

“(C) appropriate State officials.

“(3) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities—

“(A) to develop plans and programs for adoption by a metropolitan planning organization; and

“(B) to develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

“(4) CONTINUING DESIGNATION.—The designation of a metropolitan planning organi-

zation under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (5).

“(5) REDESIGNATION PROCEDURES.—A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that combined represent not less than 75 percent of the existing planning area population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area) as appropriate to carry out this section.

“(6) DESIGNATION OF MORE THAN 1 METROPOLITAN PLANNING ORGANIZATION.—More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the existing metropolitan planning area make designation of more than 1 metropolitan planning organization for the area appropriate.

“(d) METROPOLITAN PLANNING AREA BOUNDARIES.—

“(1) IN GENERAL.—For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

“(2) INCLUDED AREA.—Each metropolitan planning area—

“(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and

“(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Office of Management and Budget.

“(3) IDENTIFICATION OF NEW URBANIZED AREAS WITHIN EXISTING PLANNING AREA BOUNDARIES.—The designation by the Bureau of the Census of new urbanized areas within an existing metropolitan planning area shall not require the redesignation of the existing metropolitan planning organization.

“(4) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the boundaries of the metropolitan planning area in existence as of the date of enactment of this paragraph shall be retained, except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in accordance with paragraph (5).

“(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—If an urbanized area is designated after the date of enactment of this paragraph in a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

“(A) shall be established in accordance with subsection (c)(1);

“(B) shall encompass the areas described in paragraph (2)(A);

“(C) may encompass the areas described in paragraph (2)(B); and

“(D) may address any nonattainment identified under the Clean Air Act (42 U.S.C. 7401 et seq.) for ozone or carbon monoxide.

“(e) COORDINATION IN MULTISTATE AREAS.—

“(1) IN GENERAL.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

“(2) INTERSTATE COMPACTS.—States are authorized—

“(A) to enter into agreements or compacts with other States, which are not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

“(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

“(3) LAKE TAHOE REGION.—

“(A) DEFINITION.—In this paragraph, the term ‘Lake Tahoe region’ has the meaning given the term ‘region’ in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96-551 (94 Stat. 3234).

“(B) TRANSPORTATION PLANNING PROCESS.—The Secretary shall—

“(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and

“(ii) coordinate the transportation planning process with the planning process required of State and local governments under this section and section 5304.

“(C) INTERSTATE COMPACT.—

“(i) IN GENERAL.—Subject to clause (ii) and notwithstanding subsection (c), to carry out the transportation planning process required by this section, California and Nevada may designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governors of the States of California and Nevada and units of general purpose local government that combined represent not less than 75 percent of the affected population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area), or in accordance with procedures established by applicable State or local law.

“(ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—

“(I) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

“(II) FUNDING.—In addition to funds made available to the metropolitan planning organization under other provisions of title 23 and this chapter, not more than 1 percent of the funds allocated under section 202 of title 23 may be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.

“(D) ACTIVITIES.—Highway projects included in transportation plans developed under this paragraph—

“(i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and

“(ii) may, in accordance with chapter 2 of title 23, be funded using funds allocated under section 202 of title 23.

“(f) COORDINATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

“(1) NONATTAINMENT AREAS.—If more than 1 metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans required by this section.

“(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE METROPOLITAN PLANNING AREAS.—If a transportation improvement funded from the highway trust fund is lo-

cated within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organizations shall coordinate plans regarding the transportation improvement.

“(3) INTERREGIONAL AND INTERSTATE PROJECT IMPACTS.—Planning for National Highway System, commuter rail projects, or other projects with substantial impacts outside a single metropolitan planning area or State shall be coordinated directly with the affected, contiguous metropolitan planning organizations and States.

“(4) COORDINATION WITH OTHER PLANNING PROCESSES.—

“(A) IN GENERAL.—The Secretary shall encourage each metropolitan planning organization to coordinate its planning process, to the maximum extent practicable, with those officials responsible for other types of planning activities that are affected by transportation, including State and local land use planning, economic development, environmental protection, airport operations, housing, and freight.

“(B) OTHER CONSIDERATIONS.—The metropolitan planning process shall develop transportation plans with due consideration of, and in coordination with, other related planning activities within the metropolitan area. This should include the design and delivery of transportation services within the metropolitan area that are provided by—

“(i) recipients of assistance under this chapter;

“(ii) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and

“(iii) recipients of assistance under section 204 of title 23.

“(g) SCOPE OF PLANNING PROCESS.—

“(1) IN GENERAL.—The goals and objectives developed through the metropolitan planning process for a metropolitan planning area under this section shall address, in relation to the performance of the metropolitan area transportation systems—

“(A) supporting the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency, including through services provided by public and private operators;

“(B) increasing the safety of the transportation system for motorized and non-motorized users;

“(C) increasing the security of the transportation system for motorized and non-motorized users;

“(D) increasing the accessibility and mobility of people and for freight, including through services provided by public and private operators;

“(E) protecting and enhancing the environment, promoting energy conservation, and promoting consistency between transportation improvements and State and local land use planning and economic development patterns;

“(F) enhancing the integration and connectivity of the transportation system, across and between modes, for people and freight, including through services provided by public and private operators;

“(G) promoting efficient system management and operation; and

“(H) emphasizing the preservation of the existing transportation system, including services provided by public and private operators.

“(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under title 23 or 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.

“(h) DEVELOPMENT OF TRANSPORTATION PLAN.—

“(1) IN GENERAL.—Each metropolitan planning organization shall develop, and update not less frequently than every 3 years, a transportation plan for its metropolitan planning area in accordance with this subsection. In developing the transportation plan under this section, each metropolitan planning organization shall consider the factors described in subsection (f) over a 20-year forecast period. For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

“(2) CONTENTS.—A transportation plan under this subsection shall be in a form that the Secretary determines to be appropriate and shall contain—

“(A) an identification of transportation facilities, including major roadways, public transportation, multimodal and intermodal facilities, and intermodal connectors, that should function as an integrated metropolitan transportation system, emphasizing those facilities that serve important national and regional transportation functions;

“(B) a financial plan that—

“(i) demonstrates how the adopted transportation plan can be implemented;

“(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan;

“(iii) recommends any additional financing strategies for needed projects and programs; and

“(iv) may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if approved by the Secretary and reasonable additional resources beyond those identified in the financial plan were available;

“(C) operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods;

“(D) capital investment and other strategies to preserve the existing metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs; and

“(E) proposed transportation and transit enhancement activities.

“(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas in non-attainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

“(4) PARTICIPATION BY INTERESTED PARTIES.—

“(A) DEVELOPMENT OF PARTICIPATION PLAN.—Not less frequently than every 3 years, each metropolitan planning organization shall develop and adopt a plan for participation in the process for developing the metropolitan transportation plan by—

“(i) citizens;

“(ii) affected public agencies;

“(iii) representatives of public transportation employees;

“(iv) freight shippers;

“(v) providers of freight transportation services;

“(vi) private providers of transportation;

“(vii) representatives of users of public transit;

“(viii) representatives of users of pedestrian walkways and bicycle transportation facilities; and

“(ix) other interested parties.

“(B) CONTENTS OF PARTICIPATION PLAN.—The participation plan—

“(i) shall be developed in a manner the Secretary determines to be appropriate;

“(ii) shall be developed in consultation with all interested parties; and

“(iii) shall provide that all interested parties have reasonable opportunities to comment on—

“(I) the process for developing the transportation plan; and

“(II) the contents of the transportation plan.

“(C) CERTIFICATION.—Before the approval of a transportation plan by the Governor and metropolitan planning organizations, each metropolitan planning organization shall certify that it has complied with the requirements of the participation plan it has adopted.

“(5) APPROVAL OF THE TRANSPORTATION PLAN.—

“(A) IN GENERAL.—Each transportation plan prepared by a metropolitan planning organization shall be—

“(i) approved by the Metropolitan Planning Organization; and

“(ii) submitted to the Governor for approval of the first 5 years of the plan.

“(B) PROJECT ADVANCEMENT.—The projects listed in the first 5 years of the plan may be selected for advancement consistent with the project selection requirements.

“(C) MAJOR AMENDMENTS.—Major amendments to the list described in subparagraph (B), including the addition, deletion, or concept and scope change of a regionally significant project, may not be advanced without—

“(i) appropriate public involvement;

“(ii) financial planning;

“(iii) transportation conformity analyses; and

“(iv) a finding by the Federal Highway Administration and Federal Transit Administration that the amended plan was produced in a manner consistent with this section.

“(6) INCLUDED PROJECTS.—

“(A) PROJECTS UNDER CHAPTER 1 OF TITLE 23 AND THIS CHAPTER.—A transportation plan developed under this section for a metropolitan area shall include the projects and strategies within the metropolitan area that are proposed for funding under chapter 1 of title 23 and this chapter.

“(B) PROJECTS UNDER CHAPTER 2 OF TITLE 23.—

“(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the metropolitan transportation plan.

“(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not regionally significant shall be grouped in 1 line item or identified individually in the metropolitan transportation plan.

“(7) SELECTION OF PROJECTS.—

“(A) IN GENERAL.—Except as otherwise provided in subsection (i)(4), the selection of federally funded projects in metropolitan planning areas shall be carried out, from the approved transportation plan—

“(i) by the State, in the case of projects under chapter 1 of title 23 or section 5308, 5310, 5311, or 5317 of this title;

“(ii) by the designated recipient, in the case of projects under section 5307; and

“(iii) 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 from the first 5 years of

the approved transportation plan in place of another project in the same 5-year period.

“(8) PUBLICATION REQUIREMENTS.—

“(A) PUBLICATION OF TRANSPORTATION PLAN.—A transportation plan involving Federal 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, including investments in pedestrian walkways and bicycle transportation facilities, for which Federal funds have been obligated in the preceding 5 years shall be published or otherwise made available for public review by the cooperative effort of the State, transit operator, and the metropolitan planning organization. This listing shall be consistent with the funding categories identified in the first 5 years of the transportation plan.

“(C) RULEMAKING.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations specifying—

“(i) the types of data to be included in the list described in subparagraph (B), including—

“(I) the name, type, purpose, and location (geocoded) of each project;

“(II) the Federal, State, and local identification numbers assigned to each project;

“(III) amounts obligated and expended on each project, sorted by funding source and transportation mode, and including the date on which each obligation was made; and

“(IV) the status of each project; and

“(ii) the media through which the list described in subparagraph (B) will be made available to the public, including written and visual components for each of the projects listed.

“(i) TRANSPORTATION MANAGEMENT AREAS.—

“(1) REQUIRED IDENTIFICATION.—The Secretary shall identify as a transportation management area each urbanized area with a population of more than 200,000 individuals.

“(2) TRANSPORTATION PLANS.—Transportation plans for a metropolitan planning area serving a transportation management area shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and transit operators.

“(3) CONGESTION MANAGEMENT SYSTEM.—

“(A) IN GENERAL.—The transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 and this chapter through the use of travel demand reduction and operational management strategies.

“(B) PHASE-IN SCHEDULE.—The Secretary shall establish a phase-in schedule that provides for not less than 1-year after the identification of transportation management areas under paragraph (1) to achieve full compliance with the requirements of this section.

“(4) SELECTION OF PROJECTS.—

“(A) IN GENERAL.—All federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under title 23 (except for projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program) or under this chapter shall be selected for implementation from the approved transportation plan by the metropolitan planning organization designated for the area in consultation with the

State and any affected public transit operator.

“(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects on the National Highway System carried out within the boundaries of a metropolitan planning area serving a transportation management area and projects carried out within such boundaries under the bridge program or the Interstate maintenance program under title 23 shall be selected for implementation from the approved transportation plan by the State in cooperation with the metropolitan planning organization designated for the area.

“(5) CERTIFICATION.—

“(A) IN GENERAL.—The Secretary shall—

“(i) ensure that the metropolitan planning process of a metropolitan planning organization serving a transportation management area is being carried out in accordance with Federal law; and

“(ii) subject to subparagraph (B), certify, not less frequently than once every 3 years, that the requirements of this paragraph are met with respect to the metropolitan planning process.

“(B) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make the certification under subparagraph (A) if—

“(i) the transportation planning process complies with the requirements of this section and other applicable Federal law; and

“(ii) a transportation plan for the metropolitan planning area has been approved by the metropolitan planning organization and the Governor.

“(C) PENALTY FOR FAILING TO CERTIFY.—

“(i) WITHHOLDING PROJECT FUNDS.—If the metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold any funds otherwise available to the metropolitan planning area for projects funded under title 23 and this chapter.

“(ii) RESTORATION OF WITHHELD FUNDS.—Any funds withheld under clause (i) shall be restored to the metropolitan planning area when the metropolitan planning process is certified by the Secretary.

“(D) REVIEW OF CERTIFICATION.—In making a certification under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

“(j) ABBREVIATED PLANS FOR CERTAIN AREAS.—

“(1) IN GENERAL.—Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, after considering the complexity of transportation problems in the area.

“(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.).

“(k) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

“(1) IN GENERAL.—Notwithstanding any other provisions of title 23 or this chapter, Federal funds may not be advanced for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) for any highway project that will result in a significant increase in carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

“(2) APPLICABILITY.—This subsection applies to a nonattainment area within the

metropolitan planning area boundaries determined under subsection (d).

“(l) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project that is not eligible under title 23 or this chapter.

“(m) AVAILABILITY OF FUNDS.—Funds set aside under section 104(f) of title 23 or section 5308 of this title shall be available to carry out this section.

“(n) CONTINUATION OF CURRENT REVIEW PRACTICE.—Any decision by the Secretary concerning a plan described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”

#### SEC. 3006. STATEWIDE TRANSPORTATION PLANNING.

Section 5304 is amended to read as follows:

##### “§ 5304. Statewide transportation planning

“(a) GENERAL REQUIREMENTS.—

“(1) DEVELOPMENT OF PLANS AND PROGRAMS.—To support the policies described in section 5301(a), each State shall develop a statewide transportation plan (referred to in this section as a “Plan”) and a statewide transportation improvement program (referred to in this section as a “Program”) for all areas of the State subject to section 5303.

“(2) CONTENTS.—The Plan and the Program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

“(3) PROCESS OF DEVELOPMENT.—The process for developing the Plan and the Program shall—

“(A) provide for the consideration of all modes of transportation and the policies described in section 5301(a); and

“(B) be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

“(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—Each State shall—

“(1) coordinate planning under this section with the transportation planning activities under section 5303 for metropolitan areas of the State and with other related statewide planning activities, such as trade and economic development and related multistate planning efforts; and

“(2) develop the transportation portion of the State implementation plan as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

“(c) INTERSTATE AGREEMENTS.—States may enter into agreements or compacts with other States for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

“(d) SCOPE OF PLANNING PROCESS.—

“(1) IN GENERAL.—Each State shall carry out a statewide transportation planning process that provides for consideration of projects, strategies, and implementing projects and services that will—

“(A) support the economic vitality of the United States, the States, nonmetropolitan areas, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

“(B) increase the safety of the transportation system for motorized and non-motorized users;

“(C) increase the security of the transportation system for motorized and non-motorized users;

“(D) increase the accessibility and mobility of people and freight;

“(E) protect and enhance the environment, promote energy conservation, promote consistency between transportation improvements and State and local land use planning and economic development patterns, and improve the quality of life;

“(F) enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

“(G) promote efficient system management and operation; and

“(H) emphasize the preservation of the existing transportation system.

“(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under title 23 or this title, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a Plan, a Program, a project or strategy, or the certification of a planning process.

“(e) ADDITIONAL REQUIREMENTS.—In carrying out planning under this section, each State shall consider—

“(1) with respect to nonmetropolitan areas, the concerns of affected local officials with responsibility for transportation;

“(2) the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

“(3) coordination of Plans, Programs, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

“(f) STATEWIDE TRANSPORTATION PLAN.—

“(1) DEVELOPMENT.—Each State shall develop a 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.—The Plan shall be developed for each metropolitan area in the State in cooperation with the metropolitan planning organization designated for the metropolitan area under section 5303.

“(B) NONMETROPOLITAN AREAS.—With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in consultation with affected nonmetropolitan officials with responsibility for transportation. The consultation process shall not require the review or approval of the Secretary.

“(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the Plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

“(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the Plan, the State shall—

“(A) provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, 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.

“(4) FINANCIAL PLAN.—The Plan may include a financial plan that—

“(A) demonstrates how the adopted Plan can be implemented;

“(B) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Plan;

“(C) recommends any additional financing strategies for needed projects and programs; and

“(D) may include, for illustrative purposes, additional projects that would be included in the adopted Plan if reasonable additional resources beyond those identified in the financial plan were available.

“(5) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—A State shall not be required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (4).

“(6) EXISTING SYSTEM.—The Plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

“(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—

“(1) DEVELOPMENT.—Each State shall develop a Program for all areas of the State.

“(2) CONSULTATION WITH GOVERNMENTS.—

“(A) METROPOLITAN AREAS.—With respect to each metropolitan area in the State, the Program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan area under section 5303.

“(B) NONMETROPOLITAN AREAS.—With respect to each nonmetropolitan area in the State, the Program shall be developed in consultation with affected nonmetropolitan local officials with responsibility for transportation. The consultation process shall not require the review or approval of the Secretary.

“(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the Program shall be developed in consultation with the tribal government and the Secretary of the Interior.

“(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the Program, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, providers of freight transportation services, representatives of users of public transit, representatives of users of pedestrian walkways and bicycle transportation facilities, and other interested parties with a reasonable opportunity to comment on the proposed Program.

“(4) INCLUDED PROJECTS.—

“(A) IN GENERAL.—A Program developed under this subsection for a State shall include federally supported surface transportation expenditures within the boundaries of the State.

“(B) LISTING OF PROJECTS.—The Program shall cover a minimum of 5 years, identify projects by year, be fiscally constrained by year, and be updated not less than once every 5 years. An annual listing of projects for which funds have been obligated in the preceding 5 years in each metropolitan planning area shall be published or otherwise made available by the cooperative effort of the State, transit operator, and the metropolitan planning organization for public review. The listing shall be consistent with the funding categories identified in the first 5 years of each metropolitan transportation plan.

“(C) INDIVIDUAL IDENTIFICATION.—

“(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program.

“(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually.

“(D) CONSISTENCY WITH STATEWIDE TRANSPORTATION PLAN.—Each project shall be—

“(i) consistent with the Plan developed under this section for the State;

“(ii) identical to the project or phase of the project as described in each year of the initial 5 years of an approved metropolitan transportation plan; and

“(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act (42 U.S.C. 7401 et seq.), if the project is carried out in an area designated as nonattainment for ozone or carbon monoxide under that Act.

“(E) 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.

“(F) FINANCIAL PLAN.—The Program may include a financial plan that—

“(i) demonstrates how the approved Program can be implemented;

“(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Program;

“(iii) recommends any additional financing strategies for needed projects and programs; and

“(iv) 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.

“(G) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

“(i) NO REQUIRED SELECTION.—Notwithstanding subparagraph (F), a State shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F).

“(ii) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F) for inclusion in an approved Program.

“(H) PRIORITIES.—The Program shall reflect the priorities for programming and expenditures of funds, including transportation and transit enhancement activities, required by title 23 and this chapter, and transportation control measures included in the State's air quality implementation plan.

“(5) PROJECT SELECTION FOR AREAS WITH POPULATIONS OF FEWER THAN 50,000 INDIVIDUALS.—

“(A) IN GENERAL.—Projects carried out in areas with populations of fewer than 50,000 individuals shall be selected, from the approved Program (excluding projects carried out under the National Highway System, the bridge program, or the Interstate maintenance program under title 23 or sections 5310 and 5311 of this title), by the State in cooperation with the affected nonmetropolitan local officials with responsibility for transportation.

“(B) CERTAIN PROGRAMS.—Projects carried out in areas with populations of fewer than 50,000 individuals under the National Highway System, the bridge program, or the Interstate maintenance program under title 23 or under sections 5310 and 5311 of this title

shall be selected, from the approved Program, by the State in consultation with the affected local officials with responsibility for transportation.

“(6) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM APPROVAL.—A Program developed under this subsection shall be reviewed and based on a current planning finding approved by the Secretary not less frequently than once every 5 years.

“(7) PLANNING FINDING.—Not less frequently than once every 5 years, the Secretary shall determine whether the transportation planning process through which Plans and Programs are developed are consistent with this section and section 5303.

“(8) 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 Program in place of another project in the program.

“(h) FUNDING.—Funds set aside pursuant to section 104(i) of title 23 and 5308 of this title shall be available to carry out this section.

“(i) TREATMENT OF CERTAIN STATE LAWS AS CONGESTION MANAGEMENT SYSTEMS.—For purposes of this section and section 5303, State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management system under section 5303(i)(3) if the Secretary determines that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of section 5303.

“(j) CONTINUATION OF CURRENT REVIEW PRACTICE.—Any decision by the Secretary concerning a metropolitan or statewide transportation plan or the Statewide Transportation Improvement Program described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“(k) INTEGRATION OF PLANNING AND ENVIRONMENTAL STUDIES.—Section 5303(o) shall also apply to the planning process established under this section, except that the planning factors to be considered shall be those set forth in subsection (d).”.

#### SEC. 3007. TRANSPORTATION MANAGEMENT AREAS.

Section 5305 is repealed.

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

Section 5306 is amended—

(1) in subsection (a)—

(A) by striking “5305 of this title” and inserting “5308”; and

(B) by inserting “, as determined by local policies, criteria, and decision making,” after “feasible”;

(2) in subsection (b) by striking “5303–5305 of this title” and inserting “5303, 5304, and 5308”; and

(3) by adding at the end the following:

“(c) REGULATIONS.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations describing how the requirements under this chapter relating to subsection (a) shall be enforced.

#### SEC. 3009. URBANIZED AREA FORMULA GRANTS.

(a) TECHNICAL AMENDMENTS.—Section 5307 is amended—

(1) by striking subsections (h), (j) and (k); and

(2) by redesignating subsections (i), (l), (m), and (n) as subsections (h), (i), (j), and (k), respectively.

(b) DEFINITIONS.—Section 5307(a) is amended—

(1) by amending paragraph (2)(A) to read as follows:

“(A) an entity designated, in accordance with the planning process under sections

5303, 5304, and 5306, by the chief executive officer of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under sections 5336 and 5337 that are attributable to transportation management areas designated under section 5303; or”; and

(2) by adding at the end the following:

“(3) SUBRECIPIENT.—The term ‘subrecipient’ means a State or local governmental authority, a nonprofit organization, or a private operator of public transportation service that may receive a Federal transit program grant indirectly through a recipient, rather than directly from the Federal Government.”.

(c) GENERAL AUTHORITY.—Section 5307(b) is amended—

(1) by amending paragraph (1) to read as follows:

“(1) IN GENERAL.—The Secretary of Transportation may award grants under this section for—

“(A) capital projects, including associated capital maintenance items;

“(B) planning, including mobility management;

“(C) transit enhancements;

“(D) operating costs of equipment and facilities for use in public transportation in an urbanized area with a population of less than 200,000; and

“(E) operating costs of equipment and facilities for use in public transportation in a portion or portions of an urbanized area with a population of at least 200,000, but not more than 225,000, if—

“(i) the urbanized area includes parts of more than one State or Commonwealth;

“(ii) the portion of the urbanized area includes only one State or Commonwealth;

“(iii) the population of the portion of the urbanized area is less than 30,000; and

“(iv) the grants will not be used to provide public transportation outside of the portion.”;

(2) by amending paragraph (2) to read as follows:

“(2) SPECIAL RULE FOR FISCAL YEARS 2004 THROUGH 2006—

“(A) INCREASED FLEXIBILITY.—The Secretary may award grants under this section, from funds made available to carry out this section for fiscal years 2004 through 2006, to finance the operating cost of equipment and facilities for use in mass transportation in an urbanized area with a population of at least 200,000 as determined by the 2000 decennial census of population if—

“(i) the urbanized area had a population of less than 200,000, as determined by the 1990 decennial census of population;

“(ii) a portion of the urbanized area was a separate urbanized area with a population of less than 200,000, as determined by the 1990 decennial census of population;

“(iii) the area was not designated as an urbanized area as determined by the 1990 decennial census of population; and

“(iv) a portion of the area was not designated as an urbanized area, as determined by the 1990 decennial census and received assistance under section 5311 in fiscal year 2002.

“(B) MAXIMUM AMOUNTS IN FISCAL YEAR 2004.—In fiscal year 2004—

“(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

“(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than the amount apportioned to the urbanized area under this section for fiscal year 2003; and



“(iii) each portion of any area not designated as an urbanized area under the 1990 Federal decennial census and eligible to receive funds under subparagraph (A)(iv) shall receive an amount of funds made available to carry out this section that is not less than the amount the portion of the area received under section 5311 in fiscal year 2002.

“(C) MAXIMUM AMOUNTS IN FISCAL YEAR 2005.—In fiscal year 2005—

“(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 50 percent of the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

“(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 50 percent of the amount apportioned to the urbanized area under this section for fiscal year 2003; and

“(iii) each portion of any area not designated as an urbanized area under the 1990 decennial census and eligible to receive funds under subparagraph (A)(iv) shall receive an amount of funds made available to carry out this section that is not less 50 percent of the amount the portion of the area received under section 5311 in fiscal year 2002.

“(D) MAXIMUM AMOUNTS IN FISCAL YEAR 2006.—In fiscal year 2006—

“(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 25 percent of the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000 as determined in the 1990 decennial census of population;

“(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 25 percent of the amount apportioned to the urbanized area under this section for fiscal year 2003; and

“(iii) each portion of any area not designated as an urbanized area under the 1990 decennial census and eligible to receive funds under subparagraph (A)(iv) shall receive an amount of funds made available to carry out this section that is not less than 25 percent of the amount the portion of the area received under section 5311 in fiscal year 2002.”; and

(3) by striking paragraph (4).

(d) PUBLIC PARTICIPATION REQUIREMENTS.—Section 5307(c)(5) is amended by striking “section 5336” and inserting “sections 5336 and 5337”.

(e) GRANT RECIPIENT REQUIREMENTS.—Section 5307(d)(1) is amended—

(1) in subparagraph (A), by inserting “, including safety and security aspects of the program” after “program”;

(2) in subparagraph (E), by striking “section” and all that follows and inserting “section, the recipient will comply with sections 5323 and 5325.”;

(3) in subparagraph (H), by striking “sections 5301(a) and (d), 5303–5306, and 5310(a)–(d) of this title” and inserting “subsections (a) and (d) of section 5301 and sections 5303 through 5306”;

(4) in subparagraph (I) by striking “and” at the end;

(5) in subparagraph (J), by striking the period at the end and inserting “; and”; and

(6) by adding at the end the following:

“(K) if located in an urbanized area with a population of not less than 200,000, will expend 1 percent of the amount the recipient receives each fiscal year under this section for transit enhancement activities described in section 5302(a)(15).”.

(f) GOVERNMENT'S SHARE OF COSTS.—Section 5307(e) is amended—

(1) by striking the first sentence and inserting the following:

“(1) CAPITAL PROJECTS.—A grant for a capital project under this section shall cover 80 percent of the net project cost.”;

(2) by striking “A grant for operating expenses” and inserting the following:

“(2) OPERATING EXPENSES.—A grant for operating expenses”;

(3) by striking the fourth sentence and inserting the following:

“(3) REMAINING COSTS.—The remainder of the net project cost shall be provided in cash from non-Federal sources or revenues derived from the sale of advertising and concessions and amounts received under a service agreement with a State or local social service agency or a private social service organization.”; and

(4) by adding at the end the following: “The prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to the remainder.”.

(g) UNDERTAKING PROJECTS IN ADVANCE.—Section 5307(g) is amended by striking paragraph (4).

(h) RELATIONSHIP TO OTHER LAWS.—Section 5307(k), as redesignated, is amended to read as follows:

“(k) RELATIONSHIP TO OTHER LAWS.—

“(1) APPLICABLE PROVISIONS.—Sections 5301, 5302, 5303, 5304, 5306, 5315(c), 5318, 5319, 5323, 5325, 5327, 5329, 5330, 5331, 5332, 5333 and 5335 apply to this section and to any grant made under this section.

“(2) INAPPLICABLE PROVISIONS.—

“(A) IN GENERAL.—Except as provided under this section, no other provision of this chapter applies to this section or to a grant made under this section.

“(B) TITLE 5.—The provision of assistance under this chapter shall not be construed as bringing within the application of chapter 15 of title 5, any nonsupervisory employee of a public transportation system (or any other agency or entity performing related functions) to which such chapter is otherwise inapplicable.”.

#### SEC. 3010. PLANNING PROGRAMS.

(a) IN GENERAL.—Section 5308 is amended to read as follows:

##### “§ 5308. Planning programs

“(a) GRANTS AUTHORIZED.—Under criteria established by the Secretary, the Secretary may award grants to States, authorities of the States, metropolitan planning organizations, and local governmental authorities, make agreements with other departments, agencies, or instrumentalities of the Government, or enter into contracts with private nonprofit or for-profit entities to—

“(1) develop transportation plans and programs;

“(2) plan, engineer, design, and evaluate a public transportation project; and

“(3) conduct technical studies relating to public transportation, including—

“(A) studies related to management, planning, operations, capital requirements, and economic feasibility;

“(B) evaluations of previously financed projects;

“(C) peer reviews and exchanges of technical data, information, assistance, and related activities in support of planning and environmental analyses among metropolitan planning organizations and other transportation planners; and

“(D) other similar and related activities preliminary to, and in preparation for, constructing, acquiring, or improving the operation of facilities and equipment.

“(b) PURPOSE.—To the extent practicable, the Secretary shall ensure that amounts appropriated pursuant to section 5338 to carry out this section and sections 5303 through 5305 are used to support balanced and com-

prehensive transportation planning that considers the relationships among land use and all transportation modes, without regard to the programmatic source of the planning amounts.

“(c) METROPOLITAN PLANNING PROGRAM.—

“(1) ALLOCATIONS TO STATES.—

“(A) IN GENERAL.—The Secretary shall allocate 80 percent of the amount made available under subsection (g)(3)(A) to States to carry out sections 5303 and 5306 in a ratio equal to the population in urbanized areas in each State, divided by the total population in urbanized areas in all States, as shown by the latest available decennial census of population.

“(B) MINIMUM ALLOCATION.—Each State shall receive not less than 0.5 percent of the total amount allocated under this paragraph.

“(2) AVAILABILITY OF FUNDS.—A State receiving an allocation under paragraph (1) shall promptly distribute such funds to metropolitan planning organizations in the State under a formula—

“(A) developed by the State in cooperation with the metropolitan planning organizations;

“(B) approved by the Secretary of Transportation;

“(C) that considers population in urbanized areas; and

“(D) that provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in this section.

“(3) SUPPLEMENTAL ALLOCATIONS.—

“(A) IN GENERAL.—The Secretary shall allocate 20 percent of the amount made available under subsection (g)(3)(A) to States to supplement allocations made under paragraph (1) for metropolitan planning organizations.

“(B) ALLOCATION FORMULA.—Amounts under this paragraph shall be allocated under a formula that reflects the additional cost of carrying out planning, programming, and project selection responsibilities in complex metropolitan planning areas under sections 5303 through 5306.

“(d) STATE PLANNING AND RESEARCH PROGRAM.—

“(1) IN GENERAL.—The amounts made available pursuant to subsection (g)(3)(B) shall be allocated to States for grants and contracts to carry out sections 5304, 5306, 5315, and 5322 so that each State receives an amount equal to the ratio of the population in urbanized areas in that State, divided by the total population in urbanized areas in all States, as shown by the latest available decennial census.

“(2) MINIMUM ALLOCATION.—Each State shall receive not less than 0.5 percent of the amount allocated under this subsection.

“(3) REALLOCATION.—A State may authorize part of the amount made available under this subsection to be used to supplement amounts available under subsection (c).

“(e) PLANNING CAPACITY BUILDING PROGRAM.—

“(1) ESTABLISHMENT.—The Secretary shall establish a Planning Capacity Building Program (referred to in this subsection as the “Program”) to support and fund innovative practices and enhancements in transportation planning.

“(2) PURPOSE.—The purpose of the Program shall be to promote activities that support and strengthen the planning processes required under this section and sections 5303 and 5304.

“(3) ADMINISTRATION.—The Program shall be administered by the Federal Transit Administration in cooperation with the Federal Highway Administration.

“(4) USE OF FUNDS.—

“(A) IN GENERAL.—Appropriations authorized under subsection (g)(1) to carry out this subsection may be used—

“(i) to provide incentive grants to States, metropolitan planning organizations, and public transportation operators; and

“(ii) to conduct research, disseminate information, and provide technical assistance.

“(B) GRANTS, CONTRACTS, COOPERATIVE AGREEMENTS.—In carrying out the activities described in paragraph (2)(B), the Secretary may—

“(i) expend appropriated funds directly; or

“(ii) award grants to, or enter into contracts, cooperative agreements, and other transactions, with a Federal agency, State agency, local governmental authority, association, nonprofit or for-profit entity, or institution of higher education.

“(f) GOVERNMENT'S SHARE OF COSTS.—Amounts made available to carry out subsections (c), (d), and (e) may not exceed 80 percent of the costs of the activity unless the Secretary of Transportation determines that it is in the interests of the Government not to require a State or local match.

“(g) ALLOCATION OF FUNDS.—Of the amounts made available under section 5338(b)(2)(B) for fiscal year 2005 and each fiscal year thereafter to carry out this section—

“(1) \$5,000,000 shall be allocated for the Planning Capacity Building Program established under subsection (e);

“(2) \$20,000,000 shall be allocated for grants under subsection (a)(2) for alternatives analyses required by section 5309(e)(2)(A); and

“(3) of the remaining amount—

“(A) 82.72 percent shall be allocated for the metropolitan planning program described in subsection (d); and

“(B) 17.28 percent shall be allocated to carry out subsection (b).

“(h) REALLOCATIONS.—Any amount allocated under this section that has not been used 3 years after the end of the fiscal year in which the amount was allocated shall be reallocated among the States.”

(b) CONFORMING AMENDMENT.—The item relating to section 5308 in the table of sections for chapter 53 is amended to read as follows: “5308. Planning programs.”

#### SEC. 3011. CAPITAL INVESTMENT PROGRAM.

(a) SECTION HEADING.—The section heading of section 5309 is amended to read as follows:

##### “§ 5309. Capital investment grants”.

(b) GENERAL AUTHORITY.—Section 5309(a) is amended—

(1) in paragraph (1)—

(A) by striking “(1) The Secretary of Transportation may make grants and loans” and inserting the following:

“(1) GRANTS AUTHORIZED.—The Secretary may award grants”;

(B) in subparagraph (A), by striking “alternatives analysis related to the development of systems,”;

(C) by striking subparagraphs (B), (C), (D), and (G);

(D) by redesignating subparagraphs (E), (F), and (H) as subparagraphs (B), (C), and (D), respectively;

(E) in subparagraph (C), as redesignated, by striking the semicolon at the end and inserting “, including programs of bus and bus-related projects for assistance to subrecipients which are public agencies, private companies engaged in public transportation, or private nonprofit organizations; and”;

(F) in subparagraph (D), as redesignated—

(i) by striking “to support fixed guideway systems”;

(ii) by striking “dedicated bus and high occupancy vehicle”;

(2) by amending paragraph (2) to read as follows:

“(2) GRANTEE REQUIREMENTS.—

“(A) GRANTEE IN AN URBANIZED AREA.—The Secretary shall require that any grants awarded under this section to a recipient lo-

cated in an urbanized area shall be subject to all terms, conditions, requirements, and provisions that the Secretary determines to be necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in the value of real property resulting from the project assisted under this section.

“(B) GRANTEE NOT IN AN URBANIZED AREA.—The Secretary shall require that any grants awarded under this section to a recipient not located in an urbanized area shall be subject to the same terms, conditions, requirements, and provisions as a recipient or subrecipient of assistance under section 5311.

“(C) SUBRECIPIENT.—The Secretary shall require that any private, nonprofit organization that is a subrecipient of a grant awarded under this section shall be subject to the same terms, conditions, requirements, and provisions as a subrecipient of assistance under section 5310.”; and

(3) by adding at the end the following:

“(3) CERTIFICATION.—An applicant that has submitted the certifications required under subparagraphs (A), (B), (C), and (H) of section 5307(d)(1) shall be deemed to have provided sufficient information upon which the Secretary may make the findings required under this subsection.”

(c) DEFINED TERM.—Section 5309(b) is amended to read as follows:

“(b) DEFINED TERM.—As used in this section, the term ‘alternatives analysis’ means a study conducted as part of the transportation planning process required under sections 5303 and 5304, which includes—

“(1) an assessment of a wide range of public transportation alternatives designed to address a transportation problem in a corridor or subarea;

“(2) sufficient information to enable the Secretary to make the findings of project justification and local financial commitment required under this section;

“(3) the selection of a locally preferred alternative; and

“(4) the adoption of the locally preferred alternative as part of the long-range transportation plan required under section 5303.”

(d) GRANT REQUIREMENTS.—Section 5309(d) is amended to read as follows:

“(d) GRANT REQUIREMENTS.—The Secretary may not approve a grant for a project under this section unless the Secretary determines that—

“(1) the project is part of an approved transportation plan and program of projects required under sections 5303, 5304, and 5306; and

“(2) the applicant has, or will have—

“(A) the legal, financial, and technical capacity to carry out the project (including safety and security aspects of the project);

“(B) satisfactory continuing control over the use of the equipment or facilities; and

“(C) the capability and willingness to maintain the equipment or facilities.”

(e) MAJOR CAPITAL INVESTMENT PROJECTS OF \$75,000,000 OR MORE.—Section 5309(e) is amended to read as follows:

“(e) MAJOR CAPITAL INVESTMENT PROJECTS OF \$75,000,000 OR MORE.—

“(1) FULL FUNDING GRANT AGREEMENT.—The Secretary shall enter into a full funding grant agreement, based on the evaluations and ratings required under this subsection, with each grantee receiving not less than \$75,000,000 under this subsection for a new fixed guideway capital project that—

“(A) is authorized for final design and construction; and

“(B) has been rated as medium, medium-high, or high, as defined in this subsection.

“(2) DETERMINATIONS.—The Secretary shall not award a grant under this subsection for a major capital project unless the Secretary determines that the proposed project is—

“(A) based on the results of an alternatives analysis and preliminary engineering;

“(B) justified based on a comprehensive review of its mobility improvements, environmental benefits, cost-effectiveness, operating efficiencies, economic development effects, and public transportation supportive land use patterns and policies; and

“(C) supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct the project, and maintain and operate the entire public transportation system, while ensuring that the extent and quality of existing public transportation services are not degraded.

“(3) EVALUATION OF PROJECT JUSTIFICATION.—In order to make the determinations required under paragraph (2)(B) for a major capital investment grant, the Secretary shall analyze, evaluate, and consider—

“(A) the results of the alternatives analysis and preliminary engineering for the proposed project;

“(B) the reliability of the forecasts of costs and utilization made by the recipient and the contractors to the recipient;

“(C) the direct and indirect costs of relevant alternatives;

“(D) factors such as—

“(i) congestion relief;

“(ii) improved mobility;

“(iii) air pollution;

“(iv) noise pollution;

“(v) energy consumption; and

“(vi) all associated ancillary and mitigation costs necessary to carry out each alternative analyzed;

“(E) reductions in local infrastructure costs achieved through compact land use development;

“(F) the cost of suburban sprawl;

“(G) the degree to which the project increases the mobility of the public transportation dependent population or promotes economic development;

“(H) population density and current transit ridership in the transportation corridor;

“(I) the technical capability of the grant recipient to construct the project;

“(J) any adjustment to the project justification necessary to reflect differences in local land, construction, and operating costs; and

“(K) other factors that the Secretary determines appropriate to carry out this chapter.

“(4) EVALUATION OF LOCAL FINANCIAL COMMITMENT.—

“(A) IN GENERAL.—In evaluating a project under paragraph (2)(C), the Secretary shall require that—

“(i) the proposed project plan provides for the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases;

“(ii) each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable; and

“(iii) local resources are available to recapitalize and operate the overall proposed public transportation system, including essential feeder bus and other services necessary to achieve the projected ridership levels, while ensuring that the extent and quality of existing public transportation services are not degraded.

“(B) EVALUATION CRITERIA.—In assessing the stability, reliability, and availability of proposed sources of local financing under paragraph (2)(C), the Secretary shall consider—

“(i) the reliability of the forecasts of costs and utilization made by the recipient and the contractors to the recipient;

“(ii) existing grant commitments;



“(iii) the degree to which financing sources are dedicated to the proposed purposes;

“(iv) any debt obligation that exists, or is proposed by the recipient, for the proposed project or other public transportation purpose; and

“(v) the extent to which the project has a local financial commitment that exceeds the required non-Federal share of the cost of the project, provided that if the Secretary gives priority to financing projects that include more than the non-Federal share required under subsection (h), the Secretary shall give equal consideration to differences in the fiscal capacity of State and local governments.

“(5) PROJECT ADVANCEMENT AND RATINGS.—

“(A) PROJECT ADVANCEMENT.—A proposed project under this subsection shall not advance from alternatives analysis to preliminary engineering or from preliminary engineering to final design and construction unless the Secretary determines that the project meets the requirements of this section and there is a reasonable likelihood that the project will continue to meet such requirements.

“(B) RATINGS.—In making a determination under subparagraph (A), the Secretary shall evaluate and rate the project on a 5-point scale (high, medium-high, medium, medium-low, or low) based on the results of the alternatives analysis, the project justification criteria, and the degree of local financial commitment, as required under this subsection. In rating the projects, the Secretary shall provide, in addition to the overall project rating, individual ratings for each of the criteria established by regulation.

“(6) APPLICABILITY.—This subsection shall not apply to projects for which the Secretary has issued a letter of intent or entered into a full funding grant agreement before the date of enactment of the Federal Public Transportation Act of 2004.

“(7) RULEMAKING.—Not later than 240 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations on the manner by which the Secretary shall evaluate and rate projects based on the results of alternatives analysis, project justification, and local financial commitment, in accordance with this subsection.

“(8) POLICY GUIDANCE.—

“(A) PUBLICATION.—The Secretary shall publish policy guidance regarding the new starts project review and evaluation process—

“(i) not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2004; and

“(ii) each time significant changes are made by the Secretary to the new starts project review and evaluation process and criteria, but not less frequently than once every 2 years.

“(B) PUBLIC COMMENT AND RESPONSE.—The Secretary shall—

“(i) invite public comment to the guidance published under subparagraph (A); and

“(ii) publish a response to the comments received under clause (i).”.

(f) MAJOR CAPITAL INVESTMENT PROJECTS LESS THAN \$75,000,000.—Section 5309(f) is amended to read as follows:

“(f) MAJOR CAPITAL INVESTMENT PROJECTS LESS THAN \$75,000,000.—

“(1) PROJECT CONSTRUCTION GRANT AGREEMENT.—

“(A) IN GENERAL.—The Secretary shall enter into a project construction grant agreement, based on evaluations and ratings required under this subsection, with each grantee receiving less than \$75,000,000 under this subsection for a new fixed guideway or corridor improvement capital project that—

“(i) is authorized by law; and

“(ii) has been rated as medium, medium-high, or high, in accordance with paragraph (3).

“(B) CONTENTS.—

“(1) IN GENERAL.—An agreement under this paragraph shall specify—

“(I) the scope of the project to be constructed;

“(II) the estimated net cost of the project;

“(III) the schedule under which the project shall be constructed;

“(IV) the maximum amount of funding to be obtained under this subsection;

“(V) the proposed schedule for obligation of future Federal grants; and

“(VI) the sources of non-Federal funding.

“(ii) ADDITIONAL FUNDING.—The agreement may include a commitment on the part of the Secretary to provide funding for the project in future fiscal years.

“(C) FULL FUNDING GRANT AGREEMENT.—An agreement under this paragraph shall be considered a full funding grant agreement for the purposes of subsection (g).

“(2) SELECTION PROCESS.—

“(A) SELECTION CRITERIA.—The Secretary may provide financial assistance under this subsection for a proposed project only if the Secretary determines that the project is—

“(i) based on the results of planning and alternatives analysis;

“(ii) justified based on a review of its public transportation supportive land use policies, cost effectiveness, and effect on local economic development; and

“(iii) supported by an acceptable degree of local financial commitment.

“(B) PLANNING AND ALTERNATIVES.—In evaluating a project under subparagraph (A)(i), the Secretary shall analyze and consider the results of planning and alternatives analysis for the project.

“(C) PROJECT JUSTIFICATION.—For purposes of making the determination under paragraph (A)(ii), the Secretary shall—

“(i) determine the degree to which local land use policies are supportive of the public transportation project and the degree to which the project is likely to achieve local developmental goals;

“(ii) determine the cost effectiveness of the project at the time of the initiation of revenue service;

“(iii) determine the degree to which the project will have a positive effect on local economic development;

“(iv) consider the reliability of the forecasts of costs and ridership associated with the project; and

“(v) consider other factors that the Secretary determines appropriate to carry out this subsection.

“(D) LOCAL FINANCIAL COMMITMENT.—For purposes of subparagraph (A)(iii), the Secretary shall require that each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable.

“(3) ADVANCEMENT OF PROJECT TO DEVELOPMENT AND CONSTRUCTION.—

“(A) IN GENERAL.—A proposed project under this subsection may advance from the planning and alternatives analysis stage to project development and construction only if—

“(i) the Secretary finds that the project meets the requirements of this subsection and there is a reasonable likelihood that the project will continue to meet such requirements; and

“(ii) the metropolitan planning organization has adopted the locally preferred alternative for the project into the long-range transportation plan.

“(B) EVALUATION.—In making the findings under subparagraph (A), the Secretary shall evaluate and rate the project as ‘high’, ‘medium-high’, ‘medium’, ‘medium-low’, or ‘low’

based on the results of the analysis of the project justification criteria and the degree of local financial commitment, as required by this subsection.

“(4) IMPACT REPORT.—

“(A) IN GENERAL.—Not later than 240 days after the date of enactment of the Federal Public Transportation Act of 2004, the Federal Transit Administration shall submit a report on the methodology to be used in evaluating the land use and economic development impacts of non-fixed guideway or partial fixed guideway projects to—

“(i) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

“(ii) the Committee on Transportation and Infrastructure of the House of Representatives.

“(B) CONTENTS.—The report submitted under subparagraph (A) shall address any qualitative and quantitative differences between fixed guideway and non-fixed guideway projects with respect to land use and economic development impacts.

“(5) REGULATIONS.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations establishing an evaluation and rating process for proposed projects under this subsection that is based on the results of project justification and local financial commitment, as required under this subsection.”.

(g) FULL FUNDING GRANT AGREEMENTS.—Section 5309(g)(2) is amended by adding at the end the following:

“(C) BEFORE AND AFTER STUDY.—

“(i) IN GENERAL.—Each full funding grant agreement shall require the applicant to conduct a study that—

“(I) describes and analyzes the impacts of the new start project on transit services and transit ridership;

“(II) evaluates the consistency of predicted and actual project characteristics and performance; and

“(III) identifies sources of differences between predicted and actual outcomes.

“(ii) INFORMATION COLLECTION AND ANALYSIS PLAN.—

“(I) SUBMISSION OF PLAN.—Applicants seeking a full funding grant agreement shall submit a complete plan for the collection and analysis of information to identify the impacts of the new start project and the accuracy of the forecasts prepared during development of the project. Preparation of this plan shall be included in the full funding grant agreement as an eligible activity.

“(II) CONTENTS OF PLAN.—The plan submitted under subclause (I) shall provide for—

“(aa) the collection of data on the current transit system regarding transit service levels and ridership patterns, including origins and destinations, access modes, trip purposes, and rider characteristics;

“(bb) documentation of the predicted scope, service levels, capital costs, operating costs, and ridership of the project;

“(cc) collection of data on the transit system 2 years after the opening of the new start project, including analogous information on transit service levels and ridership patterns and information on the as-built scope and capital costs of the new start project; and

“(dd) analysis of the consistency of predicted project characteristics with the after data.

“(D) COLLECTION OF DATA ON CURRENT SYSTEM.—To be eligible for a full funding grant agreement, recipients shall have collected data on the current system, according to the plan required, before the beginning of construction of the proposed new start project. Collection of this data shall be included in the full funding grant agreement as an eligible activity.

“(E) PUBLIC PRIVATE PARTNERSHIP PILOT PROGRAM.—

“(i) AUTHORIZATION.—The Secretary may establish a pilot program to demonstrate the advantages of public-private partnerships for certain fixed guideway systems development projects.

“(ii) IDENTIFICATION OF QUALIFIED PROJECTS.—The Secretary shall identify qualified public-private partnership projects as permitted by applicable State and local enabling laws and work with project sponsors to enhance project delivery and reduce overall costs.”.

(h) FEDERAL SHARE OF NET PROJECT COST.—Section 5309(h) is amended to read as follows:

“(h) FEDERAL SHARE OF ADJUSTED NET PROJECT COST.—

“(1) IN GENERAL.—The Secretary shall estimate the Federal share of the net project cost based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities.

“(2) ADJUSTMENT FOR COMPLETION UNDER BUDGET.—The Secretary may adjust the final net project cost of a major capital investment project evaluated under subsections (e) and (f) to include the cost of eligible activities not included in the originally defined project if the Secretary determines that the originally defined project has been completed at a cost that is significantly below the original estimate.

“(3) MAXIMUM FEDERAL SHARE.—

“(A) IN GENERAL.—A grant for the project shall be for 80 percent of the net project cost, or the net project cost as adjusted under paragraph (2), unless the grant recipient requests a lower grant percentage.

“(B) EXCEPTIONS.—The Secretary may provide a higher grant percentage than requested by the grant recipient if—

“(i) the Secretary determines that the net project cost of the project is not more than 10 percent higher than the net project cost estimated at the time the project was approved for advancement into preliminary engineering; and

“(ii) the ridership estimated for the project is not less than 90 percent of the ridership estimated for the project at the time the project was approved for advancement into preliminary engineering.

“(4) OTHER SOURCES.—The costs not funded by a grant under this section may be funded from—

“(A) an undistributed cash surplus;

“(B) a replacement or depreciation cash fund or reserve; or

“(C) new capital, including any Federal funds that are eligible to be expended for transportation.

“(5) PLANNED EXTENSION TO FIXED GUIDEWAY SYSTEM.—In addition to amounts allowed under paragraph (1), a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the Secretary determines that only non-Federal funds were used and that the purchase was made for use on the extension. A refund or reduction of the remainder may be made only if a refund of a proportional amount of the grant is made at the same time.

“(6) EXCEPTION.—The prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to amounts allowed under paragraph (4).”.

(i) LOAN PROVISIONS AND FISCAL CAPACITY CONSIDERATIONS.—Section 5309 is amended—

(1) by striking subsections (i), (j), (k), and (l);

(2) by redesignating subsections (m) and (n) as subsections (i) and (j), respectively;

(3) by striking subsection (o) (as added by section 3009(i) of the Federal Transit Act of 1998); and

(4) by redesignating subsections (o) and (p) as subsections (k) and (l), respectively.

(j) ALLOCATING AMOUNTS.—Section 5309(i), as redesignated, is amended to read as follows:

“(i) ALLOCATING AMOUNTS.—

“(1) FISCAL YEAR 2004.—Of the amounts made available or appropriated for fiscal year 2004 under section 5338(a)(3)—

“(A) \$1,315,983,615 shall be allocated for projects of not less than \$75,000,000 for major capital projects for new fixed guideway systems and extensions of such systems under subsection (e) and new major corridor improvements under subsection (f);

“(B) \$1,199,387,615 shall be allocated for capital projects for fixed guideway modernization; and

“(C) \$673,204,520 shall be allocated for capital projects for buses and bus-related equipment and facilities.

“(2) IN GENERAL.—Of the amounts made available or appropriated for fiscal year 2005 and each fiscal year thereafter for grants under this section pursuant to subsections (b)(4) and (c) of section 5338—

“(A) the amounts appropriated under section 5338(c) shall be allocated for major capital projects for—

“(i) new fixed guideway systems and extensions of not less than \$75,000,000, in accordance with subsection (e); and

“(ii) new major capital projects for corridor improvements, in accordance with subsection (f); and

“(B) the amounts made available under section 5338(b)(4) shall be allocated for capital projects for buses and bus-related equipment and facilities.

“(3) FIXED GUIDEWAY MODERNIZATION.—The amounts made available for fixed guideway modernization under section 5338(b)(2)(K) for fiscal year 2005 and each fiscal year thereafter shall be allocated in accordance with section 5337.

“(4) NEW FIXED GUIDEWAY SYSTEMS AND CORRIDOR IMPROVEMENTS.—Not more than 8 percent of the allocation described in paragraphs (1)(A) and (2)(A) may be expended on preliminary engineering.

“(5) FUNDING FOR FERRY BOATS.—Of the amounts described in paragraphs (1)(A) and (2)(A), \$10,400,000 shall be available in each of the fiscal years 2004 through 2009 for capital projects in Alaska and Hawaii for new fixed guideway systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals.

“(6) BUS AND BUS FACILITY GRANTS.—

“(A) CONSIDERATIONS.—In making grants under paragraphs (1)(C) and (2)(B), the Secretary shall consider the age and condition of buses, bus fleets, related equipment, and bus-related facilities.

“(B) PROJECTS NOT IN URBANIZED AREAS.—Of the amounts made available under paragraphs (1)(C) and (2)(B), not less than 5.5 percent shall be available in each fiscal year for projects that are not in urbanized areas.

“(C) INTERMODAL TERMINALS.—Of the amounts made available under paragraphs (1)(C) and (2)(B), not less than \$75,000,000 shall be available in each fiscal year for intermodal terminal projects, including the intercity bus portion of such projects.”.

(k) REPORTS.—Section 5309 is amended by inserting at the end the following:

“(m) REPORTS.—

“(1) ANNUAL REPORT ON FUNDING RECOMMENDATIONS.—

“(A) IN GENERAL.—Not later than the first Monday of February of each year, the Secretary shall submit a report on funding recommendations to—

“(i) the Committee on Transportation and Infrastructure of the House of Representatives;

“(ii) the Committee on Banking, Housing, and Urban Affairs of the Senate;

“(iii) the Subcommittee on Transportation of the Committee on Appropriations of the House of Representatives; and

“(iv) the Subcommittee on Transportation of the Committee on Appropriations of the Senate.

“(B) CONTENTS.—The report submitted under subparagraph (A) shall contain—

“(i) a proposal on the allocation of amounts to finance grants for capital investment projects among grant applicants;

“(ii) a recommendation of projects to be funded based on—

“(I) the evaluations and ratings determined under subsection (e); and

“(II) existing commitments and anticipated funding levels for the subsequent 3 fiscal years; and

“(iii) detailed ratings and evaluations on each project recommended for funding.

“(2) TRIENNIAL REPORTS ON PROJECT RATINGS.—

“(A) IN GENERAL.—Not later than the first Monday of February, the first Monday of June, and the first Monday of October of each year, the Secretary shall submit a report on project ratings to—

“(i) the Committee on Transportation and Infrastructure of the House of Representatives;

“(ii) the Committee on Banking, Housing, and Urban Affairs of the Senate;

“(iii) the Subcommittee on Transportation of the Committee on Appropriations of the House of Representatives; and

“(iv) the Subcommittee on Transportation of the Committee on Appropriations of the Senate.

“(B) CONTENTS.—Each report submitted under subparagraph (A) shall contain—

“(i) a summary of the ratings of all capital investment projects for which funding was requested under this section;

“(ii) detailed ratings and evaluations on the project of each applicant that had significant changes to the finance or project proposal or has completed alternatives or preliminary engineering since the date of the latest report; and

“(iii) all relevant information supporting the evaluation and rating of each updated project, including a summary of the financial plan of each updated project.

“(3) BEFORE AND AFTER STUDY REPORTS.—Not later than the first Monday of August of each year, the Secretary shall submit a report containing a summary of the results of the studies conducted under subsection (g)(2) to—

“(A) the Committee on Transportation and Infrastructure of the House of Representatives;

“(B) the Committee on Banking, Housing, and Urban Affairs of the Senate;

“(C) the Subcommittee on Transportation of the Committee on Appropriations of the House of Representatives; and

“(D) the Subcommittee on Transportation of the Committee on Appropriations of the Senate.

“(4) CONTRACTOR PERFORMANCE ASSESSMENT REPORT.—

“(A) IN GENERAL.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2004, and each year thereafter, the Secretary shall submit a report analyzing the consistency and accuracy of cost and ridership estimates made by each contractor to public transportation agencies developing major investment projects to the committees and subcommittees listed under paragraph (3).

“(B) CONTENTS.—The report submitted under subparagraph (A) shall compare the cost and ridership estimates made at the time projects are approved for entrance into preliminary engineering with—

“(i) estimates made at the time projects are approved for entrance into final design;

“(ii) costs and ridership when the project commences revenue operation; and

“(iii) costs and ridership when the project has been in operation for 2 years.

“(5) ANNUAL GENERAL ACCOUNTING OFFICE REVIEW.—

“(A) REVIEW.—The Comptroller General of the United States shall conduct an annual review of the processes and procedures for evaluating and rating projects and recommending projects and the Secretary’s implementation of such processes and procedures.

“(B) REPORT.—Not later than 90 days after the submission of each report required under paragraph (3), the Comptroller General shall submit a report to Congress that summarizes the results of the review conducted under subparagraph (A).

“(6) CONTRACTOR PERFORMANCE INCENTIVE REPORT.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2004, the Secretary shall submit a report to the committees and subcommittees listed under paragraph (3) on the suitability of allowing contractors to public transportation agencies that undertake major capital investments under this section to receive performance incentive awards if a project is completed for less than the original estimated cost.”.

#### SEC. 3012. NEW FREEDOM FOR ELDERLY PERSONS AND PERSONS WITH DISABILITIES.

(a) IN GENERAL.—Section 5310 is amended to read as follows:

##### “§ 5310. New freedom for elderly persons and persons with disabilities

“(a) GENERAL AUTHORITY.—

“(1) AUTHORIZATION.—The Secretary may award grants to a State for capital public transportation projects that are planned, designed, and carried out to meet the needs of elderly individuals and individuals with disabilities, with priority given to the needs of these individuals to access necessary health care.

“(2) ACQUISITION OF PUBLIC TRANSPORTATION SERVICES.—A capital public transportation project under this section may include acquiring public transportation services as an eligible capital expense.

“(3) ADMINISTRATIVE COSTS.—A State may use not more than 15 percent of the amounts received under this section to administer, plan, and provide technical assistance for a project funded under this section.

“(b) ALLOTMENTS AMONG STATES.—

“(1) IN GENERAL.—From amounts made available or appropriated in each fiscal year under subsections (a)(1)(C)(iv) and (b)(2)(D) of section 5338 for grants under this section, the Secretary shall allot amounts to each State under a formula based on the number of elderly individuals and individuals with disabilities in each State.

“(2) TRANSFER OF FUNDS.—Any funds allotted to a State under paragraph (1) may be transferred by the State to the apportionments made under sections 5311(c) and 5336 if such funds are only used for eligible projects selected under this section.

“(3) REALLOCATION OF FUNDS.—A State receiving a grant under this section may reallocate such grant funds to—

“(A) a private nonprofit organization;

“(B) a public transportation agency or authority; or

“(C) a governmental authority that—

“(i) has been approved by the State to coordinate services for elderly individuals and individuals with disabilities;

“(ii) certifies that nonprofit organizations are not readily available in the area that can provide the services described under this subsection; or

“(iii) will provide services to persons with disabilities that exceed those services required by the Americans with Disabilities Act.

“(c) FEDERAL SHARE.—

“(1) MAXIMUM.—

“(A) IN GENERAL.—A grant for a capital project under this section may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

“(B) EXCEPTION.—A State described in section 120(b)(1) of title 23 shall receive an increased Federal share in accordance with the formula under that section.

“(2) REMAINING COSTS.—The costs of a capital project under this section that are not funded through a grant under this section—

“(A) may be funded from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; and

“(B) may be derived from amounts appropriated to or made available to any Federal agency (other than the Department of Transportation, except for Federal Lands Highway funds) that are eligible to be expended for transportation.

“(3) EXCEPTION.—For purposes of paragraph (2), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

“(d) GRANT REQUIREMENTS.—

“(1) IN GENERAL.—A grant recipient under this section shall be subject to the requirements of a grant recipient under section 5307 to the extent the Secretary determines to be appropriate.

“(2) CERTIFICATION REQUIREMENTS.—

“(A) FUND TRANSFERS.—A grant recipient under this section that transfers funds to a project funded under section 5336 in accordance with subsection (b)(2) shall certify that the project for which the funds are requested has been coordinated with private nonprofit providers of services under this section.

“(B) PROJECT SELECTION AND PLAN DEVELOPMENT.—Each grant recipient under this section shall certify that—

“(i) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and

“(ii) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

“(C) ALLOCATIONS TO SUBRECIPIENTS.—Each grant recipient under this section shall certify that allocations of the grant to subrecipients, if any, are distributed on a fair and equitable basis.

“(e) STATE PROGRAM OF PROJECTS.—

“(1) SUBMISSION TO SECRETARY.—Each State shall annually submit a program of transportation projects to the Secretary for approval with an assurance that the program provides for maximum feasible coordination between transportation services funded under this section and transportation services assisted by other Federal sources.

“(2) USE OF FUNDS.—Each State may use amounts made available to carry out this section to provide transportation services for elderly individuals and individuals with disabilities if such services are included in an approved State program of projects.

“(f) LEASING VEHICLES.—Vehicles acquired under this section may be leased to local governmental authorities to improve trans-

portation services designed to meet the needs of elderly individuals and individuals with disabilities.

“(g) MEAL DELIVERY FOR HOMEBOUND INDIVIDUALS.—Public transportation service providers receiving assistance under this section or section 5311(c) may coordinate and assist in regularly providing meal delivery service for homebound individuals if the delivery service does not conflict with providing public transportation service or reduce service to public transportation passengers.

“(h) TRANSFERS OF FACILITIES AND EQUIPMENT.—With the consent of the recipient in possession of a facility or equipment acquired with a grant under this section, a State may transfer the facility or equipment to any recipient eligible to receive assistance under this chapter if the facility or equipment will continue to be used as required under this section.

“(i) FARES NOT REQUIRED.—This section does not require that elderly individuals and individuals with disabilities be charged a fare.”.

(b) CONFORMING AMENDMENT.—The item relating to section 5310 in the table of sections for chapter 53 is amended to read as follows: “5310. New freedom for elderly persons and persons with disabilities.”.

#### SEC. 3013. FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.

(a) DEFINITIONS.—Section 5311(a) is amended to read as follows:

“(a) DEFINITIONS.—As used in this section, the following definitions shall apply:

“(1) RECIPIENT.—The term ‘recipient’ means a State that receives a Federal transit program grant directly from the Federal Government.

“(2) SUBRECIPIENT.—The term ‘subrecipient’ means a State or local governmental authority, a nonprofit organization, or a private operator of public transportation service that receives Federal transit program grant funds indirectly through a recipient.”.

(b) GENERAL AUTHORITY.—Section 5311(b) is amended—

(1) by amending paragraph (1) to read as follows:

“(1) GRANTS AUTHORIZED.—Except as provided under paragraph (2), the Secretary may award grants under this section to recipients located in areas other than urbanized areas for—

“(A) public transportation capital projects;

“(B) operating costs of equipment and facilities for use in public transportation; and

“(C) the acquisition of public transportation services.”;

(2) by redesignating paragraph (2) as paragraph (3);

(3) by inserting after paragraph (1) the following:

“(2) STATE PROGRAM.—

“(A) IN GENERAL.—A project eligible for a grant under this section shall be included in a State program for public transportation service projects, including agreements with private providers of public transportation service.

“(B) SUBMISSION TO SECRETARY.—Each State shall annually submit the program described in subparagraph (A) to the Secretary.

“(C) APPROVAL.—The Secretary may not approve the program unless the Secretary determines that—

“(i) the program provides a fair distribution of amounts in the State;

“(ii) the program provides the maximum feasible coordination of public transportation service assisted under this section with transportation service assisted by other Federal sources; and

“(iii) amounts provided for projects on Indian reservations are not less than amounts

attributable to the population and land area of Indian reservations in the State, as published under subsection (c)(5).";

(4) in paragraph (3), as redesignated—

(A) by striking "(3) The Secretary of Transportation" and inserting the following: "(3) RURAL TRANSPORTATION ASSISTANCE PROGRAM.—

"(A) ESTABLISHMENT.—The Secretary";

(B) by striking "make" and inserting "use not more than 2 percent of the amount made available to carry out this section to award"; and

(C) by adding at the end the following:

"(B) DATA COLLECTION.—

"(i) REPORT.—Each grantee under this section shall submit an annual report to the Secretary containing information on capital investment, operations, and service provided with funds received under this section, including—

"(I) total annual revenue;

"(II) sources of revenue;

"(III) total annual operating costs;

"(IV) total annual capital costs;

"(V) fleet size and type, and related facilities;

"(VI) revenue vehicle miles; and

"(VII) ridership."; and

(5) by adding after paragraph (3) the following:

"(4) Of the amount made available to carry out paragraph (3)—

"(A) not more than 15 percent may be used to carry out projects of a national scope; and

"(B) any amounts not used under subparagraph (A) shall be allocated to the States.".

(c) APPORTIONMENTS.—Section 5311(c) is amended to read as follows:

"(c) APPORTIONMENTS.—

"(1) IN GENERAL.—Of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(F) of section 5338—

"(A) 20 percent shall be apportioned to the States in accordance with paragraph (2); and

"(B) 80 percent shall be apportioned to the States in accordance with paragraph (3).

"(2) APPORTIONMENTS BASED ON LAND AREA IN NONURBANIZED AREAS.—

"(A) IN GENERAL.—Subject to subparagraph (B), each State shall receive an amount that is equal to the amount apportioned under paragraph (1)(A) multiplied by the ratio of the land area in areas other than urbanized areas in that State and divided by the land area in all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.

"(B) MAXIMUM APPORTIONMENT.—No State shall receive more than 5 percent of the amount apportioned under this paragraph.

"(3) APPORTIONMENTS BASED ON POPULATION IN NONURBANIZED AREAS.—Each State shall receive an amount equal to the amount apportioned under paragraph (1)(B) multiplied by the ratio of the population of areas other than urbanized areas in that State divided by the population of all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.

"(4) PUBLICATION OF APPORTIONMENTS.—The Secretary shall publish the total amount apportioned to each State under this subsection and the amounts attributable to the population and land area to Indian reservation in each State.".

(d) USE FOR ADMINISTRATIVE, PLANNING, AND TECHNICAL ASSISTANCE.—Section 5311(e) is amended—

(1) by striking "AND TECHNICAL ASSISTANCE.—(1) The Secretary of Transportation" and inserting "PLANNING, AND TECHNICAL ASSISTANCE.—The Secretary";

(2) by striking "to a recipient"; and

(3) by striking paragraph (2).

(e) INTERCITY BUS TRANSPORTATION.—Section 5311(f) is amended—

(1) in paragraph (1)—

(A) by striking "(1)" and inserting the following:

"(1) IN GENERAL.—"; and

(B) by striking "after September 30, 1993,"; and

(2) in paragraph (2)—

(A) by striking "A State" and inserting "After consultation with affected intercity bus service providers, a State"; and

(B) by striking "of Transportation".

(f) FEDERAL SHARE OF COSTS.—Section 5311(g) is amended to read as follows:

"(g) FEDERAL SHARE OF COSTS.—

"(1) MAXIMUM FEDERAL SHARE.—

"(A) CAPITAL PROJECTS.—

"(i) IN GENERAL.—Except as provided under clause (ii), a grant awarded under this section for any purpose other than operating assistance may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

"(ii) EXCEPTION.—A State described in section 120(b)(1) of title 23 shall receive a Federal share of the net capital costs in accordance with the formula under that section.

"(B) OPERATING ASSISTANCE.—

"(i) IN GENERAL.—Except as provided under clause (ii), a grant made under this section for operating assistance may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary.

"(ii) EXCEPTION.—A State described in section 120(b)(1) of title 23 shall receive a Federal share of the net operating costs equal to 62.5 percent of the Federal share provided for under subparagraph (A)(ii).

"(2) OTHER FUNDING SOURCES.—Funds for a project under this section that are not provided for by a grant under this section—

"(A) may be provided from—

"(i) an undistributed cash surplus;

"(ii) a replacement or depreciation cash fund or reserve;

"(iii) a service agreement with a State or local social service agency or a private social service organization; or

"(iv) new capital; and

"(B) may be derived from amounts appropriated to or made available to a Federal agency (other than the Department of Transportation, except for Federal Land Highway funds) that are eligible to be expended for transportation.

"(3) USE OF FEDERAL GRANT.—A State carrying out a program of operating assistance under this section may not limit the level or extent of use of the Federal grant for the payment of operating expenses.

"(4) EXCEPTION.—For purposes of paragraph (2)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(c)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(c)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.".

(g) WAIVER CONDITION.—Section 5311(j)(1) is amended by striking "but the Secretary of Labor may waive the application of section 5333(b)" and inserting "if the Secretary of Labor utilizes a Special Warranty that provides a fair and equitable arrangement to protect the interests of employees".

SEC. 3014. RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.

(a) IN GENERAL.—Section 5312 is amended—

(1) by amending subsection (a) to read as follows:

"(a) RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS.—

"(1) IN GENERAL.—The Secretary may make grants, contracts, cooperative agreements, or other transactions (including agreements with departments, agencies, and instrumentalities of the United States Government) for

research, development, demonstration or deployment projects, or evaluation of technology of national significance to public transportation that the Secretary determines will improve public transportation service or help public transportation service meet the total transportation needs at a minimum cost.

"(2) INFORMATION.—The Secretary may request and receive appropriate information from any source.

"(3) SAVINGS PROVISION.—This subsection does not limit the authority of the Secretary under any other law.";

(2) by striking subsections (b) and (c);

(3) by redesignating subsections (d) and (e) as (b) and (c), respectively.

(4) in subsection (b), as redesignated—

(A) in paragraph (2), by striking "other agreements" and inserting "other transactions"; and

(B) in paragraph (5), by striking "within the Mass Transit Account of the Highway Trust Fund"; and

(5) in subsection (c), as redesignated—

(A) in paragraph (2), by striking "public and private" and inserting "public or private"; and

(B) in paragraph (3), by striking "within the Mass Transit Account of the Highway Trust Fund".

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading of section 5312 is amended to read as follows:

"§ 5312. Research, development, demonstration, and deployment projects".

(2) TABLE OF SECTIONS.—The item relating to section 5312 in the table of sections for chapter 53 is amended to read as follows:

"5312. Research, development, demonstration, and deployment projects.".

SEC. 3015. TRANSIT COOPERATIVE RESEARCH PROGRAM.

(a) IN GENERAL.—Section 5313 is amended—

(1) by striking subsection (b);

(2) in subsection (a)—

(A) in paragraph (1), by striking "(1) The amounts made available under paragraphs (1) and (2)(C)(ii) of section 5338(c) of this title" and inserting "The amounts made available under subsections (a)(5)(C)(iii) and (b)(2)(G)(i) of section 5338"; and

(B) in paragraph (2), by striking "(2)" and inserting the following:

"(b) FEDERAL ASSISTANCE.—"; and

(3) by amending subsection (c) to read as follows:

"(c) FEDERAL SHARE.—If there would be a clear and direct financial benefit to an entity under a grant or contract financed under this section, the Secretary shall establish a Federal share consistent with such benefit.".

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading of section 5313 is amended to read as follows:

"§ 5313. Transit cooperative research program".

(2) TABLE OF SECTIONS.—The item relating to section 5313 in the table of sections for chapter 53 is amended to read as follows:

"5313. Transit cooperative research program.".

SEC. 3016. NATIONAL RESEARCH PROGRAMS.

(a) IN GENERAL.—Section 5314 is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

"(1) AVAILABILITY OF FUNDS.—The Secretary may use amounts made available under subsections (a)(5)(C)(iv) and (b)(2)(G)(iv) of section 5338 for grants, contracts, cooperative agreements, or other transactions for the purposes described in sections 5312, 5315, and 5322.";

(B) in paragraph (2), by striking "(2) Of" and inserting the following:

“(2) ADA COMPLIANCE.—From”;

(C) by amending paragraph (3) to read as follows:

“(3) SPECIAL DEMONSTRATION INITIATIVES.—The Secretary may use not more than 25 percent of the amounts made available under paragraph (1) for special demonstration initiatives, subject to terms that the Secretary determines to be consistent with this chapter. For a nonrenewable grant of not more than \$100,000, the Secretary shall provide expedited procedures for complying with the requirements of this chapter.”; and

(D) in paragraph (4)—

(i) by striking subparagraph (B); and

(ii) by redesignating subparagraph (C) as subparagraph (B); and

(2) by amending subsection (b) to read as follows:

“(b) FEDERAL SHARE.—If there would be a clear and direct financial benefit to an entity under a grant, contract, cooperative agreement, or other transaction financed under subsection (a) or section 5312, 5313, 5315, or 5322, the Secretary shall establish a Federal share consistent with such benefit.”.

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading for section 5314 is amended to read as follows:

“§ 5314. National research programs”.

(2) TABLE OF SECTIONS.—The item relating to section 5314 in the table of sections for chapter 53 is amended to read as follows:

“5314. National research programs.”.

#### SEC. 3017. NATIONAL TRANSIT INSTITUTE.

(a) Section 5315 is amended—

(1) by striking subsections (a) and (b) and inserting the following:

“(a) ESTABLISHMENT.—The Secretary shall award a grant to Rutgers University to conduct a national transit institute.

“(b) DUTIES.—

“(1) IN GENERAL.—In cooperation with the Federal Transit Administration, State transportation departments, public transportation authorities, and national and international entities, the institute established pursuant to subsection (a) shall develop and conduct training programs for Federal, State, and local transportation employees, United States citizens, and foreign nationals engaged or to be engaged in Government-aid public transportation work.

“(2) TRAINING PROGRAMS.—The training programs developed under paragraph (1) may include courses in recent developments, techniques, and procedures related to—

“(A) intermodal and public transportation planning;

“(B) management;

“(C) environmental factors;

“(D) acquisition and joint use rights of way;

“(E) engineering and architectural design;

“(F) procurement strategies for public transportation systems;

“(G) turnkey approaches to delivering public transportation systems;

“(H) new technologies;

“(I) emission reduction technologies;

“(J) ways to make public transportation accessible to individuals with disabilities;

“(K) construction, construction management, insurance, and risk management;

“(L) maintenance;

“(M) contract administration;

“(N) inspection;

“(O) innovative finance;

“(P) workplace safety; and

“(Q) public transportation security.”; and

(2) in subsection (d), by striking “mass” each place it appears.

#### SEC. 3018. BUS TESTING FACILITY.

Section 5318 is repealed.

#### SEC. 3019. BICYCLE FACILITIES.

Section 5319 is amended by striking “5307(k)” and inserting “5307(d)(1)(K)”.

#### SEC. 3020. SUSPENDED LIGHT RAIL TECHNOLOGY PILOT PROJECT.

Section 5320 is repealed.

#### SEC. 3021. CRIME PREVENTION AND SECURITY.

Section 5321 is repealed.

#### SEC. 3022. GENERAL PROVISIONS ON ASSISTANCE.

Section 5323 is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

“(1) IN GENERAL.—Financial assistance provided under this chapter to a State or a local governmental authority may be used to acquire an interest in, or to buy property of, a private company engaged in public transportation, for a capital project for property acquired from a private company engaged in public transportation after July 9, 1964, or to operate a public transportation facility or equipment in competition with, or in addition to, transportation service provided by an existing public transportation company, only if—

“(A) the Secretary determines that such financial assistance is essential to a program of projects required under sections 5303, 5304, and 5306;

“(B) the Secretary determines that the program provides for the participation of private companies engaged in public transportation to the maximum extent feasible; and

“(C) just compensation under State or local law will be paid to the company for its franchise or property.”; and

(B) in paragraph (2), by striking “(2)” and inserting the following:

“(2) LIMITATION.—”;

(2) by amending subsection (b) to read as follows:

“(b) NOTICE AND PUBLIC HEARING.—

“(1) IN GENERAL.—An application for a grant under this chapter for a capital project that will substantially affect a community, or the public transportation service of a community, shall include, in the environmental record for the project, evidence that the applicant has—

“(A) provided an adequate opportunity for public review and comment on the project;

“(B) held a public hearing on the project if the project affects significant economic, social, or environmental interests;

“(C) considered the economic, social, and environmental effects of the project; and

“(D) found that the project is consistent with official plans for developing the urban area.

“(2) CONTENTS OF NOTICE.—Notice of a hearing under this subsection—

“(A) shall include a concise description of the proposed project; and

“(B) shall be published in a newspaper of general circulation in the geographic area the project will serve.”;

(3) by amending subsection (c) to read as follows:

“(c) NEW TECHNOLOGY.—A grant for financial assistance under this chapter for new technology, including innovative or improved products, techniques, or methods, shall be subject to the requirements of section 5309 to the extent the Secretary determines to be appropriate.”;

(4) by amending subsection (d) to read as follows:

“(d) CONDITIONS ON BUS TRANSPORTATION SERVICE.—Financial assistance under this chapter may be used to buy or operate a bus only if the recipient agrees to comply with the following conditions on bus transportation service:

“(1) CHARTER BUS SERVICE.—

“(A) IN GENERAL.—Except as provided under subparagraph (B), a recipient may provide incidental charter bus service only within its lawful service area if—

“(i) the recipient annually publishes, by electronic and other appropriate means, a notice—

“(I) indicating its intent to offer incidental charter bus service within its lawful service area; and

“(II) soliciting notices from private bus operators that wish to appear on a list of carriers offering charter bus service in that service area;

“(ii) the recipient provides private bus operators with an annual opportunity to notify the recipient of its desire to appear on a list of carriers offering charter bus service in such service area;

“(iii) upon receiving a request for charter bus service, the recipient electronically notifies the private bus operators listed as offering charter service in that service area with the name and contact information of the requestor and the nature of the charter service request; and

“(iv) the recipient does not offer to provide charter bus service unless no private bus operator indicates that it is willing and able to provide the service within a 72-hour period after the receipt of such notice.

“(B) EXCEPTION.—A recipient that operates 2,000 or fewer vehicles in fixed-route peak hour service may provide incidental charter bus transportation directly to—

“(i) local governments; and

“(ii) social service entities with limited resources.

“(C) IRREGULARLY SCHEDULED EVENTS.—Service, other than commuter service, by a recipient to irregularly scheduled events, where the service is conducted in whole or in part outside the service area of the recipient, regardless of whether the service is contracted for individually with passengers, is subject to a rebuttable presumption that such service is charter service.

“(2) VIOLATION OF AGREEMENTS.—

“(A) COMPLAINTS.—A complaint regarding the violation of a charter bus service agreement shall be submitted to the Regional Administrator of the Federal Transit Administration, who shall—

“(i) provide a reasonable opportunity for the recipient to respond to the complaint;

“(ii) provide the recipient with an opportunity for an informal hearing; and

“(iii) issue a written decision not later than 60 days after the parties have completed their submissions.

“(B) APPEALS.—

“(i) IN GENERAL.—A decision by the Regional Administrator may be appealed to a panel comprised of the Federal Transit Administrator, personnel in the Office of the Secretary of Transportation, and other persons with expertise in surface passenger transportation issues.

“(ii) STANDARD OF REVIEW.—The panel described in clause (i) shall consider the complaint de novo on all issues of fact and law.

“(iii) WRITTEN DECISION.—The appeals panel shall issue a written decision on an appeal not later than 60 days after the completion of submissions. This decision shall be the final order of the agency and subject to judicial review in district court.

“(C) CORRECTION.—If the Secretary determines that a violation of an agreement relating to the provision of charter service has occurred, the Secretary shall correct the violation under terms of the agreement.

“(D) REMEDIES.—The Secretary may issue orders to recipients to cease and desist in actions that violate the agreement, and such orders shall be binding upon the parties. In addition to any remedy spelled out in the agreement, if a recipient has failed to correct a violation within 60 days after the receipt of a notice of violation from the Secretary, the Secretary shall withhold from the recipient the lesser of—

“(i) 5 percent of the financial assistance available to the recipient under this chapter for the next fiscal year; or

“(ii) \$200,000.

“(3) REGULATIONS.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue amended regulations that—

“(A) implement this subsection, as revised by such Act; and

“(B) impose restrictions, procedures, and remedies in connection with sightseeing service by a recipient.

“(4) PUBLIC NOTICE.—The Secretary shall make all written decisions, guidance, and other pertinent materials relating to the procedures in this subsection available to the public in electronic and other appropriate formats in a timely manner.”;

(5) by striking subsection (e);

(6) by redesignating subsection (f) as subsection (e);

(7) in subsection (e), as redesignated—

(A) by striking “(1)” and inserting the following:

“(1) IN GENERAL.—”;

(B) by striking paragraph (2);

(C) by striking “This subsection” and inserting the following:

“(2) EXCEPTIONS.—This subsection; and

(D) by adding at the end the following:

“(3) PENALTY.—If the Secretary determines that an applicant, governmental authority, or publicly owned operator has violated the agreement required under paragraph (1), the Secretary shall bar the applicant, authority, or operator from receiving Federal transit assistance in an amount the Secretary determines to be appropriate.”;

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

“(f) BOND PROCEEDS ELIGIBLE FOR LOCAL SHARE.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, a recipient of assistance under section 5307 or 5309, may use the proceeds from the issuance of revenue bonds as part of the local matching funds for a capital project.

“(2) REIMBURSEMENT BY SECRETARY.—The Secretary may reimburse an eligible recipient for deposits of bond proceeds in a debt service reserve that the recipient established pursuant to section 5302(a)(1)(K) from amounts made available to the recipient under section 5307 or 5309.”;

(9) in subsection (g)—

(A) by striking “(f)” each place it appears and inserting “(e)”;

(B) by striking “103(e)(4) and 142 (a) or (c)” each place it appears and inserting “133 and 142”;

(10) by amending subsection (h) to read as follows:

“(h) TRANSFER OF LANDS OR INTERESTS IN LANDS OWNED BY THE UNITED STATES.—

(1) REQUEST BY SECRETARY.—If the Secretary determines that any part of the lands or interests in lands owned by the United States and made available as a result of a military base closure is necessary for transit purposes eligible under this chapter, including corridor preservation, the Secretary shall submit a request to the head of the Federal agency supervising the administration of such lands or interests in lands. Such request shall include a map showing the portion of such lands or interests in lands, which is desired to be transferred for public transportation purposes.

“(2) TRANSFER OF LAND.—If 4 months after submitting a request under paragraph (1), the Secretary does not receive a response from the Federal agency described in paragraph (1) that certifies that the proposed appropriation of land is contrary to the public interest or inconsistent with the purposes

for which such land has been reserved, or if the head of such agency agrees to the utilization or transfer under conditions necessary for the adequate protection and utilization of the reserve, such land or interests in land may be utilized or transferred to a State, local governmental authority, or public transportation operator for such purposes and subject to the conditions specified by such agency.

“(3) REVERSION.—If at any time the lands or interests in land utilized or transferred under paragraph (2) are no longer needed for public transportation purposes, the State, local governmental authority, or public transportation operator that received the land shall notify to the Secretary, and such lands shall immediately revert to the control of the head of the Federal agency from which the land was originally transferred.”;

(11) in subsection (j)(5), by striking “Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240, 105 Stat. 1914)” and inserting “Federal Public Transportation Act of 2004”;

(12) by amending subsection (l) to read as follows:

“(l) RELATIONSHIP TO OTHER LAWS.—Section 1001 of title 18 applies to a certificate, submission, or statement provided under this chapter. The Secretary may terminate financial assistance under this chapter and seek reimbursement directly, or by offsetting amounts, available under this chapter, if the Secretary determines that a recipient of such financial assistance has made a false or fraudulent statement or related act in connection with a Federal transit program.”;

(13) in subsection (m), by inserting at the end the following: “Requirements to perform preaward and postdelivery reviews of rolling stock purchases to ensure compliance with subsection (j) shall not apply to private nonprofit organizations or to grantees serving urbanized areas with a population of fewer than 1,000,000.”;

(14) in subsection (o), by striking “assistance or other financing under the Transportation Infrastructure Finance and Innovation Act of 1998” and inserting “a loan or loan guarantee under title 23”;

(15) by adding at the end the following:

“(p) PROHIBITED USE OF FUNDS.—Grant funds received under this chapter may not be used to pay ordinary governmental or non-project operating expenses.”.

#### SEC. 3023. SPECIAL PROVISIONS FOR CAPITAL PROJECTS.

(a) IN GENERAL.—Section 5324 is amended to read as follows:

##### “§ 5324. Special provisions for capital projects

“(a) REAL PROPERTY AND RELOCATION SERVICES.—Whenever real property is acquired or furnished as a required contribution incident to a project, the Secretary shall not approve the application for financial assistance unless the applicant has made all payments and provided all assistance and assurances that are required of a State agency under sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630 and 4655). The Secretary must be advised of specific references to any State law that are believed to be an exception to section 301 or 302 of such Act (42 U.S.C. 4651 and 4652).

“(b) ADVANCE REAL PROPERTY ACQUISITIONS.—

(1) IN GENERAL.—The Secretary may participate in the acquisition of real property before the completion of the environmental reviews for any project that may use the property if the Secretary determines that external market forces are jeopardizing the potential use of the property for the project and if—

“(A) there are offers on the open real estate market to convey that property for a

use that is incompatible with the project under study;

“(B) there is an imminent threat of development or redevelopment of the property for a use that is incompatible with the project under study;

“(C) recent appraisals reflect a rapid increase in the fair market value of the property;

“(D) the property, because it is located near an existing transportation facility, is likely to be developed and to be needed for a future transportation improvement; or

“(E) the property owner can demonstrate that, for health, safety, or financial reasons, retaining ownership of the property poses an undue hardship on the owner in comparison to other affected property owners and requests the acquisition to alleviate that hardship.

“(2) PROTECTION OF PUBLIC LANDS.—Property acquired in accordance with this subsection may not be developed in anticipation of the project unless the Secretary has complied with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for protection of publicly owned park lands, wildlife and waterfowl refuges, and historic sites.

“(3) LIMITATION.—The Secretary shall limit the size and number of properties acquired under this subsection as necessary to avoid any prejudice to the Secretary’s objective evaluation of project alternatives.

“(4) EXEMPTION.—An acquisition under this section shall be considered an exempt project under section 176 of the Clean Air Act (42 U.S.C. 7506).

“(c) RAILROAD CORRIDOR PRESERVATION.—

“(1) IN GENERAL.—The Secretary may assist an applicant to acquire railroad right-of-way before the completion of the environmental reviews for any project that may use the right-of-way if the acquisition is otherwise permitted under Federal law. The Secretary may establish restrictions on such an acquisition as the Secretary determines to be necessary and appropriate.

“(2) PROTECTION OF PUBLIC LANDS.—Railroad right-of-way acquired under this subsection may not be developed in anticipation of the project until the Secretary has complied with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for protection of publicly owned park lands, wildlife and waterfowl refuges, and historic sites.

“(d) CONSIDERATION OF ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—

“(1) IN GENERAL.—The Secretary may not approve an application for financial assistance for a capital project under this chapter unless the Secretary determines that the project has been developed in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Secretary’s findings under this paragraph shall be made a matter of public record.

“(2) COOPERATION AND CONSULTATION.—In carrying out section 5301(e), the Secretary shall cooperate and consult with the Secretary of the Interior and the Administrator of the Environmental Protection Agency on each project that may have a substantial impact on the environment.”.

(b) CONFORMING AMENDMENT.—The item relating to section 5324 in the table of sections for chapter 53 is amended to read as follows:

“5324. Special provisions for capital projects.”.

#### SEC. 3024. CONTRACT REQUIREMENTS.

(a) IN GENERAL.—Section 5325 is amended to read as follows:

##### “§ 5325. Contract requirements

“(a) COMPETITION.—Recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary.



“(b) ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS.—

“(1) IN GENERAL.—A contract or requirement for program management, architectural engineering, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which Federal assistance is provided under this chapter shall be awarded in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, or an equivalent qualifications-based requirement of a State. This subsection does not apply to the extent a State has adopted or adopts by law a formal procedure for procuring those services.

“(2) ADDITIONAL REQUIREMENTS.—When awarding a contract described in paragraph (1), recipients of assistance under this chapter shall comply with the following requirements:

“(A) Any contract or subcontract awarded under this chapter shall be performed and audited in compliance with cost principles contained in part 31 of title 48, Code of Federal Regulations (commonly known as the Federal Acquisition Regulation).

“(B) A recipient of funds under a contract or subcontract awarded under this chapter shall accept indirect cost rates established in accordance with the Federal Acquisition Regulation for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently under dispute.

“(C) After a firm's indirect cost rates are accepted under subparagraph (B), 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.

“(D) A recipient requesting or using the cost and rate data described in subparagraph (C) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided by the group of agencies sharing cost data under this subparagraph, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

“(c) EFFICIENT PROCUREMENT.—A recipient may award a procurement contract under this chapter to other than the lowest bidder if the award furthers an objective consistent with the purposes of this chapter, including improved long-term operating efficiency and lower long-term costs.

“(d) DESIGN-BUILD PROJECTS.—

“(1) DEFINED TERM.—As used in this subsection, the term ‘design-build project’—

“(A) means a project under which a recipient enters into a contract with a seller, firm, or consortium of firms to design and build an operable segment of a public transportation system that meets specific performance criteria; and

“(B) may include an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment.

“(2) FINANCIAL ASSISTANCE FOR CAPITAL COSTS.—Federal financial assistance under this chapter may be provided for the capital costs of a design-build project after the recipient complies with Government requirements.

“(e) ROLLING STOCK.—

“(1) ACQUISITION.—A recipient of financial assistance under this chapter may enter into a contract to expend that assistance to acquire rolling stock—

“(A) with a party selected through a competitive procurement process; or

“(B) based on—

“(i) initial capital costs; or

“(ii) performance, standardization, life cycle costs, and other factors.

“(2) MULTIYEAR CONTRACTS.—A recipient procuring rolling stock with Federal financial assistance under this chapter may make a multiyear contract, including options, to buy not more than 5 years of requirements for rolling stock and replacement parts. The Secretary shall allow a recipient to act on a cooperative basis to procure rolling stock under this paragraph and in accordance with other Federal procurement requirements.

“(f) EXAMINATION OF RECORDS.—Upon request, the Secretary and the Comptroller General, or any of their representatives, shall have access to and the right to examine and inspect all records, documents, and papers, including contracts, related to a project for which a grant is made under this chapter.

“(g) GRANT PROHIBITION.—A grant awarded under this chapter may not be used to support a procurement that uses an exclusionary or discriminatory specification.

“(h) BUS DEALER REQUIREMENTS.—No State law requiring buses to be purchased through in-State dealers shall apply to vehicles purchased with a grant under this chapter.

“(i) AWARDS TO RESPONSIBLE CONTRACTORS.—

“(1) IN GENERAL.—Federal financial assistance under this chapter may be provided for contracts only if a recipient awards such contracts to responsible contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement.

“(2) CRITERIA.—Before making an award to a contractor under paragraph (1), a recipient shall consider—

“(A) the integrity of the contractor;

“(B) the contractor's compliance with public policy;

“(C) the contractor's past performance, including the performance reported in the Contractor Performance Assessment Reports required under section 5309(m)(4); and

“(D) the contractor's financial and technical resources.”.

(b) CONFORMING AMENDMENTS.—Chapter 53 is amended by striking section 5326.

#### SEC. 3025. PROJECT MANAGEMENT OVERSIGHT AND REVIEW.

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—Section 5327(a) is amended—

(1) in paragraph (11), by striking “and” at the end;

(2) in paragraph (12), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(13) safety and security management.”.

(b) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—Section 5327(c) is amended—

(1) by amending paragraph (1) to read as follows:

“(1) IN GENERAL.—The Secretary may not use more than 1 percent of amounts made available for a fiscal year to carry out any of sections 5307 through 5311, 5316, or 5317, or a project under the National Capital Transportation Act of 1969 (Public Law 91-143) to make a contract to oversee the construction of major projects under any of sections 5307 through 5311, 5316, or 5317 or under that Act.”;

(2) in paragraph (2)—

(A) by striking “(2)” and inserting the following:

“(2) OTHER ALLOWABLE USES.—”; and

(B) by inserting “and security” after “safety”; and

(3) in paragraph (3), by striking “(3) The Government shall” and inserting the following:

“(3) FEDERAL SHARE.—Federal funds shall be used to”.

#### SEC. 3026. PROJECT REVIEW.

Section 5328 is amended—

(1) in subsection (a)—

(A) in paragraph (1) by striking “(1) When the Secretary of Transportation allows a new fixed guideway project to advance into the alternatives analysis stage of project review, the Secretary shall cooperate with the applicant” and inserting the following:

“(1) APPROVAL OF DRAFT ENVIRONMENTAL IMPACT STATEMENT.—The Secretary shall cooperate with an applicant undertaking an alternatives analysis under subsections (e) and (f) of section 5309”;

(B) in paragraph (2)—

(i) by striking “(2)” and inserting the following:

“(2) ADVANCEMENT TO PRELIMINARY ENGINEERING STAGE.—”; and

(ii) by striking “is consistent with” and inserting “meets the requirements of”;

(C) in paragraph (3)—

(i) by striking “(3)” and inserting the following:

“(3) RECORD OF DECISION.—”; and

(ii) by striking “of construction”; and

(iii) by adding before the period at the end the following: “if the Secretary determines that the project meets the requirements of subsections (e) and (f) of section 5309”; and

(D) by striking paragraph (4); and

(2) by striking subsection (c).

#### SEC. 3027. INVESTIGATIONS OF SAFETY AND SECURITY RISK.

(a) IN GENERAL.—Section 5329 is amended to read as follows:

##### “§ 5329. Investigation of safety hazards and security risks

“(a) IN GENERAL.—The Secretary may conduct investigations into safety hazards and security risks associated with a condition in equipment, a facility, or an operation financed under this chapter to establish the nature and extent of the condition and how to eliminate, mitigate, or correct it.

“(b) SUBMISSION OF CORRECTIVE PLAN.—If the Secretary establishes that a safety hazard or security risk warrants further protective measures, the Secretary shall require the local governmental authority receiving amounts under this chapter to submit a plan for eliminating, mitigating, or correcting it.

“(c) WITHHOLDING OF FUNDS.—Financial assistance under this chapter, in an amount to be determined by the Secretary, may be withheld until a plan is approved and carried out.”.

(b) CONFORMING AMENDMENT.—The item relating to section 5329 in the table of sections for chapter 53 is amended to read as follows:

“5329. Investigation of safety hazards and security risks.”.

#### SEC. 3028. STATE SAFETY OVERSIGHT.

(a) IN GENERAL.—Section 5330 is amended—

(1) by amending the heading to read as follows:

##### “§ 5330. Withholding amounts for noncompliance with State safety oversight requirements”;

(2) by amending subsection (a) to read as follows:

“(a) APPLICATION.—This section shall only apply to—

“(1) States that have rail fixed guideway public transportation systems that are not subject to regulation by the Federal Railroad Administration; and

“(2) States that are designing rail fixed guideway public transportation systems that will not be subjected to regulation by the Federal Railroad Administration.”;

(3) in subsection (d), by striking “affected States” and inserting the following: “affected States—

“(1) shall ensure uniform safety standards and enforcement; or

“(2) may designate”; and

(4) in subsection (f), by striking “Not later than December 18, 1992, the” and inserting “The”.

(b) CONFORMING AMENDMENT.—The item relating to section 5330 in the table of sections for chapter 53 is amended to read as follows: “5330. Withholding amounts for noncompliance with State safety oversight requirements.”

#### SEC. 3029. SENSITIVE SECURITY INFORMATION.

Section 40119(b) is amended—

(1) in paragraph (1)(C), by inserting “, transportation facilities or infrastructure, or transportation employees” before the period at the end; and

(2) by adding at the end the following:

“(3) A State or local government may not enact, enforce, prescribe, issue, or continue in effect any law, regulation, standard, or order to the extent it is inconsistent with this section or regulations prescribed under this section.”

#### SEC. 3030. TERRORIST ATTACKS AND OTHER ACTS OF VIOLENCE AGAINST PUBLIC TRANSPORTATION SYSTEMS.

(a) IN GENERAL.—Section 1993 of title 18, United States Code, is amended—

(1) by striking “mass” each place it appears and inserting “public”; and

(2) in subsection (a)(5), by inserting “controlling,” after “operating”; and

(3) in subsection (c)(5), by striking “5302(a)(7) of title 49, United States Code,” and inserting “5302(a) of title 49.”

(b) CONFORMING AMENDMENT.—The table of contents for chapter 97 of title 18, United States Code is amended by amending the item related to section 1993 to read as follows:

“1993. Terrorist attacks and other acts of violence against public transportation systems.”

#### SEC. 3031. CONTROLLED SUBSTANCES AND ALCOHOL MISUSE TESTING.

Section 5331 is amended—

(1) in subsection (a)(3), by inserting before the period at the end the following: “or sections 2303a, 7101(i), or 7302(e) of title 46. The Secretary may also decide that a form of public transportation is covered adequately, for employee alcohol and controlled substances testing purposes, under the alcohol and controlled substance statutes or regulations of an agency within the Department of Transportation or other Federal agency”; and

(2) in subsection (f), by striking paragraph (3).

#### SEC. 3032. EMPLOYEE PROTECTIVE ARRANGEMENTS.

Section 5333(b) is amended—

(1) in paragraph (3), by striking the period at the end and inserting “, if—

“(A) the protective period does not exceed 4 years; and

“(B) the separation allowance does not exceed 12 months.”; and

(2) by adding at the end the following:

“(4) An arrangement under this subsection shall not guarantee continuation of employment as a result of a change in private contractors through competitive bidding unless such continuation is otherwise required under subparagraph (A), (B), or (D) of paragraph (2).

“(5) Fair and equitable arrangements to protect the interests of employees utilized by the Secretary of Labor for assistance to purchase like-kind equipment or facilities, and amendments to existing assistance agreements, shall be certified without referral.”

#### SEC. 3033. ADMINISTRATIVE PROCEDURES.

Section 5334 is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking “5309–5311 of this title” and all that follows and inserting “5309 through 5311”; and

(B) in paragraph (9), by striking “and” at the end;

(C) in paragraph (10), by striking the period at the end and inserting “; and”; and

(D) by inserting at the end the following:

“(11) issue regulations as necessary to carry out the purposes of this chapter.”;

(2) by redesignating subsections (b), (c), (d), (e), (f), (g), (h), (i), and (j) as subsections (c), (d), (e), (f), (g), (h), (i), (j), and (k), respectively;

(3) by adding after subsection (a) the following:

“(b) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—

“(1) IN GENERAL.—Except as directed by the President for purposes of national defense or in the event of a national or regional emergency, the Secretary may not regulate—

“(A) the operation, routes, or schedules of a public transportation system for which a grant is made under this chapter; or

“(B) the rates, fares, tolls, rentals, or other charges prescribed by any public or private transportation provider.

“(2) COMPLIANCE WITH AGREEMENT.—Nothing in this subsection shall prevent the Secretary from requiring a recipient of funds under this chapter to comply with the terms and conditions of its Federal assistance agreement.”; and

(4) in subsection (j)(1), as redesignated, by striking “carry out section 5312(a) and (b)(1) of this title” and inserting “advise and assist the Secretary in carrying out section 5312(a)”.

#### SEC. 3034. REPORTS AND AUDITS.

Section 5335 is amended—

(1) by striking subsection (b); and

(2) in subsection (a)—

(A) in paragraph (1), by striking “(1)”; and

(B) in paragraph (2), by striking “(2) The Secretary may make a grant under section 5307 of this title” and inserting the following:

“(b) REPORTING AND UNIFORM SYSTEMS.—The Secretary may award a grant under section 5307 or 5311”.

#### SEC. 3035. APPORTIONMENTS OF APPROPRIATIONS FOR FORMULA GRANTS.

Section 5336 is amended—

(1) by striking subsection (d);

(2) by striking subsection (h);

(3) by striking subsection (k);

(4) by redesignating subsections (a) through (c) as subsections (b) through (d), respectively;

(5) by adding before subsection (b), as redesignated, the following:

“(a) APPORTIONMENTS.—Of the amounts made available for each fiscal year under subsections (a)(1)(C)(vi) and (b)(2)(L) of section 5338—

“(1) there shall be apportioned, in fiscal year 2005 and each fiscal year thereafter, \$35,000,000 to certain urbanized areas with populations of less than 200,000 in accordance with subsection (k); and

“(2) any amount not apportioned under paragraph (1) shall be apportioned to urbanized areas in accordance with subsections (b) through (d).”;

(6) in subsection (b), as redesignated—

(A) by striking “Of the amount made available or appropriated under section 5338(a) of this title” and inserting “Of the amount apportioned under subsection (a)(3)”; and

(B) in paragraph (2), by striking “subsections (b) and (c) of this section” and inserting “subsections (c) and (d)”; and

(7) in subsection (c)(2), as redesignated, by striking “subsection (a)(2) of this section” and inserting “subsection (b)(2)”; and

(8) in subsection (d), as redesignated, by striking “subsection (a)(2) of this section” and inserting “subsection (b)(2)”; and

(9) in subsection (e)(1), by striking “subsections (a) and (h)(2) of section 5338 of this title” and inserting “subsections (a) and (b) of section 5338”; and

(10) in subsection (g), by striking “subsection (a)(1) of this section” each place it appears and inserting “subsection (b)(1)”; and

(11) by adding at the end the following:

“(k) SMALL TRANSIT INTENSIVE CITIES FACTORS.—

“(1) APPORTIONMENT BASED UPON REVENUE VEHICLE MILES.—Of the amount apportioned under subsection (a)(1), one-third shall be apportioned to urbanized areas as follows:

“(A) The Secretary shall calculate a factor equal to the sum of revenue vehicle miles operated within urbanized areas with a population of between 200,000 and 1,000,000 divided by the sum of the population of all such urbanized areas.

“(B) The Secretary shall designate as eligible for an apportionment under this paragraph all urbanized areas with a population of under 200,000 for which the number of revenue vehicle miles operated within the urbanized area divided by the population of the urbanized area exceeds the factor calculated under subparagraph (A).

“(C) For each urbanized area qualifying for an apportionment under subparagraph (B), the Secretary shall calculate an amount equal to the product of the population of that urbanized area and the factor calculated under subparagraph (A).

“(D) For each urbanized area qualifying for an apportionment under subparagraph (B), the Secretary shall calculate an amount equal to the difference between the number of revenue vehicle miles within that urbanized area less the amount calculated in subparagraph (C).

“(E) Each urbanized area qualifying for an apportionment under subparagraph (B) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for that urbanized area under subparagraph (D) divided by the sum of the amounts calculated under subparagraph (D) for all urbanized areas qualifying for an apportionment under subparagraph (B).

“(2) APPORTIONMENT BASED UPON REVENUE VEHICLE HOURS.—Of the amount apportioned under subsection (a)(1), one-third shall be apportioned to urbanized areas as follows:

“(A) The Secretary shall calculate a factor equal to the sum of revenue vehicle hours operated within urbanized areas with a population of between 200,000 and 1,000,000 divided by the sum of the population of all such urbanized areas.

“(B) The Secretary shall designate as eligible for an apportionment under this paragraph all urbanized areas with a population of under 200,000 for which the number of revenue vehicle hours operated within the urbanized area divided by the population of the urbanized area exceeds the factor calculated under subparagraph (A).

“(C) For each urbanized area qualifying for an apportionment under subparagraph (B), the Secretary shall calculate an amount equal to the product of the population of that urbanized area and the factor calculated under subparagraph (A).

“(D) For each urbanized area qualifying for an apportionment under subparagraph (B), the Secretary shall calculate an amount equal to the difference between the number of revenue vehicle hours within that urbanized area less the amount calculated in subparagraph (C).

“(E) Each urbanized area qualifying for an apportionment under subparagraph (B) shall

receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for that urbanized area under subparagraph (D) divided by the sum of the amounts calculated under subparagraph (D) for all urbanized areas qualifying for an apportionment under subparagraph (B).

“(3) APPORTIONMENT BASED UPON PASSENGER MILES.—Of the amount apportioned under subsection (a)(1), one-third shall be apportioned to urbanized areas as follows:

“(A) The Secretary shall calculate a factor equal to the sum of passenger miles consumed within urbanized areas with a population of between 200,000 and 1,000,000 divided by the sum of the population of all such urbanized areas.

“(B) The Secretary shall designate as eligible for an apportionment under this paragraph all urbanized areas with a population of under 200,000 for which the number of passenger miles consumed within the urbanized area divided by the population of the urbanized area exceeds the factor calculated under subparagraph (A).

“(C) For each urbanized area qualifying for an apportionment under subparagraph (B), the Secretary shall calculate an amount equal to the product of the population of that urbanized area and the factor calculated under subparagraph (A).

“(D) For each urbanized area qualifying for an apportionment under subparagraph (B), the Secretary shall calculate an amount equal to the difference between the number of passenger miles consumed within that urbanized area less the amount calculated in subparagraph (C).

“(E) Each urbanized area qualifying for an apportionment under subparagraph (B) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for that urbanized area under subparagraph (D) divided by the sum of the amounts calculated under subparagraph (D) for all urbanized areas qualifying for an apportionment under subparagraph (B).

“(I) STUDY ON INCENTIVES IN FORMULA PROGRAMS.—

“(1) STUDY.—The Secretary shall conduct a study to assess the feasibility and appropriateness of developing and implementing an incentive funding system under sections 5307 and 5311 for operators of public transportation.

“(2) REPORT.—

“(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall submit a report on the results of the study conducted under paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

“(B) CONTENTS.—The report submitted under subparagraph (A) shall include—

“(i) an analysis of the availability of appropriate measures to be used as a basis for the distribution of incentive payments;

“(ii) the optimal number and size of any incentive programs;

“(iii) what types of systems should compete for various incentives;

“(iv) how incentives should be distributed; and

“(v) the likely effects of the incentive funding system.”.

#### SEC. 3036. APPORTIONMENTS FOR FIXED GUIDEWAY MODERNIZATION.

Section 5337 is amended—

(1) in subsection (a), by striking “for each of fiscal years 1998 through 2003”; and

(2) by striking “section 5336(b)(2)(A)” each place it appears and inserting “section 5336(c)(2)(A)”.

#### SEC. 3037. AUTHORIZATIONS.

Section 5338 is amended to read as follows:

##### “§ 5338. Authorizations

“(a) FISCAL YEAR 2004.—

“(1) FORMULA GRANTS.—

“(A) TRUST FUND.—For fiscal year 2004, \$3,013,315,920 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5310, and 5311 of this chapter and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

“(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated \$753,328,980 for fiscal year 2004 to carry out sections 5307, 5310, and 5311 of this chapter and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

“(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

“(i) \$4,821,335 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307;

“(ii) \$6,908,995 shall be available to provide over-the-road bus accessibility grants under section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note);

“(iii) \$90,117,950 shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310;

“(iv) \$239,188,058 shall be available to provide financial assistance for other than urbanized areas under section 5311; and

“(v) \$3,425,608,562 shall be available to provide financial assistance for urbanized areas under section 5307.

“(2) JOB ACCESS AND REVERSE COMMUTE.—

“(A) TRUST FUND.—For fiscal year 2004, \$83,504,400 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 3037 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5309 note).

“(B) GENERAL FUND.—In addition to the amounts made available under paragraph (A), there are authorized to be appropriated \$20,876,100 for fiscal year 2004 to carry out section 3037 of the Transportation Equity Act of the 21st Century (49 U.S.C. 5309 note).

“(3) CAPITAL PROGRAM GRANTS.—

“(A) TRUST FUND.—For fiscal year 2004, \$2,550,860,600 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309.

“(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated \$637,715,150 for fiscal year 2004 to carry out section 5309.

“(4) PLANNING.—

“(A) TRUST FUND.—For fiscal year 2004, \$58,055,440 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5308.

“(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated \$14,513,860 for fiscal year 2004 to carry out section 5308.

“(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

“(i) 82.72 percent shall be allocated for metropolitan planning under section 5308(c); and

“(ii) 17.28 percent shall be allocated for State planning under section 5308(d).

“(5) RESEARCH.—

“(A) TRUST FUND.—For fiscal year 2004, \$42,149,840 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5311(b), 5312, 5313, 5314, 5315, and 5322.

“(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated \$10,537,460 for fiscal year 2004 to carry out sections 5311(b), 5312, 5313, 5314, 5315, and 5322.

“(C) ALLOCATION OF FUNDS.—Of the funds made available or appropriated under this paragraph—

“(i) not less than \$3,976,400 shall be available to carry out programs of the National Transit Institute under section 5315;

“(ii) not less than \$5,219,025 shall be available to carry out section 5311(b)(2);

“(iii) not less than \$8,201,325 shall be available to carry out section 5313; and

“(iv) the remainder shall be available to carry out national research and technology programs under sections 5312, 5314, and 5322.

“(6) UNIVERSITY TRANSPORTATION RESEARCH.—

“(A) TRUST FUND.—For fiscal year 2004, \$4,771,680 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5505 and 5506.

“(B) GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated \$1,192,920 for fiscal year 2004 to carry out sections 5505 and 5506.

“(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

“(i) \$1,988,200 shall be available for grants under 5506(f)(5) to the institution identified in section 5505(j)(3)(E), as in effect on the day before the date of enactment of the Federal Public Transportation Act of 2004;

“(ii) \$1,988,200 shall be available for grants under section 5505(d) to the institution identified in section 5505(j)(4)(A), as in effect on the date specified in clause (i); and

“(iii) \$1,988,200 shall be available for grants under section 5505(d) to the institution identified in section 5505(j)(4)(F), as in effect on the date specified in subclause (i).

“(C) SPECIAL RULE.—Nothing in this paragraph shall be construed to limit the transportation research conducted by the centers receiving financial assistance under this section.

“(7) ADMINISTRATION.—

“(A) TRUST FUND.—For fiscal year 2004, \$60,043,640 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334.

“(B) GENERAL FUND.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated \$15,010,910 for fiscal year 2004 to carry out section 5334.

“(8) GRANTS AS CONTRACTUAL OBLIGATIONS.—

“(A) GRANTS FINANCED FROM HIGHWAY TRUST FUND.—A grant or contract that is approved by the Secretary and financed with amounts made available under paragraph (1)(A), (2)(A), (3)(A), (4)(A), (5)(A), (6)(A), or (7)(A) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project.

“(B) GRANTS FINANCED FROM GENERAL FUND.—A grant or contract that is approved by the Secretary and financed with amounts appropriated in advance under paragraph (1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), or (7)(B) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project only to the extent that amounts are appropriated for such purpose by an Act of Congress.

“(9) AVAILABILITY OF AMOUNTS.—Amounts made available or appropriated under paragraphs (1) through (6) shall remain available until expended.”.

“(b) FORMULA GRANTS AND RESEARCH.—

“(1) IN GENERAL.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307,

5308, 5309, 5310 through 5316, 5322, 5335, 5339, and 5505 of this title, and sections 3037 and 3038 of the Federal Transit Act of 1998 (112 Stat. 387 et seq.)—

“(A) \$6,262,600,000 for fiscal year 2005;

“(B) \$6,577,629,000 for fiscal year 2006;

“(C) \$6,950,400,000 for fiscal year 2007;

“(D) \$7,594,760,000 for fiscal year 2008; and

“(E) \$8,275,320,000 for fiscal year 2009.

“(2) ALLOCATION OF FUNDS.—Of the amounts made available under paragraph (1) for each fiscal year—

“(A) 0.92 percent shall be available for grants to the Alaska Railroad under section 5307 for improvements to its passenger operations;

“(B) 1.75 percent shall be available to carry out section 5308;

“(C) 2.05 percent shall be available to provide financial assistance for job access and reverse commute projects under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note);

“(D) 3.00 percent shall be available to provide financial assistance for services for elderly persons and persons with disabilities under section 5310;

“(E) 0.125 percent shall be available to carry out section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note);

“(F) 6.25 percent shall be available to provide financial assistance for other than urbanized areas under section 5311;

“(G) 0.89 percent shall be available to carry out transit cooperative research programs under section 5313, the National Transit Institute under section 5315, university research centers under section 5505, and national research programs under sections 5312, 5313, 5314, and 5322, of which—

“(i) 17.0 percent shall be allocated to carry out transit cooperative research programs under section 5313;

“(ii) 7.5 percent shall be allocated to carry out programs under the National Transit Institute under section 5315, including not more than \$1,000,000 to carry out section 5315(a)(16);

“(iii) 11.0 percent shall be allocated to carry out the university centers program under section 5505; and

“(iv) any funds made available under this subparagraph that are not allocated under clauses (i) through (iii) shall be allocated to carry out national research programs under sections 5312, 5313, 5314, and 5322;

“(H) \$25,000,000 shall be available for each of the fiscal years 2005 through 2009 to carry out section 5316;

“(I) there shall be available to carry out section 5335—

“(i) \$3,700,000 in fiscal year 2005;

“(ii) \$3,900,000 in fiscal year 2006;

“(iii) \$4,200,000 in fiscal year 2007;

“(iv) \$4,600,000 in fiscal year 2008; and

“(v) \$5,000,000 in fiscal year 2009;

“(J) 6.25 percent shall be allocated in accordance with section 5340 to provide financial assistance for urbanized areas under section 5307 and other than urbanized areas under section 5311; and

“(K) 22.0 percent shall be allocated in accordance with section 5337 to provide financial assistance under section 5309(i)(3); and

“(L) any amounts not made available under subparagraphs (A) through (K) shall be allocated in accordance with section 5336 to provide financial assistance for urbanized areas under section 5307.

“(3) UNIVERSITY CENTERS PROGRAM.—

“(A) ALLOCATION.—Of the amounts allocated under paragraph (2)(G)(iii), \$1,000,000 shall be available in each of the fiscal years 2005 through 2009 for Morgan State University to provide transportation research, training, and curriculum development.

“(B) REQUIREMENTS.—The university specified under subparagraph (A) shall be considered a University Transportation Center under section 510 of title 23, and shall be subject to the requirements under subsections (c), (d), (e), and (f) of such section.

“(C) REPORT.—In addition to the report required under section 510(e)(3) of title 23, the university specified under subparagraph (A) shall annually submit a report to the Secretary that describes the university's contribution to public transportation.

“(4) BUS GRANTS.—In addition to the amounts made available under paragraph (1), there shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309(i)(2)(B)—

“(A) \$839,829,000 for fiscal year 2005;

“(B) \$882,075,000 for fiscal year 2006;

“(C) \$932,064,000 for fiscal year 2007;

“(D) \$1,018,474,000 for fiscal year 2008; and

“(E) \$1,109,739,000 for fiscal year 2009.

“(c) MAJOR CAPITAL INVESTMENT GRANTS.—There are authorized to be appropriated to carry out section 5309(i)(2)(A)—

“(1) \$1,461,072,000 for fiscal year 2005;

“(2) \$1,534,568,000 for fiscal year 2006;

“(3) \$1,621,536,000 for fiscal year 2007;

“(4) \$1,771,866,000 for fiscal year 2008; and

“(5) \$1,930,641,000 for fiscal year 2009.

“(d) ADMINISTRATION.—There are authorized available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334—

“(1) \$86,500,000 for fiscal year 2005;

“(2) \$90,851,000 for fiscal year 2006;

“(3) \$96,000,000 for fiscal year 2007;

“(4) \$104,900,000 for fiscal year 2008; and

“(5) \$114,300,000 for fiscal year 2009.

“(e) GRANTS AS CONTRACTUAL OBLIGATIONS.—

“(1) MASS TRANSIT ACCOUNT FUNDS.—A grant or contract approved by the Secretary that is financed with amounts made available under subsection (b)(1) or (d) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project.

“(2) APPROPRIATED FUNDS.—A grant or contract approved by the Secretary that is financed with amounts made available under subsection (b)(2) or (c) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project only to the extent that amounts are appropriated in advance for such purpose by an Act of Congress.

“(f) AVAILABILITY OF AMOUNTS.—Amounts made available by or appropriated under subsections (b) and (c) shall remain available until expended.”.

#### SEC. 3038. APPORTIONMENTS BASED ON GROWING STATES FORMULA FACTORS.

(a) IN GENERAL.—Chapter 53 is amended by adding at the end the following:

##### “§ 5340. Apportionments based on growing States and high density State formula factors

“(a) ALLOCATION.—Of the amounts made available for each fiscal year under section 5338(b)(2)(J), the Secretary shall apportion—

“(1) 50 percent to States and urbanized areas in accordance with subsection (b); and

“(2) 50 percent to States and urbanized areas in accordance with subsection (c).

“(b) GROWING STATE APPORTIONMENTS.—

“(1) APPORTIONMENT AMONG STATES.—The amounts apportioned under paragraph (a)(1) shall provide each State with an amount equal to the total amount apportioned multiplied by a ratio equal to the population of that State forecast for the year that is 15 years after the most recent decennial census, divided by the total population of all States forecast for the year that is 15 years after the most recent decennial census.

“(2) APPORTIONMENTS BETWEEN URBANIZED AREAS AND OTHER THAN URBANIZED AREAS IN EACH STATE.—

“(A) IN GENERAL.—The Secretary shall apportion amounts to each State under paragraph (1) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the forecast population of all urbanized areas in that State divided by the total forecast population of that State. In making the apportionment under this subparagraph, the Secretary shall utilize any available forecasts made by the State. If no forecasts are available, the Secretary shall utilize data on urbanized areas and total population from the most recent decennial census.

“(B) REMAINING AMOUNTS.—Amounts remaining for each State after apportionment under subparagraph (A) shall be apportioned to that State and added to the amount made available for grants under section 5311.

“(3) APPORTIONMENTS AMONG URBANIZED AREAS IN EACH STATE.—The Secretary shall apportion amounts made available to urbanized areas in each State under subsection (b)(2)(A) so that each urbanized area receives an amount equal to the amount apportioned under subsection (b)(2)(A) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336, and made available for grants under section 5307.

“(c) HIGH DENSITY STATE APPORTIONMENTS.—Amounts to be apportioned under subsection (a)(2) shall be apportioned as follows:

“(1) ELIGIBLE STATES.—The Secretary shall designate as eligible for an apportionment under this subsection all States with a population density in excess of 370 persons per square mile.

“(2) STATE URBANIZED LAND FACTOR.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to the product of the urban land area of urbanized areas in the State times 370 persons per square mile.

“(3) STATE APPORTIONMENT FACTOR.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to the difference between the total population of the State less the amount calculated in paragraph (2).

“(4) STATE APPORTIONMENT.—Each State qualifying for an apportionment under paragraph (1) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for the State under paragraph (3) divided by the sum of the amounts calculated under paragraph (3) for all States qualifying for an apportionment under paragraph (1).

“(5) APPORTIONMENTS BETWEEN URBANIZED AREAS AND OTHER THAN URBANIZED AREAS IN EACH STATE.—

“(A) IN GENERAL.—The Secretary shall apportion amounts apportioned to each State under paragraph (4) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the population of all urbanized areas in that State divided by the total population of that State.

“(B) REMAINING AMOUNTS.—Amounts remaining for each State after apportionment under subparagraph (a) shall be apportioned to that State and added to the amount made available for grants under section 5311.

“(6) APPORTIONMENTS AMONG URBANIZED AREAS IN EACH STATE.—The Secretary shall apportion amounts made available to urbanized areas in each State under subsection (c)(5)(A) so that each urbanized area receives

an amount equal to the amount apportioned under subsection (c)(5)(A) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336, and made available for grants under section 5307."

(b) CONFORMING AMENDMENT.—The table of sections for chapter 53 is amended by adding at the end the following:

"5340. Apportionments based on growing States and high density States formula factors."

#### SEC. 3039. JOB ACCESS AND REVERSE COMMUTE GRANTS.

Section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note) is amended—

(1) in subsection (b)—  
(A) in paragraph (1)—  
(i) by striking "means an individual" and inserting the following: "means—  
"(A) an individual"; and  
(ii) by striking the period at the end and inserting "; or  
"(B) an individual who is eligible for assistance under the State program of Temporary Assistance to Needy Families funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et. seq.) in the State in which the recipient of a grant under this section is located."; and  
(B) in paragraph (2), by striking "development of" each place it appears and inserting "development and provision of";  
(2) in subsection (1), by amending paragraph (2) to read as follows:

"(2) COORDINATION.—  
"(A) IN GENERAL.—The Secretary shall coordinate activities under this section with related activities under programs of other Federal departments and agencies.  
"(B) CERTIFICATION.—A recipient of funds under this section shall certify that—  
"(i) the project has been derived from a locally developed, coordinated public transit human services transportation plan; and  
"(ii) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.";

(3) by amending subsection (j) to read as follows:

"(j) GRANT REQUIREMENTS.—  
"(1) IN GENERAL.—  
"(A) URBANIZED AREAS.—A grant awarded under this section to a public agency or private company engaged in public transportation in an urbanized area shall be subject to the all of the terms and conditions to which a grant awarded under section 5307 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.  
"(B) OTHER THAN URBANIZED AREAS.—A grant awarded under this section to a public agency or a private company engaged in public transportation in an area other than urbanized areas shall be subject to all of the terms and conditions to which a grant awarded under section 5311 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.  
"(C) NONPROFIT ORGANIZATIONS.—A grant awarded under this section to a private nonprofit organization shall be subject to all of the terms and conditions to which a grant made under section 5310 of title 49, United States Code, is subject, to the extent the Secretary considers appropriate.  
"(2) SPECIAL WARRANTY.—  
"(A) IN GENERAL.—Section 5333(b) of title 49, United States Code, shall apply to grants under this section if the Secretary of Labor utilizes a Special Warranty that provides a

fair and equitable arrangement to protect the interests of employees.

"(B) WAIVER.—The Secretary may waive the applicability of the Special Warranty under subparagraph (A) for private non-profit recipients on a case-by-case basis as the Secretary considers appropriate."; and  
(4) by striking subsections (k) and (l).

#### SEC. 3040. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.

(a) SECTION HEADING.—The section heading for section 3038 of the Federal Transit Act of 1998 (49 U.S.C. 5310 note), is amended to read as follows:

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

(b) FUNDING.—Section 3038(g) of the Federal Transit Act of 1998 (49 U.S.C. 5310 note) is amended to read as follows:

"(g) FUNDING.—Of the amounts made available for each fiscal year under subsections (a)(1)(C)(iii) and (b)(2)(E) of section 5338 of title 49, United States Code—

"(1) 75 percent shall be available, and shall remain available until expended, for operators of over-the-road buses, used substantially or exclusively in intercity, fixed-route over-the-road bus service, to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses; and  
"(2) 25 percent shall be available, and shall remain available until expended, for operators of over-the-road bus service not described in paragraph (1), to finance the incremental capital and training costs of the Department of Transportation's final rule regarding accessibility of over-the-road buses."

(b) CONFORMING AMENDMENT.—The item relating to section 3038 in the table of contents for the Transportation Equity Act for the 21st Century (Public Law 105-178) is amended to read as follows:

"Sec. 3038. Over-the-road bus accessibility program."

#### SEC. 3041. ALTERNATIVE TRANSPORTATION IN PARKS AND PUBLIC LANDS.

(a) IN GENERAL.—Chapter 53 is amended by inserting after section 5315 the following:

#### "§ 5316. Alternative transportation in parks and public lands

"(a) IN GENERAL.—  
"(1) AUTHORIZATION.—  
"(A) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, may award a grant or enter into a contract, cooperative agreement, interagency agreement, intraagency agreement, or other transaction to carry out a qualified project under this section to enhance the protection of America's National Parks and public lands and increase the enjoyment of those visiting the parks and public lands by ensuring access to all, including persons with disabilities, improving conservation and park and public land opportunities in urban areas through partnering with state and local governments, and improving park and public land transportation infrastructure.  
"(B) CONSULTATION WITH OTHER AGENCIES.—To the extent that projects are proposed or funded in eligible areas that are not within the jurisdiction of the Department of the Interior, the Secretary of the Interior shall consult with the heads of the relevant Federal land management agencies in carrying out the responsibilities under this section.  
"(2) USE OF FUNDS.—A grant, cooperative agreement, interagency agreement, intraagency agreement, or other transaction for a qualified project under this section shall be available to finance the leasing of equipment and facilities for use in public transportation, subject to any regulation that the Secretary may prescribe limiting

the grant or agreement to leasing arrangements that are more cost-effective than purchase or construction.

"(b) DEFINITIONS.—As used in this section, the following definitions shall apply:

"(1) ELIGIBLE AREA.—The term 'eligible area' means any federally owned or managed park, refuge, or recreational area that is open to the general public, including—

"(A) a unit of the National Park System;  
"(B) a unit of the National Wildlife Refuge System;

"(C) a recreational area managed by the Bureau of Land Management; and  
"(D) a recreation area managed by the Bureau of Reclamation.

"(2) FEDERAL LAND MANAGEMENT AGENCY.—The term 'Federal land management agency' means a Federal agency that manages an eligible area.  
"(3) ALTERNATIVE TRANSPORTATION.—The term 'alternative transportation' means transportation by bus, rail, or any other publicly or privately owned conveyance that provides to the public general or special service on a regular basis, including sightseeing service.  
"(4) QUALIFIED PARTICIPANT.—The term 'qualified participant' means—

"(A) a Federal land management agency; or  
"(B) a State, tribal, or local governmental authority with jurisdiction over land in the vicinity of an eligible area acting with the consent of the Federal land management agency, alone or in partnership with a Federal land management agency or other Governmental or nongovernmental participant.  
"(5) QUALIFIED PROJECT.—The term 'qualified project' means a planning or capital project in or in the vicinity of an eligible area that—  
"(A) is an activity described in section 5302, 5303, 5304, 5308, or 5309(a)(1)(A);  
"(B) involves—  
"(i) the purchase of rolling stock that incorporates clean fuel technology or the replacement of buses of a type in use on the date of enactment of this section with clean fuel vehicles; or  
"(ii) the deployment of alternative transportation vehicles that introduce innovative technologies or methods;  
"(C) relates to the capital costs of coordinating the Federal land management agency public transportation systems with other public transportation systems;  
"(D) provides a nonmotorized transportation system (including the provision of facilities for pedestrians, bicycles, and nonmotorized watercraft);  
"(E) provides waterborne access within or in the vicinity of an eligible area, as appropriate to and consistent with this section; or  
"(F) is any other alternative transportation project that—  
"(i) enhances the environment;  
"(ii) prevents or mitigates an adverse impact on a natural resource;  
"(iii) improves Federal land management agency resource management;  
"(iv) improves visitor mobility and accessibility and the visitor experience;  
"(v) reduces congestion and pollution (including noise pollution and visual pollution); or  
"(vi) conserves a natural, historical, or cultural resource (excluding rehabilitation or restoration of a non-transportation facility).

"(c) FEDERAL AGENCY COOPERATIVE ARRANGEMENTS.—The Secretary shall develop cooperative arrangements with the Secretary of the Interior that provide for—  
"(1) technical assistance in alternative transportation;  
"(2) interagency and multidisciplinary teams to develop Federal land management

agency alternative transportation policy, procedures, and coordination; and

“(3) the development of procedures and criteria relating to the planning, selection, and funding of qualified projects and the implementation and oversight of the program of projects in accordance with this section.

“(d) LIMITATION ON USE OF AVAILABLE AMOUNTS.—

“(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, may use not more than 10 percent of the amount made available for a fiscal year under section 5338(a)(2)(I) to carry out planning, research, and technical assistance under this section, including the development of technology appropriate for use in a qualified project.

“(2) ADDITIONAL AMOUNTS.—Amounts made available under this subsection are in addition to amounts otherwise available to the Secretary to carry out planning, research, and technical assistance under this title or any other provision of law.

“(3) MAXIMUM AMOUNT.—No qualified project shall receive more than 12 percent of the total amount made available to carry out this section under section 5338(a)(2)(I) for any fiscal year.

“(e) PLANNING PROCESS.—In undertaking a qualified project under this section,

“(1) if the qualified participant is a Federal land management agency—

“(A) the Secretary, in cooperation with the Secretary of the Interior, shall develop transportation planning procedures that are consistent with—

“(i) the metropolitan planning provisions under section 5303 of this title;

“(ii) the statewide planning provisions under section 5304 of this title; and

“(iii) the public participation requirements under section 5307(e); and

“(B) in the case of a qualified project that is at a unit of the National Park system, the planning process shall be consistent with the general management plans of the unit of the National Park system; and

“(2) if the qualified participant is a State or local governmental authority, or more than one State or local governmental authority in more than one State, the qualified participant shall—

“(A) comply with the metropolitan planning provisions under section 5303 of this title;

“(B) comply with the statewide planning provisions under section 5304 of this title;

“(C) comply with the public participation requirements under section 5307(e) of this title; and

“(D) consult with the appropriate Federal land management agency during the planning process.

“(f) COST SHARING.—

“(1) The Secretary, in cooperation with the Secretary of the Interior, shall establish the agency share of net project cost to be provided under this section to a qualified participant.

“(2) In establishing the agency share of net project cost to be provided under this section, the Secretary shall consider—

“(A) visitation levels and the revenue derived from user fees in the eligible area in which the qualified project is carried out;

“(B) the extent to which the qualified participant coordinates with a public transportation authority or private entity engaged in public transportation;

“(C) private investment in the qualified project, including the provision of contract services, joint development activities, and the use of innovative financing mechanisms;

“(D) the clear and direct benefit to the qualified participant; and

“(E) any other matters that the Secretary considers appropriate to carry out this section.

“(3) Notwithstanding any other provision of law, Federal funds appropriated to any Federal land management agency may be counted toward the non-agency share of the net project cost of a qualified project.

“(g) SELECTION OF QUALIFIED PROJECTS.—

“(1) The Secretary of the Interior, after consultation with and in cooperation with the Secretary, shall determine the final selection and funding of an annual program of qualified projects in accordance with this section.

“(2) In determining whether to include a project in the annual program of qualified projects, the Secretary of the Interior shall consider—

“(A) the justification for the qualified project, including the extent to which the qualified project would conserve resources, prevent or mitigate adverse impact, and enhance the environment;

“(B) the location of the qualified project, to ensure that the selected qualified projects—

“(i) are geographically diverse nationwide; and

“(ii) include qualified projects in eligible areas located in both urban areas and rural areas;

“(C) the size of the qualified project, to ensure that there is a balanced distribution;

“(D) the historical and cultural significance of a qualified project;

“(E) safety;

“(F) the extent to which the qualified project would—

“(i) enhance livable communities;

“(ii) reduce pollution (including noise pollution, air pollution, and visual pollution);

“(iii) reduce congestion; and

“(iv) improve the mobility of people in the most efficient manner; and

“(G) any other matters that the Secretary considers appropriate to carry out this section, including—

“(i) visitation levels;

“(ii) the use of innovative financing or joint development strategies; and

“(iii) coordination with gateway communities.

“(h) QUALIFIED PROJECTS CARRIED OUT IN ADVANCE.—

“(1) When a qualified participant carries out any part of a qualified project without assistance under this section in accordance with all applicable procedures and requirements, the Secretary, in consultation with the Secretary of the Interior, may pay the share of the net capital project cost of a qualified project if—

“(A) the qualified participant applies for the payment;

“(B) the Secretary approves the payment; and

“(C) before carrying out that part of the qualified project, the Secretary approves the plans and specifications in the same manner as plans and specifications are approved for other projects assisted under this section.

“(2)(A) The cost of carrying out part of a qualified project under paragraph (1) includes the amount of interest earned and payable on bonds issued by a State or local governmental authority, to the extent that proceeds of the bond are expended in carrying out that part.

“(B) The rate of interest under this paragraph may not exceed the most favorable rate reasonably available for the qualified project at the time of borrowing.

“(C) The qualified participant shall certify, in a manner satisfactory to the Secretary, that the qualified participant has exercised reasonable diligence in seeking the most favorable interest rate.

“(i) RELATIONSHIP TO OTHER LAWS.—

“(1) SECTION 5307.—A qualified participant under this section shall be subject to the requirements of sections 5307 and 5333(a) to the extent the Secretary determines to be appropriate.

“(2) OTHER REQUIREMENTS.—A qualified participant under this section is subject to any other terms, conditions, requirements, and provisions that the Secretary determines to be appropriate to carry out this section, including requirements for the distribution of proceeds on disposition of real property and equipment resulting from a qualified project assisted under this section.

“(3) PROJECT MANAGEMENT PLAN.—If the amount of assistance anticipated to be required for a qualified project under this section is not less than \$25,000,000—

“(A) the qualified project shall, to the extent the Secretary considers appropriate, be carried out through a full funding grant agreement, in accordance with section 5309(g); and

“(B) the qualified participant shall prepare a project management plan in accordance with section 5327(a).

“(i) ASSET MANAGEMENT.—The Secretary, in consultation with the Secretary of the Interior, may transfer the interest of the Department of Transportation in, and control over, all facilities and equipment acquired under this section to a qualified participant for use and disposition in accordance with any property management regulations that the Secretary determines to be appropriate.

“(j) COORDINATION OF RESEARCH AND DEPLOYMENT OF NEW TECHNOLOGIES.—

“(1) The Secretary, in cooperation with the Secretary of the Interior, may undertake, or make grants, cooperative agreements, contracts (including agreements with departments, agencies, and instrumentalities of the Federal Government) or other transactions for research, development, and deployment of new technologies in eligible areas that will—

“(A) conserve resources;

“(B) prevent or mitigate adverse environmental impact;

“(C) improve visitor mobility, accessibility, and enjoyment; and

“(D) reduce pollution (including noise pollution and visual pollution).

“(2) The Secretary may request and receive appropriate information from any source.

“(3) Grants, cooperative agreements, contracts or other transactions under paragraph (1) shall be awarded from amounts allocated under subsection (c)(1).

“(k) INNOVATIVE FINANCING.—A qualified project receiving financial assistance under this section shall be eligible for funding through a state infrastructure bank or other innovative financing mechanism available to finance an eligible project under this chapter.

“(l) REPORTS.—

“(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, shall annually submit a report on the allocation of amounts made available to assist qualified projects under this section to—

“(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

“(B) the Committee on Transportation and Infrastructure of the House of Representatives.

“(2) ANNUAL AND SUPPLEMENTAL REPORTS.—The report required under paragraph (1) shall be included in the report submitted under section 5309(m).”

(b) CONFORMING AMENDMENTS.—The table of sections for chapter 53 is amended by inserting after the item relating to section 5315 the following:

“5316. Alternative transportation in parks and public lands.”



**SEC. 3042. OBLIGATION CEILING.**

Notwithstanding any other provision of law, the total of all obligations from amounts made available from the Mass Transit Account of the Highway Trust Fund by, and amounts appropriated under, subsections (a) through (c) of section 5338 of title 49, United States Code, shall not exceed—

- (1) \$7,265,876,900 for fiscal year 2004;
- (2) \$8,650,000,000 for fiscal year 2005;
- (3) \$9,085,123,000 for fiscal year 2006;
- (4) \$9,600,000,000 for fiscal year 2007;
- (5) \$10,490,000,000 for fiscal year 2008; and
- (6) \$11,430,000,000 for fiscal year 2009.

**SEC. 3043. ADJUSTMENTS FOR THE SURFACE TRANSPORTATION EXTENSION ACT OF 2003.**

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall reduce the total apportionments and allocations made for fiscal year 2004 to each grant recipient under section 5338 of title 49, United States Code, by the amount apportioned to that recipient pursuant to section 8 of the Surface Transportation Extension Act of 2003 (117 Stat. 1121).

(b) FIXED GUIDEWAY MODERNIZATION ADJUSTMENT.—In making the apportionments described in subsection (a), the Secretary shall adjust the amount apportioned for fiscal year 2004 to each urbanized area for fixed guideway modernization to reflect the apportionment method set forth in 5337(a) of title 49, United States Code.

**SA 2270.** Ms. COLLINS submitted an amendment intended to be proposed by her to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following new section:

**SEC. \_\_\_\_ . FUNDS FOR REBUILDING FISH STOCKS.**

Section 105 of the Miscellaneous Appropriations and Offsets Act, 2004 (division H of the Consolidated Appropriations Act, 2004) is repealed.

**SA 2271.** Mr. VOINOVICH submitted an amendment intended to be proposed by him to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 806, strike line 5 and insert the following:

**SEC. 1514. PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES.**

(a) PROGRAMS AND PROJECTS WITH DE MINIMIS IMPACTS.—

(1) TITLE 23.—Section 138 of title 23, United States Code, is amended—

(A) in the first sentence, by striking “It is hereby” and inserting the following:

“(a) DECLARATION OF POLICY.—It is”; and

(b) by adding at the end the following:

“(b) DE MINIMIS IMPACTS.—

“(1) REQUIREMENTS.—

“(A) IN GENERAL.—The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) or (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

“(B) CRITERIA.—In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimiza-

tion, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

“(2) HISTORIC SITES.—With respect to historic sites, the Secretary may make a finding of de minimis impact only if—

“(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that—

“(i) the transportation program or project will have no adverse effect on the historic site; or

“(ii) there will be no historic properties affected by the transportation program or project;

“(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation, if participating in the consultation); and

“(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

“(3) PARKS, RECREATION AREAS, AND WILDLIFE AND WATERFOWL REFUGES.—With respect to parks, recreation areas, or wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

“(A) the Secretary has determined, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (including public notice and opportunity for public review and comment), that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this title; and

“(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.”

(2) TITLE 49.—Section 303 of title 49, United States Code, is amended—

(A) by striking “(c) The Secretary” and inserting the following:

“(c) APPROVAL OF PROGRAMS AND PROJECTS.—Subject to subsection (d), the Secretary”; and

(B) by adding at the end the following:

“(d) DE MINIMIS IMPACTS.—

“(1) REQUIREMENTS.—

“(A) IN GENERAL.—The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) or (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

“(B) CRITERIA.—In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

“(2) HISTORIC SITES.—With respect to historic sites, the Secretary may make a finding of de minimis impact only if—

“(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that—

“(i) the transportation program or project will have no adverse effect on the historic site; or

“(ii) there will be no historic properties affected by the transportation program or project;

“(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or

tribal historic preservation officer (and from the Advisory Council on Historic Preservation, if participating in the consultation); and

“(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

“(3) PARKS, RECREATION AREAS, AND WILDLIFE AND WATERFOWL REFUGES.—With respect to parks, recreation areas, or wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

“(A) the Secretary has determined, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (including public notice and opportunity for public review and comment), that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this title; and

“(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.”

(b) CLARIFICATION OF EXISTING STANDARDS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall (in consultation with affected agencies and interested parties) promulgate regulations that clarify the factors to be considered and the standards to be applied in determining the prudence and feasibility of alternatives under section 138 of title 23 and section 303 of title 49, United States Code.

(2) REQUIREMENTS.—The regulations—

(A) shall clarify the application of the legal standards to a variety of different types of transportation programs and projects depending on the circumstances of each case; and

(B) may include, as appropriate, examples to facilitate clear and consistent interpretation by agency decisionmakers.

(c) IMPLEMENTATION STUDY.—

(1) IN GENERAL.—The Secretary and the Transportation Research Board of the National Academy of Sciences shall jointly conduct a study on the implementation of this section and the amendments made by this section.

(2) COMPONENTS.—In conducting the study, the Secretary and the Transportation Research Board shall evaluate—

(A) the processes developed under this section and the amendments made by this section and the efficiencies that may result;

(B) the post-construction effectiveness of impact mitigation and avoidance commitments adopted as part of projects conducted under this section and the amendments made by this section; and

(C) the quantity of projects with impacts that are considered de minimis under this section and the amendments made by this section, including information on the location, size, and cost of the projects.

(3) REPORT REQUIREMENT.—The Secretary and the Transportation Research Board shall prepare—

(A) not earlier than the date that is 4 years after the date of enactment of this Act, a report on the results of the study conducted under this subsection; and

(B) not later than September 30, 2009, an update on the report required under subparagraph (A).

(4) REPORT RECIPIENTS.—The Secretary and the Transportation Research Board shall—

(A) submit the report and update required under paragraph (3) to—

(i) the appropriate committees of Congress;

(ii) the Secretary of the Interior; and

(iii) the Advisory Council on Historic Preservation; and

(B) make the report and update available to the public.

#### SEC. 1515. REGULATIONS.

### AUTHORITY FOR COMMITTEES TO MEET

#### COMMITTEE ON THE JUDICIARY

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet on Thursday, February 5, 2004, at 10 a.m., in room 2141 of the Rayburn House Office Building to consider judicial nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

### PRIVILEGES OF THE FLOOR

Mr. GRASSLEY. Madam President, I have a unanimous consent request from Senator BAUCUS for people to be on the floor. I ask unanimous consent that the following interns for the Senate Finance Committee be granted floor privileges for the remainder of the debate on the highway bill: Jane Bergeson, Shannon Augure, Jeremy Sieglitz, Tyson Hill, Simon Chabel, and Trace Thaxton.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SHELBY. Mr. President, I also ask unanimous consent that Rich Steinmann and Kate Mattice, detailees from the Federal Transit Administration serving the Banking Committee, be granted floor privileges for the duration of the consideration of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that Peter Smallwood, a fellow in the office of Senator LIEBERMAN, be granted the privilege of the floor for the consideration of S. 1072, the highway bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

### ORDERS FOR FRIDAY, FEBRUARY 6, 2004

Mr. INHOFE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Friday, February 6. I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then resume consideration of S. 1072, the highway bill, for the purpose of debate only.

The PRESIDING OFFICER. Without objection, it is so ordered.

### PROGRAM

Mr. INHOFE. Mr. President, tomorrow morning the Senate will resume consideration of S. 1072, the highway bill. There will be no rollcall votes tomorrow, but Senators are encouraged

to come to the floor and speak on the merits of the bill. The majority leader will expand on next week's schedule during tomorrow's session.

### ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. INHOFE. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:15 p.m., adjourned until Friday, February 6, 2004, at 9:30 a.m.

### NOMINATIONS

Executive nominations received by the Senate February 5, 2004:

#### DEPARTMENT OF DEFENSE

MARK FALCOFF, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL SECURITY EDUCATION BOARD FOR A TERM OF FOUR YEARS, VICE CORNELIUS P. O'LEARY, TERM EXPIRED.

#### FOREIGN SERVICE

THE FOLLOWING-NAMED PERSONS OF THE AGENCIES INDICATED FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF THE CLASS STATED, AND ALSO FOR THE OTHER APPOINTMENTS INDICATED HEREWITH: FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS THREE, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

#### DEPARTMENT OF COMMERCE

BRUCE M. QUINN, OF CALIFORNIA

THE FOLLOWING-NAMED MEMBERS OF THE FOREIGN SERVICE TO BE CONSULAR OFFICERS AND/OR SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA, AS INDICATED: CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

#### DEPARTMENT OF COMMERCE

HORACE E. BURTON, OF NEW JERSEY  
JAMES P. GOLSEN, OF MARYLAND

THE FOLLOWING-NAMED MEMBERS OF THE FOREIGN SERVICE TO BE CONSULAR OFFICERS AND/OR SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA, AS INDICATED: CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

#### DEPARTMENT OF COMMERCE

ERIC B. WOLFF, OF CALIFORNIA

#### DEPARTMENT OF STATE

JAMES E. AGUIRRE, OF CALIFORNIA  
PHILLIP C. ALLEN, OF VIRGINIA  
VINSON A. ANDERSON, OF VIRGINIA  
PETER DONALD ANDREOLA, OF VIRGINIA  
MATTHEW KAZUAKI ASADA, OF NEW JERSEY  
KIMBERLY ELAINE BASER, OF VIRGINIA  
BENJAMIN STEPHEN BALL, OF CALIFORNIA  
JAMES L. BANGERT, OF THE DISTRICT OF COLUMBIA  
GEORGE DAVID BANKS, OF VIRGINIA  
SUSAN L. BAUER, OF VIRGINIA  
JEREMY HEYWOOD BEER, OF COLORADO  
WYLITA L. BELL, OF VIRGINIA  
KELLY ANNE BILLINGSLEY, OF FLORIDA  
ALFRED MICHAEL BOLL, OF FLORIDA  
QIANA BRADFORD, OF GEORGIA  
MARY KATHERINE BREZIN, OF VIRGINIA  
MOZELLA N. BROWN, OF THE DISTRICT OF COLUMBIA  
THOMAS M. CALL, OF THE DISTRICT OF COLUMBIA  
CHARLES M. CARRICO, OF VIRGINIA  
NATHAN CHRISTOPHER CARTER, OF VIRGINIA  
DONALD L. CONNER, OF THE DISTRICT OF COLUMBIA  
WILFRED A. COTE IV, OF OHIO  
AMANDA E. CURTIS, OF TEXAS  
JENNIFER LEE DAVIS, OF GEORGIA  
ALEXANDER PHILLIP DELOREY, OF FLORIDA  
SEAN M. DOHERTY, OF THE DISTRICT OF COLUMBIA  
CHRISTOPHER HAYES DORN, OF VIRGINIA  
ERIN MARIE DOTSON, OF VIRGINIA  
MILES DUDLEY, OF VIRGINIA  
ANA M. DUQUE-HIGGINS, OF VIRGINIA  
JOANNE EDWARDS, OF CALIFORNIA  
YUEL D. EISENSTAT, OF THE DISTRICT OF COLUMBIA  
VICTORIA EWSUK, OF VIRGINIA  
STEVEN B. FOX, OF THE DISTRICT OF COLUMBIA  
LAUREN FUNKHOUSER, OF VIRGINIA  
RODRIGO GARZA, OF TEXAS  
ANDREA GOODMAN, OF CALIFORNIA  
SIMONE LYNNETTE GRAVES, OF FLORIDA  
KARYN M. GREEN, OF VIRGINIA  
PATRICIA A. HALL, OF VIRGINIA  
JOSHUA M. HANDLER, OF THE DISTRICT OF COLUMBIA

WILLIAM FORREST HARLOW, OF TEXAS  
JOSHUA MATTHEW HARRIS, OF NEW JERSEY  
TIMOTHY B. HEFNER, OF NORTH CAROLINA  
GAIL A. HERRMANN, OF MARYLAND  
RANDOLPH CHARLES HILLIARD, OF VIRGINIA  
THOMAS R. HOBAN, OF VIRGINIA  
CATHERINE H. HOLMBERG, OF VIRGINIA  
KELLY MAURER HOLTHAUS, OF MARYLAND  
JAMES R. JAMERSON, OF MARYLAND  
MARA A. KAPLAN, OF VIRGINIA  
KAREN YOUNG KESHAP, OF VIRGINIA  
DONALD F. KILBURG III, OF MINNESOTA  
MARK E. KISSEL, OF MARYLAND  
JEREMIAH ANDRE KNIGHT, OF CONNECTICUT  
MICHAEL K. KOSTICK, OF VIRGINIA  
ANNEMETTE LAVERY, OF ARIZONA  
DONNA L. LEE, OF VIRGINIA  
JINNIE J. LEE, OF NEW YORK  
MICHELLE ANNE LEE, OF OHIO  
VAN-TRINH THI LEO, OF VIRGINIA  
CAROLYN M. MANN, OF VIRGINIA  
TELSIDE LOGAN MANSON, OF VIRGINIA  
ROSEMARIE MARTIGNETTI-HAYES, OF MASSACHUSETTS  
TANDY KEALA REIKO MATSUUDA, OF VIRGINIA  
KIMBERLY M. MCCLURE, OF KENTUCKY  
DAVID E. McMULLIN, OF THE DISTRICT OF COLUMBIA  
MARC J. MELLINGER, OF VIRGINIA  
KURT MICHAEL MIHELICH, OF VIRGINIA  
JAMES N. MILLER, OF CONNECTICUT  
STUART WAYNE MINOR, OF VIRGINIA  
WILLIAM S. MITCHELL, OF VIRGINIA  
ANJANA J. MODI, OF PENNSYLVANIA  
ARAM MOHAMED, OF VIRGINIA  
CHARNAE L. MORRIS, OF NEW YORK  
CHINH U. NGUYEN, OF VIRGINIA  
KATHARINE B. O'CONNOR, OF VIRGINIA  
REBECCA P. OWEN, OF UTAH  
TUNISIA M. OWENS, OF CALIFORNIA  
MICHAEL L. PAPP, OF VIRGINIA  
WILLIAM JOSEPH PATON, OF NEW YORK  
ANTHONY C. PATTON, OF VIRGINIA  
JESSICA H. PATTERSON, OF VIRGINIA  
LISA M. PHILLIPS, OF VIRGINIA  
MARGO POGORZELSKI, OF NEW YORK  
MUSTAFA MUHAMMAD POPAL, OF VIRGINIA  
ANUPAMA PRATTIPATI, OF PENNSYLVANIA  
FRANCISCA FLORENCIA QUINTANAR-BERMEDEZ, OF CALIFORNIA  
BRIAN J. RAYMOND, OF THE DISTRICT OF COLUMBIA  
ANDREW H. READER, OF VIRGINIA  
REBECCA ANNE REAM, OF VIRGINIA  
CARSON R. RELITZ, OF INDIANA  
CHARLES LEWIS RIDLEY IV, OF VIRGINIA  
CURTIS RAYMOND RIED, OF CALIFORNIA  
DAYNA RACHELLE ROBISON, OF VIRGINIA  
SUSAN ELIZABETH SACK, OF VIRGINIA  
JOY MICHIKO SAKURAI, OF HAWAII  
MARISSA DENISE SCOTT, OF LOUISIANA  
CRAIG M. SEHLHORST, OF FLORIDA  
JOHN A. SIKO, OF THE DISTRICT OF COLUMBIA  
RODNEY A. SNYDER, OF VIRGINIA  
EDWARD W. SOLTOW, OF ARIZONA  
JAMES REBER SOPP, OF VIRGINIA  
PAUL J. STEFANSKI, OF VIRGINIA  
DAVID STEPHENSON, OF TEXAS  
BRADLEY K. STILWELL, OF WASHINGTON  
LAURA TAYLOR-KALE, OF CALIFORNIA  
ERIK N. THOMAS, OF VIRGINIA  
MATTHEW A. THOMPSON, OF VIRGINIA  
ANGELA TLUSTENKO-BROOKS, OF VIRGINIA  
KENICHIRO TOKO, OF NEW JERSEY  
MICHELLE NICOLE WARD, OF MARYLAND  
ALISON E. WERNER, OF THE DISTRICT OF COLUMBIA  
COLIN WILLETT, OF VIRGINIA  
CARY M. WILLIAMS, OF VIRGINIA  
BRIAN CHARLES WINANS, OF ILLINOIS  
ANDREW VAUGHN WITHERSPOON, OF NEW HAMPSHIRE  
JESSICA A. WOLF, OF NEW YORK  
SUSAN W. WONG, OF NEW YORK  
CHARLES BYRON WOODWARD JR., OF VIRGINIA  
BRYAN DEAN WRIGHT, OF VIRGINIA  
RAN XU, OF NEW YORK

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE FOR PROMOTION IN THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED:  
CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF COMMERCE

MICHAEL W. LIKALA, OF TEXAS

IN THE COAST GUARD

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS VICE COMMANDANT OF THE UNITED STATES COAST GUARD AND TO THE GRADE INDICATED UNDER TITLE 14, U.S.C., SECTION 47:

*To be vice admiral*

VICE ADM. TERRY M. CROSS, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS COMMANDER, ATLANTIC AREA OF THE UNITED STATES COAST GUARD AND TO THE GRADE INDICATED UNDER TITLE 14, U.S.C., SECTION 47:

*To be vice admiral*

REAR ADM. VIVIEN S. CREA, 0000

THE FOLLOWING NAMED CADETS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES COAST GUARD UNDER TITLE 14, U.S.C., SECTION 211:

*To be ensign*

CATHERINE A. ABELLA, 0000