

A Bill

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

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

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

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SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

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

TITLE I--NATIONAL HIGH PERFORMANCE RAIL SYSTEM

SEC. 1101. PURPOSE AND OBJECTIVES.

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

(b) OBJECTIVES.--

- (1) MOBILITY.--The National High Performance Rail System shall increase the efficient transportation of both goods and persons by delivering a

transformational transportation infrastructure system that will increase jobs and support economic growth.

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

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

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

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

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

SEC. 1102. PASSENGER RAIL SYSTEM.

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

"CHAPTER 246--PASSENGER RAIL SYSTEM

"Sec.

"24601. Definitions.

"24602. Authorizations.

"24603. National high performance passenger rail system.

"24604. Network development program.

"24605. System preservation and renewal program.

"24606. Passenger rail planning.

"24607. Regional Rail Development Authorities.

"24608. Oversight.

"24609. Financial assistance provisions.

"Sec. 24601. Definitions

"In this chapter:

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

"(A) CORE EXPRESS CORRIDOR.--The term 'Core Express Corridor' means a passenger rail corridor that offers electric-powered service operating primarily on dedicated track at peak speeds of 125 miles per hour or greater, and that primarily connects major metropolitan centers in the United States that are generally up to 500 miles apart within a three-hour travel time.

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

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

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

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

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

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

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

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

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

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

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

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

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

"(10) STATE OF GOOD REPAIR.--The term 'state of good repair' means a condition in which the existing physical assets, both individually and as a

system, are functioning as designed within their useful lives and are sustained through regular maintenance and replacement programs.

"Sec. 24602. Authorizations

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

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

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

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

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

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

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

"Sec. 24603. National high performance passenger rail system

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

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

- "(1) a network development program; and
- "(2) a system preservation and renewal program.

"Sec. 24604. Network development program

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

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

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

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

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

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

- "(A) A State.
- "(B) An Interstate Compact.
- "(C) A public agency established by one or more States and having responsibility for providing high-speed or intercity passenger rail service.
- "(D) Amtrak.
- "(E) A Regional Rail Development Authority, as described in section 24607 of this title.
- "(F) A private-sector entity or entities proposing to develop a high-speed or intercity passenger rail project identified on a Regional Passenger Rail Development Plan (as described in subsection 24606(b) of this title) or a State Rail Plan (as described in chapter 227 of this title). Entities described in this subparagraph may apply in conjunction with another eligible recipient but, if applying separately, shall provide at least the minimum non-Federal share of the total project costs, as required under paragraph (f) of this section.
- "(G) Any other entity deemed eligible by the Secretary.

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

or more of the following activities are eligible to receive financial assistance under this subsection:

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

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

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

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

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

"(F) Highway-rail grade crossing improvements.

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

"(H) Communication and signalization improvements.

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

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

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

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

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

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

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

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

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

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

"(B) also consider--

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

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

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

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

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

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

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

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

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

Federal share of total project costs under this section shall not exceed 85 percent.

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

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

"(c) STATION DEVELOPMENT.--

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

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

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

"(A) A State.

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

"(C) A political subdivision of a State.

"(D) Amtrak.

"(E) A public transit agency.

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

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

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

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

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

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

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

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

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

"(ii) automobile access, including parking;

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

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

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

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

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

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

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

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

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

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

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

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

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

"(iii) anticipated positive economic and employment impacts;

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

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

"(I) development of the intermodal station;

"(II) capital improvements in the station area; and

"(III) high-speed or intercity passenger rail capital investment needs or ongoing operating assistance requirements; and

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

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

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

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

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

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

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

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

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

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

"(1) OBJECTIVE.--The objective of the U.S. rail equipment development program is to promote interoperability of passenger rail equipment, to the extent

practicable, and to create economies of scale sufficient to further develop a domestic passenger equipment manufacturing industry.

"(2) ESTABLISHMENT.--The Secretary may establish an organizational and financial framework, which may take the form of a corporation, that may be owned or jointly-owned by Amtrak, participating States, or other entities, to accomplish the following objectives:

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

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

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

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

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

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

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

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

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

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

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

"(4) FINANCIAL ASSISTANCE.--

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

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

"(i) A State;

"(ii) Amtrak;

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

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

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

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

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

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

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

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

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

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

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

"(1) CAPACITY-BUILDING.--

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

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

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

"(i) A State.

"(ii) An Interstate Compact.

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

"(iv) A political subdivision of a State.

"(v) Amtrak.

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

"(vii) A nonprofit institution of higher learning.

"(viii) The Transportation Research Board.

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

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

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

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

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

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

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

"(2) TRANSITION ASSISTANCE.--

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

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

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

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

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

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

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

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

"(D) ELIGIBLE RECIPIENTS.--

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

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

"(I) a State;

"(II) an Interstate Compact;

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

"(IV) Amtrak;

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

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

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

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

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

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

"(II) encourages private sector investment; or

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

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

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

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

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

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

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

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

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

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

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

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

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

"(iv) other issues identified by the Secretary.

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

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

"Sec. 24605. System preservation and renewal program

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

"(1) Public Asset Backlog Retirement.

"(2) National Network Service.

"(3) State of Good Repair and Recapitalization.

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

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

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

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

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

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

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

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

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

"(c) NATIONAL NETWORK SERVICE.--

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

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

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

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

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

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

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

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

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

"(A) a State;

"(B) a group of States;

"(C) a political subdivision of a State;

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

"(E) Amtrak; and

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

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

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

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

"(B) NON-FEDERAL SHARE.--The non-Federal share of project costs under this section may include non-Federal funds used to pay for credit risk premiums or credit subsidies related to loans issued under the Railroad Rehabilitation and Improvement Financing program authorized under section 502 of the Railroad Revitalization and Regulatory Reform

Act of 1976 (45 U.S.C. 822) or the National Infrastructure Innovation and Finance Fund authorized under subchapter II of chapter 6 of title 23.

"(5) IDENTIFICATION OF PROJECTS.--The Secretary shall work with Amtrak, the Northeast Corridor Infrastructure and Operations Advisory Commission, public agencies that own physical assets in corridors jointly served by public transit and high-speed or intercity passenger rail service, and Regional Rail Development Authorities, as described in section 24607 of this title, to identify high-speed and intercity passenger rail projects necessary to maintain existing physical assets in a state of good repair as defined in section 24601 of this title.

"Sec. 24606. Passenger rail planning

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

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

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

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

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

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

"(i) Population size and density.

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

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

"(iv) Economic profile of specific markets.

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

"(vi) Distances between markets.

"(vii) Geographic characteristics.

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

"(C) A discussion of benefits and costs of potential investments in high-speed or intercity passenger rail that considers both user and public benefits and costs from a network perspective, to include factors such as

travel time reductions, enhanced mobility benefits, environmental benefits, economic benefits, and other public benefits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(v) an analysis of operating financial forecasts;

"(vi) a benefit-cost analysis for the regional network that considers both user and public benefits and costs from a network perspective, to include factors such as ridership projections, travel time reductions, enhanced mobility benefits, environmental benefits, economic benefits, and other public benefits;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Sec. 24607. Regional Rail Development Authorities

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

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

"(b) GOVERNANCE.--

"(1) EXECUTIVE DIRECTOR.--

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

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

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

"(i) Passenger or freight rail operations.

"(ii) Transportation or infrastructure planning.

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

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

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

"(i) establish and maintain a passenger rail corridor development and delivery capability that consists of qualified transportation infrastructure planning, financing, and construction professionals directed to develop and deliver projects that are consistent with the strategy and objectives set forth in the Regional Passenger Rail Development Plan; and

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

"(2) REGIONAL COMMITTEE.--

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

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

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

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

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

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

"(ii) economic development bodies;

"(iii) business leaders in the region;

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

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

"(vi) rail labor;

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

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

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

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

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

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

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

"(E) MAJORITY VOTE.--An action or decision by the Regional Committee shall be by majority vote of all members, whether in person or in absentia. Each member shall be provided a reasonable opportunity to vote on all matters before the Regional Committee.

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

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

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

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

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

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

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

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

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

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

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

"(d) FUNDING ELIGIBILITY.--Regional Rail Development Authorities are eligible to receive Federal financial assistance under the Network Development Program

(as described in section 24604 of this title) and for Public Asset Backlog Retirement and State of Good Repair and Recapitalization activities within the System Preservation and Renewal Program (as described in section 24605 of this title).

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

"Sec. 24608. Oversight

"(a) AUTHORITY.--

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

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

"(b) PROJECT MANAGEMENT OVERSIGHT.--

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

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

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

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

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

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

"(1) a Project Management Plan;

"(2) a Financial Plan;

"(3) a System Safety Plan;

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

"(5) a Project Risk Management Plan; and

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

"Sec. 24609. Financial assistance provisions

"(a) STATE RECIPIENTS OF FINANCIAL ASSISTANCE.--A State desiring to avail itself of the provisions of this chapter shall have a State department, agency, or Commission with adequate powers, and be suitably equipped and organized to discharge to the satisfaction of the Secretary of Transportation, the duties required by this chapter.

"(b) FINANCIAL ASSISTANCE CONDITIONS.--

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

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

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

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

SEC. 1103. OBLIGATION CEILING.

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

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

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

SEC. 1104. BUY AMERICA.

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

"CHAPTER 287--BUY AMERICA PREFERENCES

"Sec.

"28701. Buying goods produced in the United States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 1105. MISCELLANEOUS RAIL PROVISIONS.

(a) AUTHORIZATIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(a) IN GENERAL.--

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

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

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

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

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

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

"(2) TERMS AND CONDITIONS.--

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

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

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

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

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

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

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

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

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

"Sec. 24107. Limitations on claims

"(a) LIMITATIONS ON CLAIMS.--

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

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

"(b) SAVINGS CLAUSE AND LIMITATIONS.--

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

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

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

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

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

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

"Sec. 20115. User fees

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

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

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

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

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

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

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

"Sec. 24107. Limitations on claims.".

SEC. 1106. MISCELLANEOUS CORRECTIONS, REVISIONS AND REPEALS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Section 20156 of title 49 of the United States Code is amended--
 (A) in subsection (c) by inserting a comma after "In developing its railroad safety risk reduction program"; and
 (B) in subsection (g) by inserting a comma after "good faith" and by striking "non-profit" and inserting "nonprofit".

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

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

(9) Section 20160 of title 49 of the United States Code is amended--
 (A) in subsection (a)(1) by striking the word "or" from the phrase "concerning each previously unreported crossing through which it operates or with respect to the trackage over which it operates"; and
 (B) in subsection (b)(1)(A) by striking the word "or" from the phrase "concerning each crossing through which it operates or with respect to the trackage over which it operates".

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

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

(12) Section 21102(c) of title 49 of the United States Code is amended--
 (A) by striking "APPLICATION OF HOURS OF SERVICE REGIME TO COMMUTER AND INTERCITY PASSENGER RAILROAD TRAIN EMPLOYEES" and inserting "APPLICATION OF HOURS OF SERVICE REGIME TO COMMUTER AND INTERCITY PASSENGER RAILROAD TRAIN EMPLOYEES, INCLUDING TOURIST, HISTORIC, SCENIC, OR EXCURSION RAILROAD TRAIN EMPLOYEES";

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) MISCELLANEOUS REPEALS.--

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

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

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

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

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

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

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

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

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

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

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

TITLE II--SURFACE TRANSPORTATION INFRASTRUCTURE REFORM

Subtitle A--Accelerating Project Delivery

SEC. 2001. PROJECT DELIVERY ACCELERATION INITIATIVE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 2002. EFFICIENCIES IN CONTRACTING.

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

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

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

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

"(C) TIMING.--

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

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

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

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

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

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

SEC. 2003. APPLICATION OF CATEGORICAL EXCLUSIONS FOR

MULTI-MODAL PROJECTS.

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 2004. INTEGRATION OF PLANNING AND ENVIRONMENTAL REVIEW.

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

"Sec. 167. Integration of planning and environmental review

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

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

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

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

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

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

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

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

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

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

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

"(3) APPLICABILITY.--

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

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

"(ii) travel corridor location;

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

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

"(v) basic description of the environmental setting;

"(vi) methodologies for analysis;

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

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

"(II) regional ecosystem needs and opportunities;

and

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

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

"(i) travel demands;

"(ii) regional development and growth;

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

"(iv) population and employment;

- "(v) natural and human environmental conditions;
- "(vi) environmental resources and environmentally-sensitive areas;
- "(vii) potential environmental effects, including the identification of resources of concern and potential cumulative effects on those resources, as a result of a statewide or regional cumulative effects assessment;
- "(viii) greenhouse gas emissions from transportation and climate change impacts on infrastructure;
- "(ix) mitigation needs for a proposed action or for programmatic level mitigation for potential effects that the lead Federal agency determines are most effectively addressed at a regional or national program level; and
- "(x) safety performance.

"(4) CONDITIONS FOR ADOPTION AND USE OF PLANNING

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

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

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

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

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

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

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

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

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

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

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

"167. Integration of planning and environmental review."

SEC. 2005. NATIONAL ENVIRONMENTAL POLICY ACT PROCESS REFORMS.

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

(1) in subsection (a)--

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

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

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

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

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

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

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

"(f) SCOPING.--

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

decisions with respect to the proposed action.

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

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

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

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

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

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

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

"(iii) costs;

"(iv) the needs of affected local governments;

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

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

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

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

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

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

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

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

"(4) ISSUE RESOLUTION.--

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

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

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

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

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

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

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

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

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

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

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

"(j) CONSOLIDATED STATEMENTS AND DECISIONS.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(2) TERMS AND CONDITIONS.--

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

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

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

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

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

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

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

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

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

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

SEC. 2007. ALTERNATIVE RELOCATION PAYMENT DEMONSTRATION PROGRAM.

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

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

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

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

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

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

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

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

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

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

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

SEC. 2008. SURFACE TRANSPORTATION PROJECT DELIVERY PROGRAM.

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

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

- (1) by striking paragraph (2)(B)(ii) and inserting the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) ESTABLISHMENT.--

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

(2) ASSUMPTION OF RESPONSIBILITY.--

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

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

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

(b) LOCAL GOVERNMENT PARTICIPATION.--

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

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

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

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

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

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

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

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

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

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

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

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

(A) notification of the determination of noncompliance; and

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

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

Subtitle B--Infrastructure Financing; Freight Policy

Part 1--National Infrastructure Innovation And Finance Fund

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

- (a) IN GENERAL.--Chapter 6 of title 23, United States Code, is amended--
- (1) by inserting the following before section 601:
"SUBCHAPTER 1--GENERAL";
 - (2) by inserting the following after section 610:

"Sec. 611. Continuation of TIFIA credit assistance

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

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

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

- (2) by inserting the following at the end:

"SUBCHAPTER II--NATIONAL INFRASTRUCTURE INNOVATION AND FINANCE FUND

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

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

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

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

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

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

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

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

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

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

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

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

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

"(C) is one of the following:

"(i) A transportation-related project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(e) FUND STRATEGY.--

"(1) IN GENERAL.--The Fund shall advance the primary objective and secondary objectives by providing financial assistance for individual projects or programs of related projects identified in regional plans (either at the time of submission or prior to the obligation of funding) and designed to significantly improve national or regional economic competitiveness. The Fund shall especially target projects or programs of related projects with a demonstrated difficulty in obtaining complete financing through other available public or private sources of funds for reasons including project complexity, incorporation of multiple jurisdictions, incorporation of multiple transportation modes, or other comparable transactional barriers. The Fund will seek to identify appropriate investment plans for selected projects and programs of projects. To the extent practical, the Fund will use its resources to build a portfolio of transformational investments that--

"(A) promotes the distribution of benefits to economically distressed areas;

"(B) promotes geographic diversity in the distribution of benefits;

"(C) promotes cross-jurisdictional infrastructure planning and co-investment among a broad range of participants, including States, tribal governments, municipalities, and private investors;

"(D) promotes greater efficiency in the movement of freight;

"(E) promotes the use of innovation and best practices in the planning, design, development and delivery of projects, including practices that promote performance-based decision-making to achieve national, state or local objectives;

"(F) integrates multiple transportation modes in the movement of passengers or freight; and

"(G) integrates transportation infrastructure investment planning, such as regional transportation plans, with land-use, economic development, and other infrastructure investment plans.

"(2) INVESTMENT PROSPECTUS.--

"(A) The processes and publications described below shall follow rulemaking procedures under section 553 of title 5, United States Code.

"(B) The Fund shall publish a detailed description of its strategy in an Investment Prospectus within 180 days of enactment of this chapter.

The Investment Prospectus shall--

"(i) specify what the Fund shall consider significant to the economic competitiveness of the United States or a region thereof in a manner consistent with the primary objective;

"(ii) specify the priorities and strategic focus of the Fund in forwarding the primary objective and secondary strategic objectives and carrying out the Fund strategy as described in this chapter;

"(iii) specify the priorities and strategic focus of the Fund in promoting greater efficiency in the movement of freight, including the framework and methodology that the Fund will use to align its investments with the national freight transportation strategic plan developed pursuant to Section 310 of Title 49;

"(iv) specify the priorities and strategic focus of the Fund in promoting the use of innovation and best practices in the planning, design, development and delivery of projects, including the framework and methodology that the Fund will use to align its investments with the Secretary's designations of states or metropolitan areas that have highly-effective or highly-improved performance-based planning processes pursuant to sections 134(n) and 135(m) of this title, and sections 5303(n) and 5304(m) of title 49;

"(v) describe in detail the framework and methodology for calculating the qualification score as specified in this chapter, along with the data to be requested from applicants and the mechanics of calculations to be applied to that data to determine the qualification score;

"(vi) describe how selection criteria will be applied by the Executive Director in determining the competitiveness of an application and its qualification score relative to other current applications and previously funded applications; and

"(vii) Describe how the qualification score methodology and project selection framework are consistent with maximizing the fund goals in both urban and rural areas.

"(C) The Investment Prospectus and any subsequent updates thereto shall be approved by a majority vote of the Investment Council prior to publication.

"(D) The Fund shall update the Investment Prospectus on every biennial anniversary of its original publication.

"(3) OPERATING GUIDANCE.--

"(A) The processes and publications described below shall follow rulemaking procedures under section 553 of title 5, United States Code.

"(B) The Fund shall publish its Operating Guidance within 180 days of enactment of this chapter. The Operating Guidance shall--

"(i) establish general operating procedures to be followed by the fund in carrying out its authorities under this chapter;

"(ii) establish criteria, requirements, and standards regarding provision of various forms of assistance authorized under this chapter, including the various forms and terms of credit assistance, that are consistent with the requirements of this chapter;

"(iii) establish an application and award process for Planning and Feasibility Grants in accordance with the authorities and requirements provided for under this chapter;

"(iv) establish disclosure and application procedures for nominating or otherwise proposing applications for project assistance, either solicited or unsolicited, that are consistent with the requirements of this chapter;

"(v) describe in detail the form and timing of data and other information required of applicants in conjunction with consideration of an application for financial assistance under this chapter; and

"(vi) establish a schedule of regular time intervals for the presentation of sets of one or more Investment Plans before the Investment Council.

"(C) The Fund shall periodically review, and may update the Operating Guidance.

"(f) GOVERNANCE.--

"(1) EXECUTIVE DIRECTOR.--

"(A) The Fund shall be administered by an Executive Director who is appointed by the President and confirmed by the Senate.

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

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

"(i) Two or more distinct transportation modes.

"(ii) Economic analysis.

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

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

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

"(i) establish and approve the Operating Guidance;

"(ii) establish and maintain a project application origination capability at the Fund that consists of a staff of qualified transportation infrastructure planning professionals directed to search nationwide for projects that promote the strategy set forth in the most recently published Investment Prospectus, and to solicit applications to finance those projects from eligible funding recipients;

"(iii) establish and maintain an analysis capability at the Fund that consists of a staff of qualified economics professionals directed to collect application data, analyze that data, and report to the Executive Director on qualification scores, measures of uncertainty, and other analyses of applications;

"(iv) establish and maintain an investment planning process capability at the Fund that consists of a staff of qualified project finance professionals directed to review qualified applications and to structure Investment Plans;

"(v) establish and maintain a technical assistance capability at the Fund that consists of a staff of qualified project management professionals directed to assist those entities receiving funding from the Fund in the successful execution of their Investment Plans and to otherwise implement the funding decisions of the Secretary; and

"(vi) post on the Fund's website semi-annual reports on the Fund's activities that include the status of applications received, the outcome of application evaluations, the outcome of investment planning processes, the status of Investment Plans submitted to the Investment Council, and the status of financial assistance awards approved by the Secretary.

"(F) The Executive Director shall serve a five-year term.

"(G) A vacancy in the position of Executive Director shall be filled in the manner in which the original appointment was made and as expeditiously as possible.

"(H) The Executive Director shall be a position compensated on the Federal Executive Schedule.

"(2) FUND INVESTMENT COUNCIL.--

"(A) There is established within the Fund a deliberative body consisting of nine members to be known as the 'Investment Council'.

"(B) The membership of the Investment Council shall be established and maintained as follows:

"(i) The Secretary shall appoint not more than two of the following executives of the Department of Transportation to serve as members of the Investment Council:

"(I) Deputy Secretary.

"(II) Under Secretary of Transportation for Policy.

"(III) General Counsel.

"(IV) Chief Financial Officer.

"(V) Assistant Secretary of Transportation for Policy.

"(VI) Assistant Secretary of Transportation for Aviation and International Affairs.

"(ii) The Secretary shall appoint not more than two of the following executives of the Department of Transportation's modal administrations to serve as concurrent members of the Investment

Council for a term of two years, with none of the executives serving consecutive terms:

"(I) Administrator, Federal Highway Administration.

"(II) Administrator, Federal Transit Administration;

"(III) Administrator, Federal Aviation Administration.

"(IV) Administrator, Federal Railroad Administration.

"(V) Administrator, Maritime Administration.

"(iii) The Secretary of the Treasury shall be a permanent member of the Investment Council.

"(iv) The Secretary of Commerce shall be a permanent member of the Investment Council.

"(v) The Secretary of the Department of Housing and Urban Development shall be a permanent member of the Investment Council.

"(vi) The Administrator of the Environmental Protection Agency shall be a permanent member of the Investment Council.

"(vii) The Secretary of the Department of Energy shall be a permanent member of the Investment Council.

"(C) The Investment Council and its members shall be responsible for carrying out the following duties:

"(i) Establishing and approving the Investment Prospectus, in consultation with the Fund Advisory Committee, within 180 days of enactment of this chapter.

"(ii) Updating the Investment Prospectus, in consultation with the Fund Advisory Committee, on each biennial anniversary of its original publication.

"(iii) Reviewing Investment Plans and related application materials and other analyses provided to the Investment Council by the Executive Director.

"(iv) Determining by majority vote whether or not to recommend Investment Plans submitted by the Executive Director to the Secretary for funding.

"(v) Certifying reports to Congress and other publications of the Fund.

"(D) Action or decision by the Investment Council shall be by majority vote of all members, whether in person or in absentia. Each member shall be provided a reasonable opportunity to vote on all matters before the Investment Council.

"(E) Every two years after the date of enactment of this chapter the Investment Council, in consultation with the Director of the Office of Management and Budget and the Fund Advisory Committee, shall post on the Fund's website a report that evaluates the Fund's performance. The report shall include an assessment of the Fund as a model for

infrastructure investment and may include a recommendation on whether or not to extend the Fund's activities to non-transportation infrastructure sectors likely to benefit the United States, including renewable energy generation, energy transmission and storage, energy efficiency, drinking water and wastewater systems, and telecommunications.

"(3) FUND ADVISORY COMMITTEE.--

"(A) Not later than 180 days from the date of enactment of this chapter, the President shall establish an advisory committee, to be known as the 'Fund Advisory Committee'.

"(B) The Fund Advisory Committee shall advise the Investment Council and the Secretary with respect to the following:

"(i) Alignment of the investment prospectus and its contents with the primary objective, secondary objectives and other elements of the fund strategy as described in this chapter.

"(ii) Alignment of the framework and methodology used to determine qualification scores and uncertainty estimates with the primary objective, secondary objectives, and the Fund strategy.

"(iii) Consistency of the calculation of qualification scores and uncertainty estimates with academic standards for analytical rigor and data quality typically applied to peer-reviewed social science research.

"(iv) Alignment of investment decision mechanics and outcomes with the Investment Prospectus and the requirements of this chapter.

"(v) Integrity and effectiveness of Fund operations and performance, including application evaluation processes, Investment Plan processes and determinations, and the optimization of the Fund's performance as a portfolio.

"(vi) Fund progress in financing projects with a demonstrated difficulty in obtaining complete financing through other available public or private sources of funds for reasons including project complexity, incorporation of multiple jurisdictions, incorporation of multiple transportation modes, or other comparable transactional barriers.

"(vii) Prospects for the extension of the Fund's activities to non-transportation infrastructure sectors likely to benefit the United States, including renewable energy generation, energy transmission and storage, energy efficiency, drinking water and wastewater systems, and telecommunications.

"(C) The Fund Advisory Committee shall post on the Fund's website a biennial report on the execution of the Fund strategy that includes--

"(i) an independent assessment of the Fund's performance in terms of the elements specified by subsection (f)(3)(B)(i)-(vi) of this section; and

"(ii) an independent analysis in terms of the element specified by subsection (f)(3)(B)(vii) of this section.

"(D) Within 90 days of each Investment Council decision on an Investment Plan, the Fund Advisory Committee shall post on the Fund's website a report that includes an assessment of--

"(i) the adherence of each funding decision, including applications funded and not funded, to the requirements of the Investment Prospectus, Operating Guidance, and this chapter;

"(ii) the consistency of each funding decision for applications funded with the primary objective, the secondary objectives, the Fund strategy and the requirements of this chapter;

"(iii) the validity of the qualification certification of each funded application;

"(iv) the return on Federal investment likely to result from each funded Investment Plan; and

"(v) the return on total investment likely to result from each funded Investment Plan.

"(E) The Committee shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

"(F) The Committee shall consist of five members to be appointed by the President. Each member shall have expertise in one or more of the following areas:

"(i) Economics and economic analysis.

"(ii) Project or public finance.

"(iii) Portfolio or fund management.

"(iv) Organized labor interests.

"(v) Environmental interests.

"(vi) American business and trade interests.

"(vii) Rural community development.

"(viii) Transportation policies and priorities, including policies and priorities related to one or more of the relevant modes of transportation (highways, transit, rail, aviation or maritime).

"(ix) State Department of Transportation and/or Metropolitan Planning Organization policies and priorities.

"(x) Other infrastructure planning, redevelopment, and development-related codes and policies".

"(G) The President shall ensure that the membership of the Fund Advisory Committee is bipartisan and otherwise balanced in terms of the points of view represented and the functions to be performed by the Committee.

"(H) The Fund Advisory Committee shall continue to serve so long as the Fund exists and contemplates new investments. The term of an appointee shall be three years.

"(I) Members of the Fund Advisory Committee may be compensated at a rate equal to the daily equivalent of the annual rate of basic pay for level IV of the Executive Schedule (5 U.S.C. 5315) for each

day (including travel time) during which the member is engaged in performance of duties of the Committee. Members shall not be considered employees of the Federal Government by reason of receiving such pay for their service.

"Sec. 622. Fund authorities and assistance

"(a) AGREEMENTS WITH OTHER ORGANIZATIONS.--The Fund may enter into an agreement with any organization within the Department of Transportation to obtain necessary technical expertise and assistance. The head of any Federal agency may detail employees to the Fund for purposes of carrying out its duties.

"(b) FEES FOR SERVICES.--

"(1) ADMINISTRATIVE FEES.--To the extent and in the amounts provided in appropriation acts, the Fund may establish and collect fees from eligible funding recipients, including application and processing fees and other fees associated with the costs of loan servicing, at a level sufficient to cover all or a portion of the administrative costs to the Federal Government of providing funding assistance and servicing the credit instruments entered into under this chapter.

"(2) OTHER FEES.--To the extent and in the amounts provided in appropriation acts, the Fund may establish and collect fees from eligible funding recipients and expend those fees at a level sufficient to cover all or a portion of the costs of expert firms, including counsel in the field of municipal and project finance, and financial advisors to assist with underwriting, credit analysis, or other independent reviews, as appropriate.

"(3) AVAILABILITY OF AMOUNTS.--Amounts collected under subsections (b)(1) and (b)(2) shall be available to the extent provided in advance in appropriations acts; provided, the source of such fees shall not be a loan or a debt obligation guaranteed by the Federal Government.

"(c) PLANNING AND FEASIBILITY GRANTS.--

"(1) IN GENERAL.--The Fund may make grants to an eligible funding recipient to fund activities related to the planning, preparation or design of a specific eligible project proposal, including costs associated with –

"(A) planning and formulating optimal project design;

"(B) assessing project technical feasibility;

"(C) assessing potential project performance; and

"(D) incorporating the project proposal into a regional plan.

"(2) GRANT PROGRAM CRITERIA.--In administering the grant program under this subsection, the Fund shall give priority to activities that are likely to lead to projects that are well aligned with the criteria laid out in sections 621(c) and 621(d) and are consistent with the strategy undertaken in 621(e)

"(3) FEDERAL SHARE.--The Fund may enter into a grant agreement with an eligible funding recipient to pay up to 100 percent of eligible planning and feasibility costs of an eligible project described under this subsection.

"(4) ELIGIBLE COSTS.--The following project costs are eligible for funding under this subsection:

"(A) An activity reasonably necessary to obtain Federal, State, and local permits, licenses, and approvals for an eligible project, including the costs of concept development and preliminary design, economic and environmental analyses, public involvement, and application, licensing, and permit fees.

"(B) Preparation of financial analyses and other economic analyses reasonably necessary in order to apply for and secure funding to implement an eligible project.

"(5) ALIGNMENT WITH INVESTMENT PROSPECTUS.--The Fund may make a planning or feasibility grant to a project only if the application materials for the planning and feasibility grant demonstrate that the eligible project is aligned with the strategy outlined in the Investment Prospectus.

"(6) DESIGNATION FOR RECEIPT OF CERTAIN FUNDS.--When the State or local governmental entity is carrying out the planning and feasibility activities, the eligible funding recipient may designate the State or local governmental entity to receive grant funds for such activities directly from the Fund.

"(d) NATIONAL INFRASTRUCTURE INNOVATION GRANTS.--

"(1) IN GENERAL.--The Fund may make grants to eligible recipients to fund capital investments in infrastructure.

"(2) ELIGIBLE USES.--Grants may be used to fund eligible project costs of eligible projects as defined in this chapter.

"(3) APPROVED INVESTMENT PLAN.--Grants under this heading can only fund project costs covered under an Investment Plan approved by the Secretary. Grants funded under this heading are subject to the terms and conditions of the approved Investment Plan.

"(4) FUND SHARE.--Grants made by the Fund under this subsection may not exceed 50 percent of the eligible project costs of an eligible project, except as may be necessary to achieve the Fund Strategy specified in Sec. 621(e)(1) of this chapter. The Fund shall take into account the ability of an applicant to finance its share of project costs during the investment planning process.

"(e) DIRECT LOANS AND LOAN GUARANTEES.--

"(1) DIRECT LOANS.--

"(A) AGREEMENTS.--The Fund is authorized to make direct loans to eligible funding recipients for eligible projects on such terms and conditions and containing such covenants, representations, warranties, and requirements (including requirements for audits) as the Fund determines appropriate, consistent with requirements of this chapter, the Operating Guidance, and all other statutory or regulatory requirements.

"(B) APPROVED INVESTMENT PLAN. – Direct Loans under this heading can only fund eligible project costs covered in an investment plan approved by the Secretary. Loans funded under this heading are subject to the terms and conditions of the approved investment plan.

"(C) TERMS, CONDITIONS, AND LIMITATIONS.--Direct loans made under this chapter will be on such terms and conditions as the Executive Director may prescribe, except that:

"(i) The Fund will provide credit assistance to any prospective borrower only when it is necessary to alleviate a credit market imperfection, or when it is necessary to achieve specified Federal objectives by providing credit assistance, and such assistance is the most efficient way to meet those objectives on a borrower-by-borrower basis.

"(ii) No loan made will be subordinated to another debt contracted by the borrower, or to any other claims against the borrowers in the case of default, unless such subordination is necessary to achieve Federal objectives, consistent with criteria and policies set forth in the Operating Guidance.

"(iii) Direct loans or interest supplements on loan guarantees will be at an interest rate that is set by reference to a benchmark interest rate (yield) on marketable Treasury securities with a similar maturity to the direct loans being made or the non-Federal loans being guaranteed, at a level consistent with the interest rate policy set forth in the Operating Guidance.

"(iv) The Executive Director will prescribe explicit standards for use in periodically assessing the credit risk of new and existing direct loans and guaranteed loans. The Executive Director must find that there is a reasonable assurance of repayment before extending credit assistance.

"(v) New direct loans may not be obligated and new loan guarantees may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required in Section 504 of the Federal Credit Reform Act of 1990, as amended.

"(vi) The total principal amount of the direct loan or loan guarantee shall not exceed the lower of 70 percent of total eligible project costs less the percentage of eligible project costs that are otherwise funded by the Fund, or some other level that may be defined in the Operating Guidance.

(v) Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Fund will have the right in its discretion to complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell any property acquired by the Fund pursuant to the provisions of this Act.

"(D) REPAYMENT.--

"(i) The Fund shall adhere to policies set forth in the Operating Guidance concerning repayment terms and shall establish repayment terms for each direct loan based on the

projected cash flow from project revenues or other repayment sources.

"(ii) The final maturity date of a direct loan or loan guarantee shall not exceed 90 percent of the estimated useful economic life of the asset being financed except under conditions set forth in the Operating Guidance. In no case shall the maturity date be later than the estimated useful economic life of the asset being financed.

"(E) RISK ASSESSMENT.--Requirements for risk assessment will be outlined in the Operating Guidance.

"(2) LOAN GUARANTEES.--

"(A) IN GENERAL.--The Fund is authorized to provide loan guarantees to eligible funding recipients on such terms and conditions and containing such covenants, representations, warranties, and requirements (including requirements for audits) as the Fund determines appropriate, consistent with requirements of this chapter, the Operating Guidance, and all other statutory or regulatory requirements.

"(B) APPROVED INVESTMENT PLAN.--Loan guarantees under this heading can only fund eligible project costs that are covered in an investment plan approved by the Secretary. Loan guarantees funded under this heading are subject to the terms and conditions of the approved investment plan.

"(C) TERMS, CONDITIONS AND LIMITATIONS.--

"(i) The terms and limitations of a guaranteed loan shall be consistent with the terms and limitations set forth in this subsection for a direct loan including maximum Fund share requirements, except that the interest rate on the guaranteed loan and any repayment features shall be negotiated between the eligible funding recipient and the lender consistent with the policies set forth in the Operating Guidance, with the consent of the Secretary.

"(ii) No loan will be guaranteed if the income from such loan is excluded from gross income for the purposes of Chapter 1 of the Internal Revenue Code of 1986, as amended, or if the guarantee provides significant collateral or security, as determined by the Administrator, for other obligations the income from which is so excluded.

"(iii) Fees or premiums for loan guarantee or insurance coverage will be set at levels that minimize the cost to the Government, as defined in Section 502 of the Federal Credit Reform Act of 1990, as amended, of such coverage, while supporting achievement of the program's objectives, consistent with policies as set forth in the Operating Guidance

"(iv) No loan guaranteed to any borrower will exceed 80 percent of the loss on the loan. Borrowers who are deemed to pose less of a risk will receive a lower guarantee as a percentage of the loan amount.

"(v) No loan will be guaranteed unless the Executive Director determines that the lender is responsible, and that adequate provision is made for servicing the loan on reasonable terms and protecting the financial interest of the United States.

"(vi) Any guarantee will be conclusive evidence that said guarantee has been properly obtained; that the underlying loan qualified for such guarantee; and that, but for fraud or material misrepresentation by the holder, such guarantee will be presumed to be valid, legal, and enforceable.

"(vii) If, as a result of a default by a borrower under a guaranteed loan, after the holder thereof has made such further collection efforts and instituted such enforcement proceedings as the Executive Director may require, the Executive Director determines that the holder has suffered a loss, the Executive Director will pay to such holder no more than 80 percent of such loss, as specified in the guarantee contract. Upon making any such payment, the Executive Director will be subrogated to all the rights of the recipient of the payment. The Executive Director will be entitled to recover from the borrower the amount of any payments made pursuant to any guarantee entered into under this chapter.

"(vi) The Attorney General will take such action as may be appropriate to enforce any right accruing to the United States as a result of the issuance of any guarantee under this chapter.

"(vii) Nothing in this section will be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the guaranteed loan and approved by the Executive Director, provided that budget authority for any resulting subsidy costs as defined under the Federal Credit Reform Act of 1990, as amended, is available.

"(D) REPAYMENT.--

"(i) The Fund shall adhere to policies set forth in the Operating Guidance concerning repayment terms and shall establish repayment terms for each direct loan based on the projected cash flow from project revenues or other repayment sources.

"(E) RISK ASSESSMENT.--Requirements for risk assessment will be outlined in the Operating Guidance.

"(f) APPLICATION EVALUATION AND QUALIFICATION.--

"(1) APPLICATION ELIGIBILITY STANDARD.--An application shall, at a minimum, meet the following requirements to be eligible for consideration by the Fund:

"(A) Funding recipient or recipients, project or program of related projects, and associated project costs identified in the application must be eligible as specified in this chapter.

"(B) Eligible project costs identified in the application must exceed \$50,000,000, unless the application is for a project or program of related projects located entirely in a rural area and in that case must exceed \$1,000,000.

"(C) Financial assistance from sources outside of the Fund adequate to support at least thirty percent of the total eligible project costs included in the application must be identified.

"(D) Project benefits identified in the application must be distributed broadly either at a national or regional level. The geographic scope of benefits shall not be limited to a focused area, such as a commercial or residential real estate development, a shopping or amusement complex, or a recreational area.

"(E) Applicant must not be delinquent on Federal tax or non-tax debts, including judgment liens against property for a debt to the Federal Government, and therefore not eligible to receive Federal loans, loan guarantees or insurance. Processing will continue only when the debtor satisfactorily resolves the debts in compliance with 31 U.S.C. 3720B and 31 C.F.R. 285.13. The Fund shall use credit bureaus as a screening tool and ask applicants about such delinquencies on the application form.

"(2) QUALIFICATION SCORE.--The Fund shall assign to each eligible application a single numerical factor on the basis of an evaluation of the information and data collected from the applicant. This factor shall be the application's qualification score and shall be determined by the ratio of the present value of benefits to the present value of costs reasonably expected to result from the funding of the project or projects as proposed in the application. The calculation of the qualification score shall be determined through a consistently applied analytic and systematic framework. The score shall also include measures of the uncertainty of benefits and costs which will indicate the potential uncertainty of the qualification score. The methodology of the framework, including the specific mechanics of its calculation, shall be published in the Investment Prospectus. The qualification score and measures of uncertainty shall be shared with the applicant within 15 days of their final determination and published on the Fund's website within 30 days of their final determination. The methodology used to calculate the qualification score and uncertainty measures shall--

"(A) apply equal weighting to all measures of the net present value of benefits and costs; and

"(B) include standardized measures of the expected uncertainty in both total and specific benefits and costs associated with the project.

"(3) APPLICATION QUALIFICATION.--The Executive Director shall determine whether to certify an application as qualified for financial assistance on the basis of an evaluation of the information and data collected from the applicant, including the qualification score. In order to certify an application as qualified, the

Executive Director shall, at a minimum, find that the application's qualification score--

"(A) has been calculated on the basis of data, estimates, and assumptions that are defensible according to accepted standards of economic analysis;

(B) appears valid based on efforts by the Fund to conduct due diligence and verification;

"(C) is greater than the larger of either 1.0 or some other factor published in the Investment Prospectus as a threshold for qualification; and

"(D) is competitive with scores issued to applications currently under consideration and scores issued to applications previously funded under this chapter, taking into account the Executive Director's assessment of the extent to which the application under consideration achieves the following in order of relative priority:

"(i) Advances the primary objective and secondary objectives of the Fund.

"(ii) Addresses a special infrastructure investment challenge due to cost, complexity, cross-jurisdictional scope, multimodal features, or use of innovative technologies.

"(iii) Provides a cost effective approach to achieving the benefits described in the application relative to alternative approaches to achieving comparable benefits, taking into account the estimated uncertainty in measures of costs and benefits associated with the project.

"(iv) Combines Fund funds with other sources of funds to leverage substantial co-investment from the public and private sectors.

"(v) Delivers revenue streams from public or private sources dedicated to pay debt service, meet ongoing operating expenses, or provide for needed maintenance and capital renewal over the life cycle of the funded asset.

"(vi) Rewards states or metropolitan areas that are designated by the Secretary as having highly-effective or highly-improved performance-based planning processes pursuant to sections 134(n) and 135(m) of this title, and sections 5303(n) and 5304(m) of title 49.

"(vii) Encourages use of innovative procurement, asset management, or financing to optimize the all-in-life-cycle cost-effectiveness of a project.

"(g) INVESTMENT PLANS.--

"(1) QUALIFIED APPLICATION REQUIREMENT.--Applications certified by the Executive Director as qualified applications shall enter a process for producing a mutually agreeable Investment Plan. No applicant or application

shall enter this process by any other means. No application shall be funded without an Investment Plan approved by the Secretary.

"(2) INVESTMENT PLANNING PROCESS.--The Fund shall establish a process for determining the level, form, and terms of financial assistance to be offered by the Fund to complete a financing package adequate to fund the project or projects included in the application. The top priority of the Fund in the investment planning process shall be to establish a mutually agreeable financing package that is adequate to fund the qualified application and that maximizes total expected project benefits relative to total expected costs while also considering the portion of total costs to be financed by the Fund. When considering the appropriate level and form of Fund resources to include in an Investment Plan, the Fund shall consider the qualification score achieved by the application relative to other current applications and previously funded applications and shall strive to make investment plan decisions on the basis of maximizing total net benefits relative to cost. As part of this process, the Fund shall consider--

"(A) the amount of Fund budgetary resources required to complete a financing package;

"(B) the percentage of Federal resources included in the Investment Plan in the form of grants;

"(C) level of certainty of the proposed net benefits, including the risks to the Federal taxpayer and the project sponsor in the event of project cost overrun or failure; and

"(D) the percentage of eligible project costs to be funded through non-Federal resources pledged by the applicant to complete a financing package.

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

"(4) SUBMISSION TO FUND INVESTMENT COUNCIL.--The Executive Director shall advance Investment Plans for qualified applications to the Investment Council at regular submission intervals, as set forth in the Operating Guidance.

"(5) CONFLICT OF INTEREST PROTECTIONS.--The Fund and the Department of Transportation shall establish, in operating procedures and in the Operating Guidance, communications practices and compliance procedures that protect Fund professional staff responsible for negotiating Investment Plans from outside or otherwise inappropriate influence, and conflicts of interest. This shall include necessary restrictions on communications between Fund staff responsible for the investment planning process and individuals and organizations both within

and outside of the Department of Transportation, including the Fund Investment Council, the Office of the Secretary, the Secretary and others as needed to safeguard the ability of the Fund to fairly and independently formulate Investment Plans as directed under this subsection.

"(h) FUNDING DECISIONS.--

"(1) INVESTMENT PLAN SUBMISSION REQUIREMENT.--The Investment Council shall only consider recommending an application for funding upon receipt of an Investment Plan from the Executive Director.

"(2) APPLICATION FUNDING RECOMMENDATION.--The Investment Council shall vote on whether or not to recommend funding an Investment Plan within 15 days of receipt and shall communicate the outcome of the vote to the Secretary.

"(3) NO MODIFICATION.--Investment Plans submitted by the Executive Director to the Investment Council shall not be changed.

"(4) RECOMMENDED PLANS.--Investment Plans recommended for funding shall be forwarded to the Secretary for approval.

"(5) FUNDING APPROVAL.--The Secretary shall consider each Investment Plan recommended by the Investment Council without modification, and either approve or reject the Investment Plan. Applications with approved Investment Plans shall be funded per their Investment Plan. Applications with rejected Investment Plans shall be returned to the Executive Director and may be reconsidered by the Fund no sooner than one year after the date of return.

"(i) PROJECT SPONSORSHIP; PUBLIC BENEFIT ANALYSIS; LEGAL COMPLIANCE.--

"(1) COMPLIANCE WITH APPLICABLE LAWS.--

"(A) For projects receiving financial assistance under this chapter that would otherwise be eligible for financial assistance under title 23 or chapter 53 of this title, the Fund shall establish policies for determining which requirements of the title or chapter shall be applied to the projects, except that labor standards shall be applied to projects receiving financial assistance under this chapter that would otherwise be eligible under title 23 or chapter 53 of this title, as required by the title or chapter including, when applicable, the requirement that all laborers and mechanics employed by contractors or subcontractors on construction work performed on the projects shall be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor under sections 3141-3144, 3146, and 3147 of title 40, United States Code.

"(B) A project that receives financial assistance under this chapter shall comply with (i) the applicable planning and programming requirements of sections 134 and 135 of title 23, and (ii) all applicable environmental laws and requirements, including the National Environmental Policy Act of 1969 (NEPA) and the National Historic Preservation Act (NHPA).

"(C) The Department of Transportation shall be the Federal lead agency in the environmental review process for a project carried out under

this chapter (and the Secretary of Transportation may delegate this responsibility to an operating administration), subject to the following:

"(i) Nothing in this section precludes another agency from being a joint lead agency in accordance with the regulations adopted by the President's Council on Environmental Quality.

"(ii) An eligible funding recipient that is a State or local governmental entity receiving funds under this chapter shall serve as a joint lead agency with the Department of Transportation under the National Environmental Policy Act of 1969, and such recipient may, at the discretion of the lead federal agency or agencies, prepare any environmental document required in support of the project if the lead Federal agency furnishes guidance in such preparation. The lead Federal agency must independently evaluate, approve and adopt the State or local government's environmental findings and determinations as set forth in the environmental documentation prepared by the State or local government agency prior to taking any action on the project.

"(iii) In the case of a project that is undertaken by an eligible funding recipient that is a nongovernmental entity, the State or local governmental co-sponsor of the project shall serve as a joint lead agency with the Department, and that public sponsor shall have the authority to prepare environmental documents as provided in subparagraph (ii).

"(2) DETERMINATION OF APPLICABLE MODAL REQUIREMENTS.--In the event that a project has cross-modal components, the Fund shall have the discretion to designate the specific requirements that shall apply to the project.

"Sec. 623. Authorizations

"(a) AUTHORIZATION OF APPROPRIATIONS.--There are authorized to be appropriated from the General Fund to carry out this chapter the following amounts:

"(1) For fiscal year 2011, \$4,000,000,000, of which not more than \$150,000,000 may be expended for Planning Grants and Feasibility Grants, and not more than \$50,000,000 may be expended for the analysis of costs and benefits of projects.

"(2) For fiscal year 2012, \$5,000,000,000, of which not more than \$150,000,000 may be expended for Planning Grants and Feasibility Grants and not more than \$50,000,000 may be expended for the analysis of costs and benefits of projects.

"(3) For fiscal year 2013, \$5,000,000,000, of which not more than \$150,000,000 may be expended for Planning Grants and Feasibility Grants and not more than \$50,000,000 may be expended for the analysis of costs and benefits of projects.

"(4) For fiscal year 2014, \$5,000,000,000, of which not more than \$150,000,000 may be expended for Planning Grants and Feasibility Grants and

not more than \$50,000,000 may be expended for the analysis of costs and benefits of projects.

"(5) For fiscal year 2015, \$6,000,000,000, of which not more than \$150,000,000 may be expended for Planning Grants and Feasibility Grants and not more than \$50,000,000 may be expended for the analysis of costs and benefits of projects.

"(b) ADMINISTRATIVE EXPENSES.--Of the amounts authorized under subsection (a), the following amounts made available through appropriations acts may be expended by the Fund to pay the reasonable costs of administering this chapter, inclusive of any fees collected pursuant to section 622:

- "(1) In fiscal year 2012, not more than \$70,000,000.
- "(2) In fiscal year 2013, not more than \$50,000,000.
- "(3) In fiscal year 2014, not more than \$51,000,000.
- "(4) In fiscal year 2015, not more than \$51,000,000.
- "(5) In fiscal year 2016, not more than \$52,000,000.
- "(6) In fiscal year 2017, not more than \$52,000,000.

"(c) AVAILABILITY OF AMOUNTS.--Amounts made available under subsection (a) shall remain available until expended."

(b) CONFORMING AMENDMENT.--The analysis of chapter 6 of title 23, United States Code, is amended to read as follows:

"CHAPTER 6--INFRASTRUCTURE FINANCE

"SUBCHAPTER I--GENERAL

"Sec.

- "601. Generally applicable provisions.
- "602. Determination of eligibility and project selection.
- "603. Secured loans.
- "604. Lines of credit.
- "605. Program administration.
- "606. State and local permits.
- "607. Regulations.
- "608. Funding.
- "609. Reports to Congress.
- "610. State infrastructure bank program.
- "611. Continuation of TIFIA credit assistance.

"SUBCHAPTER II--NATIONAL INFRASTRUCTURE INNOVATION AND FINANCE FUND

- "621. National Infrastructure Innovation and Finance Fund; definitions.
- "622. Fund authorities and assistance.
- "623. Authorizations."

SEC. 2102. TITLE 5 AMENDMENT.

Section 5315 of title 5, United States Code, is amended by inserting the following at the end:

"Executive Director, National Infrastructure Innovation and Finance Fund."

Part 2--Freight Policy Office

SEC. 2151. OFFICE OF FREIGHT POLICY.

(a) OFFICE OF FREIGHT POLICY.--Section 102 of title 49, United States Code, is amended--

- (1) by redesignating subsection (h) as subsection (i); and
- (2) by inserting after subsection (g) the following:

"(h) OFFICE OF FREIGHT POLICY.--There is established within the Office of the Under Secretary of Transportation for Policy an Office of Freight Policy.

"(1) RESPONSIBILITIES.--The Office shall--

"(A) support the Secretary in the implementation of the National Freight Transportation Policy;

"(B) support the Secretary in the designation of the components of the National Freight Transportation System;

"(C) provide data and analysis to the Secretary on the conditions and performance of the National Freight Transportation System;

"(D) coordinate implementation of the National Freight Transportation Policy among the operating units of the Department of Transportation and among public and private stakeholders;

"(E) develop measures of the condition and performance of the freight transportation network, including measures of the condition and performance of highways, freight rail, ports and waterways, air cargo, and pipelines;

"(F) prepare the National Freight Transportation Strategic Plan;

"(G) work with the Bureau of Transportation Statistics, which shall coordinate the collection of freight transportation data by modal administrations, to improve condition and performance measures and data on costs, value, weight, and ton-miles of shipments;

"(H) oversee the Freight Transportation Joint Program Office;

"(I) facilitate the sharing of freight-related research, technology, and other best practices; and

"(J) carry out other duties as prescribed by the Secretary.

"(2) ORGANIZATION.--The head of the Office shall be the Director of Freight Policy and shall be appointed in the competitive service by the Secretary."

(b) FREIGHT TRANSPORTATION.--Chapter 3 of title 49, United States Code, is amended by adding at the end the following:

"Sec. 310. Freight transportation

"(a) NATIONAL FREIGHT TRANSPORTATION POLICY.--It is the policy of the United States to improve the condition and performance of the national freight transportation system so that it is economically efficient and environmentally sustainable, provides the foundation for the United States to compete in the global economy, and achieves the goals set forth in subsection (b) through cost-effective infrastructure investments, operational improvements, and appropriate safety, environmental, and energy policies.

"(b) GOALS.--The goals of the National Freight Transportation Policy are--

"(1) to invest in infrastructure improvements and to implement operational improvements that strengthen the contribution of the freight transportation system to the economic competitiveness of the United States, reduce congestion, and increase productivity, particularly for domestic industries and businesses that create high-value jobs;

"(2) to promote energy conservation and the environmental sustainability of freight movements;

"(3) to improve the safety, security, and resilience of freight transportation;

"(4) to improve the contribution of the freight transportation system to the livability of the American people;

"(5) to improve the state of good repair of the freight transportation system;

"(6) to use advanced technology to improve the safety and efficiency of the freight transportation system;

"(7) to incorporate concepts of performance, innovation, competition, and accountability into the operation and maintenance of the National Freight Transportation System; and

"(8) to improve the economic efficiency of the freight transportation system.

"(c) NATIONAL FREIGHT TRANSPORTATION SYSTEM.--The National Freight Transportation System shall consist of all modes of freight transportation operating in a unified, interconnected manner, including highways, freight rail, ports and waterways, air cargo, and pipelines. The Secretary shall designate the components of the National Freight Transportation System.

"(d) NATIONAL FREIGHT TRANSPORTATION STRATEGIC PLAN.--

"(1) IN GENERAL.-- Not later than two years after the date of the enactment of this section, and every third year thereafter, the Secretary shall issue a National Freight Transportation Strategic Plan to guide planning and investments in the National Freight Transportation System. The Plan shall be

designed to support a transparent, data-driven transportation infrastructure investment decisionmaking process that relies on market analysis and public participation to allocate the Nation's infrastructure investment resources in an economically efficient manner.

"(2) CONTENTS.--The Plan shall include, at a minimum--

"(A) an assessment of the condition and performance of the national freight transportation system;

"(B) forecasts of freight volumes for the 20-year period beginning in the year during which the plan is issued;

"(C) an identification of major trade gateways and national freight corridors that connect major population centers, trade gateways, and other major freight generators. The identification of major trade gateways and national freight corridors shall be revised, as appropriate, in subsequent plans;

"(D) an analysis of emerging and long-term projected trends in economics, national and international trade patterns, consumer demand, research and technology, logistics systems, and environmental conditions that affect or will affect the condition, performance, needs, and uses of the National Freight Transportation System;

"(E) an assessment of the major challenges to effectively meeting the policy and goals set forth in subsections (a) and (b);

"(F) an assessment of statutory, regulatory, technological, institutional, and other barriers to improved freight transportation performance, and opportunities for overcoming those barriers;

"(G) a list of priority freight corridors and gateways to be improved and developed;

"(H) a proposed investment plan identifying priorities for Federal investments to implement the policy and goals set forth in subsections (a) and (b);

"(I) a plan for operational improvements in the National Freight Transportation System; and

"(J) other actions needed to implement the policy and goals set forth in subsections (a) and (b).

"(3) PLAN DEVELOPMENT.--In developing the Plan, the Secretary shall consult with appropriate public and private transportation stakeholders; use a transparent, objective, data-driven approach that includes market analysis; consider ongoing Federal, State, and corridor-wide transportation plans; provide for public notice and comment; as appropriate, establish advisory committees to advise on developing the Plan; acquire and analyze the data necessary to assess the conditions and performance of the National Freight Transportation System; consider freight flows and locations of freight traffic generators; and address the unique needs of exporters of freight. The Secretary may conduct studies, gather information, and require the production and reporting of data necessary to develop and update the report. The Plan shall consider, in identifying national freight

corridors, the High Priority Corridors identified in section 1105 of the Intermodal Surface Transportation Efficiency Act of 1991, as amended.

"(4) SUBMISSION AND PUBLICATION.-- Upon completion of the Plan, the Secretary shall post it on the Department of Transportation public website.

"(e) FREIGHT TRANSPORTATION CONDITIONS AND PERFORMANCE REPORT.--Not later than two years after the date of the enactment of this section, and biennially thereafter, the Secretary shall prepare a report on the conditions and performance of the freight transportation system in the United States.

"(f) TRANSPORTATION INVESTMENT DATA AND PLANNING TOOLS.--

"(1) IN GENERAL.--Not later than one year after the date of the enactment of this section, the Secretary shall--

"(A) develop new tools or improve existing tools to support an outcome-oriented, performance-based approach to evaluate proposed freight-related and other transportation projects, including--

"(i) methodologies for systematic analysis of benefits and costs;

"(ii) tools for ensuring that the evaluation of freight-related and other transportation projects can consider safety, economic competitiveness, environmental sustainability, livability, and state of good repair in the project selection process; and

"(iii) other elements to assist in effective transportation planning;

"(B) direct the collection of transportation-related data to support a broad range of evaluation methods and techniques such as demand forecasts, modal diversion forecasts, and estimates of the effects of proposed investments on congestion, pollution, public health, and other factors, to assist in making transportation investment decisions; and

"(C) at a minimum, in consultation with other relevant Federal agencies, consider any improvements to existing freight flow data collection efforts that could reduce identified freight data gaps and deficiencies and help improve forecasts of freight transportation demand.

"(2) CONSULTATION.--To the extent practicable, the Secretary shall consult with Federal, State, and local transportation planners to develop, improve, and implement the tools and collect the data in paragraph (1).

"(g) FINANCIAL ASSISTANCE.--The Secretary shall use the findings of the National Freight Transportation Strategic Plan to guide infrastructure investment decisions subject to the Secretary's discretion."

(c) CONFORMING AMENDMENT.--

(1) CHAPTER 3 ANALYSIS.--The analysis of chapter 3 of title 49, United States Code, is amended by inserting after the item relating to section 309 the following:

"310. Freight transportation."

(2) REPEAL OF OBSOLETE PROVISION.--Section 5503 of title 49, United States Code, is repealed.

Subtitle C--Federal-Aid Highways

Part 1--Authorizations and Programs

SEC. 2201. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.--The following sums are authorized to be appropriated out of the Highway Account of the Transportation Trust Fund:

(1) SAFETY PROGRAM.--

(A) HIGHWAY SAFETY IMPROVEMENT PROGRAM.--For the highway safety improvement program under section 148 of title 23, United States Code--

- (i) \$2,246,000,000 for fiscal year 2012;
- (ii) \$2,418,000,000 for fiscal year 2013;
- (iii) \$2,523,000,000 for fiscal year 2014;
- (iv) \$2,638,000,000 for fiscal year 2015;
- (v) \$2,754,000,000 for fiscal year 2016; and
- (vi) \$2,877,000,000 for fiscal year 2017.

(B) HIGHWAY SAFETY DATA IMPROVEMENT PROGRAM.--For the highway safety data improvement program under section 149 of such title--

- (i) \$293,000,000 for fiscal year 2012;
- (ii) \$314,000,000 for fiscal year 2013;
- (iii) \$328,000,000 for fiscal year 2014;
- (iv) \$342,000,000 for fiscal year 2015;
- (v) \$358,000,000 for fiscal year 2016; and
- (vi) \$373,000,000 for fiscal year 2017.

(2) NATIONAL HIGHWAY PROGRAM.--

(A) HIGHWAY INFRASTRUCTURE PERFORMANCE PROGRAM.--For the highway infrastructure performance program under section 119 of such title--

- (i) \$16,750,000,000 for fiscal year 2012;
- (ii) \$17,100,000,000 for fiscal year 2013;
- (iii) \$17,800,000,000 for fiscal year 2014;
- (iv) \$18,600,000,000 for fiscal year 2015;
- (v) \$19,500,000,000 for fiscal year 2016; and
- (vi) \$20,300,000,000 for fiscal year 2017.

(B) FLEXIBLE INVESTMENT PROGRAM.--For the flexible investment program under section 133 of such title--

- (i) \$15,632,000,000 for fiscal year 2012;
- (ii) \$18,202,000,000 for fiscal year 2013;

- (ii) \$19,818,000,000 for fiscal year 2014;
- (iv) \$21,028,000,000 for fiscal year 2015;
- (v) \$21,879,000,000 for fiscal year 2016; and
- (vi) \$22,919,000,000 for fiscal year 2017.

(3) LIVABILITY PROGRAM.--

(A) LIVABLE COMMUNITIES PROGRAM.--For the livable communities program under section 150(a) of such title--

- (i) \$3,400,000,000 for fiscal year 2012;
- (ii) \$3,590,000,000 for fiscal year 2013;
- (iii) \$3,777,000,000 for fiscal year 2014;
- (iv) \$3,980,000,000 for fiscal year 2015;
- (v) \$4,188,000,000 for fiscal year 2016; and
- (vi) \$4,404,000,000 for fiscal year 2017.

(B) INVESTMENTS FOR LIVABLE COMMUNITIES GRANT PROGRAM.--For the investments for livable communities grant program under section 150(b) of such title--

- (i) \$500,000,000 for fiscal year 2012;
- (ii) \$500,000,000 for fiscal year 2013;
- (iii) \$500,000,000 for fiscal year 2014;
- (iv) \$500,000,000 for fiscal year 2015;
- (v) \$500,000,000 for fiscal year 2016; and
- (vi) \$500,000,000 for fiscal year 2017.

(C) LIVABILITY CAPACITY BUILDING GRANT PROGRAM.--For the livability capacity building grant program under section 2210(e) of this Act--

- (i) \$200,000,000 for fiscal year 2012;
- (ii) \$200,000,000 for fiscal year 2013;
- (iii) \$200,000,000 for fiscal year 2014;
- (iv) \$200,000,000 for fiscal year 2015;
- (v) \$200,000,000 for fiscal year 2016; and
- (vi) \$200,000,000 for fiscal year 2017.

(4) FEDERAL ALLOCATION PROGRAM.--

(A) FEDERAL LANDS.--

(i) FEDERAL LANDS TRANSPORTATION PROGRAM.--For the federal lands transportation program under section 203 of such title--

- (I) \$430,000,000 for fiscal year 2012, of which \$315,000,000 shall be for the National Park Service and the United States Fish and Wildlife Service;
- (II) \$457,000,000 for fiscal year 2013, of which \$335,000,000 shall be for the National Park Service and the United States Fish and Wildlife Service;
- (III) \$477,000,000 for fiscal year 2014, of which \$349,000,000 shall be for the National Park Service and the United States Fish and Wildlife Service;

(IV) \$498,000,000 for fiscal year 2015, of which \$365,000,000 shall be for the National Park Service and the United States Fish and Wildlife Service;

(V) \$520,000,000 for fiscal year 2016, of which \$381,000,000 shall be for the National Park Service and the United States Fish and Wildlife Service; and

(VI) \$540,000,000 for fiscal year 2017, of which \$396,000,000 shall be for the National Park Service and the United States Fish and Wildlife Service.

(ii) FEDERAL LANDS ACCESS PROGRAM.--For the federal lands access program under section 204 of such title--

(I) \$177,000,000 for fiscal year 2012;

(II) \$209,000,000 for fiscal year 2013;

(III) \$218,000,000 for fiscal year 2014;

(IV) \$228,000,000 for fiscal year 2015;

(V) \$238,000,000 for fiscal year 2016; and

(VI) \$249,000,000 for fiscal year 2017.

(B) TRIBAL TRANSPORTATION PROGRAM.--For the tribal transportation program under section 202 of such title--

(i) \$600,000,000 for fiscal year 2012;

(ii) \$628,000,000 for fiscal year 2013;

(iii) \$655,000,000 for fiscal year 2014;

(iv) \$685,000,000 for fiscal year 2015;

(v) \$715,000,000 for fiscal year 2016; and

(vi) \$747,000,000 for fiscal year 2017.

(C) WORKFORCE DEVELOPMENT.--

(i) ON-THE-JOB TRAINING AND SUPPORTIVE SERVICES.--For on-the-job training and supportive services under section 104(b) of such title--

(I) \$25,000,000 for fiscal year 2012;

(II) \$40,000,000 for fiscal year 2013;

(III) \$50,000,000 for fiscal year 2014;

(IV) \$60,000,000 for fiscal year 2015;

(V) \$70,000,000 for fiscal year 2016; and

(VI) \$70,000,000 for fiscal year 2017.

(ii) DISADVANTAGED BUSINESS ENTERPRISES TRAINING.--For disadvantaged business enterprises training under section 140(c) of such title--

(I) \$25,000,000 for fiscal year 2012;

(II) \$40,000,000 for fiscal year 2013;

(III) \$50,000,000 for fiscal year 2014;

(IV) \$60,000,000 for fiscal year 2015;

(V) \$70,000,000 for fiscal year 2016; and

(VI) \$70,000,000 for fiscal year 2017.

(b) DISADVANTAGED BUSINESS ENTERPRISES.--

(1) **DEFINITIONS.**--In this subsection, the following definitions apply:

(A) **SMALL BUSINESS CONCERN.**--The term "small business concern" has the meaning that term has under section 3 of the Small Business Act (15 U.S.C. 632), except that the term shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has average annual gross receipts over the preceding 3 fiscal years in excess of \$22,410,000, as adjusted annually by the Secretary for inflation.

(B) **SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.**--The term "socially and economically disadvantaged individuals" has the meaning that term has under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and relevant subcontracting regulations issued pursuant to that Act, except that women shall be presumed to be socially and economically disadvantaged individuals for purposes of this subsection.

(2) **GENERAL RULE.**--Except to the extent that the Secretary of Transportation determines otherwise, not less than 10 percent of the amounts made available for any program under titles I, II, and V of this Act and section 403 of title 23, United States Code, shall be expended through small business concerns owned and controlled by socially and economically disadvantaged individuals.

(3) **ANNUAL LISTING OF DISADVANTAGED BUSINESS ENTERPRISES.**--Each State shall annually--

(A) survey and compile a list of the small business concerns referred to in paragraph (2) and the location of the concerns in the State; and

(B) notify the Secretary, in writing, of the percentage of the concerns that are controlled by women, by socially and economically disadvantaged individuals (other than women), and by individuals who are women and are otherwise socially and economically disadvantaged individuals.

(4) **UNIFORM CERTIFICATION.**--The Secretary shall establish minimum uniform criteria for State governments to use in certifying whether a concern qualifies for purposes of this subsection. The minimum uniform criteria shall include, but not be limited to, on-site visits, personal interviews, licenses, analysis of stock ownership, listing of equipment, analysis of bonding capacity, listing of work completed, resume of principal owners, financial capacity, and type of work preferred.

(5) **COMPLIANCE WITH COURT ORDERS.**--Nothing in this subsection limits the eligibility of an entity or person to receive funds made available under titles I, III, and V of this Act and section 403 of title 23, United States Code, if the entity or person is prevented, in whole or in part, from complying with paragraph (2) because a Federal court issues a final order in which the court finds that the requirement of paragraph (2), or the program established under paragraph (2), is unconstitutional.

(c) CRITICAL HIGHWAY INFRASTRUCTURE PROGRAM.--There is authorized to be appropriated out of the Highway Account of the Transportation Trust Fund \$27,650,000,000 for fiscal year 2012 for critical highway infrastructure.

(1) TRANSFER OF FUNDS TO GENERAL SERVICES

ADMINISTRATION.--Of amounts authorized to be appropriated under this subsection, \$2,200,000,000 shall be made available and transferred to the General Services Administration for cross-border transportation activities.

(2) TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT PROGRAM.--Of amounts authorized to be appropriated under this subsection, \$450,000,000 shall be made available for credit assistance under the Transportation Infrastructure Finance and Innovation Act program, of which the Secretary may use up to \$5,000,000 for administrative expenses to carry out such program.

(3) CRITICAL HIGHWAY INFRASTRUCTURE.--

(A) ADMINISTRATIVE EXPENSES.--Of amounts authorized to be appropriated under this subsection, the Secretary may use up to \$20,000,000 for administrative expenses to carry out this paragraph. Such funds shall remain available until expended.

(B) APPORTIONMENT OF FUNDS.--On October 1 of fiscal year 2012, after making the set-asides under paragraphs (1) and (2) and subparagraph (A), the Secretary shall apportion the remainder of the sums authorized to be appropriated under this subsection to the several States in accordance with section 104(b)(1) of title 23, United States Code, for projects that would be eligible under section 119 of such title.

(4) APPLICABILITY OF TITLE 23.--Funds made available to carry out this subsection shall be available for obligation and administered in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall not be transferable, and the Federal share of the cost of a project or activity under this subsection may be up to 100 percent. Except as otherwise specified in this subsection, funds made available under this subsection shall be available for 3 years after the end of the year for which authorized.

SEC. 2202. OBLIGATION CEILING.

(a) GENERAL LIMITATION.--Subject to subsection (e), and notwithstanding any other provision of law, the obligations for Federal-aid highway and highway safety construction programs shall not exceed--

- (1) \$[69,675,000,000] for fiscal year 2012;
- (2) \$XX,XXX,XXX,XXX for fiscal year 2013;
- (3) \$XX,XXX,XXX,XXX for fiscal year 2014;
- (4) \$XXX,XXX,XXX,XXX for fiscal year 2015;
- (5) \$XX,XXX,XXX,XXX for fiscal year 2016; and
- (6) \$XX,XXX,XXX,XXX for fiscal year 2017.

(b) EXCEPTIONS.--The limitations under subsection (a) shall not apply to obligations under or for--

- (1) section 125 of title 23, United States Code;
- (2) section 147 of the Surface Transportation Assistance Act of 1978 (23 U.S.C. 144 note; 92 Stat. 2714);
- (3) section 9 of the Federal-Aid Highway Act of 1981 (Public Law 97-134; 95 Stat. 1701);
- (4) subsections (b) and (j) of section 131 of the Surface Transportation Assistance Act of 1982 (Public Law 97-424; 96 Stat. 2119);
- (5) subsections (b) and (c) of section 149 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17; 101 Stat. 198);
- (6) sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240; 105 Stat. 2027);
- (7) section 157 of title 23, United States Code (as in effect on June 8, 1998);
- (8) section 105 of title 23, United States Code (as in effect for fiscal years 1998 through 2004, but only in an amount equal to \$639,000,000 for each of those fiscal years);
- (9) Federal-aid highway programs for which obligation authority was made available under the Transportation Equity Act for the 21st Century (Public Law 105-178; 112 Stat. 107) or subsequent public laws for multiple years or to remain available until used, but only to the extent that the obligation authority has not lapsed or been used;
- (10) section 105 of title 23, United States Code (as in effect for fiscal years 2005 through 2011, but only in an amount equal to \$639,000,000 for each of those fiscal years);
- (11) section 1603 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59; 119 Stat. 1248), to the extent that funds obligated in accordance with that section were not subject to a limitation on obligations at the time at which the funds were initially made available for obligation; and
- (12) **[section 133 of title 23, United State Code (but, for each of fiscal years 2012 through 2017, only in an amount equal to \$639,000,000 per fiscal year)].

(c) DISTRIBUTION OF OBLIGATION AUTHORITY.--For each of fiscal years 2012 through 2017, the Secretary--

- (1) shall not distribute obligation authority provided by subsection (a) for the fiscal year for--
 - (A) amounts authorized for administrative expenses and programs by section 104(a) of title 23, United States Code; and
 - (B) amounts authorized for the Bureau of Transportation Statistics;
- (2) shall not distribute an amount of obligation authority provided by subsection (a) that is equal to the unobligated balance of amounts made available from the Highway Account of the Transportation Trust Fund or the Highway

Trust Fund (other than the Mass Transit Account) for Federal-aid highway and highway safety programs for previous fiscal years the funds for which are allocated by the Secretary;

(3) shall determine the ratio that--

(A) the obligation authority provided by subsection (a) for the fiscal year, less the aggregate of amounts not distributed under paragraphs (1) and (2); bears to

(B) the total of the sums authorized to be appropriated for the Federal-aid highway and highway safety construction programs (other than sums authorized to be appropriated for provisions of law described in paragraphs (1) through (11) of subsection (b) [and sums authorized to be appropriated for section 133 of title 23, United States Code, equal to the amount referred to in subsection (b)(12) for the fiscal year]), less the aggregate of the amounts not distributed under paragraphs (1) and (2);

(4) shall distribute the obligation authority provided by subsection (a), less the aggregate amounts not distributed under paragraphs (1) and (2), for each of the programs that are allocated by the Secretary under this Act and title 23, United States Code (other than to programs to which paragraph (1) applies), by multiplying--

(A) the ratio determined under paragraph (3); by

(B) the amounts authorized to be appropriated for each such program for the fiscal year; and

(5) shall distribute the obligation authority provided by subsection (a), less the aggregate amounts not distributed under paragraphs (1) and (2) and the amounts distributed under paragraph (4), for Federal-aid highway and highway safety construction programs that are apportioned by the Secretary under this Act and title 23, United States Code [(other than the amounts apportioned for the flexible investment program in section 133 of title 23, United State Code, that are exempt from limitation under subsection (b)(12))] in the ratio that--

(A) amounts authorized to be appropriated for the programs that are apportioned to each State for the fiscal year; bear to

(B) the total of the amounts authorized to be appropriated for the programs that are apportioned to all States for the fiscal year.

(d) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.--

Notwithstanding subsection (c), the Secretary shall, after August 1 of each of fiscal years 2012 through 2017--

(1) revise a distribution of the obligation authority made available under subsection (c) if an amount distributed cannot be obligated during that fiscal year; and

(2) redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during that fiscal year, giving priority to those States having large unobligated balances of funds apportioned under sections 144 (as in effect on the date before the date of enactment of this Act) and 104 of title 23, United States Code.

(e) NO-YEAR AND MULTI-YEAR OBLIGATION LIMITATION.--

(1) TRANSPORTATION RESEARCH PROGRAMS.--

(A) IN GENERAL.--Except as provided in subparagraph (B), obligation limitations imposed by subsection (a) shall apply to contract authority for transportation research programs carried out under--

- (i) chapter 5 of title 23, United States Code; and
- (ii) title V (research title) of this Act.

(B) EXCEPTION.--Obligation authority made available under subparagraph (A) shall--

- (i) remain available until used for obligation of such funds for transportation research programs; and
- (ii) be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

(2) SURFACE TRANSPORTATION REVENUE ALTERNATIVES OFFICE.--Obligation authority distributed under subsection (c)(4) for the surface transportation revenue alternatives office under section 2218 of this Act shall--

(A) remain available until used for obligation of funds for such office; and

(B) be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

(3) ADMINISTRATIVE EXPENSES FOR THE CRITICAL HIGHWAY INFRASTRUCTURE PROGRAM.--Obligation authority distributed under subsection (c)(4) for administrative expenses for the critical highway infrastructure program under section 2201(c)(3)(A) of this Act shall--

(A) remain available for a period of 3 fiscal years; and

(B) be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

(f) REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.--

(1) IN GENERAL.--Not later than 30 days after the date of distribution of obligation authority under subsection (c) for each of fiscal years 2012 through 2017, the Secretary shall distribute to the States any funds that--

(A) are authorized to be appropriated for the fiscal year for Federal-aid highway programs; and

(B) the Secretary determines will not be allocated to the States, and will not be available for obligation, in the fiscal year due to the imposition of any obligation limitation for the fiscal year.

(2) RATIO.--Funds shall be distributed under paragraph (1) in the same ratio as the distribution of obligation authority under subsection (c)(5).

(3) AVAILABILITY.--Funds distributed under paragraph (1) shall be available for any purpose described in section 133(c) of title 23, United States Code.

SEC. 2203. APPORTIONMENTS.

(a) IN GENERAL.--The text of section 104 of title 23, United States Code, is amended to read as follows:

"(a) ADMINISTRATIVE EXPENSES.--

"(1) IN GENERAL.--There are authorized to be appropriated from the Highway Account of the Transportation Trust Fund to be made available to the Secretary for administrative expenses of the Federal Highway Administration--

"(A) \$445,661,000 for fiscal year 2012;

"(B) \$ XXX,XXX,XXX for fiscal year 2013;

"(C) \$ XXX,XXX,XXX for fiscal year 2014;

"(D) \$ XXX,XXX,XXX for fiscal year 2015;

"(E) \$ XXX,XXX,XXX for fiscal year 2016; and

"(F) \$ XXX,XXX,XXX for fiscal year 2017.

"(2) PURPOSES.--The funds authorized by this subsection shall be used--

"(A) to administer the provisions of law to be funded from appropriations for the Federal-aid highway program and programs authorized under chapter 2 of this title; and

"(B) to make transfers of such sums as the Secretary determines to be appropriate to the Appalachian Regional Commission for administrative activities associated with the Appalachian development highway system.

"(3) AVAILABILITY.--The funds made available under paragraph (1) shall remain available until expended.

"(b) APPORTIONMENTS.--On October 1 of each fiscal year, the Secretary, after making the set-aside authorized by subsection (d), shall apportion the remainder of the sums authorized to be appropriated for expenditure on the highway infrastructure performance program, the flexible investment program, the livable communities program, the highway safety improvement program, and the highway safety data improvement program for that fiscal year, among the several States in the following manner:

"(1) HIGHWAY INFRASTRUCTURE PERFORMANCE PROGRAM.--

"(A) IN GENERAL.--For the highway infrastructure performance program in accordance with the following formula:

"(B) MINIMUM APPORTIONMENT.--Notwithstanding subparagraph (A), each State shall receive a minimum of ___ percent of the funds apportioned under this paragraph.

"(2) FLEXIBLE INVESTMENT PROGRAM.--

"(A) For the flexible investment program, \$52,000,000 for each of fiscal years 2012 through 2017 for the territorial highway program under section 215, and the remainder apportioned as follows:

"(B) MINIMUM APPORTIONMENT.--Notwithstanding subparagraph (A), each State shall receive a minimum of ___ percent of the funds apportioned under this paragraph.

"(3) LIVABLE COMMUNITIES PROGRAM.--

"(A) IN GENERAL.--For the livable communities program,

"(B) MINIMUM APPORTIONMENT.--Notwithstanding subparagraph (A), each State shall receive a minimum of ___ percent of the funds apportioned under this paragraph.

"(4) HIGHWAY SAFETY IMPROVEMENT PROGRAM.--

"(A) IN GENERAL.--For the highway safety improvement program, in accordance with the following formula:

"(B) MINIMUM APPORTIONMENT.--Notwithstanding subparagraph (A), each State shall receive a minimum of ___ percent of the funds apportioned under this paragraph.

"(5) HIGHWAY SAFETY DATA IMPROVEMENT PROGRAM.--

"(A) IN GENERAL.--For the highway safety data improvement program, in accordance with the following formula:

"(B) MINIMUM APPORTIONMENT.--Notwithstanding subparagraph (A), each State shall receive a minimum of ___ percent of the funds apportioned under this paragraph.

"(c) CERTIFICATION OF APPORTIONMENTS.--

"(1) IN GENERAL.--On October 1 of each fiscal year, the Secretary shall certify to each of the State transportation departments the sums which he or she has apportioned hereunder to each State for such fiscal year. To permit the States to develop adequate plans for the utilization of apportioned sums, the Secretary shall advise each State of the amount that will be apportioned each year under this section not later than ninety days before the beginning of the fiscal year for which the sums to be apportioned are authorized.

"(2) NOTICE TO STATES.--If the Secretary has not made an apportionment under section 104 by the 21st day of a fiscal year beginning after September 30, 1998, the Secretary shall transmit, by the 21st day, to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a written statement of the reason for not making such apportionment in a timely manner.

"(d) METROPOLITAN PLANNING.--

"(1) SET-ASIDE.--On October 1 of each fiscal year, the Secretary shall set aside 1 percent of the funds authorized to be appropriated for the highway infrastructure performance program, the flexible investment program, and the livable communities program authorized under this title to carry out the requirements of section 134 of this title.

"(2) APPORTIONMENT TO STATES OF SET-ASIDE FUNDS.--These funds shall be apportioned to the States in the ratio which the population in urbanized areas or parts thereof, in each State bears to the total population in such

urbanized areas in all the States as shown by the latest available census, except that no State shall receive less than 1/2 percent of the amount apportioned.

"(3) USE OF FUNDS.--

"(A) IN GENERAL.--The funds apportioned to any State under paragraph (2) of this subsection shall be made available by the State to the metropolitan planning organizations responsible for carrying out the provisions of section 134 of this title, except that States receiving the minimum apportionment under paragraph (2) may, in addition, subject to the approval of the Secretary, use the funds apportioned to finance transportation planning outside of urbanized areas.

"(B) UNUSED FUNDS.--Any funds that are not used to carry out section 134 may be made available by a metropolitan planning organization to the State to fund activities under section 135 of this title.

"(4) DISTRIBUTION OF FUNDS WITHIN STATES.--

"(A) IN GENERAL.--The distribution within any State of the planning funds made available to agencies under paragraph (3) of this subsection shall be in accordance with a formula developed by each State and approved by the Secretary which shall consider but not necessarily be limited to, population, status of planning, attainment of air quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of section 134 of this title and other applicable requirements of Federal law.

"(B) REIMBURSEMENT.--Not later than 30 days after the date of receipt by a State of a request for reimbursement of expenditures made by a metropolitan planning organization for carrying out section 134 of this title, the State shall reimburse, from funds distributed under this paragraph to the metropolitan planning organization by the State, the metropolitan planning organization for those expenditures.

"(5) DETERMINATION OF POPULATION FIGURES.--For the purposes of determining population figures under this subsection, the Secretary shall use the most recent estimate published by the Secretary of Commerce.

"(e) REPORT TO CONGRESS.--The Secretary shall submit to Congress a report, and also make such report available to the public in a user-friendly format via the Internet, for each fiscal year on--

"(1) the amount obligated, by each State, for Federal-aid highways and highway safety construction programs during the preceding fiscal year;

"(2) the balance, as of the last day of the preceding fiscal year, of the unobligated apportionment of each State by fiscal year under this section;

"(3) the rates of obligation of funds apportioned or set aside under this section according to--

"(A) program;

"(B) funding category or subcategory;

"(C) type of improvement; and

"(D) State.

"(f) TRANSFER OF HIGHWAY AND TRANSIT FUNDS.--

"(1) TRANSFER OF HIGHWAY FUNDS FOR TRANSIT PROJECTS.--

"(A) IN GENERAL.--Subject to subparagraph (B), funds made available for transit projects or transportation planning under this title may be transferred to and administered by the Secretary in accordance with chapter 53 of title 49.

"(B) NON-FEDERAL SHARE.--The provisions of this title relating to the non-Federal share shall apply to the funds transferred under subparagraph (A).

"(2) TRANSFER OF TRANSIT FUNDS FOR HIGHWAY PROJECTS.--

"(A) IN GENERAL.--Subject to subparagraph (B), funds made available for highway projects or transportation planning under chapter 53 of title 49 may be transferred to and administered by the Secretary in accordance with this title.

"(B) NON-FEDERAL SHARE.--The provisions of chapter 53 of title 49 relating to the non-Federal share shall apply to funds transferred under subparagraph (A).

"(3) TRANSFER OF FUNDS AMONG STATES OR TO FEDERAL HIGHWAY ADMINISTRATION.--

"(A) IN GENERAL.--Subject to subparagraph (B), the Secretary may, at the request of a State, transfer funds apportioned or allocated under this title to the State to another State, or to the Federal Highway Administration, for the purpose of funding one or more projects that are eligible for assistance with funds so apportioned or allocated.

"(B) APPORTIONMENT.--The transfer shall have no effect on any apportionment of funds to a State under this section.

"(4) TRANSFER OF OBLIGATION AUTHORITY.--Obligation authority for funds transferred under this subsection shall be transferred in the same manner and amount as the funds for the projects that are transferred under this subsection."

(b) Section 1120(c) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59; 1119 STAT. 1144, 1192) is repealed.

SEC. 2204. DEFINITIONS.

(a) DEFINITIONS.--Section 101(a) of title 23, United States Code, is amended--

(1) by striking paragraphs (7), (9), (12), (19), (20), (24), (25), (26), (28), (35), and (38);

(2) by redesignating paragraphs (2), (3), (4), (5), (6), (8), (10), (11), (21), (22), (23), (27), (29), (30), (31), (32), (33), (34), (36), and (37) as paragraphs (3), (4), (5), (6), (7), (10), (11), (12), (19), (20), (21), (22), (23), (24), (25), (26), (27), (29), (33), and (34), respectively;

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

"(2) ASSET MANAGEMENT.--The term 'asset management' means a strategic and systematic process of operating, maintaining, upgrading and expanding physical assets effectively throughout their lifecycles, focusing on business and engineering practices for resource allocation and utilization, with the objective of better decision making based upon quality information and well defined objectives.";

(4) in paragraph (4), as redesignated, in the matter preceding subparagraph (A), by inserting "or any project eligible for assistance under this title" after "of a highway";

(5) in paragraph (4)(A), as redesignated, to read as follows:

"(A) preliminary engineering, engineering, and design related services directly related to the construction of a highway project including engineering, design, project development and management, construction project management and inspection, surveying, mapping (including the establishment of temporary and permanent geodetic markers in accordance with specifications of the National Oceanic and Atmospheric Administration of the Department of Commerce), and architectural related services;"

(6) in paragraph (4)(B), as redesignated, by--

(A) inserting "reconstruction," before "resurfacing";

(B) striking "and"; and

(C) inserting "and preservation" after "rehabilitation";

(7) in paragraph (4)(E), as redesignated, by striking "railway" and inserting "railway-highway";

(8) in paragraph (4)(F), as redesignated, by striking "obstacles" and inserting "hazards";

(9) in paragraph (4)(H), by adding ", or such other capital improvements as enhance the efficiency or effectiveness of an eligible Federal-aid highway" after "scale houses";

(10) in paragraph (6), as redesignated, by--

(A) inserting "public" before "highway eligible"; and

(B) inserting "functionally" before "classified";

(11) in paragraph (7), as redesignated, by striking "any of the Federal-aid highway systems" and inserting "the National Highway System";

(12) by inserting after paragraph (7), as redesignated, the following:

"(8) FEDERAL LANDS ACCESS TRANSPORTATION FACILITY.--The term 'Federal Lands access transportation facility' means a public highway, road, bridge, trail, or transit system which is located on, is adjacent to, or that provides access to Federal lands, for which title or maintenance responsibility of such facility is vested in a State, county, town, township, Tribal, municipal, or local government.";

(13) by inserting after new paragraph (8) the following:

"(9) FEDERAL LANDS TRANSPORTATION FACILITY.--The term 'Federal lands transportation facility' means a public highway, road, bridge, trail, or transit system, which is located on, is adjacent to, or that provides access to

publicly-accessible Federal lands for which title and maintenance responsibility is vested in the Federal Government, and that appears on the national Federal lands transportation facility inventory defined in section 203(c) of this title.";

(14) in paragraph (13), by striking "(c)" and inserting "(d)";

(15) in paragraph (15), by--

(A) striking "as a" and inserting "as an air quality"; and

(B) inserting "air quality" before "attainment area";

(16) in paragraph (19), as redesignated, by--

(A) striking "an" and inserting "any"; and

(B) striking "to construct a particular portion of a highway, or if the context so implies, the particular portion of a highway so constructed or any other undertaking";

(17) in paragraph (20), as redesignated, by--

(A) striking "the State transportation department and"; and

(B) inserting "and the recipient" after "Secretary";

(18) by amending paragraph (24), as redesignated, to read as follows:

"(24) SAFETY IMPROVEMENT PROJECT.--The term 'safety improvement project' means strategies, activities, and projects on a public road consistent with the State strategic highway safety plan that corrects or improves a roadway feature that constitutes a hazard to road users or addresses a highway safety problem.";

(19) by inserting after paragraph (27), as redesignated, the following:

"(28) STATE STRATEGIC HIGHWAY SAFETY PLAN.--The term 'state strategic highway safety plan' means a comprehensive, data-driven safety plan developed, implemented, and evaluated by the State transportation department or the Governor's designee.";

(20) by moving paragraph (39), inserting it after paragraph (29), as redesignated, redesignating it as paragraph (30), and--

(A) in paragraph 30(A), as redesignated, by striking "program" and inserting "strategies"; and

(B) in paragraph 30(B), as redesignated, by amending clauses (i) and (ii) to read as follows:

"(i) actions such as traffic detection and surveillance, corridor management, freeway management, arterial management, active transportation and demand management, work zone management, emergency management, road weather management, traffic incident management, traveler information services, congestion pricing, parking management, automated enforcement, traffic control, commercial vehicle operations, freight management, and coordination of highway, rail, transit, bicycle, and pedestrian operations; and

"(ii) coordinating the implementation of regional transportation system management and operations investments requiring agreements, integration, and inter-operability to achieve targeted system performance, reliability, safety, and customer service levels. These regional investments include traffic incident

management, traveler information services, emergency management, roadway weather management, intelligent transportation systems, communication networks, and information sharing systems.";

(21) by inserting after paragraph (30), as redesignated, the following:

"(31) TRIBAL TRANSPORTATION FACILITY.--The term 'Tribal transportation facility' means a public highway, road, bridge, trail, or transit system that is located on or provides access to Tribal lands, and appears on the national Tribal transportation facility inventory defined in section 202(b)(2) of this title.";

(22) by inserting after paragraph (31) the following:

"(32) TRUCK STOP ELECTRIFICATION SYSTEM.--The term 'truck stop electrification system' means a system that delivers heat, air conditioning, electricity, or communications to a heavy duty vehicle.";

(b) DECLARATION OF POLICY.--Section 101(b), United States Code, is amended--

(1) in paragraph (1) by--

(A) striking the heading and inserting "CONSTRUCTION, RECONSTRUCTION AND REHABILITATION OF THE NATIONAL HIGHWAY SYSTEM.--"; and

(B) striking "the construction of Federal aid highway systems" and inserting "the construction, reconstruction and rehabilitation of the National Highway System";

(2) by striking paragraph (2);

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

(4) in paragraph (2)(H), as redesignated, by striking "Interstate System" and inserting "National Highway System";

(c) AMENDMENT OF SECTION 101(c).--Section 101(c) of title 23, United States Code, is amended by striking "system" and inserting "highway".

SEC. 2205. NATIONAL HIGHWAY PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.--The Secretary shall establish a National Highway Program to provide funding to preserve and improve the condition and performance of the highway infrastructure critical to the competitiveness of our economy and the livability of our communities.

(b) PROGRAM COMPONENTS.--The National Highway Program shall consist of the following two programs intended to increase the proportion of the Nation's highways and bridges in good physical condition and operation:

(1) The Highway Infrastructure Performance Program defined in section 119 of title 23, United States Code, will ensure strategic investments to achieve national goals for preserving and improving the infrastructure condition and

performance of the National Highway System, as defined in section 103 of title 23 of such Code; and

(2) The Flexible Investment Program defined in section 133 of title 23 of such Code will provide flexibility to States for investment decisions that improve the condition and performance of all Federal-aid highway facilities and of bridges on public roads.

(c) PERFORMANCE-BASED MANAGEMENT.--Obligation of funds apportioned to carry out the Highway Infrastructure Performance Program component of the National Highway Program shall be conditioned upon a State developing a performance-based framework for investments, including an asset management plan for the National Highway System that will be used for developing a program of projects to make progress toward achievement of national goals established for improving infrastructure condition and performance of the National Highway System.

SEC. 2206. NATIONAL HIGHWAY SYSTEM.

(a) IN GENERAL.--Section 103 of title 23, United States Code, is amended to read as follows:

"Sec. 103. National highway system

"(a) IN GENERAL.--For the purposes of this title, the Federal-aid system is the National Highway System, which includes the Interstate System.

"(b) NATIONAL HIGHWAY SYSTEM.--

"(1) DESCRIPTION.--The National Highway System consists of the highway routes and connections to transportation facilities that shall--

"(A) serve major population centers, international border crossings, ports, airports, public transportation facilities, and other intermodal transportation facilities and other major travel destinations;

"(B) meet national defense requirements; and

"(C) serve interstate and interregional travel and commerce.

"(2) COMPONENTS.--The National Highway System described in paragraph (1) consists of the following:

"(A) The National Highway System depicted on the map submitted by the Secretary of Transportation to Congress with the report entitled "Pulling Together: The National Highway System and its Connections to Major Intermodal Terminals" and dated May 24, 1996, and modifications approved by the Secretary prior to the enactment of this paragraph.

"(B) Other urban and rural principal arterial routes and border crossings on such routes not included on the National Highway System prior to the enactment of this paragraph.

"(C) Other connector highways (including toll facilities) that provide motor vehicle access between arterial routes on the National Highway System and a major intermodal transportation facility not

included on the National Highway System prior to the enactment of this paragraph.

"(D) A strategic highway network consisting of a network of highways that are important to the United States strategic defense policy and that provide defense access, continuity, and emergency capabilities for the movement of personnel, materials, and equipment in both peacetime and wartime that were not included on the National Highway System prior to the enactment of this paragraph. The highways may be highways on or off the Interstate System and shall be designated by the Secretary in consultation with appropriate Federal agencies and the States.

"(E) Major strategic highway network connectors consisting of highways that provide motor vehicle access between major military installations and highways that are part of the strategic highway network but were not included on the National Highway System prior to the enactment of this paragraph. The highways shall be designated by the Secretary in consultation with appropriate Federal agencies and the States.

"(3) MODIFICATIONS TO NHS.--

"(A) IN GENERAL.--The Secretary may make any modification, including any modification consisting of a connector to a major intermodal terminal, to the National Highway System that is proposed by a State if the Secretary determines that the modification--

"(i) meets the criteria established for the National Highway System under this title after the enactment of this subsection; and

"(ii) enhances the national transportation characteristics of the National Highway System.

"(B) COOPERATION.--

"(i) IN GENERAL.--In proposing a modification under this paragraph, a State shall cooperate with local and regional officials.

"(ii) URBANIZED AREAS.--In an urbanized area, the local officials shall act through the metropolitan planning organization designated for the area under section 134 of this title.

"(c) REQUIREMENT FOR STATE ASSET MANAGEMENT PLAN FOR THE NATIONAL HIGHWAY SYSTEM.--

"(1) IN GENERAL.--A State shall develop and implement a risk-based State asset management plan for managing infrastructure assets on the National Highway System based on a process defined by the Secretary.

"(2) PERFORMANCE GOALS.--A State asset management plan shall include strategies leading to a program of projects that will make progress toward achievement of the national goals for infrastructure condition and performance of the National Highway System consistent with the requirements of sections 134 and 135 of this title.

"(3) PLAN CONTENTS.--A State asset management plan shall, at a minimum, be in a form that the Secretary determines to be appropriate and include the following:

"(A) A summary listing of the highway infrastructure assets on the National Highway System in the State and their condition.

"(B) Asset management objectives and measures.

"(C) Performance gap identification.

"(D) Lifecycle cost and risk management analysis.

"(E) A financial plan.

"(F) Investment strategies.

"(d) INTERSTATE SYSTEM.--

"(1) DESCRIPTION.--

"(A) IN GENERAL.--The Dwight D. Eisenhower National System of Interstate and Defense Highways within the United States (including the District of Columbia and Puerto Rico) consists of highways designed, located, and selected in accordance with this paragraph.

"(B) DESIGN.--

"(i) IN GENERAL.--Except as provided in clause (ii), highways on the Interstate System shall be designed in accordance with the standards of section 109(b) of this title.

"(ii) EXCEPTION.--Highways on the Interstate System in Alaska and Puerto Rico shall be designed in accordance with such geometric and construction standards as are adequate for current and probable future traffic demands and the needs of the locality of the highway.

"(C) LOCATION.--Highways on the Interstate System shall be located so as--

"(i) to connect by routes, as direct as practicable, the principal metropolitan areas, cities, and industrial centers;

"(ii) to serve the national defense; and

"(iii) to the maximum extent practicable, to connect at suitable border points with routes of continental importance in Canada and Mexico.

"(D) SELECTION OF ROUTES.--To the maximum extent practicable, each route of the Interstate System shall be selected by joint action of the State transportation departments of the State in which the route is located and the adjoining States, in cooperation with local and regional officials, and subject to the approval of the Secretary.

"(2) MAXIMUM MILEAGE.--The mileage of highways on the Interstate System shall not exceed 43,000 miles, exclusive of designations under paragraph (4).

"(3) MODIFICATIONS.--The Secretary may approve or require modifications to the Interstate System in a manner consistent with the policies and procedures established under this subsection.

"(4) INTERSTATE SYSTEM DESIGNATIONS.--

"(A) ADDITIONS.--If the Secretary determines that a highway on the National Highway System meets all standards of a highway on the Interstate System and that the highway is a logical addition or connection

to the Interstate System, the Secretary may, upon the affirmative recommendation of the State or States in which the highway is located, designate the highway as a route on the Interstate System.

"(B) DESIGNATIONS AS FUTURE INTERSTATE SYSTEM ROUTES.--

"(i) If the Secretary determines that a highway on the National Highway System would be a logical addition or connection to the Interstate System and would qualify for designation as a route on the Interstate System under subparagraph (A) if the highway met all standards of a highway on the Interstate System, the Secretary may, upon the affirmative recommendation of the State or States in which the highway is located, designate the highway as a future Interstate System route.

"(ii) A designation under clause (i) shall be made only upon the written agreement of the State or States described in such clause that the highway will be constructed to meet all standards of a highway on the Interstate System by the date that is 25 years after the date of the agreement.

"(iii)(I) If the State or States described in clause (i) have not substantially completed the construction of a highway designated under this subparagraph within the time provided for under clause (ii), the Secretary shall remove the designation of the highway as a future Interstate System route.

"(II) Removal of the designation of a highway under subclause (I) shall not preclude the Secretary from designating the highway as a route on the Interstate System under subparagraph (A) or under any other provision of law providing for addition to the Interstate System.

"(III) An agreement described in clause (ii) that is entered into before August 10, 2005 shall be deemed to include the 25-year time limitation described in that clause, regardless of any earlier construction completion date in the agreement.

"(iv) No law, rule, regulation, map, document, or other record of the United States, or of any State or political subdivision of a State, shall refer to any highway designated as a future Interstate System route under this subparagraph, nor shall any such highway be signed or marked, as a highway on the Interstate System until such time as the highway is constructed to the geometric and construction standards for the Interstate System and has been designated as a route on the Interstate System.

"(C) FINANCIAL RESPONSIBILITY.--Except as provided in this title, the designation of a highway under this paragraph shall create no additional Federal financial responsibility with respect to the highway.

"(5) EXEMPTION OF INTERSTATE SYSTEM.--

"(A) IN GENERAL.--Except as provided in subparagraph (B), the Interstate System shall not be considered to be a historic site under section 303 of title 49 or section 138 of this title, regardless of whether the Interstate System or portions or elements of the Interstate System are listed on, or eligible for listing on, the National Register of Historic Places.

"(B) INDIVIDUAL ELEMENTS.--Subject to subparagraph (C), the Secretary shall determine, through the administrative process established for exempting the Interstate System from section 106 of the National Historic Preservation Act (16 U.S.C. 470f), those individual elements of the Interstate System that possess national or exceptional historic significance (such as a historic bridge or a highly significant engineering feature). Such elements shall be considered to be a historic site under section 303 of title 49 or section 138 of this title, as applicable.

"(C) CONSTRUCTION, MAINTENANCE, RESTORATION, AND REHABILITATION ACTIVITIES.--Subparagraph (B) does not prohibit a State from carrying out construction, maintenance, restoration, or rehabilitation activities for a portion of the Interstate System referred to in subparagraph (B) upon compliance with section 303 of title 49 or section 138 of this title, as applicable, and section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

"(e) TRANSFER OF INTERSTATE CONSTRUCTION FUNDS.--

"(1) IN GENERAL.--Upon application by a State and approval by the Secretary, the Secretary may transfer to the apportionment of the State under section 104(b)(2) of this title any remaining amount of funds apportioned to the State under section 104(b)(5)(A), as in effect on June 8, 1998.

"(2) EFFECT OF TRANSFER.--Upon transfer of an amount under subparagraph (A), the construction on which the amount is based, as included in the 1991 Interstate System cost estimate, shall not be eligible for funding under section 104(b)(5)(A) as in effect on June 8, 1998.

"(3) APPLICABILITY OF CERTAIN LAWS.--Funds transferred under this subsection shall be subject to the laws (including regulations, policies, and procedures) relating to the apportionment to which the funds are transferred.

"(f) NATIONAL FREIGHT CORRIDORS.--The term 'National Freight Corridors' means the national freight corridors identified under section 310 of title 49.

"(g) OPERATION OF CONVENTIONAL COMBINATION VEHICLES ON THE NATIONAL HIGHWAY SYSTEM.--

"(1) DEFINITION OF CONVENTIONAL COMBINATION VEHICLES.--The term 'conventional combination vehicles' means--

"(A) truck-tractor/semi-trailer combinations with semi-trailers up to 53-feet in length and 102 inches in width;

"(B) truck-tractor/semi-trailer/trailer combinations with each semi-trailer and trailer up to 28.5 feet in length and 102 inches in width; and

"(C) drive-away saddlemount combinations, not to exceed 97 feet in overall length, with up to three truck tractors, with or without a full mount, towed by a truck tractor.

"(2) NATIONAL NETWORK.--The National Network designated under the Surface Transportation Assistance Act of 1982 (Public Law 97-424; 96 Stat. 2119) is repealed.

"(3) OPERATION OF CONVENTIONAL COMBINATION VEHICLES.--

"(A) REQUIREMENT.--Conventional combination vehicles must be allowed to operate in all States on all segments of the National Highway System except segments that were open to traffic on the date of the enactment of this subsection and on which all non-passenger commercial motor vehicles were banned.

"(B) RESTRICTIONS.--A State may request temporary or permanent restrictions on the operation of commercial conventional combination vehicles, subject to approval by the Secretary, based on safety considerations, geometric constraints, work zones, weather, or traffic management requirements of special events or emergencies.

"(C) REASONABLE ACCESS.--Conventional combination vehicles must be given reasonable access between the National Highway System and facilities for food, fuel, and rest within one mile of the National Highway System, and access to terminal locations for the unloading and loading of cargo by the most reasonable, practicable, and safe route available, subject to review by the Secretary."

(b) CONFORMING AMENDMENTS.--Section 215 of title 23, United States Code, is amended--

(1) in subsection (f)(1)(A), by--

(A) striking "surface transportation program" and inserting "flexible investment program"; and

(B) striking "133(b)" and inserting "133(c)"; and

(2) in subsection (g), by striking "paragraphs (1), (3), and (4) of section 133(b)" and inserting "paragraphs (2), (5), and (8) of section 133(c) and section 133(f)".

SEC. 2207. HIGHWAY INFRASTRUCTURE PERFORMANCE PROGRAM.

(a) IN GENERAL.--Section 119 of title 23, United States Code, is amended to read as follows:

"Sec. 119. Highway infrastructure performance program

"(a) ESTABLISHMENT.--The Secretary of Transportation shall establish and implement a highway infrastructure performance program under this section.

"(b) PURPOSES.--The purposes of the highway infrastructure performance program shall be to--

"(1) provide support for the condition and operational performance of the National Highway System; and

"(2) ensure that investments of Federal-aid funds in highway infrastructure are directed to achievement of established national performance goals for infrastructure condition and operations.

"(c) ELIGIBLE FACILITIES.--Except as provided in subsections (d) and (f)(4) of this section, to be eligible for funding apportioned under 104(b)(1) of this title to carry out this section, a facility must be located on the National Highway System as defined in section 103 of this title.

"(d) ELIGIBLE PROJECTS.--Funds apportioned to a State to carry out the Highway Infrastructure Performance Program may be obligated only for a project on an eligible facility that--

"(1) is a project, or is part of a program of projects, supporting progress toward the achievement of national performance goals for improving infrastructure condition, safety, mobility, or freight movement on the National Highway System and is consistent with requirements of sections 134 and 135 of this title; and

"(2) is for one or more of the following purposes:

"(A) Reconstruction, resurfacing, restoration, rehabilitation, preservation or operational improvements of segments of the National Highway System.

"(B) Replacement (including replacement with fill material), rehabilitation, preservation, and protection (including scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events) of bridges on the National Highway System.

"(C) Replacement (including replacement with fill material), rehabilitation, preservation, and protection (including impact protection measures, security countermeasures, and protection against extreme events) of tunnels on the National Highway System.

"(D) Inspection and evaluation, as defined in section 151 of this title, of bridges and tunnels on the National Highway System, and inspection and evaluation of other highway infrastructure assets on the National Highway System, including signs and sign structures, earth retaining walls, and drainage structures.

"(E) Training of bridge and tunnel inspectors as defined in section 151 of this title.

"(F) Rehabilitation or replacement of existing ferry boats and ferry boat facilities, including approaches, that connect road segments of the National Highway System.

"(G) Reconstruction, resurfacing, restoration, rehabilitation, and preservation of, and operational improvements for, a Federal-aid highway not on the National Highway System, if--

"(i) the highway project is in the same corridor as, and in proximity to, a fully access-controlled highway designated as a part of the National Highway System;

"(ii) the improvements will enhance the level of service on the fully access-controlled highway described in clause (i) and improve regional traffic flow; and

"(iii) the improvements are more cost-effective, as determined by benefit-cost analysis, than an improvement to the fully access-controlled highway described in clause (i).

"(H) Bicycle transportation and pedestrian walkways in accordance with section 217 of this title.

"(I) Highway safety improvements for segments of the National Highway System.

"(J) Capital and operating costs for traffic management and traveler information monitoring, management, and control facilities and programs.

"(K) Development and implementation of a State asset management plan for the National Highway System and other public roads in accordance with section 103 of this title, including data collection, maintenance, and integration and the cost associated with obtaining, updating, and licensing software and equipment required for risk-based asset management and performance-based management.

"(L) Mitigation of damage to the human and natural environment, including wildlife, habitat, and ecosystems caused or anticipated to be caused by a transportation project funded under this section. Mitigation under this subsection includes the purchase of credits from commercial mitigation banks, establishing and managing agency sponsored mitigation banks, purchase of credits or establishment of in-lieu fee mitigation programs, contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands, and development of statewide and regional natural habitat and wetland conservation and mitigation plans, including any such banks, efforts, and plans as authorized under the Water Resources Development Act of 1990 (Public Law 101-640) (including crediting provisions). The following apply:

"(i) Contributions to a mitigation effort described in this subparagraph may take place concurrent with, in advance of, or subsequent to the construction of a project or projects.

"(ii) Credits from any agency-sponsored mitigation bank that are attributable to funding under this subparagraph may be used only for projects funded under this title unless the agency pays to the Secretary an amount equal to the Federal funds

attributable to the mitigation bank credits the agency uses for purposes other than mitigation of a project funded under this title.

"(iii) The agency shall pay an amount equal to the amount of Federal funds attributable to a mitigation site or unused mitigation bank credits if, within 10 years (or such longer period as the State requests and the Secretary determines to be reasonable) after the date on which Federal funds are first made available for such purpose under this title--

"(I) a project mitigation site funded under this subparagraph is not completed; or

"(II) in the case of an agency-sponsored mitigation bank funded under this subparagraph, if the bank's credits have not been fully applied to projects funded under this title.

"(iv) The Secretary shall deposit all amounts paid to the Secretary under this subparagraph into the Transportation Trust Fund.

"(M) Infrastructure-based intelligent transportation systems capital improvements.

"(N) Environmental restoration and pollution abatement in accordance with section 328 of this title.

"(O) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329 of this title.

"(P) Operational improvements to a freight railroad, marine highway, or intermodal facility in a National Freight Corridor that are a more cost effective means of improving performance in that National Freight Corridor, as determined by benefit-cost analysis, than improvements to a highway on the National Highway System, except that a State may not obligate in excess of 5 percent of funds apportioned to it to carry out this section for such purpose.

"(e) **LIMITATION ON NEW CAPACITY.**--The portion of the cost of any project undertaken under this section that is attributable to the expansion of the capacity of an eligible facility, where such new capacity consists of one or more new travel lanes shall not be eligible for funding under this section, except that construction of auxiliary lanes or widening of a bridge during rehabilitation or replacement to meet current geometric, construction and structural standards for the types and volumes of projected traffic over its design life shall be eligible for funding.

"(f) **STATE PERFORMANCE MANAGEMENT.**--

"(1) **IN GENERAL.**--To obligate funding apportioned under section 104(b)(1) of this title, a State shall develop a framework to invest such funding in projects or a program of projects designed to achieve State targets developed in consultation with the Secretary and identified in statewide and metropolitan transportation plans to support national goals for improving infrastructure condition and performance of the National Highway System.

"(2) STATE ASSET MANAGEMENT PLAN.--

"(A) REQUIREMENT FOR PLAN.--To obligate funding apportioned under section 104(b)(1) of this title, each State shall have in effect a risk-based asset management plan for the National Highway System in accordance with section 103(c) of this title, developed through a process defined and approved by the Secretary.

"(B) APPROVAL OF PLAN DEVELOPMENT PROCESS.--

"(i) Not later than 3 months after a State submits a request for approval of the process used by the State to develop the State National Highway System Asset Management Plan, the Secretary shall review such process and certify that the process meets the requirements defined by the Secretary or shall deny certification and define actions necessary for the State to correct deficiencies in the State process.

"(ii) Not less often than every 4 years, the Secretary shall review and recertify that the process used by a State to develop and maintain the State National Highway System Asset Management Plan meets the requirements for such process as defined by the Secretary.

"(3) PERFORMANCE REPORTS.--A State shall annually report to the Secretary on the condition and performance of the National Highway System, progress in achieving State targets for each of the national goals for the National Highway System, and the effectiveness of the investment strategy documented in the State National Highway System Asset Management Plan. A State that does not meet its targets for 2 consecutive years for each of these national goals established by the Secretary shall state the actions the State will undertake to meet its targets."

"(4) PERFORMANCE ACHIEVEMENT.--A State that demonstrates that it has met its targets for 3 consecutive years for each of the national goals for the National Highway System, may request approval from the Secretary to use apportionments under section 104(b)(1) of this title for the purposes described in section 133 of this title for a period of 12 months or until such time as the State does not meet its targets."

(b) TRANSITION PERIOD.--

(1) STATE PERFORMANCE MANAGEMENT.--

(A) IN GENERAL.--Except as provided in subparagraph (B), the Secretary shall approve obligations of funds apportioned to a State to carry out the Highway Infrastructure Performance Program under section 119 of title 23, United States Code only if, not later than one year after the measures and associated targets for improving infrastructure condition and performance of the National Highway System are established by the Secretary, a State has in effect State targets developed in consultation with the Secretary that will contribute to achieving such national goals as required by subsection (f) of such section, and section 2301 of this Act.

(B) INTERIM.--Until a State has in effect State targets developed in consultation with the Secretary that will contribute to achieving the national goals for improving the infrastructure condition and performance of the National Highway System, but not later than one year after national measures and associated targets as defined under section 2301 of this Act are established by the Secretary, the Secretary shall approve obligations of funds apportioned to a State to carry out the Highway Infrastructure Performance Program under section 119 of such title for projects that otherwise meet the requirements of such section.

(2) STATE ASSET MANAGEMENT PLAN.--

(A) IN GENERAL.--Except as provided in subparagraph (B), the Secretary shall approve obligations of funds apportioned to a State to carry out the Highway Infrastructure Performance Program under section 119 of title 23 of such Code, only if, not later than 6 months after promulgation of regulations to define the requirements for a State National Highway System Asset Management Plan and the process to be used in developing such plan in accordance with section 103 of such title, the Secretary has approved the State's process for developing such State National Highway System Asset Management Plan.

(B) INTERIM.--Until a State implements an approved process for a State Asset Management Plan and has the Plan in effect, but not later than 6 months after promulgation of regulations to implement section 103 of such title, the Secretary shall approve obligation of funds apportioned to a State to carry out the Highway Infrastructure Performance Program for projects that otherwise meet the requirements of such section.

(c) CONFORMING AMENDMENT.--The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 119 and inserting the following:

"119. Highway infrastructure performance program."

SEC. 2208. FLEXIBLE INVESTMENT PROGRAM.

(a) IN GENERAL.--Section 133 of title 23, United States Code, is amended to read as follows:

"Sec. 133. Flexible investment program

"(a) ESTABLISHMENT.--The Secretary of Transportation shall establish and implement a flexible investment program under this section.

"(b) PURPOSE.--The purposes of the flexible investment program shall be to provide flexibility to States to direct funding to improve the conditions and performance on Federal-aid highways and on bridges on any public road.

"(c) ELIGIBLE PROJECTS.--Funds apportioned under section 104(b)(2) of this title to carry out the flexible investment program may be obligated for any of following purposes:

"(1) Construction, reconstruction, rehabilitation, resurfacing, restoration, preservation, or operational improvements for Federal-aid highways, including construction of designated routes of the Appalachian Development Highway System.

"(2) Replacement (including replacement with fill material), rehabilitation, preservation, and protection (including painting, scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events), for bridges and tunnels on public roads of all functional classifications

"(3) Construction of a new bridge or tunnel on a new location on a Federal-aid highway.

"(4) Inspection and evaluation of bridges and tunnels and training of bridge and tunnel inspectors as defined in section 151 of this title and for other highway assets including signs, retaining walls, and drainage structures.

"(5) Fringe and corridor parking facilities.

"(6) Bicycle transportation and pedestrian walkways in accordance with section 217 of this title.

"(7) Highway safety infrastructure improvements and programs.

"(8) Highway research and development and technology transfer programs.

"(9) Capital and operating costs for traffic management and traveler information monitoring, management, and control facilities and programs, including advanced truck stop electrification systems.

"(10) Projects and strategies designed to support congestion pricing, including electronic toll collection and travel demand management strategies and programs.

"(11) Surface transportation planning.

"(12) Transportation control measures listed in section 108(f)(1)(A) (other than clause (xvi)) of the Clean Air Act (42 U.S.C. 7408(f)(1)(A)).

"(13) Development and implementation of a State asset management plan for the National Highway System and other public roads in accordance with section 103 of this title, including data collection, maintenance, and integration and the cost associated with obtaining, updating, and licensing software and equipment required for risk-based asset management and performance-based management.

"(14) Mitigation of impacts to the human and natural environment including wildlife, habitat, and ecosystems caused or anticipated to be caused by a transportation project funded under this title. Mitigation eligible under this subsection includes the purchase of credits from commercial mitigation banks, establishing and managing agency sponsored mitigation banks, purchase of credits or establishment of in-lieu fee mitigation programs, contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands, and development of statewide and regional natural habitat

and wetland conservation and mitigation plans, including any such banks, efforts, and plans authorized under the Water Resources Development Act of 1990 (Public Law 101-640) (including crediting provisions), as follows:

"(A) Contributions to a mitigation bank described in this paragraph may take place concurrent with, in advance of, or subsequent to the construction of a project or projects.

"(B) Credits from any agency-sponsored mitigation bank that are attributable to funding under this paragraph may be used only for projects funded under this title unless the agency pays to the Secretary an amount equal to the Federal funds attributable to the mitigation bank credits the agency uses for purposes other than mitigation of a project funded under this title.

"(C) The agency shall pay an amount equal to the amount of Federal funds attributable to a mitigation site or unused mitigation bank credits if, within 10 years (or such longer period as the State requests and the Secretary determines to be reasonable) after the date on which Federal funds are first made available for such purpose under this title--

"(i) a project mitigation site funded under this paragraph is not completed; or,

"(ii) an agency-sponsored mitigation bank funded under this paragraph has bank credits that have not been fully applied to projects funded under this title.

"(D) The Secretary shall deposit all amounts paid to the Secretary under this subparagraph into the Highway Trust Fund.

"(15) Infrastructure-based intelligent transportation systems capital improvements.

"(16) Environmental restoration and pollution abatement in accordance with section 328 of this title.

"(17) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329 of this title.

"(18) Capacity and operational improvements to a freight railroad, marine highway, or intermodal facility in a National Freight Corridor that are a more cost effective means of improving performance in that National Freight Corridor, as determined by benefit-cost analysis, than improvements to a highway on the National Highway System, except that a State may not obligate in excess of 5 percent of funds apportioned to it to carry out this section for such purpose.

"(d) LOCATION OF PROJECTS.--Except as provided in subsection (f) and except for projects described in subsections (c)(2), (c)(5), (c)(7), and (c)(8), flexible investment program projects may not be undertaken on roads functionally classified as local or rural minor collectors, unless the roads were on a Federal-aid highway system on January 1, 1991, and except as approved by the Secretary.

"(e) APPLICABILITY OF PLANNING REQUIREMENTS.--Programming and expenditure of funds for projects under this section shall be consistent with the requirements of sections 134 and 135 of this title.

"(f) BRIDGES NOT ON FEDERAL-AID HIGHWAYS.--

"(1) SET-ASIDE.--Of the amounts apportioned to a State for fiscal year 2012 and each fiscal year thereafter under section 104(b)(2) of this title, the State shall obligate for activities identified in subsection (c)(2) for highway bridges located on public roads, other than those on a Federal-aid highway, an amount which is not less than 15 percent of the amount of funds apportioned to the State for the Highway Bridge Program for fiscal year 2012.

"(2) REDUCTION OF EXPENDITURES.--The Secretary, after consultation with State and local officials, may reduce the requirement for expenditure for bridges not on a Federal-aid highway under paragraph (1) with respect to the State if the Secretary determines that the State has inadequate needs to justify the expenditure.

"(3) CREDIT FOR BRIDGES NOT ON FEDERAL-AID HIGHWAYS.--Notwithstanding any other provision of law, with respect to any project not on a Federal-aid highway for the replacement of a bridge or rehabilitation of a bridge which is wholly funded from State and local sources, is eligible for Federal funds under this section, is noncontroversial, is certified by the State to have been carried out in accordance with all standards applicable to such projects under this section, and is determined by the Secretary upon completion to be no longer a deficient bridge, any amount expended after the date of the enactment of this subsection from State and local sources for such project in excess of 20 percent of the cost of construction thereof may be credited to the non-Federal share of the cost of the projects in such State which are eligible for Federal funds under this section. Such crediting shall be in accordance with such procedures as the Secretary may establish."

(b) CONFORMING AMENDMENT.--The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 133 and inserting the following:

"133. Flexible investment program."

SEC. 2209. HISTORIC HIGHWAY BRIDGES.

(a) IN GENERAL.--Section 144 of title 23, United States Code, is amended to read as follows:

"Sec. 144. Historic highway bridges

"(a) IN GENERAL.--The Secretary of Transportation shall, in cooperation with the States, implement this section in a manner that encourages the inventory, retention, rehabilitation, adaptive reuse, and future study of historic highway bridges.

"(b) HISTORIC HIGHWAY BRIDGE DEFINED.--As used in this section, 'historic highway bridge' means any bridge that is listed on, or eligible for listing on, the National Register of Historic Places.

"(c) STATE INVENTORY.--The Secretary shall require each State to complete an inventory of all bridges on and off Federal-aid highways to determine their historic significance. The Secretary may, at the request of a State, inventory bridges on and off Federal aid highways for historic significance.

"(d) ELIGIBILITY.--Reasonable costs associated with actions to preserve, or reduce the impact of a project under this chapter on, the integrity of historic highway bridges shall be eligible as reimbursable project costs under this title if the load capacity and safety features of the bridge are adequate to serve the intended use for the life of the bridge; except that in the case of a bridge which is no longer used for motorized vehicular traffic, the costs eligible as reimbursable project costs under this subsection shall not exceed 200 percent of the estimated cost of demolition of such bridge.

"(e) PRESERVATION.--Any State that proposes to demolish an historic highway bridge for a replacement project with funds made available under this title shall first make the bridge available for donation to a State, locality, or responsible private entity if such State, locality, or responsible entity enters into an agreement to--

"(1) maintain the bridge and the features that give it its historic significance; and

"(2) assume all future legal and financial responsibility for the bridge, which may include an agreement to hold the State transportation department harmless in any liability action.

"(f) COSTS INCURRED.--Costs incurred by the State to preserve the historic highway bridge, including funds made available to the State, locality, or private entity to enable it to accept the bridge, shall be eligible as reimbursable project costs under this chapter up to an amount not to exceed 200 percent of the cost of demolition. If an historic highway bridge must be removed in order to accommodate a replacement structure on existing location, only those of a type which could reasonably be expected to be relocated (such as a metal truss bridge) need be made available for donation. Acceptance of these funds shall not preclude the preserved structure from eligibility for future funding for which it may qualify under other sections of this title."."

(b) CONFORMING AMENDMENT.--The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 144 and inserting the following:

"Sec. 144. Historic highway bridges.".

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

(a) IN GENERAL.--Section 151 of title 23, United States Code, is amended to read as follows:

"Sec. 151. National bridge and tunnel inventory and inspection programs

"(a) NATIONAL BRIDGE INVENTORY.--

"(1) HIGHWAY BRIDGES.--The Secretary, in consultation with the States, shall inventory all highway bridges on any public road, including privately owned bridges open to the public, on and off Federal-aid highways, that are bridges over waterways, other topographical barriers, other highways, and railroads.

"(2) TRIBAL AND FEDERAL LANDS PUBLIC BRIDGES.--The Secretary, in consultation with the Secretaries of appropriate Federal agencies, shall inventory all tribally-owned and Federally-owned highway bridges that are open to the public, over waterways, other topographical barriers, other highways, and railroads.

"(b) BRIDGE CONSTRUCTION COSTS.--The Secretary, in consultation with the States and the Secretaries of appropriate Federal agencies, shall determine the cost of replacing and rehabilitating bridges.

"(c) NATIONAL TUNNEL INVENTORY.--

"(1) HIGHWAY TUNNELS.--The Secretary, in consultation with the States, shall inventory all highway tunnels on any public road, on and off Federal-aid highways.

"(2) FEDERAL LANDS PUBLIC TUNNELS.--The Secretary, in consultation with the Secretaries of appropriate Federal agencies, shall inventory all Federally-owned highway tunnels that are open to the public.

"(d) TUNNEL CONSTRUCTION COSTS.--The Secretary, in consultation with the States and the Secretaries of appropriate Federal agencies, shall determine the cost of replacing and rehabilitating tunnels.

"(e) NATIONAL BRIDGE AND TUNNEL INSPECTION STANDARDS.--The Secretary, in consultation with the State transportation departments and interested and knowledgeable private organizations and individuals, shall establish national bridge inspection standards and national tunnel inspection standards for the proper safety inspection and evaluation of all highway bridges and tunnels.

"(f) MINIMUM REQUIREMENTS OF INSPECTION STANDARDS.--The standards established under subsection (a) shall, at a minimum--

"(1) specify in detail the method by which such inspections shall be carried out by the States, Federal Agencies, and Tribes;

"(2) establish the maximum time period between inspections;

"(3) establish the qualifications for those charged with carrying out the inspections;

"(4) require each State, Federal Agency, and Tribe to maintain and make available to the Secretary upon request--

"(A) written reports on the results of highway bridge and tunnel inspections together with notations of any action taken pursuant to the findings of such inspections; and

"(B) current inventory data for all highway bridges and tunnels reflecting the findings of the most recent inspections conducted; and

"(5) establish a procedure for national certification of highway bridge inspectors and tunnel inspectors.

"(g) TRAINING PROGRAM FOR BRIDGE AND TUNNEL INSPECTORS.--

The Secretary, in cooperation with the State transportation departments, shall establish a program designed to train appropriate governmental employees to carry out highway bridge and tunnel inspections. Such training program shall be revised from time to time to take into account new and improved techniques.

"(h) AVAILABILITY OF FUNDS.--To carry out this section, the Secretary may use funds made available pursuant to the provisions of sections 104(a) and 503 of this title.

"(i) NATIONAL BRIDGE INSPECTION STANDARDS AND NATIONAL TUNNEL INSPECTION STANDARDS COMPLIANCE REQUIREMENTS.--

"(1) REVIEWS OF STATE COMPLIANCE.--

"(A) ANNUAL REVIEW.--The Secretary shall annually review State compliance with the standards established under this section.

"(B) FINDING OF NONCOMPLIANCE.--Where an annual review in accordance with subparagraph (A) identifies noncompliance by a State, the Secretary shall issue a report detailing the issues of such noncompliance by December 31 of the calendar year in which the review was made, and shall provide the State an opportunity to address the noncompliance by--

"(i) developing a corrective action plan to remedy the noncompliance; or

"(ii) resolving the issues of noncompliance within 45 days of notification.

"(2) PENALTY FOR NONCOMPLIANCE.--

"(A) FUNDING REQUIREMENT.--Where a State fails to satisfy the requirements of paragraph (1)(B) by August 1 of the calendar year following the year of the finding of noncompliance, the Secretary shall, on October 1 of such year, and each year thereafter as may be necessary, require the State to dedicate funds apportioned to the State under sections 119 and 133 of this title after enactment of this paragraph to correct the noncompliance with this section.

"(B) AMOUNT OF FUNDING.--The amount of the funds directed to correcting noncompliance in accordance with subparagraph (A) shall--

"(i) be determined by the State based on an analysis of the actions needed to address the noncompliance; and

"(ii) require approval by the Secretary.

"(3) EXCEPTIONS. –

"(A) SPECIAL SAFETY CONCERNS.--Whenever bridges are discovered with safety concerns in need of immediate action such as improper postings for load restrictions or inadequate bridge closings, the Secretary shall immediately notify the State of noncompliance and require the State to correct the noncompliance. Notwithstanding section 145 of this title, after enactment of this paragraph the Secretary may require a State to use funds apportioned to the State for sections 119 or 133 of this title or other funds available to the State to correct bridges with special safety concerns.

"(B) AMOUNT OF FUNDING.--The amount of the funds directed for correcting noncompliance in accordance with subparagraph (A) shall--

"(i) be determined by the State based on an analysis of the actions needed to address the noncompliance; and

"(ii) if apportioned funds are used, require approval by the Secretary.

"(j) SET-ASIDE FOR BRIDGE AND TUNNEL INSPECTIONS.--Of funds apportioned to a State for fiscal year 2012 and each fiscal year thereafter, the following amounts shall be set aside and combined and administered as a single fund to carry out this section:

"(1) One percent of the funds apportioned to a State under section 104(b)(1) of this title for the Highway Infrastructure Performance Program under section 119 of this title; and

"(2) One percent of the funds apportioned to a State under section 104(b)(2) of this title for the Flexible Investment Program under section 133 of this title."

(b) CONFORMING AMENDMENT.--The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 151 and inserting the following:

"Sec. 151. National bridge and tunnel inventory and inspection programs."

SEC. 2211. LIVABILITY PROGRAM.

(a) ESTABLISHMENT.--The Secretary shall establish and implement a livability program in accordance with this section that shall consist of the livable communities program in section 150(a) of title 23, United States Code, the investments for livable communities grant program in section 150(b) of title 23, United States Code, and the livability capacity building grant program defined under subsection (e) of this section.

(b) PURPOSES.--The purposes of the livability program shall be to--

(1) promote safe and efficient multi-modal choices for transportation users in rural and urban areas throughout the country;

(2) increase access to transportation services;

- (3) enhance the relationship between transportation and land use while protecting the environment;
- (4) provide affordable connections from residences to employment centers and essential services, including safe routes to school; and
- (5) enhance economic opportunities and environmental sustainability.

(c) IN GENERAL.--Chapter 1 of title 23, United States Code, is amended by inserting after section 149 the following:

"Sec. 150. Livability Program

"(a) LIVABLE COMMUNITIES PROGRAM.--

"(1) ESTABLISHMENT.--The Secretary shall establish and implement a livable communities program in accordance with this subsection.

"(2) PURPOSES.--The purposes of the livable communities program shall be to--

"(A) help States to deliver transportation projects that improve quality of life for rural and urban areas;

"(B) improve the safety and efficiency of the transportation system for all transportation modes;

"(C) reduce the impacts of transportation on the environment, including the reduction of greenhouse gas emissions;

"(D) reduce the need for costly future transportation infrastructure;

"(E) ensure efficient access to jobs, education and essential services; and

"(F) encourage private sector development patterns and investments that support livability goals.

"(3) ELIGIBLE PROJECTS AND ACTIVITIES.--A State may obligate funds apportioned to carry out the livable communities program for any of the following projects or activities:

"(A) Planning, designing, or construction of boulevards, main streets and scenic byways, including--

"(i) redesign of an underused highway, particularly one that is no longer a principal route after construction of a bypass or Interstate System route, into a context sensitive boulevard or main street that supports multiple forms of transportation;

"(ii) new street construction that enhances connectivity, increases the efficiency of network performance, and encourages the use of public transportation, pedestrian walkways, or bicycle infrastructure;

"(iii) redesign of a street to enhance connectivity, increase the efficiency of network performance, and encourage the use of public transportation, pedestrian walkways, or bicycle infrastructure;

"(iv) redesign of a highway to support public transportation, including transit-only lanes and priority signalization for transit;

"(v) planning or implementation of changes to State or local laws, codes or ordinances that provide transportation facilities to support infill, transit-oriented or town center development that will support trip-chaining, non-motorized transportation or more efficient use of the road network;

"(vi) safety improvements to a State scenic byway, National Scenic Byway, All-American Road, or one of America's Byways;

"(vii) historic preservation and other improvements to the streetscape that support livable communities, and the rehabilitation of historic transportation buildings, structures, or facilities for transportation use; and

"(viii) community and environmental mitigation for projects undertaken in this Program, including –

"(I) historic preservation and rehabilitation of historic transportation buildings, structures, or facilities;

"(II) inventory, control, or removal of outdoor advertising where local and State laws prevent the re-erecting, moving, or replacing of outdoor advertising signs on the same parcel or in an area designated by agreement;

"(III) strategies to reduce water pollution due to roadway runoff;

"(IV) strategies to reduce transportation-related wildlife mortality and to restore and maintain connectivity among terrestrial and aquatic habitats; and

"(V) other mitigation at the watershed and ecosystem scale to support prioritized transportation investments, including--

"(a) mitigation of damage to the human and natural environment caused by a transportation project funded under this title; and

"(b) environmental restoration and pollution abatement in accordance with ****[section 328??]**.

"(B) Providing transportation choices, including--

"(i) on-road and off-road trail facilities for pedestrians, bicyclists, and other nonmotorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other security-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

"(ii) the planning, design, and construction of infrastructure-related projects and systems that will provide safe

routes for non-drivers, including children, older adults, individuals with disabilities, and individuals with lower incomes to access daily needs;

"(iii) activities for safety and education of pedestrians and bicyclists and to encourage walking and bicycling, including efforts to encourage walking and bicycling to school and community centers;

"(iv) conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other nonmotorized transportation users; and

"(v) carpool, vanpool and car share projects.

"(C) Supporting livability through planning, project development, and programmatic mitigation, including--

"(i) archaeological and historic preservation planning and research; and

"(ii) stormwater management.

"(D) Improving air quality and reducing congestion by means of transportation projects or programs for an area in a State that is or was designated as a nonattainment area for ozone, carbon monoxide, nitrogen dioxide, or particulate matter under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) and classified pursuant to section 181(a), 186(a), 188(a), or 188(b) of the Clean Air Act (42 U.S.C. 7511(a), 7512(a), 7513(a), or 7513(b)) or is or was designated as a nonattainment area under section 107(d) after December 31, 1997, or is required to prepare, and file with the Administrator of the Environmental Protection Agency, maintenance plans under the Clean Air Act (42 U.S.C. 7401 et seq.), but only if--

"(i) the Secretary, after consultation with the Administrator of the Environmental Protection Agency determines, on the basis of information published by the Environmental Protection Agency pursuant to section 108(f)(1)(A) of the Clean Air Act (other than clause (xvi)) that the project or program is likely to contribute to--

"(I) the attainment of a national ambient air quality standard; or

"(II) the maintenance of a national ambient air quality standard in a maintenance area and a high level of effectiveness in reducing air pollution, in cases of projects or programs where sufficient information is available;

"(ii) the Secretary, after consultation with the Administrator of the Environmental Protection Agency determines that the project or program is part of a program, method, or strategy described in section 108(f)(1)(A) of the Clean Air Act;

"(iii) the project or program is included in a State implementation plan that has been approved pursuant to the Clean Air Act and the project will have air quality benefits; or

"(iv) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the project or program is likely to contribute to the attainment of a national ambient air quality standard, or to the reduction of greenhouse gases, whether through reductions in vehicle miles traveled, fuel consumption, or through other means.

"(E) Construction, rehabilitation, or replacement of ferry boats and ferry boat terminals as described in section 129(c) of this title.

"(F) Capital costs for transit projects eligible for assistance under chapter 53 of title 49, United States Code, including vehicles and facilities, whether publicly or privately owned, that are used to provide intercity passenger service by bus, and fringe and corridor parking or other transportation project to support transit-oriented development. A State may use up to 50 percent of funds apportioned to it under section 104(b)(3) of this title for purposes identified in this subparagraph, including any funds used to improve air quality and reduce congestion under subparagraph (D).

"(4) SET ASIDE FOR AIR QUALITY IMPROVEMENT.--

"(A) IN GENERAL.--The Secretary shall ensure that any State with a nonattainment area shall set aside a minimum of 15 percent of funds apportioned to it under section 104(b)(3) of this title for use only for projects to improve air quality in nonattainment areas as described in subsection (a)(3)(D).

"(B) LIMITATION ON USE OF FUNDS.--A State may not obligate any funds set aside under subparagraph (A) for a project that will result in the construction of new capacity available to single occupant vehicles unless the project consists of a high occupancy vehicle facility available to single occupant vehicles only at other than peak travel times.

"(5) REQUIRED STATE COORDINATORS.--Of funds apportioned to a State under section 104(b)(3) of this title, a State shall use such amount as may be necessary to fund in the State department of transportation--

"(A) one or more State bicycle and pedestrian coordinators for promoting and facilitating the increased use of nonmotorized modes of transportation, including developing facilities for the use of pedestrians and bicyclists and public education, promotional, and safety programs for using such facilities; and

"(B) a full-time safe routes to school coordinator to enable and encourage children, including those with disabilities, to walk and bicycle to school; to make walking and bicycling to school safe and more appealing, and to facilitate the planning, development and implementation of projects that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of schools.

"(6) STATE PERFORMANCE MANAGEMENT.--

"(A) IN GENERAL.--A State shall develop a strategy to invest funding apportioned to carry out this program for projects and activities to

achieve State targets established in consultation with the Secretary that support national goals for improving livability.

"(B) PERFORMANCE REPORTS.--A State shall annually report ****[to the Secretary]** on its progress in achieving State targets for national goals for improving livability.

"(b) INVESTMENTS FOR LIVABLE COMMUNITIES GRANT PROGRAM.--

"(1) IN GENERAL.--The Secretary shall establish an investments for livable communities grant program in accordance with this subsection.

"(2) PURPOSE.--The purpose of the investments for livable communities grant program shall be to promote innovative, multi-modal, and multi-jurisdictional highway projects that promise significant environmental and economic benefits to an entire metropolitan area, a region, or the nation.

"(3) ELIGIBLE APPLICANTS.--A State department of transportation, tribal government, local government, or metropolitan planning organization shall be eligible to apply for a grant under this subsection.

"(4) ELIGIBLE PROJECTS.--A project eligible for funding under subsection (a)(3) of this section shall be eligible for funding under the investments for livable communities grant program.

"(5) ELIGIBLE PROJECT COSTS.--Eligible project costs shall include --

"(A) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities;

"(B) construction, reconstruction, rehabilitation, acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, acquisition of equipment directly related to improving system performance, and operational improvements; and

"(C) all financing costs, including subsidy costs, under the Transportation Infrastructure Finance and Innovation Act program.

"(6) APPLICATIONS AND AWARDS.--

"(A) APPLICATIONS.--An eligible applicant seeking a grant for an eligible project under this subsection shall submit an application in such form and in accordance with such requirements as the Secretary shall establish.

"(B) MINIMUM AWARD AMOUNT.--An eligible applicant must request at least \$250,000 for an eligible project under this subsection.

"(C) FEDERAL SHARE.--Except for eligible project costs under paragraph (5)(C), the Federal share of the cost of a project under the infrastructure for livable communities grant program shall not exceed 80 percent. For eligible project costs under paragraph (5)(C), the Federal share may be up to 100 percent of the financing costs.

"(D) CRITERIA FOR GRANTS.--In addition to eligibility requirements under paragraph (4), in awarding a grant under this subsection for a project, the Secretary shall consider the extent to which the project--

"(i) demonstrates a cohesive plan in which non-infrastructure elements, where proposed, reinforce achievement of the purpose of the program;

"(ii) commits more than 20 percent of State or local matching funds, in addition to Federal funds made available under this section, to projects eligible for assistance under this section;

"(iii) is expected to be completed in three years and demonstrates broad community support;

"(iv) will enhance the economic competitiveness of the metropolitan area, region, or nation;

"(v) will improve the condition of existing transportation facilities and systems, particularly the minimization of life-cycle costs;

"(vi) will improve energy efficiency, reduce dependence on oil, reduce greenhouse gas emissions, or provide overall environmental benefits; or

"(vii) will improve the safety of transportation facilities in metropolitan area, region, or nation.".

(d) TRANSITION PERIOD FOR STATE PERFORMANCE MANAGEMENT.--

(1) **IN GENERAL.--**Except as provided in paragraph (2), the Secretary shall approve obligations of funds apportioned to a State to carry out the livable communities program under section 150(a) of title 23, United States Code, only if, not later than one year after the Secretary establishes national measures and associated targets for the livable communities program, the State has developed, in consultation with the Secretary, State targets that will contribute to achieving such national goals as required by such section.

(2) **INTERIM.--**Until a State has developed, in consultation with the Secretary, State targets that will contribute to achieving the national goals for improving livability, but not later than the date that is one year after the Secretary establishes national measures and associated targets for the livable communities program, the Secretary may approve obligations of funds apportioned to a State to carry out the livable communities program under section 150(a) of such title for projects that otherwise meet the requirements of such section.

(e) LIVABILITY CAPACITY BUILDING GRANT PROGRAM.--

(1) **IN GENERAL.--**The Secretary shall establish a livability capacity building grant program in accordance with this subsection.

(2) **PURPOSE.--**The purpose of the livability capacity building grant program shall be to improve capacity for addressing livability needs.

(3) **ELIGIBLE APPLICANTS.--**A State department of transportation, tribal government, local government, or metropolitan planning organization shall be eligible to apply for a grant under this subsection.

(4) **ELIGIBLE PROJECTS.--**To be eligible for funding under this subsection, a project shall be a project to--

(A) facilitate improved data collection to better incorporate livability into transportation planning through the use of a variety of data collection mechanisms, including household travel surveys, panel surveys, built environment inventories, employment inventories, and travel data collection related to bicyclists and pedestrians, including persons with disabilities;

(B) provide staff training to support livability-related transportation capacity building;

(C) furnish software and computer upgrades to support modeling and data collection as described in subparagraph (A);

(D) reorganize an eligible applicant's institution to better reflect the responsibilities and expertise needed to address livability in transportation plans and related activities;

(E) assist a transportation authority to develop integrated transportation, land use, housing, and environment planning efforts or to carry out a comprehensive plan supported by the community; or

(F) develop and implement transportation modeling, simulation, and analysis capabilities, including--

(i) methods for advanced travel models;

(ii) incremental improvements to trip-based models; and

(iii) emerging models for--

(I) providing reliable information for such applications as multimodal investment analyses, operational analyses, environmental assessments, evaluations of a wide range of policy alternatives, toll-facility revenue forecasts, and freight forecasts; and

(II) meeting Federal and State regulatory requirements.

(5) APPLICATIONS AND AWARDS.--

(A) APPLICATIONS.--An eligible applicant seeking a grant for an eligible project under this subsection shall submit an application in such form and in accordance with such requirements as the Secretary shall establish.

(B) CRITERIA FOR GRANTS.--In addition to eligibility requirements under paragraph (5), in awarding a grant under this subsection for a project, the Secretary shall consider--

(i) the extent to which the proposed project will help the applicant address the principles from the interagency partnership for sustainable communities between the Department of Housing and Urban Development, the Environmental Protection Agency, and the Department of Transportation;

(ii) the degree to which the project leverages investment; and

(iii) the extent of coordination and collaboration demonstrated between all relevant transportation entities in connection with the project.

(6) FEDERAL SHARE.--The Federal share of the cost of a project carried out under this subsection shall not exceed 80 percent.

(7) APPLICABILITY OF TITLE 23.--Funds made available to carry out this subsection shall be available for obligation and administered in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code.

(f) ACCELERATING PROJECT DELIVERY.—

(1) EXEMPTIONS FOR CERTAIN PROJECTS.--Projects eligible under sections 150(a)(3)(B) and 150(b) of title 23, United States Code, related to safe routes to schools and pedestrian, bicyclists, and other nonmotorized forms of transportation shall not be subject to--

(A) section 112 of such title; and

(B) section 113 of such title when a State uses qualified youth conservation or services corps for such project.

(2) INFRASTRUCTURE PROJECTS.--Not later than one year after the date of the enactment of this Act, the Secretary shall develop regulations or guidance for Federal-aid projects under this section that encourages the use of the programmatic approaches to environmental reviews, expedited procurement techniques, and other best practices to facilitate productive and timely expenditure for projects that are small, low impact, and constructed within an existing built environment.

(3) STATE PROCESSES.--The Secretary shall work with State departments of transportation to ensure that any regulation or guidance developed under paragraph (2) is consistently implemented by States and the Federal Highway Administration to avoid unnecessary delays in implementing projects and to ensure the effective use of Federal dollars.

(4) REPEAL.--Sections 1404(j) and 1807(g) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users are repealed.

(g) CONFORMING AMENDMENT.--The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 150 and inserting the following:

"Sec. 150. Livable communities program."

(h) RELATED AMENDMENTS.--

(1) Section 162 of chapter 1 of such title, is amended by striking subsections (b) through (f).

(2) Chapter 2 of such title, as amended by this Act, is amended by repealing section 206;

(3) The analysis of chapter 2 of title 23 is amended by striking the item related to section 206; and

(4) Section 217 of title 23 is amended to read as follows:

"Sec. 217. Bicycle transportation and pedestrian walkways

"(a) USE OF HIGHWAY INFRASTRUCTURE PERFORMANCE PROGRAM FUNDS.--Subject to project approval by the Secretary, funds apportioned to a State under section 104(b)(1) of this title may be obligated for construction of pedestrian walkways and bicycle transportation facilities on land adjacent to any highway on the National Highway System.

"(b) USE OF FLEXIBLE INVESTMENT PROGRAM FUNDS.--Subject to project approval by the Secretary, funds apportioned to a State under section 104(b)(2) of this title may be obligated for construction of pedestrian walkways and bicycle transportation facilities and for carrying out nonconstruction projects related to safe bicycle and pedestrian use.

"(c) USE OF FEDERAL LANDS HIGHWAY AND TRIBAL TRANSPORTATION FUNDS.--Funds authorized for the Federal Lands Transportation Program, the Federal Lands Access Program, and the Tribal Transportation Program shall be available, at the discretion of the department charged with the administration of such funds, for construction of pedestrian walkways and bicycle transportation facilities, or other provisions for pedestrians and bicycles.

"(d) USE OF LIVABLE COMMUNITIES PROGRAM FUNDS.--Subject to project approval by the Secretary, funds apportioned to a State under section 104(b)(3) of this title may be obligated for bicycle and pedestrian facilities as described in section 150.

"(e) REQUIRED STATE COORDINATORS.--Each State receiving an apportionment under section 104(b)(3) of this title shall use such amount of the apportionment as may be necessary to fund in the State department of transportation one or more positions of bicycle and pedestrian coordinators and a full-time safe-routes to school coordinator as required under section 150(a) of this title.

"(f) BRIDGES.--In any case where a highway bridge deck being replaced or rehabilitated with Federal financial participation is located on a highway on which pedestrians or bicyclists are permitted to operate at each end of such bridge, and the Secretary determines that the safe accommodation of pedestrians and bicyclists can be provided at reasonable cost as part of such replacement or rehabilitation, then the bridge shall be replaced rehabilitated so as to provide safe accommodations.

"(g) PLANNING AND DESIGN.--

"(1) IN GENERAL.--Bicyclists and pedestrians shall be given due consideration in the comprehensive transportation plans developed by each metropolitan planning organization and State in accordance with sections 134 and 135 of this title, respectively. Bicycle transportation facilities and pedestrian walkways shall be considered, where appropriate, in conjunction with all new construction and reconstruction of transportation facilities, except where bicycle and pedestrian use are not permitted.

"(2) SAFETY CONSIDERATIONS.--Transportation plans and projects shall provide due consideration for safety and contiguous routes for bicyclists and

pedestrians. Safety considerations shall include the installation, where appropriate, and maintenance of audible traffic signals and audible signs at street crossings.

"(h) USE OF MOTORIZED VEHICLES.--Motorized vehicles may not be permitted on trails and pedestrian walkways under subsections (a) through (c) of this section, except for--

- "(1) maintenance and law enforcement purposes;
- "(2) when snow conditions and State or local regulations permit, snowmobiles;
- "(3) motorized wheelchairs;
- "(4) when State or local regulations permit, electric bicycles; and
- "(5) such other circumstances as the Secretary deems appropriate.

"(i) TRANSPORTATION PURPOSE.--No bicycle or pedestrian project may be carried out under subsections (a) and (b) of this section unless the Secretary has determined that the project will serve a transportation purpose, in addition to any other stated purpose for the project.

"(j) DEFINITIONS.--In this section, the following definitions apply:

"(1) BICYCLE TRANSPORTATION FACILITY.--The term 'bicycle transportation facility' means a new or improved lane, path, or shoulder for use by bicyclists and a traffic control device, shelter, or parking facility for bicycles.

"(2) ELECTRIC BICYCLE.--The term 'electric bicycle' means any bicycle or tricycle with a low-powered electric motor weighing under 100 pounds, with a top motor-powered speed not in excess of 20 miles per hour.

"(3) PEDESTRIAN.--The term 'pedestrian' means any person traveling by foot and any mobility-impaired person using a wheelchair.

"(4) WHEELCHAIR.--The term 'wheelchair' means a mobility aid, usable indoors, and designed for and used by individuals with mobility impairments, whether operated manually or motorized."

SEC. 2212. FEDERAL LANDS AND TRIBAL TRANSPORTATION PROGRAMS.

(a) IN GENERAL.--Chapter 2 of title 23, United States Code, is amended by striking sections 201 through 204 and inserting the following:

"Sec. 201. Federal lands and Tribal transportation programs

"(a) PURPOSE.--Recognizing the need for all public Federal and tribal transportation facilities to be treated under uniform policies similar to the policies that apply to Federal-aid highways and other public transportation facilities, the Secretary of Transportation shall coordinate a uniform policy for all public Federal and Tribal transportation facilities that shall apply to Federal lands transportation facilities, Tribal transportation facilities, and Federal lands access transportation facilities.

"(b) AVAILABILITY OF FUNDS.--

"(1) AVAILABILITY.--Funds authorized for the Tribal transportation program, the Federal lands transportation program, and the Federal lands access program shall be available for contract upon apportionment, or on October 1 of the fiscal year for which authorized if no apportionment is required.

"(2) AMOUNT REMAINING.--Any amount remaining unexpended for a period of three years after the close of the fiscal year for which authorized shall lapse.

"(3) OBLIGATIONS.--The Secretary of the Department charged with the administration of such funds is granted authority to incur obligations, approve projects, and enter into contracts under such authorizations and his action in doing so shall be deemed a contractual obligation of the United States for the payment of the cost thereof and such funds shall be deemed to have been expended when so obligated.

"(4) EXPENDITURE.--Any funds hereafter authorized for any fiscal year under the Federal lands transportation program, the Federal lands access program, and the Tribal transportation program shall be deemed to have been expended if a sum equal to the total of the sums authorized for such fiscal year and previous fiscal years shall have been obligated. Any of such funds released by payment of final voucher or modification of project authorizations shall be credited to the balance of unobligated authorizations and be immediately available for expenditure.

"(5) APPLICABILITY.--The provisions of this section shall not apply to funds authorized before the date of the enactment of this section.

"(6) CONTRACTUAL OBLIGATION.--Notwithstanding any other provision of law, the authorization by the Secretary of engineering and related work for the development, design, and acquisition associated with a construction project, whether performed by contract or agreement authorized by law, or the approval by the Secretary of plans, specifications, and estimates for construction of a project, shall be deemed to constitute a contractual obligation of the Federal Government to pay the total eligible cost of any project funded under this title and any project funded pursuant to agreements authorized by this or other titles. Nothing in this provision shall be construed to affect application of the Federal share associated with the project being undertaken under this section or to modify the point of obligation associated with Federal salaries and expenses.

"(c) TRANSPORTATION PLANNING.--

"(1) TRANSPORTATION PLANNING PROCEDURES.--In consultation with the Secretary of each appropriate Federal land management agency, the Secretary shall implement transportation planning procedures for Federal lands and Tribal transportation facilities that are consistent with the planning processes required under sections 134 and 135 of this title.

"(2) APPROVAL OF TRANSPORTATION IMPROVEMENT PROGRAM.--The transportation improvement program developed as a part of the

transportation planning process under this section shall be approved by the Secretary.

"(3) INCLUSION IN OTHER PLANS.--All regionally significant Tribal transportation program, Federal lands transportation program, and Federal lands access program projects shall be--

"(A) developed in cooperation with State and metropolitan planning organizations; and

"(B) included in appropriate Tribal transportation program, Federal lands transportation program, and Federal lands access program, State and metropolitan plans, and transportation improvement programs.

"(4) INCLUSION IN STATE PROGRAMS.--The approved Tribal transportation program, Federal lands transportation program, and Federal lands access program transportation improvement programs shall be included in appropriate State and metropolitan planning organization plans and programs without further action on the transportation improvement program.

"(5) ASSET MANAGEMENT.--The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, have in place safety, bridge, pavement, and congestion management systems for facilities funded under the Tribal transportation program and the Federal lands transportation program in support of asset management.

"(6) DATA COLLECTION.--

"(A) DATA COLLECTION.--The Secretaries of the appropriate Federal land management agencies shall collect and report data necessary to implement the Federal lands transportation program, the Federal lands access program, and the Tribal transportation program including, but not limited to--

"(i) inventory and condition information on Federal lands transportation facilities and tribal transportation facilities; and

"(ii) bridge inspection and inventory information on any publicly-accessible Federal bridge.

"(B) STANDARDS.--The Secretary, in coordination with the Secretaries of the appropriate Federal land management agencies, shall define the collection and reporting data standards.

"(7) ADMINISTRATIVE EXPENSES.--For purposes of implementing the activities described in this subsection, including direct support of transportation planning activities among Federal land management agencies, the Secretary may use up to 5 percent for each fiscal year of the funds authorized under sections 203 and 204 of this title.

"(d) REIMBURSABLE AGREEMENTS.--In carrying out work under reimbursable agreements with any State, local, or Tribal government under this title, the Secretary may, without regard to any other provision of law or regulation, record obligations against accounts receivable from such entities, and shall credit amounts received from such entities to the appropriate account, such credit to occur within 90 days of the date of the original request by the Secretary for payment.

"(e) TRANSFERS.--

"(1) IN GENERAL.--Funds made available for the Federal lands transportation program and the Federal lands access program may be transferred by the Secretary within and between those programs with the concurrence of the Secretary and the affected Secretaries of the respective Federal land management agencies, State departments of transportation, or local government agencies to enable efficient use of such resources.

"(2) CREDIT.--The funds shall be credited back to the loaning entity with funds that are currently available for obligation at the time of the credit.

"Sec. 202. Tribal transportation program

"(a) USE OF FUNDS.--

"(1) IN GENERAL.--Funds made available under the Tribal transportation program shall be used by the Secretary of Transportation and the Secretary of the Interior to pay the costs of--

"(A) transportation planning, research, maintenance, engineering, rehabilitation, restoration, construction, and reconstruction of Tribal transportation facilities and--

"(i) adjacent vehicular parking areas;

"(ii) interpretive signage;

"(iii) acquisition of necessary scenic easements and scenic or historic sites;

"(iv) provision for pedestrians and bicycles;

"(v) environmental mitigation in or adjacent to Tribal lands

to--

"(I) improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and

"(II) mitigate the damage to wildlife, aquatic organism passage, habitat, and ecosystem connectivity, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate;

"(vi) construction and reconstruction of roadside rest areas, including sanitary and water facilities; and

"(vii) other appropriate public road facilities as determined by the Secretary;

"(B) operation and maintenance of transit facilities which are located on, or provide access to Tribal lands; and

"(C) any transportation project eligible for assistance under this title that is within or that provides access to Tribal lands.

"(2) CONTRACT.--In connection with an activity described in paragraph (1), the Secretary and the Secretary of the Interior may enter into a contract or other appropriate agreement with respect to such activity with--

"(A) a State (including a political subdivision of a State); or

"(B) an Indian tribe.

"(3) INDIAN LABOR.--Indian labor may be employed, in accordance with such rules and regulations as may be promulgated by the Secretary of the Interior, to carry out any construction or other activity described in paragraph (1).

"(4) FEDERAL EMPLOYMENT.--No maximum limitation on Federal employment shall be applicable to construction or improvement of Tribal transportation facilities.

"(5) FUNDS FOR CONSTRUCTION AND IMPROVEMENT.--All funds made available for the construction and improvement of Tribal transportation facilities shall be administered in conformity with regulations and agreements jointly approved by the Secretary and the Secretary of the Interior.

"(6) ADMINISTRATIVE EXPENSES.--

"(A) IN GENERAL.--Of the funds authorized to be appropriated for the Tribal transportation program, up to six percent may be used by the Secretary or the Secretary of the Interior for program management and oversight and project-related administrative expenses.

"(B) RESERVATION OF FUNDS.--The Secretary of the Interior may reserve funds from administrative funds of the Bureau of Indian Affairs that are associated with the Tribal transportation program to fund Tribal technical assistance centers under section 504(b) of this title.

"(7) MAINTENANCE.--

"(A) USE OF FUNDS.--Notwithstanding any other provision of this title, of the amount of funds allocated to an Indian tribe from the Tribal transportation program, for the purpose of maintenance (excluding road sealing, which shall not be subject to any limitation), the Secretary shall not use more than the greater of--

"(i) an amount equal to 25 percent; or

"(ii) \$500,000.

"(B) BIA RESPONSIBILITY.--The Bureau of Indian Affairs shall continue to retain primary responsibility, including annual funding request responsibility, for road maintenance programs on Indian reservations, and the Secretary of the Interior shall ensure that funding made available under this subsection for maintenance of Tribal transportation facilities for each fiscal year is supplementary to and not in lieu of any obligation of funds by the Bureau of Indian Affairs for road maintenance programs on Indian reservations.

"(C) TRIBAL-STATE ROAD MAINTENANCE AGREEMENTS.--

"(i) An Indian tribe and a State may enter into a road maintenance agreement under which an Indian tribe assumes the responsibilities of the State for--

"(I) Tribal transportation facilities; and

"(II) roads providing access to Tribal transportation facilities.

"(ii) Agreements entered into under clause (i)--

"(I) shall be negotiated between the State and the Indian tribe; and

"(II) shall not require the approval of the Secretary.

"(8) COOPERATION.--Cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement, and any funds received from a State, county, or local subdivision shall be credited to appropriations available for the Tribal transportation program.

"(9) COMPETITIVE BIDDING.--Construction of each project shall be performed by contract awarded by competitive bidding, unless the Secretary or the Secretary of the Interior shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest.

Notwithstanding the foregoing, the provisions of section 23 of the "Buy Indian" Act of June 25, 1910 (36 Stat. 891), and the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (88 Stat. 2205) shall apply to all funds administered by the Secretary of the Interior that are appropriated for the construction and improvement of Tribal transportation facilities.

"(b) FUNDS DISTRIBUTION.--

"(1) IN GENERAL.--All funds authorized to be appropriated for the Tribal transportation program shall be allocated among Indian tribes in accordance with the formula established by the Secretary of the Interior in Chapter 25 of the Code of Federal Regulations, section 170.

"(2) NATIONAL TRIBAL TRANSPORTATION FACILITY INVENTORY.--

"(A) IN GENERAL.--The Secretary of the Interior, in cooperation with the Secretary, shall maintain a comprehensive national inventory of Tribal transportation facilities that are eligible for assistance under the Tribal transportation program.

"(B) TRANSPORTATION FACILITIES INCLUDED IN THE INVENTORY.--For purposes of identifying the Tribal transportation system and determining the relative transportation needs among Indian tribes, the Secretary shall include, at a minimum, transportation facilities that are eligible for assistance under the Tribal transportation program that a tribe has requested, including facilities that--

"(i) were included in the Bureau of Indian Affairs system inventory prior to October 1, 2004;

"(ii) are owned by an Indian Tribal government;

"(iii) are owned by the Bureau of Indian Affairs;

"(iv) were constructed or reconstructed with funds from the Highway Account of the Transportation Trust Fund under the Indian reservation roads program since 1983;

"(v) are community streets or bridges within the exterior boundary of Indian reservations, Alaska Native villages, and other recognized Indian communities (including communities in former Indian reservations in Oklahoma) in which the majority of residents are American Indians or Alaska Natives; or

"(vi) are primary access routes proposed by Tribal governments, including roads between villages, roads to landfills,

roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal terminals, such as airports, harbors, or boat landings.

"(C) LIMITATION ON PRIMARY ACCESS ROUTES.--For purposes of this paragraph, a proposed primary access route is the shortest practicable route connecting two points of the proposed route.

"(D) ADDITIONAL FACILITIES.--Nothing in this paragraph shall preclude the Secretary from including additional transportation facilities that are eligible for funding under the Tribal transportation program in the inventory used for the national funding allocation if such additional facilities are included in the inventory in a uniform and consistent manner nationally.

"(E) BRIDGES.--All bridges in the inventory shall be recorded in the national bridge inventory administered by the Secretary under section 151 of this title.

"(3) REGULATIONS.--Notwithstanding sections 563(a) and 565(a) of title 5, the Secretary of the Interior shall maintain regulations governing the Tribal transportation program and the funding formula under paragraph (4), in accordance with established policies and procedures.

"(4) BASIS FOR FUNDING FORMULA.--The funding formula under this paragraph shall be based on factors that reflect--

"(A) the relative needs of the Indian tribes, and reservation or Tribal communities, for transportation assistance;

"(B) the relative administrative capacities of, and challenges faced by, various Indian tribes, including the cost of road construction in each Bureau of Indian Affairs area, geographic isolation, and difficulty in maintaining all-weather access to employment, commerce, health, safety, and educational resources; and

"(C) the national Tribal transportation facility inventory described in paragraph (2), except that--

"(i) not less than fifty percent of the formula funds distributed to each tribe shall be derived from Tribal transportation facilities that are included in the inventory as a result of clauses (i), (ii), or (iii) under paragraph (2)(B); and

"(ii) up to fifty percent of the formula funds distributed to each tribe shall be derived from Tribal transportation facilities that are not included in the inventory as a result of clauses (i), (ii), or (iii) under paragraph (2)(B).

"(5) TRANSFERRED FUNDS.--

"(A) IN GENERAL.--Not later than 30 days after the date on which funds are made available to the Secretary of the Interior under this paragraph, the funds shall be distributed to, and available for immediate use by, eligible Indian tribes, in accordance with the formula for distribution of funds under the Tribal transportation program.

"(B) USE OF FUNDS.--Notwithstanding any other provision of this section, funds available to Indian tribes for Tribal transportation

facilities shall be expended on projects identified in a transportation improvement program approved by the Secretary.

"(6) HEALTH AND SAFETY ASSURANCES.--Notwithstanding any other provision of law, an Indian Tribal government may approve plans, specifications, and estimates and commence road and bridge construction with funds made available from the Tribal transportation program through a contract or agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.) if the Indian Tribal government--

"(A) provides assurances in the contract or agreement that the construction will meet or exceed applicable health and safety standards;

"(B) obtains the advance review of the plans and specifications from a State-licensed civil engineer that has certified that the plans and specifications meet or exceed the applicable health and safety standards; and

"(C) provides a copy of the certification under subparagraph (A) to the Deputy Assistant Secretary for Tribal Government Affairs, Department of Transportation, or the Assistant Secretary for Indian Affairs, Department of the Interior, as appropriate; and

"(D) obtains the advance written approval of the plans, specifications, and estimates from the facility owner or public authority having maintenance responsibility for the facility shown and provides a copy of the approval to the entities listed in subparagraph (C).

"(7) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.

"(A) IN GENERAL.--Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available under this chapter and section 125(e) of this title for Tribal transportation facilities to pay for the costs of programs, services, functions, and activities, or portions thereof, that are specifically or functionally related to the cost of planning, research, engineering, and construction of any Tribal transportation facility that provides access to or is located within the reservation or community of an Indian tribe shall be made available, upon request of the Indian Tribal government, to the Indian Tribal government for contracts and agreements for such planning, research, engineering, and construction in accordance with the Indian Self-Determination and Education Assistance Act.

"(B) EXCLUSION OF AGENCY PARTICIPATION.--Funds for programs, functions, services, or activities, or portions thereof, including supportive administrative functions that are otherwise contractible to which subparagraph (A) applies, shall be paid in accordance with subparagraph (A) without regard to the organizational level at which the Department of the Interior has previously carried out such programs, functions, services, or activities.

"(8) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.--

"(A) IN GENERAL.--Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available to an Indian Tribal government under

this chapter for a Tribal transportation facility program or project that is located on an Indian reservation or provides access to the reservation or a community of the Indian tribe shall be made available, on the request of the Indian Tribal government, to the Indian Tribal government for use in carrying out, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), contracts and agreements for the planning, research, design, engineering, construction, and maintenance relating to the program or project.

"(B) EXCLUSION OF AGENCY PARTICIPATION.--In accordance with subparagraph (A), all funds for a program or project to which subparagraph (A) applies shall be paid to the Indian Tribal government without regard to the organizational level at which the Department of the Interior has previously carried out, or the Department of Transportation has previously carried out under the Tribal Transportation Program, the programs, functions, services, or activities involved.

"(C) CONSORTIA.--Two or more Indian tribes that are otherwise eligible to participate in a program or project to which this chapter applies may form a consortium to be considered as a single Indian tribe for the purpose of participating in the project under this section.

"(D) SECRETARY AS SIGNATORY.--Notwithstanding any other provision of law, the Secretary is authorized to enter into a funding agreement with an Indian Tribal government to carry out a Tribal transportation facility program or project under subparagraph (A) that is located on an Indian reservation or provides access to the reservation or a community of the Indian tribe.

"(E) FUNDING.--The amount an Indian Tribal government receives for a program or project under subparagraph (A) shall equal the sum of the funding that the Indian Tribal government would otherwise receive for the program or project in accordance with the funding formula established under this subsection and such additional amounts as the Secretary determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project.

"(F) ELIGIBILITY.--

"(i) Subject to clause (ii) and the Secretary's approval, funds may be made available under subparagraph (A) to an Indian Tribal government for a program or project in a fiscal year only if the Indian Tribal government requesting such funds demonstrates to the satisfaction of the Secretary financial stability and financial management capability during the 3 fiscal years immediately preceding the fiscal year for which the request is being made.

"(ii) An Indian Tribal government that had no uncorrected significant and material audit exceptions in the required annual audit of the Indian Tribal government self-determination contracts or self-governance funding agreements with any Federal agency during the three-fiscal-year period referred in clause (i) shall be

conclusive evidence of the financial stability and financial management capability for purposes of clause (i).

"(G) ASSUMPTION OF FUNCTIONS AND DUTIES.--An Indian Tribal government receiving funding under subparagraph (A) for a program or project shall assume all functions and duties that the Secretary of the Interior would have performed with respect to a program or project under this chapter, other than those functions and duties that inherently cannot be legally transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.).

"(H) POWERS.--An Indian Tribal government receiving funding under subparagraph (A) for a program or project shall have all powers that the Secretary of the Interior would have exercised in administering the funds transferred to the Indian Tribal government for such program or project under this section if the funds had not been transferred, except to the extent that such powers are powers that inherently cannot be legally transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.).

"(I) DISPUTE RESOLUTION.--In the event of a disagreement between the Secretary or the Secretary of the Interior and an Indian tribe over whether a particular function, duty, or power may be lawfully transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.), the Indian tribe shall have the right to pursue all alternative dispute resolutions and appeal procedures authorized by such Act, including regulations issued to carry out the Act.

"(J) TERMINATION OF CONTRACT OR AGREEMENT.--On the date of the termination of a contract or agreement under this section by an Indian Tribal government, the Secretary shall transfer all funds that would have been allocated to the Indian Tribal government under the contract or agreement to the Secretary of the Interior to provide continued transportation services in accordance with applicable law.

"(c) PLANNING.--Up to 3 percent of funds made available for the Tribal transportation program for each fiscal year shall be allocated to those Indian Tribal governments applying for transportation planning pursuant to the provisions of the Indian Self-Determination and Education Assistance Act. The Indian Tribal government, in cooperation with the Secretary of the Interior and, as appropriate, with a State, local government, or metropolitan planning organization, shall carry out a transportation planning process in accordance with Section 201(c) of this title. Projects shall be selected by the Indian Tribal government from the transportation improvement program and shall be subject to the approval of the Secretary of the Interior and the Secretary.

"(d) TRIBAL TRANSPORTATION FACILITY BRIDGES.--

"(1) NATIONWIDE PRIORITY PROGRAM.--The Secretary shall maintain a nationwide priority program for improving deficient bridges eligible for the Tribal transportation program.

"(2) FUNDING.--Before making distributions under subsection (b), the Secretary shall set aside up to 5 percent of funds made available under the Tribal transportation program for each fiscal year to be allocated to carry out planning, design, engineering, preconstruction, construction, and inspection of projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions, or install scour countermeasures for deficient Tribal transportation facility bridges, including multiple-pipe culverts.

"(3) ELIGIBLE BRIDGES.--To be eligible to receive funding under this subsection, a bridge described in paragraph (1) must--

"(A) have an opening of 20 feet or more;

"(B) be classified as a Tribal transportation facility; and

"(C) be structurally deficient or functionally obsolete..

"(4) APPROVAL REQUIREMENT.--The Secretary may make funds available under this subsection for preliminary engineering, construction, and construction engineering activities after approval of required documentation and verification of eligibility in accordance with this title.

"(e) SAFETY.--

"(1) FUNDING.--Before making distributions under subsection (b), the Secretary shall set aside up to 2 percent of funds made available under the Tribal transportation program for each fiscal year to be allocated based on identification and analysis of highway safety issues and opportunities in Tribal lands, as determined by the Secretary, on application of the Indian Tribal governments for eligible projects as described in section 148(a)(2) of this title.

"(2) PROJECT SELECTION.--The Indian Tribal government, in cooperation with the Secretary of the Interior and, as appropriate, with a State, local government, or metropolitan planning organization, shall select projects from the transportation improvement program, subject to the approval of the Secretary and the Secretary of the Interior.

"(f) FEDERAL-AID ELIGIBLE PROJECTS.--Before approving as a project on a Tribal transportation facility any project eligible for funds apportioned under section 104 of this title in a State, the Secretary must determine that the obligation of funds for such project is supplementary to and not in lieu of the obligation, for projects on Tribal transportation facilities, of a fair and equitable share of funds apportioned to such State under section 104 of this title.

"Sec. 203. Federal lands transportation program

"(a) USE OF FUNDS.--

"(1) IN GENERAL.--Funds made available under the Federal lands transportation program shall be used by the Secretary of Transportation and the Secretary of the appropriate Federal land management agency to pay the costs of--

"(A) transportation planning, research, preventive maintenance, engineering, rehabilitation, restoration, construction, and reconstruction of Federal transportation facilities, and--

"(i) adjacent vehicular parking areas;

"(ii) interpretive signage;

"(iii) acquisition of necessary scenic easements and scenic or historic sites;

"(iv) provision for pedestrians and bicycles;

"(v) environmental mitigation in or adjacent to publicly-accessible Federal lands to--

"(I) improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and

"(II) mitigate the damage to wildlife, aquatic organism passage, habitat, and ecosystem connectivity, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate;

"(vi) construction and reconstruction of roadside rest areas including sanitary and water facilities; and

"(vii) other appropriate public road facilities as determined by the Secretary; and

"(B) any transportation project eligible for assistance under this title that is within or adjacent to, or that provides access to, publicly-accessible Federal lands.

"(2) CONTRACT.--In connection with an activity described in paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency may enter into a contract or other appropriate agreement with respect to such activity with--

"(A) a State (including a political subdivision of a State); or

"(B) an Indian tribe.

"(3) ADMINISTRATION.--All appropriations for the construction and improvement of Federal lands transportation facilities shall be administered in conformity with regulations and agreements jointly approved by the Secretary and the Secretary of the appropriate Federal land managing agency.

"(4) COOPERATION.--Cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement, and any funds received from a State, county, or local subdivision shall be credited to appropriations available for the class of Federal lands transportation facilities to which such funds were contributed.

"(5) COMPETITIVE BIDDING.--Construction of each project shall be performed by contract awarded by competitive bidding, unless the Secretary or the Secretary of the appropriate Federal land management agency shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest.

"(b) AGENCY PROGRAM DISTRIBUTIONS. --

"(1) IN GENERAL.--On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for that fiscal year for the Federal lands transportation program on the basis of applications of need, as determined by the Secretary, and in coordination with the transportation plans required by section 201, of the respective transportation systems of the following Federal land management agencies:

- "(A) The National Park Service.
- "(B) The U.S. Forest Service.
- "(C) The U.S. Fish and Wildlife Service.
- "(D) The U.S. Army Corps of Engineers.
- "(E) The Bureau of Land Management.

"(2) APPLICATIONS.--

"(A) Each application from a Federal land management agency shall include proposed programs at various potential funding levels as defined by the Secretary.

"(B) The Secretary shall consider the extent to which the programs support--

"(i) the transportation goals of the Secretary across the entire agency's inventory, including--

- "(I) state of good repair of transportation facilities;
- "(II) reduction of bridge deficiencies, and
- "(III) improvement of safety;

"(ii) high use Federal recreational sites or Federal economic generators; and

"(iii) the resource management goals of the Secretary of the respective Federal lands management agency.

"(c) NATIONAL FEDERAL LANDS TRANSPORTATION FACILITY INVENTORY.--

"(1) IN GENERAL.--The Secretaries of the appropriate Federal land management agencies, in cooperation with the Secretary, shall maintain a comprehensive national inventory of public Federal lands transportation facilities.

"(2) TRANSPORTATION FACILITIES INCLUDED IN THE INVENTORIES.--For purposes of identifying the Federal lands transportation system and determining the relative transportation needs among Federal land management agencies, the inventories shall include, at a minimum, facilities that--

"(A) provide access to high use Federal recreation sites or Federal economic generators, as determined by the Secretary in coordination with the respective Secretaries of the appropriate Federal land management agencies; and

"(B) are owned by one of the following agencies:

- "(i) The National Park Service.
- "(ii) The U.S. Forest Service.
- "(iii) The U.S. Fish and Wildlife Service.
- "(iv) The Bureau of Land Management.
- "(v) The U.S. Army Corps of Engineers.

"(3) AVAILABILITY.--The inventories shall be made available to the Secretary.

"(4) UPDATES.--The Secretaries of the appropriate Federal land management agencies shall update their inventories as determined by the Secretary.

"(5) REVIEW.--A decision to add or remove a facility from the inventory shall not be considered a Federal action for purposes of review under the National Environmental Protection Act of 1969 (42 U.S.C. 4321 et seq.).

"Sec. 204. Federal lands access program

"(a) USE OF FUNDS.--

"(1) IN GENERAL.--Funds made available under the Federal lands access program shall be used by the Secretary of Transportation and the Secretary of the appropriate Federal land management agency to pay the cost of--

"(A) transportation planning, research, engineering, preventive maintenance, rehabilitation, restoration, construction, and reconstruction of Federal lands access transportation facilities located on, adjacent to, or that provide access to Federal lands; and--

"(i) adjacent vehicular parking areas;

"(ii) interpretive signage;

"(iii) acquisition of necessary scenic easements and scenic or historic sites;

"(iv) provisions for pedestrians and bicycles;

"(v) environmental mitigation in or adjacent to Federal lands to--

"(I) improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and

"(II) mitigate the damage to wildlife, aquatic organism passage, habitat, and ecosystem connectivity, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate;

"(vi) construction and reconstruction of roadside rest areas including sanitary and water facilities; and

"(vii) other appropriate public road facilities as determined by the Secretary; and

"(B) any transportation project eligible for assistance under this title that is within or adjacent to, or that provides access to, Federal lands.

"(2) CONTRACT.--In connection with an activity described in paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency may enter into a contract or other appropriate agreement with respect to such activity with--

"(A) a State (including a political subdivision of a State); or

"(B) an Indian tribe.

"(3) ADMINISTRATION.--All appropriations for the construction and improvement of Federal lands access transportation facilities shall be administered in conformity with regulations and agreements approved by the Secretary.

"(4) COOPERATION.--Cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement, and any funds received from a State, county, or local subdivision for a Federal lands access transportation facility project shall be credited to appropriations available under the Federal lands access program.

"(5) COMPETITIVE BIDDING.--Construction of each project shall be performed by contract awarded by competitive bidding, unless the Secretary or the Secretary of the appropriate Federal land management agency shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest.

"(b) PROGRAM DISTRIBUTIONS.--

"(1) IN GENERAL.--Funding made available to carry out the Federal lands access program shall be allocated among those States having Federal lands in accordance with the following formula:

"(A) Seventy five percent of the available funding for use in those States that contain at least one and one half percent of the total public land in the United States managed by the agencies listed in paragraph (2), distributed as follows:

"(i) Twenty percent in the ratio that--

"(I) recreational visitation within each such State,
bears to--

"(II) the recreational visitation within all such
States;

"(ii) Ten percent in the ratio that--

"(I) the Federal land area within each such State,
bears to--

"(II) the Federal land area in all such States;

"(iii) Fifty percent in the ratio that--

"(I) the Federal public road miles within each such
State, bears to--

"(II) the Federal public road miles in all such States;

and

"(iv) Twenty percent in the ratio that--

"(I) the Federal public bridges within each such
State, bears to--

"(II) the Federal public bridges in all such States.

"(B) Twenty five percent of the available funding for use in those States that do not contain at least one and one half percent of the total public land in the United States managed by the agencies listed in paragraph (2), distributed as follows:

"(i) Twenty percent in the ratio that--

"(I) recreational visitation within each such State,
bears to--
"(II) the recreational visitation within all such
States;
"(ii) Ten percent in the ratio that--
"(I) the Federal land area within each such State,
bears to--
"(II) the Federal land area in all such States;
"(iii) Fifty percent in the ratio that--
"(I) the Federal public road miles within each such
State, bears to--
"(II) the Federal public road miles in all such States;
and
"(iv) Twenty percent in the ratio that--
"(I) the Federal public bridges within each such
State, bears to--
"(II) the Federal public bridges in all such States.

"(2) DATA SOURCE.--Data necessary to distribute funding under
paragraph (1) shall be provided by the following Federal land management
agencies:

- "(A) The National Park Service.
- "(B) The U.S. Forest Service.
- "(C) The U.S. Fish and Wildlife Service.
- "(D) The Bureau of Land Management.
- "(E) The U.S. Army Corps of Engineers.

"(c) PROGRAMMING DECISIONS.--Programming decisions shall be made
within each State by a committee comprised of a representative of the Federal Highway
Administration, a representative of the State Department of Transportation, and a
representative of county or other local governments within that State.

"(d) PROJECT PREFERENCE.--In making programming decisions under
subsection (c), the committee shall give preference to projects that provide access to, are
adjacent to, or are located within high use Federal recreation sites, Federal economic
generators, or gateway communities to Federal lands, as identified by the Secretaries of
the appropriate Federal land management agencies."

(b) PUBLIC LANDS DEVELOPMENT ROADS AND TRAILS.--Section 214 of
title 23, United States Code, is repealed.

(c) CONFORMING AMENDMENTS.--

(1) CHAPTER 2 ANALYSIS.--The analysis for chapter 2 of title 23,
United States Code, is amended by--

(A) striking the item relating to section 201 and inserting the
following:

"201. Federal lands and Tribal transportation programs.";

(B) striking the item relating to section 202 and inserting the following:
"202. Tribal transportation program.";
(C) striking the item relating to section 203 and inserting the following:
"203. Federal lands transportation program.";
(D) striking the item relating to section 204 and inserting the following:
"204. Federal lands access program."; and
(E) striking the item relating to section 214.
(2) DEFINITION.--Section 138(a) of title 23, United States Code, is amended by striking "park road or parkway under section 204 of this title" and inserting "Federal lands transportation facility".

SEC. 2213. EMERGENCY RELIEF PROGRAM.

Section 125 of title 23, United States Code, is amended to read as follows:

"Sec. 125. Emergency relief

"(a) IN GENERAL.--Subject to this section and section 120 of this title, an emergency fund is authorized for expenditure by the Secretary of Transportation for the repair or reconstruction of highways, roads, and trails, in any part of the United States, including Indian reservations, that the Secretary finds have suffered serious damage as a result of--

- "(1) natural disaster over a wide area, such as by a flood, hurricane, tidal wave, earthquake, severe storm, or landslide; or
- "(2) catastrophic failure from any external cause.

"(b) RESTRICTION ON ELIGIBILITY.--In no event shall funds be used under this section for the repair or reconstruction of bridges--

- "(1) that have been permanently closed to all vehicular traffic by the State or responsible local official because of imminent danger of collapse due to a structural deficiency or physical deterioration; or
- "(2) if a construction phase of a replacement structure is included in the approved Statewide Transportation Improvement Program (STIP) at the time of the event. As used in this section, the term 'construction phase' refers to the physical construction separate from any other identified phases in the STIP, such as planning, design, or right-of-way phases.

"(c) FUNDING.--Subject to the following limitations, there are authorized to be appropriated from the Highway Account of the Transportation Trust Fund such sums as may be necessary to establish the fund authorized by this section and to replenish it on an annual basis:

- "(1) Not more than \$100,000,000 is authorized to be obligated in any 1 fiscal year commencing after September 30, 1980, to carry out the provisions of

this section; except that, if in any fiscal year the total of all obligations under this section is less than the amount authorized to be obligated in such fiscal year, the unobligated balance of such amount shall remain available until expended and shall be in addition to amounts otherwise available to carry out this section each year.

"(2) Pending such appropriation or replenishment, the Secretary may obligate from any funds heretofore or hereafter appropriated for obligation in accordance with this title, including existing Federal-aid appropriations, such sums as may be necessary for the immediate prosecution of the work herein authorized. Funds obligated under this paragraph shall be reimbursed from such appropriation or replenishment.

"(d) ELIGIBILITY.--

"(1) IN GENERAL.--The Secretary may expend funds from the emergency fund herein authorized only for the repair or reconstruction of highways on Federal-aid highways under the provisions of this chapter, except that--

"(A) no funds shall be so expended unless an emergency has been declared by the Governor of the State with concurrence by the Secretary, unless the President has declared the emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) for which concurrence of the Secretary is not required; and

"(B) the Secretary has received an application from the State transportation department that includes a comprehensive list of all eligible project sites and repair costs within 2 years after the natural disaster or catastrophic failure;

"(2) COST LIMITATION.--The total cost of a project may not exceed the cost of repair or reconstruction of a comparable facility. As used in this section, 'a comparable facility' means a facility that meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry over its design life.

"(3) DEBRIS REMOVAL.--The costs of debris removal shall be an eligible expense only for events not eligible for assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

"(4) TERRITORIES.--The total obligations for projects under this section in any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not exceed \$20,000,000.

"(5) SUBSTITUTE TRAFFIC.--Notwithstanding any provision of this section, actual and necessary costs of maintenance and operation of ferryboats or additional transit service providing temporary substitute highway traffic service, less the amount of fares charges, may be expended from the emergency fund herein authorized for Federal-aid highways.

"(e) TRIBAL TRANSPORTATION FACILITIES AND FEDERAL LANDS TRANSPORTATION FACILITIES.--Notwithstanding subsection (d)(1), the Secretary may expend funds from the emergency fund herein authorized, either independently or in cooperation with any other branch of the Government, State agency, organization, or person, for the repair or reconstruction of tribal transportation facilities and Federal lands transportation facilities, whether or not such facilities are Federal-aid highways. The Secretary may reimburse Federal and State (including political subdivisions of the States) agencies for expenditures made on projects determined eligible under this section, including expenditures for emergency repairs made before a determination of eligibility. Such reimbursements to Federal agencies and Indian tribal governments shall be transferred to the account from which the expenditure was made, or to a similar account that remains available for obligation, and the budget authority associated with the expenditure shall be restored to the agency from which it was derived and shall be available for obligation until the end of the fiscal year following the year in which the transfer occurs.

"(f) TREATMENT OF TERRITORIES.--For purposes of this section, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be considered to be States and parts of the United States, and the chief executive officer of each such territory shall be considered to be a Governor of a State."

(b) CONFORMING AMENDMENTS.--[to be inserted.]

SEC. 2214. WORKFORCE DEVELOPMENT.

(a) ON-THE-JOB TRAINING.--Section 140(b) of title 23, United States Code, is amended by--

(1) striking "Whenever apportionments are made under section 104(b)(3) of this title, the Secretary shall deduct such sums as necessary, not to exceed \$10,000,000 per fiscal year, for the administration of this subsection. Such sums so deducted shall remain available until expended."; and

(2) inserting in its place "Amounts authorized to carry out this subsection shall remain available until expended."

(b) DISADVANTAGED BUSINESS ENTERPRISE.--Section 140(c) of title 23, United States Code, is amended by--

(1) striking "Whenever apportionments are made under section 104(b)(3), the Secretary shall deduct such sums as necessary, not to exceed \$10,000,000 per fiscal year, for the administration of this subsection. Such sums so deducted shall remain available until expended."; and

(2) inserting in its place "Amounts authorized to carry out this subsection shall remain available until expended."

SEC. 2215. HIGHWAY SAFETY IMPROVEMENT PROGRAM.

(a) IN GENERAL.--Section 148 of title 23, United States Code, is amended to read as follows:

"Sec. 148. Highway safety improvement program

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

"(1) HIGHWAY SAFETY IMPROVEMENT PROGRAM.--The term 'highway safety improvement program' means projects, activities, plans and reports carried out under this section.

"(2) HIGHWAY SAFETY IMPROVEMENT PROJECT.--

"(A) IN GENERAL.--The term 'highway safety improvement project' means strategies, activities, and projects on public roads consistent with the State strategic highway safety plan that--

"(i) correct or improves a roadway feature that constitutes a hazard to road users; or

"(ii) address a highway safety problem.

"(B) PROJECT EXAMPLES.--The term 'highway safety improvement project' includes, but is not limited to, a project for one or more of the following:

"(i) An intersection safety improvement.

"(ii) Pavement and shoulder widening (including the addition of a passing lane to remedy an unsafe condition).

"(iii) Installation of rumble strips or other warning devices, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists, pedestrians, including persons with disabilities.

"(iv) Installation of a skid-resistant surface at an intersection or other location with a high frequency of crashes.

"(v) An improvement for pedestrian or bicyclist safety, including safety of persons with disabilities.

"(vi) Construction of a railway-highway grade crossing safety feature, including installation of protective devices.

"(vii) The conduct of a model traffic enforcement activity at a railway-highway grade crossing.

"(viii) Construction of a traffic calming feature.

"(ix) Elimination of a roadside hazard.

"(x) Improvement of highway signs and pavement markings.

"(xi) Installation of a priority control system for emergency vehicles at signalized intersections.

"(xii) Installation of a traffic control or other warning device at a location with high crash potential.

"(xiii) Transportation safety planning.

"(xiv) Collection and analysis of safety data.

"(xv) Installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of road users and workers), and crash attenuators.

"(xvi) The addition or retrofitting of structures or other measures to eliminate or reduce accidents involving vehicles and wildlife.

"(xvii) Installation of yellow-green signs and signals at pedestrian and bicycle crossings and in school zones.

"(xviii) Road safety audits.

"(xix) Systemic safety improvements.

"(3) ROAD SAFETY AUDIT.--The term 'road safety audit' means a formal safety performance examination of an existing or future road or intersection by an independent multidisciplinary audit team.

"(4) ROAD USERS.--The term 'road users' means motorists, passengers, public transportation operators and users, truck drivers, bicyclists, motorcyclists, pedestrians, including persons with disabilities.

"(5) SAFETY DATA.--The term 'safety data' includes, but is not limited to, crash, roadway, and traffic data on all public roads including, for railway-highway grade crossings, the characteristics of highway and train traffic, licensing, and vehicle data.

"(6) SAFETY PROJECT UNDER ANY OTHER SECTION.--

"(A) IN GENERAL.--The term 'safety project under any other section' means a project carried out for the purpose of safety under any other section of this title.

"(B) INCLUSION.-- The term 'safety project under any other section' includes projects consistent with the State strategic highway safety plan that promote the awareness of the public and educate the public concerning highway safety matters (including motorcycle safety), projects to enforce highway safety laws, and projects to provide infrastructure and equipment to support emergency services.

"(7) STATE HIGHWAY SAFETY IMPROVEMENT PROGRAM.--The term 'State highway safety improvement program' means a program of highway safety improvement projects, activities, plans and reports carried out as part of the State transportation improvement program under section 135(g).

"(8) STATE STRATEGIC HIGHWAY SAFETY PLAN.--The term 'State strategic highway safety plan' means a comprehensive, data-driven safety plan developed, implemented, and evaluated by the State transportation department or the Governor's designee.

"(9) SYSTEMIC SAFETY IMPROVEMENT.--The term 'systemic safety improvement' means an improvement that is widely implemented based on high-risk roadway features that are correlated with particular crash types, rather than crash frequency.

"(b) IN GENERAL.--The Secretary shall carry out a highway safety improvement program that is consistent with Section 311 of Title 49 to achieve a significant reduction in traffic fatalities and serious injuries on all public roads.

"(c) STATE HIGHWAY SAFETY IMPROVEMENT PROGRAM.--

"(1) IN GENERAL.--To obligate funds apportioned under [section 104(b)(4)] to carry out this section, a State shall have in effect a State highway safety improvement program that--

"(A) includes a set of programs, projects, and activities that are consistent with the State's strategic highway safety plan and meets the requirements of this section;

"(B) is consistent with the requirements of section 135(g).

"(2) DATA AND ANALYSIS.--No later than one year after the date of enactment of [this subsection], a State shall have in effect a safety data system to-

"(A) collect and maintain a record of safety data on all public roads;

"(B) advance the capabilities of the State for safety data collection, analysis, and integration consistent with the highway safety data improvement program in [section 149] of this title;

"(C) identify roadway features that constitute a danger to road users; and

"(D) perform safety problem identification and countermeasure analysis.

"(3) STRATEGIC HIGHWAY SAFETY PLAN.--A State shall have in effect, update at least every five years, and submit to the Secretary a strategic highway safety plan that--

"(A) is developed after consultation with--

"(i) a highway safety representative of the Governor of the State;

"(ii) regional transportation planning organizations and metropolitan planning organizations, if any;

"(iii) representatives of major modes of transportation;

"(iv) State and local traffic enforcement officials;

"(v) representatives conducting a motor carrier safety program;

"(vi) motor vehicle administration agencies; and

"(vii) other major Federal, State, tribal, regional and local safety stakeholders; and

"(viii) a highway-rail grade crossing safety representative of the Governor of the State;

"(B) is approved by the Governor of the State or a responsible State agency;

"(C) defines State safety goals and identifies State safety performance targets developed in consultation with the Secretary;

"(D) addresses engineering, management, operation, education, enforcement, and emergency services elements of highway safety for all road users, including behavioral and infrastructure problems and opportunities to advance safety on all public roads;

"(E) analyzes and makes effective use of State, regional, or local safety data as described in [paragraph (2)];

"(F) considers the results of Federal, State, regional or local transportation and highway safety planning processes;

"(G) identifies areas of greatest need;

"(H) describes a program of strategies to address high-risk roadway features;

"(4) IMPLEMENTATION.--

"(A) IDENTIFICATION AND ANALYSIS OF HIGHWAY SAFETY PROBLEMS AND OPPORTUNITIES.--As part of the State highway safety improvement program, a State shall, based on the data collection and analysis required in [paragraph (2)]--

"(i) identify roadway features that constitute a hazard to road users;

"(ii) identify highway safety improvement projects on the basis of crash experience, crash potential, or other data-supported means;

"(iii) establish the relative severity of roadway features based on crashes, injuries, fatalities, traffic volume levels, and other relevant data;

"(iv) consider which projects maximize opportunities to advance safety; and

"(v) consider annual progress made, in conjunction with the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration, in achieving State safety goals identified in the State strategic highway safety plan.

"(B) SCHEDULE OF HIGHWAY SAFETY IMPROVEMENT PROJECTS.--Based on the data analysis required under this section, a State shall--

"(i) determine priorities for the correction of roadway features that constitute a hazard to road users as identified through safety data analysis;

"(ii) establish and implement a schedule of highway safety improvement projects, activities or strategies to reduce identified safety problems;

"(iii) submit annually to the Secretary for review an implementation plan that --

"(I) describes how highway safety improvement program funds will be allocated, including projects, activities, and strategies to be implemented;

"(II) describes how the proposed projects, activities, and strategies funded under the State highway safety improvement program will allow the State to make progress toward achieving its safety performance targets; and

"(III) in the case of a State that does not meet its safety performance targets for 2 consecutive years, describes the actions the State will undertake to meet its targets.

"(5) ELIGIBLE PROJECTS.--

"(A) IN GENERAL.--A State may obligate funds apportioned to the State under [section 104(b)(4)] to carry out--

"(i) any highway safety improvement project on any public road or publicly owned pathway or trail; or

"(ii) as provided in paragraph (6), other safety projects.

"(B) USE OF OTHER FUNDING FOR SAFETY IMPROVEMENT PROJECTS.--

"(i) EFFECT OF SECTION.--Nothing in this section prohibits the use of funds made available under other provisions of this title for highway safety improvement projects.

"(ii) USE OF OTHER FUNDS.--States are encouraged to address the full scope of their safety needs and opportunities by using funds made available under other provisions of this title (except a provision that specifically prohibits that use).

"(6) FLEXIBLE FUNDING.--To further the implementation of a State strategic highway safety plan and achieve State safety targets, a State may use up to 25 percent of the amount of funds apportioned to the State under [section 104(b)(3)] for a fiscal year to carry out safety projects under any other section as provided in the State strategic highway safety plan if the State certifies that the funds are being used for the most effective projects to make progress toward achieving its safety performance targets.

"(7) RURAL ROADS.--

"(A) SET ASIDE.--Not less than 10 percent of funds apportioned to a State under [section 104(b)(4)] for fiscal year 2012 and each fiscal year thereafter shall be set aside for projects to improve the safety on public rural roads.

"(B) ADDITIONAL EXPENDITURES ON RURAL ROADS.--States are encouraged to expend additional funds apportioned under [section 104(b)(4)] on public rural roads to achieve State safety goals and make progress toward achieving its safety performance targets.

"(C) SPECIAL RULE.--A State may use funds set aside for purposes of this paragraph pursuant to this subsection for any project under this subsection if the State certifies to the Secretary that the State has met all State needs for safety improvements on public rural roads for the current fiscal year.

"(8) STATE PERFORMANCE MANAGEMENT.--

"(A) IN GENERAL.--A State shall--

"(i) establish a performance-based framework for its program under this section that--

"(I) is coordinated with the safety programs of the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration;

"(II) includes statewide roadway safety performance measures in the State's strategic highway safety plan;

"(III) includes a statewide set of safety performance targets in the State's strategic highway safety plan;

"(IV) tracks annual progress in achieving performance targets; and

"(ii) implements an evaluation approach to analyze and assess results achieved and set priorities for its program under this section.

"(B) PERFORMANCE REPORTS.--A State shall annually report to the Secretary on--

"(i) progress made to implement its program under this section;

"(ii) how its highway safety improvement program funds were allocated for projects, activities, and strategies;

"(iii) the extent to which the projects, activities, and strategies contributed to achieving the State's safety performance targets; and

"(iv) progress made, in conjunction with the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration, in achieving State safety goals identified in the State strategic highway safety plan;

"(C) PERFORMANCE ACHIEVEMENT.--

"(i) INCENTIVES.--If a State achieves its performance targets in a fiscal year based on the average of the most recent three prior years of available data, in the subsequent fiscal year, it may transfer up to 50 percent of funds apportioned to it under [section 104(b)(4)] in such fiscal year for use under other programs under this title.

"(ii) LIMITATION ON USE OF FUNDS.--A State that does not achieve its performance targets in a fiscal year, based on the average of the most recent three prior years of available data, in the subsequent fiscal year, shall use obligation authority equal to its prior year's apportionment under [section 104(b)(4)] only for highway safety improvement projects.

"(d) TRANSPARENCY.--A State shall make all plans and reports submitted to the Secretary under this section available to the public through.--

"(1) the Web site of the State Department of Transportation or equivalent;

or

"(2) such other means as the Secretary determines to be appropriate.

"(e) DISCOVERY AND ADMISSION INTO EVIDENCE OF CERTAIN REPORTS, SURVEYS, AND INFORMATION.--Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for any purpose directly relating to this section, or published in accordance with subsection (d), shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location identified or addressed in such reports, surveys, schedules, lists, or other data.

"(f) FEDERAL SHARE OF HIGHWAY SAFETY IMPROVEMENT PROJECTS.-- Except as provided in section 120(c), the Federal share of the cost of a highway safety improvement project carried out with funds apportioned to a State under [section 104(b)(4)] shall be 90 percent."

(b) TRANSITION PERIOD.--

(1) STRATEGIC HIGHWAY SAFETY PLAN.--

(A) UPDATED STRATEGIC HIGHWAY SAFETY PLAN.--

Except as provided in subparagraph (B), the Secretary shall approve obligations of funds apportioned under [section 104(b)(4)] of title 23, United States Code, to carry out the highway safety improvement program under section 148 of such title, only if, not later than [October 1 of the second fiscal year beginning after the date of enactment of this Act], a State has in effect and has submitted to the Secretary an updated strategic highway safety plan that meets the requirements under section 148(c) of such title.

(B) INTERIM PERIOD.--

(i) Before [October 1 of the second fiscal year beginning after the date of enactment of this Act] and until the date on which a State has in effect and submits to the Secretary an updated strategic highway safety plan as required under subparagraph (A), the Secretary shall apportion funds to a State for the highway safety improvement program and may obligate funds apportioned to the State for the highway safety improvement program under section 148 for eligible projects consistent with the State's existing strategic highway safety plan.

(ii) If a State does not have in effect and has not submitted to the Secretary an updated strategic highway safety plan by [October 1 of the second fiscal year beginning after the date of enactment of this Act], the State shall receive for the highway safety improvement program for each subsequent fiscal year until it has in effect and submits to the Secretary such updated plan, an amount that equals the amount apportioned to the State for that program for fiscal year ****[2011]**.

(2) STATE PERFORMANCE MANAGEMENT.--

(A) IN GENERAL.-- Except as provided in subparagraph (B), the Secretary shall approve obligations of funds apportioned under section 104(b)(4) of title 23, United States Code, to carry out the highway safety

improvement program under section 148 of such title, only if, not later than one year after the Secretary establishes safety performance measures and a national target, a State has developed in consultation with the Secretary safety performance targets.

(B) INTERIM.--Until a State has developed State safety performance targets, or until the date that is one year after the Secretary establishes safety performance measures and a national target, the Secretary may approve obligations of funds apportioned to a State to carry out its highway safety improvement program under section 148 for eligible projects consistent with the State's strategic highway safety plan.

(c) CONFORMING AMENDMENTS.--Section 130 of such title is amended--

(1) by striking subsections (e) through (h), and redesignating subsection (i) as subsection (e);

(2) by striking subsections (j) and (k), and redesignating subsection (l) as subsection (f);

(3) in subsection (e), as redesignated, by striking "this section" and inserting "section 104(b)(4)"; and

(4) in subsection (f), as redesignated, by striking paragraphs (3) and (4).

SEC. 2216. HIGHWAY SAFETY DATA IMPROVEMENT PROGRAM.

(a) IN GENERAL.--Section 149 of title 23, United States Code, is amended to read as follows:

"Sec. 149. Highway safety data improvement program.

"(a) ESTABLISHMENT.--The Secretary shall establish and implement a highway safety data improvement program in accordance with this section.

"(b) PURPOSE.--The purposes of the highway safety data improvement program shall be to--

"(1) provide support for the enhancement of State roadway inventory data systems and analysis for all public roads;

"(2) collect roadway safety data to be linked to highway basemaps;

"(3) inform and support the Highway Safety Improvement Program under section 148 of this title; and

"(4) improve the timeliness, accuracy, completeness, consistency, integration, and accessibility of the roadway safety data of the State that is needed to identify priorities for national, State, and local highway and traffic safety programs.

"(c) DEFINITIONS.--In this section, the following definitions apply:

"(1) HIGHWAY BASEMAP.--The term "highway basemap" means a representation of all public roads that has the ability to geolocate attribute data through a linear referencing system.

"(2) HIGHWAY SAFETY DATA IMPROVEMENT PROJECT.--The term "highway safety data improvement project" means a project that supports the collection, maintenance, and sharing of roadway safety data on all public roads and related systems associated with the analytical usage of that data, to further the capacity of States to make more informed and effective safety infrastructure investment decisions.

"(3) MODEL INVENTORY OF ROADWAY ELEMENTS.--The term "model inventory of roadway elements" means the Federal Highway Administration's listing and standardized coding of roadway and traffic data elements critical to safety management, analysis and decision-making.

"(4) ROADWAY SAFETY ANALYSIS TOOL.--The term "roadway safety analysis tool" means an analytical tool designed to assist practitioners in understanding safety problems on their roadways, linking crashes to roadway environments, and selecting and applying appropriate countermeasures.

"(5) ROADWAY SAFETY DATA.--The term "roadway safety data" means roadway inventory and traffic elements critical to safety management, including those identified as part of the model inventory of roadway elements.

"(d) ELIGIBLE USES.--A State may obligate funds apportioned for the highway safety data improvement program to--

"(1) create, update, or enhance a highway basemap of all public roads in a State;

"(2) collect roadway safety data, including data identified as part of the model inventory of roadway elements, for creation of or use on a highway basemap of all public roads in a State;

"(3) store and maintain roadway safety data in an electronic format;

"(4) develop analytical processes for roadway safety data elements; and

"(5) acquire and implement roadway safety analysis tools.

"(e) STRATEGIC HIGHWAY SAFETY DATA IMPROVEMENT PLAN.--No later than one year after the date of enactment of this subsection, a State shall submit to the Secretary a strategic highway safety data improvement plan that describes a program of strategies to achieve a data-driven safety program and defines State safety data improvement goals and annual roadway safety data targets.

"(f) ANNUAL REPORT.--

"(1) IN GENERAL.--A State shall annually report to the Secretary on progress in achieving State roadway safety data targets.

"(2) CONTENTS.--The Secretary shall establish the content and schedule for the reports under this subsection.

"(3) TRANSPARENCY.--The State shall make such reports available to the public through--

(A) the Web site of the State Department of Transportation or equivalent; or

(B) such other means as the Secretary determines to be appropriate.

"(g) FEDERAL SHARE.--The Federal share of the cost of a project carried out under this section shall not exceed 90 percent.

"(h) SPECIAL RULE.--A State may use funds apportioned for the program under this section for any project under section 148 of this title if the State certifies to the Secretary that the State has met all State needs for highway safety data improvements."

(b) TRANSITION PERIOD.--

(1) IN GENERAL.--The Secretary shall approve obligations of funds apportioned to a State to carry out the highway safety data improvement program under section 149 of title 23, United States Code, only if not later than one year after the enactment of this Act, a State has submitted to the Secretary a strategic highway safety data improvement plan.

(2) INTERIM.--Until a State has submitted a strategic highway safety data improvement plan, or until the date that is one year after the date of enactment of this Act, the Secretary may approve obligations of funds apportioned to a State to carry out the highway safety data improvement program under section 149 of such title for projects that otherwise meet the requirements of such section.

(c) ANALYSIS AND APPLICATION.--Of the funds authorized to be appropriated for the highway safety data improvement program, the Secretary shall set aside \$17,500,000 to be expended by the Federal Highway Administration consistent with Section 311 of title 49 for intermodal coordination with the Federal Motor Carrier Safety Administration, the National Highway Traffic Safety Administration, the Research and Innovative Technology Administration, and other appropriate administrations of the Department of Transportation to--

- (1) evaluate and manage safety performance;
- (2) develop coordinated safety data plans;
- (3) improve timeliness, accuracy, completeness, consistency, integration, and accessibility of safety data, systems, and processes; and
- (4) foster cross modal implementation of roadway safety data programs.

(d) CONFORMING AMENDMENTS.-- The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 149 and inserting the following:

"Sec. 149. Highway safety data improvement program."

SEC. 2217. TOLLING.

(a) IN GENERAL.--Section 129 of title 23, United States Code, is amended by adding at the end the following--

"(d) METROPOLITAN CONGESTION REDUCTION.--

"(1) AUTHORIZATION.--Notwithstanding section 301 of this title, and subject to the conditions and other provisions of this subsection, the Secretary may permit States and other public authorities to impose tolls on highways, bridges or tunnels (including a highway, bridge or tunnel located on the Interstate System) in urbanized areas with populations over 1 million people (or, at the Secretary's discretion, other urbanized areas with high levels of congestion) for the purpose of reducing or managing high levels of congestion on a highway, bridge or tunnel, or network of such facilities, located around or within the urbanized area.

"(2) APPLICATION.--States and other public authorities wishing to receive toll authority under this subsection shall submit an application to the Secretary that contains--

"(A) an identification of the facility or facilities to be tolled;

"(B) a preliminary facility management plan that includes a description of how tolls will be implemented (including the pricing structure, toll collection points, tolling technology, transit services to be provided, and other relevant information available when the application is submitted);

"(C) preliminary traffic and revenue estimates and a proposed finance plan for construction, operations and maintenance;

"(D) a description of the congestion problems and how the proposed pricing plan will improve operational performance;

"(E) a demonstration that the proposed project is part of a well-coordinated, multi-modal transportation plan for the metropolitan area, including descriptions of--

"(i) existing transit service on the relevant corridors and the project sponsor's plans for enhancing transit service in these corridors to ensure that users of the facility have alternative transportation choices; and

"(ii) an analysis of anticipated traffic diversion and its affect on the routes onto which diversion may occur;

"(F) a proposed monitoring and reporting plan which shall be conducted through the metropolitan planning process under section 134 of this title and section 5303 of title 49, United States Code; and

"(G) such other information as the Secretary may require.

"(3) SELECTION CRITERIA.--The Secretary may approve the application of a State or public authority under paragraph (2) only if the Secretary determines that--

"(A) the proposed pricing plan will be effective in addressing the congestion sought to be addressed;

"(B) the proposed facility management plan takes into account the interests of local, regional, and interstate travelers;

"(C) the proposed project is part of a well-coordinated, multi-modal transportation plan for the metropolitan area, and--

"(i) there is sufficient existing transit service on the relevant corridors and/or the project sponsor plans to enhance transit service in these corridors to ensure that users of the facility have alternative transportation choices; and

"(ii) anticipated traffic diversion will not have an adverse impact on the parallel or alternative routes;

"(4) LETTERS OF INTEREST.--The State or public authority may submit an application in the form of a letter of interest to the Secretary to obtain toll authority under this subsection. The letter should include as much information required under paragraph (2) as possible as well as a discussion of the status of the National Environmental Policy Act process. If possible, applicants should submit applications prior to the completion of the process required under section 102 of the National Environmental Policy Act. The Secretary may respond to such letters of interest as deemed appropriate, but shall advise the State or public authority that the approval of the application will not occur until after the conclusion of the National Environmental Policy Act process.

"(5) DEMAND MANAGEMENT.--The tolls imposed under this subsection must be implemented in a manner that manages the demand of the facility or facilities being tolled, or, if appropriate in the context of the project, movement within a defined geographic region.

"(6) INTEROPERABILITY.--The tolls collected from motorists using the facility or facilities must be collected only through the use of noncash electronic technology that optimizes the free flow of traffic, except that cash collection may be employed at locations outside the main lanes of travel that do not impede the free flow of traffic and do not create unsafe operating conditions. The toll collection technology must meet any requirements for interoperability that are established by the Secretary.

"(7) LIMITATIONS ON USE OF REVENUES.--The following limitations on use of revenues shall apply:

"(A) Before any public authority imposes a toll under this subsection, the public authority (including the State transportation department) having jurisdiction over the highway, bridge, or tunnel must enter into an agreement with the Secretary providing that all toll revenues received from the operation of the toll facility or facilities will be used first for debt service; for reasonable return on investment of any private person financing the project; for the costs necessary for the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation, and any transit service provided within the corridor in which the facility is located; and for mitigating any adverse impacts identified under the NEPA process as a priority by the State or public authority imposing the tolls.

"(B) At the option of the public authority having jurisdiction over the facility, the toll agreement may further provide that if the State, or public authority with jurisdiction over the toll facility or facilities, certifies annually that the tolled facility or facilities are being adequately maintained, that priority for use of the revenues that have been collected

has been given to capital improvement projects located on the toll facility or facilities that reduce congestion, and if the State or public authority demonstrates that the pricing strategy has been effective in reducing or managing congestion, then the State or public authority may use any excess toll revenues for any project eligible for assistance under this title or title 49, chapters 53, United States Code, that directly benefit the operational performance of, or enhances transportation choices for users of the region's multi-modal transportation system.

"(C) If more than one facility comprises a project under this subsection, then the State or public authority may combine and use the toll revenues collected from any single facility to support the uses specified in subparagraph (A) for all facilities comprising the project.

"(D) The toll agreement shall incorporate the representations and conditions contained in the application submitted under paragraph (2), except that the Secretary may permit the State or public authority to modify such representations or conditions made with respect to the facility management plan if appropriate. The decision of the Secretary to permit the State to modify any representations or conditions made with respect to the facility management plan shall not be deemed a major federal action under section 102 of National Environmental Policy Act.

"(8) APPLICATION APPROVAL.--The execution of a toll agreement under paragraph (7) by the Secretary shall be deemed approval of the application submitted under this subsection.

"(9) HOV LANES.--For any lane designated as a high occupancy vehicle (HOV) lane, the State or relevant public authority may permit vehicles not meeting the established occupancy requirement to operate in the lane subject to the requirements of section 166 of this title, except that vehicles meeting the established occupancy requirement shall, as may be determined by the State or relevant public authority, either be permitted to travel at no charge or be charged a reduced toll, and public transportation vehicles shall be permitted to travel at no charge.

"(e) INTERSTATE SYSTEM IMPROVEMENTS.--

"(1) AUTHORIZATION.--Notwithstanding section 301 of this title, and subject to the conditions and other provisions of this subsection, the Secretary may permit States and other public authorities to impose tolls on Interstate highways, bridges or tunnels for the purpose of initially constructing Interstate highways, bridges and tunnels or for reconstructing Interstate highways, bridges or tunnels that include the addition of one or more lanes (including high occupancy vehicle lanes).

"(2) APPLICATION.--States and other public authorities wishing to receive toll authority under this subsection shall submit an application to the Secretary that contains--

"(A) an identification of the facility to be tolled, including the age, condition, intensity of use, and anticipated use of the facility;

"(B) a description of the proposed project and the mobility needs to be addressed;

"(C) in the case of initial construction, an analysis demonstrating that the facility could not reasonably be constructed from the State's apportionments and allocations made available by the Transportation Opportunities Act (including amendments) and from revenues for highways from any other source without toll revenues;

"(D) a preliminary facility management plan that includes a description of how tolls will be implemented (including the pricing structure, toll collection points, tolling technology, and other relevant information available when the application is submitted);

"(E) preliminary traffic and revenue estimates and a proposed finance plan for construction, operations and maintenance;

"(F) to the extent the proposed project will affect urbanized areas with multi-modal transportation systems, a demonstration that the proposed project is part of a well-coordinated, multi-modal transportation plan for the corridor located in such areas to be tolled, including descriptions of--

"(i) existing or planned transportation facilities that provide service on the relevant corridors; and

"(ii) anticipated traffic diversion and its affect on the routes onto which diversion may occur;

"(G) a proposed monitoring and reporting plan which shall be conducted through the state or metropolitan planning processes under sections 134 and 135 of this title and sections 5303 and 5304 of title 49, United States Code; and

"(H) such other information as the Secretary may require.

"(3) SELECTION CRITERIA.--The Secretary may approve the application of a State or public authority under paragraph (2) only if the Secretary determines that--

"(A) in the case of initial construction, the State or public authority is not reasonably able to construct the proposed toll facility using existing sources of revenue;

"(B) in the case of an existing facility, the proposed toll facility has a sufficient need (whether related to intensity of use, age, condition, or otherwise) to warrant the collection of tolls;

"(C) the plan for constructing or reconstructing the facility using toll revenues is reasonable;

"(D) the proposed facility management plan takes into account the interests of local, regional, and interstate travelers;

"(E) the project will adequately enhance the mobility and condition of the facility relative to the current and future needs of the facility; and

"(F) for projects affecting urbanized areas with multi-modal transportation systems, the proposed project is part of a well-coordinated, multi-modal transportation plan for the part of the corridor located in such

area, and anticipated traffic diversion will not have an adverse impact on parallel or alternative routes.

"(4) LETTERS OF INTEREST.--The State or public authority may submit an application in the form of a letter of interest to the Secretary to obtain toll authority under this subsection. The letter shall include as much information required under paragraph (2) as possible as well as a discussion of the status of the National Environmental Policy Act process. If possible, applicants should submit applications prior to the completion of the process required under section 102 of the National Environmental Policy Act. The Secretary may respond to such letters of interest as deemed appropriate, but shall advise the State or public authority that the approval of the application will not occur until after the conclusion of the National Environmental Policy Act process.

"(5) INTEROPERABILITY.--The tolls collected from motorists using the facility must be collected only through the use of noncash electronic technology that optimizes the free flow of traffic, except that cash collection may be employed at locations outside the main lanes of travel that do not impede the free flow of traffic and do not create unsafe operating conditions. The toll collection technology must meet any requirements for interoperability that are established by the Secretary.

"(6) LIMITATIONS ON USE OF REVENUES.-- The following limitations on use of revenues shall apply:

"(A) Before any public authority imposes a toll under this subsection, the public authority (including the State transportation department) having jurisdiction over the highway, bridge, or tunnel must enter into an agreement with the Secretary providing that all toll revenues received from the operation of the toll facility will be used first for debt service; for reasonable return on investment of any private person financing the project; for the costs necessary for the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation; and for mitigating any adverse impacts identified under the NEPA process as a priority by the State or public authority imposing the tolls.

"(B) The toll agreement shall incorporate the representations and conditions contained in the application submitted under paragraph (2), except that the Secretary may permit the State or public authority to adjust such representations or conditions made with respect to the facility management plan if appropriate. The decision of the Secretary to permit the State to modify any representations or conditions made with respect to the facility management plan shall not be deemed a major federal action under section 102 of National Environmental Policy Act.

"(7) APPLICATION APPROVAL.--The execution of a toll agreement under paragraph (6) by the Secretary shall be deemed approval of the application submitted under this subsection.

"(8) HOV LANES.--For any lane designated as a high occupancy vehicle lane, the State or relevant public authority may permit vehicles not meeting the established occupancy requirement to operate in the lane subject to the

requirements of section 166 of this title, except that vehicles meeting the established occupancy requirement shall, at the discretion of the State or relevant public authority, either be permitted to travel at no charge or charged a reduced toll."

(b) CONFORMING AMENDMENTS.--

(1) Section 1012(b) of the Intermodal Surface Transportation Efficiency Act of 1991, as amended by Section 1216(a) of the Transportation Equity Act for the 21st Century, public law 105-178, and Section 1604(a) the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, public law 109-59, is repealed, except that any project funded or approved for tolling, and subject to an executed cooperative agreement, shall continue pursuant to the terms of such approval.

(2) Section 1216(b) of the Transportation Equity Act for the 21st Century, public law 105-178, is repealed.

(3) Sections 1604(b)(1) through (5) and (7) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, public law 109-59, are repealed, except that any project approved under this section and operating pursuant to an executed toll agreement on the date of enactment of this Act may continue tolling under the terms of the agreement.

(4) Section 1604(b)(6)(A) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, public law 109-59, is amended by striking the words "under this section" and inserting "through an agreement with the Secretary".

(5) Section 1604(c) the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, public law 109-59, is repealed.

(6) Section 129(a)(8) of title 23, United States Code, is amended by striking the word "subsection" and inserting in its place the word "section".

(7) Section 166(c) of title 23, United States Code, is amended by--

(A) striking "paragraphs (4) and (5)" and inserting "paragraph (4)" in paragraph (1);

(B) striking "paragraphs (4) and (5)" and inserting "paragraph (4)" in paragraph (2); and

(C) striking "on a HOV facility" and inserting "on existing HOV lanes or existing lanes newly designated as HOV".

SEC. 2218. SURFACE TRANSPORTATION REVENUE ALTERNATIVES OFFICE.

(a) ESTABLISHMENT.--The Secretary shall establish within the Federal Highway Administration a Surface Transportation Revenue Alternatives Office to analyze a range of revenue-generating alternatives that could convey prices to users to reflect system use and other travel externalities while serving as a funding source for surface transportation programs.

(b) PURPOSES.--The purposes of the Surface Transportation Revenue Alternatives Office shall be to--

- (1) create a study framework that defines the functionality of a mileage-based user fee system and other systems, including those suitable for vehicles using fuel not taxable under the Internal Revenue Code of 1986;
- (2) evaluate system design alternatives for such systems;
- (3) conduct field trials to demonstrate and test such systems;
- (4) increase public awareness regarding the need for an alternative funding source for surface transportation programs and provide information on possible approaches; and
- (5) provide recommendations regarding adoption and implementation of a mileage-based user fee system or other system.

(c) SURFACE TRANSPORTATION REVENUE ALTERNATIVES POLICY DECISION GROUP.--

(1) IN GENERAL.--Within 1 year of the enactment of this Act, the Surface Transportation Revenue Alternatives Office shall establish and lead a Surface Transportation Revenue Alternatives Policy Decision Group, hereinafter referred to as "the Group", to inform the selection and evaluation of mileage-based user fee systems.

(2) MEMBERSHIP.--The Group shall consist of public agency representatives as determined by the Secretary, including the Department of Energy; the Department of the Treasury; the Environmental Protection Agency; other appropriate Federal and State agencies and associations; and public toll authorities.

(3) FUNCTIONS.--Within 2 years of establishment, the Group shall, at a minimum--

(A) create a study framework that defines the functionality of mileage-based user fee systems and other systems, including those suitable for vehicles using fuel not taxable under the Internal Revenue Code of 1986;

(B) identify systems for field testing and provide objectives to assess technological, administrative, institutional, privacy, and other issues associated with identified systems;

(C) establish a public awareness communications plan; and

(D) define the system design of alternatives of interest, including consideration of high-level system architectures; interoperability standards and communication protocols; and equipment standards.

(4) TRANSPARENCY.--

(A) OPEN MEETINGS.--Interested persons shall be permitted to attend meetings of the Group or file statements with the Group, subject to any reasonable rules or regulations that may be prescribed.

(B) AVAILABILITY OF RECORDS.--The records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents which are made available to or prepared for or by the Group shall be made available to the public.

(C) LIMITATION.--The requirements of this paragraph shall not apply if the Secretary determines that it is in the public interest that such meeting or information should be closed to the public in order to prevent the disclosure of matters that--

(i) should be kept secret in the interest of national defense or foreign policy;

(ii) are specifically exempted from disclosure by statute;

(iii) involve trade secrets and commercial or financial information that are obtained from a person and are privileged or confidential; or

(iv) would likely frustrate the purposes of the Surface Transportation Revenue Alternatives Office.

(5) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.--The Group shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(d) FIELD TRIALS.--

(1) IN GENERAL.--No later than 4 years after the enactment of this Act, the Surface Transportation Revenue Alternatives Office shall conduct field trials of mileage-based user fee systems identified by the Group for testing.

(2) CONSIDERATIONS.--The Office shall consider, at a minimum, the following issues in constructing field trials--

(1) capability of States to coordinate administrative and financial functions, including charging out-of-state vehicles and enforcing payment;

(2) reliability of technology over greater distances and terrains;

(3) administrative cost estimates; and

(4) user acceptance.

(3) GROUP.--The Group shall provide recommendations for the field trials.

(4) REVENUE.--Any revenue collected from field trials conducted under this section shall not be deemed to be tolls prohibited under section 301 of title 23, United States Code, if the revenue collected is to be a substitute for, or supplement to, a State fuel tax.

(5) REPORT.--Not later than September 30, 2017, the Surface Transportation Revenue Alternatives Office shall make available a report of its findings to date in an electronic format accessible to the public.

(e) FUNDING.--

(1) AUTHORIZATION.--The following sums are authorized to be appropriated from the Highway Account of the Transportation Trust Fund to carry out this section:

(A) \$20,000,000 for fiscal year 2012.

(B) \$20,000,000 for fiscal year 2013.

(C) \$130,000,000 for fiscal year 2014.

(D) \$100,000,000 for fiscal year 2015.

(E) \$25,000,000 for fiscal year 2016.

(F) \$5,000,000 for fiscal year 2017.

(2) ADMINISTRATIVE EXPENSES.-- Of amounts authorized under paragraph (1), the Secretary may use such sums as necessary for administrative expenses for implementing the activities described in this section.

(f) APPLICABILITY OF TITLE 23.-- Funds made available to carry out this section shall be available for obligation and administered in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall remain available until expended.

SEC. 2219. TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.

(a) IN GENERAL.--Chapter 1 of title 23, United States Code, is amended by adding the following after section 167, as added by this Act:

"Sec. 168. Transportation systems management and operations

"(a) ESTABLISHMENT.--The Secretary of Transportation shall establish and implement a transportation systems management and operations strategy in order to enable the national transportation system to perform in a safe and reliable manner at all times and under varying conditions.

"(b) PURPOSE.--The purposes of this strategy shall be to--

"(1) efficiently and effectively manage and operate the transportation system in order to promote the safe, reliable, and secure movement of people and goods at all times and under varying conditions;

"(2) improve the safety, performance, and reliability of existing infrastructure while bolstering the Nation's economic competitiveness and supporting livable and sustainable communities; and

"(3) ensure that the strategic performance of Federal transportation system investments is sustained for all those that depend upon the transportation system by the coordinated and collaborative implementation of a transportation systems management and operations strategy.

"(c) AUTHORITY.--

"(1) IMPLEMENTATION BY THE SECRETARY.--In implementing a transportation systems management and operations strategy, the Secretary may--

"(A) assist, guide, and cooperate with other Federal agencies, State and local governments, metropolitan planning organizations, private industry, and other interested parties to improve transportation systems management and operations so as to increase the performance, safety, reliability, and security of our surface transportation system; and

"(B) encourage each Governor with responsibility for a portion of a multi-state region or corridor to improve collaboration and coordination of transportation system management and operations strategies across the entire region or corridor.

"(2) STATE AGREEMENTS.--Any two or more States may enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of a transportation systems management operations strategy pertaining to interstate regions and corridors within the compacting States, and may establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

"(d) OBJECTIVES.--In carrying out this section, the Secretary shall seek to achieve the following objectives:

"(1) Reduce non-recurring congestion that occurs from causes, including crashes, disabled vehicles, work zones, adverse weather events, emergencies and homeland security, and planned special events.

"(2) Reduce recurring congestion through the implementation of projects and programs for the development and deployment of traffic control and travel demand management strategies designed to mitigate congestion on highway facilities during peak travel periods.

"(3) Improve day to day operations through asset management, application of traffic control devices and real time traveler information, and the use of traffic analysis tools to better model and understand problems and possible solutions

"(4) Plan for operations by integrating collaborative, objectives-driven, and performance based activities into metropolitan and statewide transportation plans described under this title and chapter 53 of title 49, that are intended to advance transportation system management and operations programs, and that bring together jurisdictions and agencies such as state departments of transportation, departments of public works, transit authorities, metropolitan planning organizations, and public safety/security agencies for improved coordination and reliability.

"(5) Organize operations by applying specific business and technical processes, organizational culture, workforce development, internal collaboration and coordination, and performance measurement methods that are intended to facilitate and advance transportation systems management and operations strategies.

"(6) Enhance freight management and operations by promoting efficient, seamless, and secure freight flows on the United States transportation system and across international borders including the use of advanced technologies, development of tools to evaluate infrastructure and operational needs at border crossings, and standards for exchanging electronic freight data.

"(7) Improve mobility and security through emergency transportation management in order to improve transportation network efficiency and public/responder safety when a non-recurring event either interrupts or overwhelms transportation operations."

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

"Sec. 168. Transportation systems management and operations."

Part 2--Performance Management

SEC. 2301. PERFORMANCE MANAGEMENT PROCESS.

(a) **DECLARATION OF POLICY.**--Performance management will transform the Federal-aid highway program and will provide a means to the most efficient investment of Federal transportation dollars by re-focusing on national transportation goals, increasing the accountability and transparency of the Federal-aid program, and improving project decision-making through performance-based planning and programming.

(b) **NATIONAL GOALS.**--

(1) **IN GENERAL.**-- It is in the interest of the nation to focus the Federal-aid highway program on the following goals:

(A) **SAFETY.**-- To achieve a significant reduction in traffic fatalities and serious injuries on all public roads.

(B) **INFRASTRUCTURE CONDITION.**--To maintain the highway infrastructure asset system in a state of good repair.

(C) **SYSTEM RELIABILITY.**--To improve the efficiency of the transportation system.

(D) **FREIGHT MOVEMENT AND ECONOMIC VITALITY.**--To improve the national freight transportation system, strengthen the ability of rural communities to access national and international trade markets and support regional economic development.

(E) **ENVIRONMENTAL SUSTAINABILITY.**--To enhance the performance of our transportation system while protecting and enhancing the natural environment.

(F) **LIVABILITY.**--To foster livable communities through place-based policies and investments that increase transportation choices and access to transportation services.

(2) **LONG RANGE PLANS ADDRESS NATIONAL GOALS.**--State and metropolitan planning organization long-range transportation plans developed under sections 134 and 135 of title 23, United States Code, shall describe how the State or metropolitan planning organization will use program and project selection to help achieve the national goals identified in paragraph (1).

(c) **PERFORMANCE MANAGEMENT.**--The Secretary shall implement performance management of the Federal-aid program and require all recipients of Federal-aid funding to participate in the process.

(d) **ESTABLISHMENT OF PERFORMANCE MEASURES.**--The Secretary shall establish quantifiable performance measures to address the safety and infrastructure condition national goals identified in subsection (b)(1) of this section. After the Secretary has established performance measures for the safety and infrastructure condition goals, the Secretary shall, as the Secretary determines appropriate,

(1) establish performance measures for the remaining goal areas; and

(2) identify actions necessary to advance the implementation of performance measures for the remaining goal areas.

(e) IDENTIFICATION OF PERFORMANCE TARGETS.--

(1) NATIONAL TARGETS.--Based on the analysis of available information and stakeholder input, the Secretary shall set national targets for achieving the safety and infrastructure condition goals identified in subsection (b)(1) and shall set national targets for the remaining goal areas as he determines appropriate.

(2) STATE TARGETS.--In consultation with the Secretary, each State shall set a State target for safety and infrastructure condition performance that will support the safety and infrastructure condition national goals identified in subsection (b)(1). After the Secretary has identified the performance measures and associated targets for the remaining national goal areas identified in subsection (b)(1), the States shall set State targets for these goal areas, in consultation with the Secretary.

(f) PROGRAM DECISIONMAKING.--Program and project decisions at the State and metropolitan planning organization level shall reflect national goals through the performance-based planning and programming processes.

SEC. 2302. METROPOLITAN TRANSPORTATION PLANNING.

Section 134 is amended to read as follows:

"Sec. 134. Metropolitan transportation planning

"(a) POLICY.--It is in the national interest to--

"(1) encourage and promote the safe and efficient management, operation, and development of multimodal surface transportation systems that will serve efficiently the mobility needs of people and freight, provide safe routes to key community destinations, and foster economic growth and development within and between States and urbanized areas, while fitting the needs and complexity of individual communities, maximizing value for taxpayers, leveraging cooperative investments, and minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes identified in this title ;

"(2) encourage the continued improvement, evolution, and coordination of the metropolitan and statewide transportation planning processes by and among metropolitan planning organizations, State departments of transportation, regional planning organizations, interstate compacts, and public transit and intercity service operators as guided by the planning factors identified in subsection (h) and section 135 (d) ; and,

"(3) encourage and promote the following principles to ensure that transportation needs and decisions are integrated with other community

planning needs and priorities, and to maximize the effectiveness of the transportation investments:

- "(A) Provide transportation choices.
- "(B) Promote accessible, equitable, affordable housing.
- "(C) Enhance economic competitiveness.
- "(D) Support existing communities.
- "(E) Coordinate policies and leverage investments.
- "(F) Value communities and neighborhoods.

"(b) DEFINITIONS.--In this section and section 135 :

"(1) METROPOLITAN PLANNING AREA.--The term 'metropolitan planning area' means the geographic area determined by agreement between the metropolitan planning organization for the area and the Governor under subsection (e).

"(2) METROPOLITAN PLANNING ORGANIZATION.--The term 'metropolitan planning organization' means the policy board of an organization created as a result of the designation process in subsection (d).

"(3) MPO.--The term 'MPO' means metropolitan planning organization.

"(4) NON-METROPOLITAN AREA.--The term 'non-metropolitan area' means a geographic area outside a designated metropolitan planning area and includes small urbanized and non-urbanized areas.

"(5) NON-METROPOLITAN AREA LOCAL OFFICIAL.--The term 'non-metropolitan area local official' means elected and appointed officials of general purpose local government with responsibility for transportation outside of a designated metropolitan planning area.

"(6) METROPOLITAN TRANSPORTATION PLAN. --The term 'metropolitan transportation plan' means a 20 year plan developed by a metropolitan planning organization under subsection (j).

"(7) TIP.--The term 'TIP' means a transportation improvement program developed by a metropolitan planning organization under subsection (k).

"(8) URBANIZED AREA.--The term 'urbanized area' means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.

"(9) MAINTENANCE AREA.--The term "maintenance area" means an area that was designated as an air quality nonattainment area, but was later redesignated by the Administrator of the Environmental Protection Agency as an air quality attainment area, under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

"(10) NONATTAINMENT AREA.--The term 'nonattainment area' has the meaning given that term in section 171 of the Clean Air Act(42 U.S.C. 7501).

"(c) GENERAL REQUIREMENTS.--

"(1) DEVELOPMENT OF METROPOLITAN TRANSPORTATION PLANS AND TIPS.--To accomplish the objectives in subsection (a), MPOs designated under subsection (d), in cooperation with the State and public transportation operators, shall develop metropolitan transportation plans and TIPs for metropolitan planning areas of the State through a performance-driven, outcome-based approach to metropolitan transportation planning.

"(2) CONTENTS.--The metropolitan transportation plans and TIPs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

"(3) PROCESS OF DEVELOPMENT.--The process for developing the metropolitan transportation plans and TIPs shall provide for consideration of facilities and services for all modes of transportation across all levels of governmental and non-governmental authority and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation needs to be addressed.

"(4) TIERING.--

"(A) TIER I MPOS.--(i) MPOs operating primarily within urbanized areas of 1,000,000 or more persons according to the Bureau of the Census shall be designated as Tier I MPOs and shall fully implement the processes described in subsections (h) through (k) of this section within two years of the enactment of the Surface Transportation Transformation Act

"(ii) MPOs operating primarily within urbanized areas of more than 200,000, but less than 1 million persons, that are designated as Tier II MPOs as described in paragraph (B), may, with the support of the Governor, request designation as a Tier I MPO upon a determination by the Secretary that such MPO has demonstrated adequate technical capacity to implement the processes described in subsections (h) through (k).

"(B) TIER II MPOS.--(i) MPOs operating primarily within urbanized areas of less than 1,000,000 persons but more than 200,000 persons shall be designated as Tier II MPOs and shall follow processes set forth under subsection (l) of this section.

"(ii) Existing MPOs operating primarily within urbanized areas of less than 200,000 persons but more than 50,000 persons prior to enactment of this section may, with the support of the Governor, request designation as a Tier II MPO upon a determination by the Secretary that such MPO has demonstrated adequate technical capacity and commitment to collaborative

transportation decision-making to implement the processes set forth under subsection (l) of this section and the requirements of the Clean Air Act (42 U.S.C. 7506(c)) in nonattainment and maintenance areas.

"(iii) In the absence of such designation as a Tier II MPO, the MPO and State shall, within 12 months of the enactment of the Surface Transportation Transformation Act , submit, a two-year plan to transfer the MPO's responsibilities back to the State or to a planning organization designated by the State, and to dissolve the MPO.

"(iv) If the MPO is dissolved, such metropolitan planning area shall continue to receive metropolitan transportation planning funds for the period of time until the MPO is dissolved, not to exceed 24 months after enactment of this section and shall be treated by the State as a non-metropolitan area under this title.

"(C) CONSOLIDATION.--MPOs operating within contiguous or adjacent urbanized areas may elect to consolidate in order to meet the requisite population thresholds necessary in order to achieve designation as a Tier I or Tier II MPO. Nothing in this subsection shall be construed as to require or prevent consolidation among multiple MPOs located within a single urbanized area.

"(d) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.--

"(1) IN GENERAL.--To carry out the metropolitan transportation planning process required by this section, an MPO shall be designated for each urbanized area with a population of more than 200,000 individuals--

"(A) by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city (based on population) as named by the Bureau of the Census); or

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

"(2) STRUCTURE.--Each MPO, when designated or redesignated under this subsection, shall consist of--

"(A) local elected officials;

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

"(C) appropriate State officials.

"(3) LIMITATION ON STATUTORY CONSTRUCTION.--

Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities to--

"(A) develop the metropolitan transportation plans and TIPs for adoption by an MPO; and

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

"(4) CONTINUING DESIGNATION.--A designation of an MPO under this subsection or any other provision of law--

"(A) for an urbanized area with a population of 200,000 or more persons shall remain in effect--

"(i) if the structure of the existing MPO complies with the requirements of paragraph (2); or

"(ii) until the existing MPO is redesignated under paragraph (5).

"(B) for an urbanized area with a population of less than 200,000 persons, shall be terminated unless reaffirmed by the existing MPO and the Governor, and approved by the Secretary, on the basis of demonstrated adequate technical capacity and commitment to collaborative transportation decision-making under subsection (c) paragraph (4)(b)(i).

"(5) REDESIGNATION PROCEDURES.--An MPO designated under this subsection shall remain in effect until the MPO is redesignated by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing planning area population (including the largest incorporated city (based on population) as named by the Bureau of the Census) as appropriate to carry out this section. Redesignation of MPOs shall be made in accordance with this section.

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

"(e) METROPOLITAN PLANNING AREA BOUNDARIES.--

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

"(2) INCLUDED AREA.--Each metropolitan planning area--

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

"(B) may encompass the entire metropolitan statistical area as defined by the Office of Management and Budget.

"(3) IDENTIFICATION OF NEW URBANIZED AREAS WITHIN EXISTING PLANNING AREA BOUNDARIES.--The designation by the Bureau of the Census of new urbanized areas within an

existing metropolitan planning area shall not require the redesignation of the existing MPO.

"(4) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.--Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment or maintenance area under the Clean Air Act (42 U.S.C. 7401 et seq.) as of the date of enactment of the Transportation Opportunities Act, the boundaries of the metropolitan planning area in existence as of such date of enactment shall be retained; except that the boundaries may be adjusted by agreement of the Governor and affected MPOs in the manner described in subsection (d)(5).

"(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.--In the case of an urbanized area designated after the date of enactment of the Transportation Opportunities Act as a nonattainment or maintenance area, the boundaries of the metropolitan planning area--

"(A) shall be established in the manner described in subsection (d)(1);

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

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

"(D) may address any nonattainment or maintenance area identified under the Clean Air Act.

"(f) COORDINATION IN MULTISTATE AREAS.--

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

"(2) COORDINATION ALONG DESIGNATED TRANSPORTATION CORRIDORS.--The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate MPOs to provide coordinated transportation planning for the entire designated transportation corridor. The Secretary may consider the effectiveness of multistate transportation coordination for the designated transportation corridor as a criterion for funding multistate corridor projects, facilities, and services, and when administering certain discretionary programs.

"(3) MPO COORDINATION WITH INTERSTATE COMPACTS.--The Secretary shall encourage MPOs to consider, during development of metropolitan transportation plans and TIPs, any relevant transportation studies concerning planning for regional transportation (including, but not limited to, high-speed and intercity rail corridor studies, commuter rail corridor studies, intermodal terminals, and interstate highways) in support of intercity or multistate area projects, and

services that have been developed by interstate compacts, agreements, or organizations established under Section 135 of this title.

"(g) MPO CONSULTATION IN METROPOLITAN TRANSPORTATION PLAN AND TIP COORDINATION.--

"(1) NONATTAINMENT AREAS.--If more than one MPO has authority within a metropolitan area or designated nonattainment or maintenance area under the Clean Air Act, each MPO shall consult with the other MPOs designated for such area and the State in the coordination of metropolitan transportation plans and TIPs required by this section.

"(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE METROPOLITAN PLANNING AREAS.--If a transportation improvement, funded under this title or chapter 53 of Title 49, is located within the boundaries of more than one metropolitan planning area, the MPOs shall coordinate metropolitan transportation plans and TIPs regarding the transportation improvement.

"(3) COORDINATION OF ADJACENT MPOS.--The Secretary shall require MPOs that are adjacent or are located in reasonably close proximity of each other to coordinate their planning processes, including coordinated preparation of metropolitan transportation plans and TIPs, to the maximum extent practicable.

"(4) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.-
-The Secretary shall require each MPO to cooperate with officials and entities responsible for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, telecommunications infrastructure, infrastructure services, housing, health services, human services, environmental protection, airport operations, high-speed and intercity passenger rail, freight rail, port access, transportation system safety, and freight movements) to the maximum extent practicable, with such planning activities to ensure that the metropolitan transportation planning process, metropolitan transportation plans and TIPs are developed in cooperation with other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the metropolitan area that are provided by--

"(A) recipients of assistance under chapter 53 of title 49;

"(B) recipients of assistance under section 204 of this title;

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

"(D) sponsors of regionally significant programs, projects, and services that are related to transportation and who are receiving assistance from any public and/or private sources, in accordance with subsection (i) of this Section.

"(h) SCOPE OF PLANNING PROCESS.--

"(1) IN GENERAL.--The metropolitan transportation planning process for a metropolitan planning area under this section shall provide for consideration of projects and strategies that will achieve the following outcomes--

"(A) improved economic competitiveness of the Nation and improved economic vitality of the metropolitan area, especially by enabling global competitiveness and productivity;

"(B) increased efficiency of the multimodal transportation system that moves people and freight;

"(C) improved accessibility to functional needs for all transportation users, including people with disabilities, older Americans, and low income individuals;

"(D) increased safety and security of the transportation system for motorized and nonmotorized users;

"(E) enhanced environmental sustainability through protection and enhancement of the environment, promotion of energy conservation, improvement of quality of life, and promotion of consistency between transportation improvements and State and local planned growth and economic development patterns;

"(F) increased efficiency in systems management and operation, including deployment of congestion management strategies across transportation networks;

"(G) increased emphasis on preservation of the existing system and maintaining it in a state of good repair, including elevators, escalators and communications technology for use of people with disabilities and older adults;

"(H) increased adoption of technology-based solutions to transportation needs;

"(I) improved accountability and transparency for public dollars, delivering projects as forecasted; and,

"(J) improved public participation by interested parties and transparency in the planning process.

"(2) ESTABLISHMENT AND USE OF A PERFORMANCE-BASED APPROACH TO METROPOLITAN TRANSPORTATION PLAN AND TIP DEVELOPMENT.--

"(A) IN GENERAL.--The metropolitan transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decision-making to achieve the outcomes set forth in paragraph (1).

"(B) NATIONAL PERFORMANCE OBJECTIVES.--The Secretary shall, from time to time, identify performance measures and intermediate and long-term targets for those measures to use in tracking attainment of national transportation performance goals,

including the factors specified in paragraph (1), and other factors that the Secretary determines are consistent with the transportation objectives of the Nation.

"(C) MPO ESTABLISHMENT OF PERFORMANCE MEASURES.--The MPO shall identify and select performance measures and intermediate and long-term targets for those measures to use in tracking attainment of critical outcomes for the region, including the factors specified in paragraph (1), and other factors deemed appropriate by the MPO, unless otherwise specified by the Secretary in accordance with subparagraph (B). Identification and selection of performance measures by the MPO shall be coordinated with the State to establish consistency, to the extent practicable.

"(D) INTEGRATION OF OTHER PERFORMANCE-BASED PLANS.--The MPO shall integrate into the metropolitan transportation planning process, either directly or by reference, the outcomes, goals, objectives, performance measures, and targets in other State plans and processes required as part of a performance-based program, including, but not limited to such plans as the State national highway system asset management plan, the State strategic highway safety plan, the locally coordinated public transit human services transportation plan, state rail plan, and the statewide transportation plan.

"(E) SYSTEM PERFORMANCE REPORT.

"(i) MPOs shall develop and publish a system performance report describing the condition of, and performance of, the transportation system in relation to the performance measures and objectives established in subparagraphs (A) through (C). The system performance report shall be updated on a schedule and at a level of detail necessary to measure progress achieved by the MPO in meeting system performance objectives and targets. The system performance report shall inform the MPO's planning process for the development of the subsequent metropolitan transportation plan and TIPs.

"(ii) Within 24 months of enactment of this section MPOs shall develop and publish a system performance report describing the condition of, and performance of, the transportation system in relation to the performance measures and objectives established in subparagraphs (A) through (C).

"(iii) MPOs shall periodically update the system performance report no later than 24 months after the adoption of the most recent metropolitan transportation plan, except for any metropolitan transportation plans adopted within 24 months of the enactment of this section.

Updates to the system performance report shall describe the condition of, and performance of, the transportation system in relation to the performance measures and objectives established in subparagraphs (A) through (C), and include a report of progress achieved in meeting performance goals and objectives in comparison with system performance recorded in past system performance reports.

"(iv) Updates to the system performance report shall include an accounting of the MPO's performance on outlay of obligated project funds and delivery of projects that have reached substantial completion in relation to the projects currently on the TIP and those projects that have been removed from the previous TIP.

"(v) The system performance report described in subparagraph (i) shall be developed in consultation with the State department of transportation and shall be submitted to the Secretary on the World Wide Web in an electronically accessible format, by means to be determined by the Secretary.

"(F) USE OF PERFORMANCE MEASURES AND SYSTEM PERFORMANCE REPORTS.--The performance measures and system performance reports shall be used, at a minimum, by the MPO as the basis for development of policies, programs, and investment priorities reflected in the metropolitan transportation plan and TIP.

"(G) PERFORMANCE-BASED PLAN DEVELOPMENT.--Metropolitan transportation plan amendments or updates, except those that are adopted within 24 months of enactment of this subsection, shall incorporate a performance-based approach to metropolitan transportation planning. Metropolitan TIPs updated or amended after enactment of this subsection shall be consistent with the most recent metropolitan transportation plan.

"(H) EVALUATION OF PERFORMANCE-BASED PLANNING.--The Secretary shall consider the MPO's effectiveness in implementing and maintaining a performance-based planning process that addresses the outcomes in subsection (h) and demonstrates progress on the achievement of those outcomes when periodically reviewing the MPO under subsection (n).

"(3) FAILURE TO CONSIDER FACTORS.--The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title, chapter 53 of Title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a metropolitan transportation plan, a TIP, a project or strategy, or the certification of a planning process.

"(i) PARTICIPATION BY INTERESTED PARTIES.--

"(1) IN GENERAL.--Each MPO shall provide citizens; affected public agencies; representatives of public transportation employees; freight shippers and providers of freight transportation services; private providers of transportation; representatives of users of public transportation, pedestrian walkways and bicycle transportation facilities; representatives of people with disabilities, older Americans, and low income individuals; and other interested parties with a reasonable opportunity to comment on the metropolitan transportation plan and TIP.

"(2) METHODS.--In carrying out paragraph (1), the MPO shall, to the maximum extent practicable--

"(A) develop the metropolitan transportation plan and TIP in consultation with all interested parties, including by the formation of advisory groups representative of the community and interested parties that participate in the development of the metropolitan plan and TIP;

"(B) provide that all interested parties have reasonable opportunities to comment on the contents of the metropolitan transportation plan and TIP;

"(C) hold any public meetings at convenient and ADA-compliant accessible locations and times;

"(D) employ interactive visualization techniques to describe plans and TIPs; and,

"(E) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

"(3) NOTICE AND COMMENT.--Before approving a metropolitan transportation plan or TIP, an MPO, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the plan and program documents, in accordance with this section. The notice shall include the public outreach methods used to develop the metropolitan transportation plan or TIP.

"(j) DEVELOPMENT OF A METROPOLITAN TRANSPORTATION PLAN.--

"(1) IN GENERAL.--Each MPO shall prepare a metropolitan transportation plan for its metropolitan planning area in accordance with the requirements of this subsection. The MPO shall prepare and update such plan every 5 years (or more frequently, if the MPO elects to update more frequently), except in the cases of either of the following:

"(A) Any MPO operating within an air quality control region designated as a nonattainment area, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407 (d)) shall prepare and

update such metropolitan transportation plan every 4 years (or more frequently, if the MPO elects to update more frequently).

"(B) Any MPO operating within an air quality control region that was designated as a nonattainment area and subsequently designated to attainment in accordance with section 107(d)(3) of that Act (42 U.S.C. 7407(d)(3)) and that is subject to a maintenance plan under section 175A of that Act (42 U.S.C. 7505a) shall prepare and update such metropolitan transportation plan every 4 years (or more frequently, if the MPO elects to update more frequently).

"(2) METROPOLITAN TRANSPORTATION PLAN.--A metropolitan transportation plan under this section shall be in a form that the Secretary determines to be appropriate and shall contain, at a minimum, the following:

"(A) the existing transportation infrastructure, including an inventory of highways, local streets and roads, bicycle and pedestrian facilities, transit facilities and services, commuter rail facilities and services, high-speed and intercity passenger rail facilities and services, freight facilities (including freight railroad and port facilities), multimodal and intermodal facilities, and intermodal connectors that, together, function as an integrated metropolitan transportation system;

"(B) the performance measures and regionally adopted performance targets for use in assessing the existing and future performance of the transportation system with respect to the outcomes identified in subsection (h) paragraph (1) and other outcomes that the MPO deems appropriate, including the projected progress towards outcomes where investment priorities identified through the most recent system performance report are linked to the National objectives and locally adopted performance targets under subsection (h)(2).

"(C) the current and projected future usage of the transportation system, by using analyses and forecasts of key socio-economic and demographic factors that affect system outcomes;

"(D) an evaluation of the existing and future condition and performance of the transportation system with respect to the performance outcomes identified in subsection (h);

"(E) recommended strategies and investments for improving system performance over the planning horizon, including system operations strategies, maintenance strategies, demand management strategies, asset management strategies, capacity and enhancement investments, land use improvements, intelligent transportation systems deployment, technology adoption strategies, and others, and, for informational purposes, high-speed and intercity passenger rail and freight rail projects and services, as

determined by their projected support of outcomes identified in subsection (h);

"(F) recommended strategies and investments to improve and integrate disability-related access to transportation infrastructure;

"(G) investment priorities for using projected available and proposed revenues over the short and long-term stages of the planning horizon, in accordance with the financial plan required under paragraph (3);

"(H) a description of Interstate compacts entered into in order to promote coordinated transportation planning in multistate areas, if applicable

"(I) to the extent practicable, an identification of existing or planned transportation rights-of-way, corridors, facilities, and related real properties at risk of abandonment or development for non-transportation uses;

"(J) an illustrative list of projects, containing investments not included in the metropolitan transportation plan but that would be included if additional resources beyond those identified in the financial plan were available;

"(K) a coordinated public transit human services transportation element that identifies community-based priorities for coordinated delivery strategies for meeting the access and mobility needs of people with disabilities, older Americans, and low income individuals; and

"(L) a discussion (developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies) of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

"(3) FINANCIAL PLAN.--

"(A) PLAN CONTENTS.--A Financial Plan shall be prepared to support the metropolitan transportation plan containing--

"(i) projected resource requirements for implementing projects, strategies, and services recommended in the statewide transportation plan, including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from federal, state, local, and private sources, innovative financing techniques to finance projects and programs; and

"(ii) the projected difference between costs and revenues, and strategies for securing additional new revenue will be included in the financial plan.

"(B) COOPERATIVE REVENUE FORECASTS.--The MPO, public transportation agency, and State shall cooperatively develop estimates of future funds included in the financial plan that are reasonably expected to be available to support the investment priorities recommended in the metropolitan transportation plan.

"(C) REQUIREMENT OF ANTICIPATED FULL FUNDING.--The metropolitan transportation plan shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

"(4) COORDINATION WITH CLEAN AIR ACT AGENCIES.--In metropolitan areas that are nonattainment or maintenance areas under the Clean Air Act, the MPO shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

"(5) PUBLICATION.--A metropolitan transportation plan involving Federal and non-federal participation in regionally significant programs, projects, and strategies shall be published or otherwise made readily available by the MPO for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, approved by the MPO and submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

"(6) CONSULTATION.--

"(A) In general.--In each metropolitan area, the MPO shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a metropolitan transportation plan.

"(B) ISSUES.--The consultation shall involve, as appropriate--

"(i) consideration of metropolitan transportation plans with State conservation plans or maps, if available;

"(ii) consideration of inventories of natural or historic resources, if available; and

"(iii) consideration of State climate action plans, State energy plans, or other State plans to reduce greenhouse gas emissions, improve energy conservation, and promote infrastructure resiliency, if available, in the development of the metropolitan transportation plan.

"(7) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.--Notwithstanding paragraph (3), a State or MPO shall not be required to select any project from the illustrative list of additional

projects included in the metropolitan transportation plan under paragraph (2)(J).

"(k) METROPOLITAN TIP.--

"(1) DEVELOPMENT.--

"(A) IN GENERAL.--In cooperation with the State and any affected public transportation operator, the MPO designated for a metropolitan area shall develop a TIP for the metropolitan planning area that contains projects drawn only from the current metropolitan transportation plan and reflects the investment priorities set forth in the current metropolitan transportation plan that are based on the most recent system performance report.

"(B) OPPORTUNITY FOR COMMENT.--In developing the TIP, the MPO, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i).

"(C) UPDATING AND APPROVAL.--The TIP shall be updated at least once every 4 years, and on a cycle compatible with the STIP development under section 135, and shall be approved by the MPO and the Governor.

"(2) CONTENTS.--

"(A) PRIORITY LIST.--The TIP shall include a priority list of proposed federally supported projects and strategies, and, for informational purposes, non-federally supported regionally significant programs, projects, and strategies to be carried out within each 4-year period after the initial adoption of the TIP using existing and reasonably available revenues in accordance with the financial plan required under paragraph (3).

"(B) DESCRIPTIONS.--Each project in the TIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project, and the effect that the project or phase of the project will have in addressing the outcomes identified in subsection (h), above.

"(C) OUTCOME ACHIEVEMENT.--Each project in the TIP shall include a projected attainment of outcomes associated with such project, linking investment priorities to outcomes and locally adopted performance targets; and

"(D) BENEFIT-COST ANALYSIS.--The TIP shall, for illustrative purposes, include preliminary elements of benefit-cost analysis for each project (including multi-phase projects) included in either of the Year 1 forecast or the Year 2 forecast of the TIP that have an expected total cost of at least ****[need entry]**\$____million.

"(E) ILLUSTRATIVE LIST OF PROJECTS.--An illustrative list of projects may be prepared containing additional investment priorities not included in the TIP that would be included if reasonable additional resources beyond those identified in the financial plan for the TIP were available.

"(3) FINANCIAL PLAN.--A Financial Plan shall be prepared to support the TIP containing--

"(A) RESOURCE REQUIREMENTS.--Projected resource requirements will be included for implementing projects, strategies, and services recommended in the TIP, including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from federal, state, local, and private sources, innovative financing techniques to finance projects and programs;

"(B) PROJECTED COST/REVENUE COMPARISON.--The projected difference between costs and revenues, and strategies for securing additional new revenue will be included in the financial plan.

"(C) COOPERATIVE REVENUE FORECASTS.--The MPO, public transportation agency, and State shall cooperatively develop estimates of future funds included in the financial plan that are reasonably expected to be available to support the investment priorities recommended in the TIP.

"(D) REQUIREMENT OF ANTICIPATED FULL FUNDING.--The TIP shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

"(4) INCLUDED PROJECTS.--

"(A) PROJECTS UNDER THIS TITLE AND CHAPTER 53 OF TITLE 49.--A TIP developed under this subsection for a metropolitan area shall include the projects within the area that are proposed for funding under chapter 1 of this title and chapter 53 of Title 49..

"(B) PROJECTS UNDER CHAPTER 2 OF THIS TITLE.--

"(i) Regionally significant projects.--Regionally significant projects proposed for funding under chapter 2 of this title shall be identified individually in the TIP.

"(ii) Other projects.--Projects proposed for funding under chapter 2 of this title that are not determined to be regionally significant shall be grouped in one line item or identified individually in the TIP.

"(C) PROJECTS NOT UNDER THIS TITLE OR CHAPTER 53 OF TITLE 49.--

"(i) For information and coordination purposes, regionally significant projects not proposed for funding under this title or chapter 53 of Title 49 for which implementation is planned in the metropolitan planning area over the program period of the TIP shall be identified individually in the TIP.

"(ii) For information and coordination purposes, high-speed and intercity passenger rail, and freight rail projects proposed for funding under subtitle V of title 49 for which implementation is planned in the metropolitan planning area over the program period of the TIP shall be identified individually in the TIP.

"(5) NOTICE AND COMMENT.--Before approving a TIP, an MPO, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i) paragraph (3).

"(6) SELECTION OF PROJECTS.--

"(A) IN GENERAL.--All federally funded projects carried out within the boundaries of a metropolitan planning area under this title (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program) or under chapter 53 of Title 49 shall be selected for implementation from the approved TIP by the Tier I MPO designated for the metropolitan planning area in cooperation with the State and any affected public transportation operator.

"(B) NATIONAL HIGHWAY SYSTEM PROJECTS.--Projects carried out within the boundaries of a metropolitan planning area on the National Highway System and projects carried out within such boundaries under the bridge program or the Interstate maintenance program under this title shall be selected for implementation from the approved TIP by the State in cooperation with the MPO designated for the metropolitan planning area.

"(C) MODIFICATIONS TO PROJECT PRIORITY.--Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved TIP in place of another project in the TIP.

"(7) PUBLICATION.--

"(A) PUBLICATION OF TIPS.--A TIP shall be published or otherwise made readily available by the MPO in electronically accessible format and means, such as the World Wide Web, for public review .

"(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.--An annual listing of projects, including investments in accessible pedestrian walkways, bicycle transportation facilities,

and intermodal facilities that support intercity transportation, for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and MPO in electronically accessible format and means, such as the World Wide Web, for public review. The listing shall be consistent with the categories identified in the TIP.

"(1) PLANNING REQUIREMENTS FOR TIER II METROPOLITAN PLANNING ORGANIZATIONS.--

"(1) IN GENERAL.--In the case of a Tier II MPO, as determined under the provisions of subsection (c), the Secretary may provide for the performance-based development of a metropolitan transportation plan and TIP for the metropolitan planning area in a manner that the Secretary determines is appropriate to achieve the outcomes identified in subsection (h) paragraph (1) above, taking into account the complexity of transportation needs in the area.

"(2) EVALUATION OF PERFORMANCE-BASED PLANNING FOR TIER II MPOS.--The Secretary shall consider a Tier II MPO's effectiveness in implementing and maintaining a performance-based planning process that addresses the outcomes in subsection (h) and demonstrates progress on the achievement of those outcomes when periodically reviewing the MPO under subsection (n).

"(3) NONATTAINMENT AND MAINTENANCE AREAS.--The Secretary shall establish planning processes that do not conflict with the conformity provisions under the Clean Air Act (42 U.S.C. 7506(c)) for such Tier II MPOs that serve metropolitan areas that are designated nonattainment or maintenance areas under the Clean Air Act.

"(m) CERTIFICATION.--

"(1) IN GENERAL.--The Secretary shall--

"(A) ensure that the metropolitan transportation planning process of an MPO is being carried out in accordance with applicable provisions of Federal law; and

"(B) subject to subparagraph (2), certify, not less often than once every 4 years, that the requirements of this paragraph are met with respect to the metropolitan transportation planning process.

"(2) REQUIREMENTS FOR CERTIFICATION.--The Secretary may make the certification under subparagraph (1) if--

"(A) for Tier I MPOs--

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

"(ii) there is a TIP for the metropolitan planning area that has been approved by the MPO and the Governor.

"(B) for Tier II MPOs--

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

"(ii) there is a TIP for the metropolitan planning area that has been approved by the MPO and the Governor.

"(C) The Secretary may delegate fact-finding authority regarding Tier II MPO certification to the State, and may make the certification under subparagraph (1) in consultation with the State.

"(3) EFFECT OF FAILURE TO CERTIFY.--

"(A) WITHHOLDING OF PROJECT FUNDS.--If a metropolitan transportation planning process of an MPO is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the MPO for projects funded under this title and chapter 53 of Title 49.

"(B) RESTORATION OF WITHHELD FUNDS.--The withheld funds shall be restored to the metropolitan planning area at such time as the metropolitan transportation planning process is certified by the Secretary.

"(4) REVIEW OF CERTIFICATION.--In making certification determinations under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan planning area under review.

"(n) PERFORMANCE-BASED PLANNING PROCESSES EVALUATION.--

"(1) IN GENERAL.--The Secretary may establish criteria to evaluate the effectiveness of the performance-based planning processes of MPOs. The Secretary may, in making certification determinations under this section, designate certain MPOs as exhibiting highly-effective or highly-improved performance-based planning processes, subject to the criteria that the Secretary establishes. The Secretary may consider the designation of an MPO as exhibiting highly-effective or highly-improved performance-based planning processes as a selection criterion when administering certain discretionary programs.

"(2) CRITERIA.--In establishing criteria to evaluate the effectiveness of the performance-based planning process of MPOs the Secretary shall consider the following:

"(A) The extent to which the MPO has achieved, or is currently making substantial progress towards achieving, the outcomes specified in its performance measurement plan, including the outcomes specified above in subsection (h). In evaluating this criterion, the Secretary shall consider whether the MPO developed a meaningful performance measurement plan that-

"(i) is based on a realistic inventory of current performance;

"(ii) identifies appropriately ambitious outcomes;

"(iii) sets significant and consequential targets; and,
"(iv) is regularly modified or adjusted to incorporate best practices and lessons learned.

"(B) The extent to which the MPO has used proven best practices that help ensure robust, sustainable multi-modal transportation investment that is both efficient and cost-effective. The Secretary shall consider the following best practices in evaluating an MPO's alignment with this criterion--

"(i) Commitment to a variety of sustainable transportation funding options (including taxes, fees and user charges) that provide flexibility to make investments across all modes of transportation.

"(ii) Use of analytical tools in the investment decision-making process, including economic analysis, life-cycle costing, asset management, value for money and public sector comparator approaches, and use of innovations in design, procurement, purchasing or other elements of project delivery.

"(iii) Use of operating practices, such as congestion pricing, ramp metering, and market-oriented pricing for curbside parking, that make more efficient use of capacity and reduce the need for investing in new highway capacity.

"(iv) Deployment of technologies to improve the condition and performance of transportation networks and to address other transportation needs.

"(v) Adoption of laws, rules and regulations, and commitment of resources toward practices that are proven to reduce transportation-related fatalities and injuries.

"(vi) Integration of transportation planning and investment decisions with other land-use and economic development decisions to improve connectivity and accessibility.

"(vii) Collection and use of data in longitudinal analyses of investment performance.

"(viii) Adoption of laws, regulations, and practices that are proven to improve air quality, reduce greenhouse gas emissions, enhance community quality of life, and expand transportation choices, including adoption of a complete streets policy that considers the needs of all transportation users.

"(C) The extent to which the MPO has developed an investment process that relies on public input and awareness to ensure that investments are transparent and accountable, and the extent to which the MPO provides regular reports allowing the public to have access to the information that is being collected in a format that allows the public to meaningfully assess the MPO's performance.

"(o) ADDITIONAL REQUIREMENTS FOR CERTAIN
NONATTAINMENT AREAS.--

"(1) IN GENERAL.--Notwithstanding any other provisions of this title or chapter 53 of Title 49, for metropolitan planning areas classified as nonattainment or maintenance areas pursuant to the Clean Air Act, Federal funds may not be advanced in such area for any highway project that will result in a significant increase in the carrying capacity for single-occupant vehicles unless the project demonstrates that it will achieve the outcomes adopted as part of the metropolitan transportation planning process required by subsection (h).

"(2) APPLICABILITY.--This subsection applies to a nonattainment or maintenance area within the metropolitan planning area boundaries determined under subsection (e).

"(p) LIMITATION ON STATUTORY CONSTRUCTION.--Nothing in this section shall be construed to confer on an MPO the authority to impose legal requirements on any transportation facility, provider, or project not eligible under this title or chapter 53 of Title 49.

"(q) FUNDING.--Funds set aside under section 104(f) of this title or section 5305 (g) of Title 49 shall be available to carry out this section.

"(r) CONTINUATION OF CURRENT REVIEW PRACTICE.--Since metropolitan transportation plans and TIPs described in this section are subject to a reasonable opportunity for public comment, since individual projects included in metropolitan transportation plans and TIPs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning metropolitan transportation plans and TIPs described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a metropolitan transportation plan or TIP described in this section shall not be considered to be a Federal action subject to review under such Act."

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

(a) IN GENERAL.--Section 135 is amended to read as follows:
"Sec. 135. Statewide and non-metropolitan transportation planning

"(a) GENERAL REQUIREMENTS.--

"(1) DEVELOPMENT OF PLANS AND PROGRAMS.--To accomplish the objectives stated in section 134 (a), each State shall develop a statewide transportation plan and a statewide transportation improvement program (STIP) for all areas of the State, subject to section 134

"(A) INCORPORATION OF METROPOLITAN TRANSPORTATION PLANS AND TIPS. --States shall incorporate without change or by reference, the metropolitan transportation plans and TIPs for metropolitan planning areas as prepared by the cognizant MPOs for those areas into the statewide transportation plans and STIPs respectively.

"(B) NON-METROPOLITAN AREAS.--States shall coordinate with local officials in small urbanized and non-urbanized areas of the States in preparing the non-metropolitan portions of statewide transportation plans and STIPs.

"(2) CONTENTS.--The statewide transportation plan and the STIP developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways bicycle transportation facilities, and intermodal facilities that support intercity transportation) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

"(3) PROCESS OF DEVELOPMENT.--The process for developing the statewide transportation plan and the STIP shall provide for consideration of facilities and services for all modes of transportation across all levels of government and non-governmental authority and the policies stated in section 134(a), and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation needs to be addressed.

"(b) COORDINATION WITH METROPOLITAN TRANSPORTATION PLANNING; STATE IMPLEMENTATION PLAN.--A State shall--

"(1) coordinate planning carried out under this section with the transportation planning activities carried out under section 134 for metropolitan areas of the State and with statewide trade and economic development planning activities and related multistate planning efforts; and

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

"(c) COORDINATION IN MULTISTATE AREAS.--

"(1) In general.--The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan planning area and the appropriate MPOs to provide coordinated transportation planning for the entire metropolitan area.

"(2) COORDINATION ALONG DESIGNATED TRANSPORTATION CORRIDORS.--The Secretary shall encourage each Governor with responsibility for a portion of a multistate transportation corridor and the appropriate States to provide coordinated transportation planning for the entire designated corridor. The Secretary may consider the effectiveness of multistate transportation coordination for the

designated transportation corridor as a criterion for funding multistate corridor projects, facilities, and services, and when administering certain discretionary programs.

"(3) INTERSTATE COMPACTS.--The consent of Congress is granted to any two or more States--

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

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

"(C) to encourage such compacts, agreements, or organizations to develop planning documents in support of intercity or multistate area projects, facilities, and services, the relevant components of which would be reflected in STIPs and statewide transportation plans.

"(4) RESERVATION OF RIGHTS.--The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

"(d) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.--The Secretary shall require States to cooperate with officials responsible for other types of planning activities that affect and are affected by transportation in the area (including State and local planned growth, economic development, telecommunications infrastructure, infrastructure services, housing, health services, human services, environmental protection, airport operations, high-speed and intercity passenger rail, freight rail, transportation system safety, and freight movements), to the maximum extent practicable, to ensure that the statewide and non-metropolitan planning process, statewide transportation plans and STIPs are developed in full coordination and cooperation with other related planning activities within the State, and the process shall provide for the design and delivery of transportation services within the State that are provided by--

"(1) recipients of assistance under chapter 53 of title 49;

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

"(3) recipients of assistance under section 204 of this title; and

"(4) sponsors of regionally significant programs, projects, and services that are related to transportation and who are receiving assistance from any public and/or private sources, in accordance with Subsection I of this Section.

"(e) SCOPE OF PLANNING PROCESS.--

"(1) IN GENERAL.--Each State shall carry out a statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that will achieve the following outcomes--

"(A) improved economic competitiveness of the Nation and improved economic vitality of the metropolitan area, especially by enabling global competitiveness and productivity;

"(B) increased efficiency of the multimodal transportation system that moves people and freight;

"(C) improved accessibility to daily needs for all transportation users, including people with disabilities, older Americans, and low income individuals;

"(D) increased safety and security of the transportation system for motorized and nonmotorized users;

"(E) enhanced environmental sustainability through protection and enhancement of the environment, promotion of energy conservation, improvement of quality of life, and promotion of consistency between transportation improvements and State and local planned growth and economic development patterns;

"(F) increased efficiency in systems management and operation, including deployment of congestion management strategies across transportation networks;

"(G) increased emphasis on preservation of the existing system and maintaining it in a state of good repair;

"(H) increased adoption of technology-based solutions to transportation needs;

"(I) improved accountability and transparency for public dollars, delivering projects as forecasted; and,

"(J) improved public participation and transparency in the planning process.

"(2) ESTABLISHMENT AND USE OF A PERFORMANCE-BASED APPROACH TO STATEWIDE TRANSPORTATION PLAN AND STIP DEVELOPMENT.--

"(A) IN GENERAL.--The statewide transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decision-making to achieve the outcomes set forth in paragraph (1).

"(B) NATIONAL PERFORMANCE OBJECTIVES.--The Secretary shall, from time to time, identify performance measures and intermediate and long-term targets for those measures to use in tracking attainment of national transportation performance goals, including the factors specified in paragraph (1), and other factors that the Secretary determines are consistent with the transportation objectives of the Nation.

"(C) STATE ESTABLISHMENT OF PERFORMANCE MEASURES.--The State shall identify and select performance

measures and intermediate and long-term targets for those measures to use in tracking attainment of critical outcomes for the region, including the factors specified in paragraph (1), and other factors deemed appropriate by the State, unless otherwise specified by the Secretary in accordance with subparagraph (A).

Identification and selection of performance measures by the State shall be coordinated with MPOs to establish consistency, to the extent practicable

"(D) INTEGRATION OF OTHER PERFORMANCE-BASED PLANS.--The State shall integrate into the statewide transportation planning process, either directly or by reference, the outcomes, goals, objectives, performance measures, and targets in other State plans and processes required as part of a performance-based program, including, but not limited to such plans as the State national highway system asset management plan, the State strategic highway safety plan, the locally coordinated public transit human services transportation plan and the state rail plan.

"(E) SYSTEM PERFORMANCE REPORT.

"(i) States shall develop and publish a system performance report describing the condition of, and performance of, the transportation system in relation to the performance measures and objectives established in subparagraphs (A) through (C). The system performance report shall be updated on a schedule and at a level of detail necessary to measure progress achieved by the State in meeting system performance objectives and targets. The system performance report shall inform the State's planning process for the development of the subsequent statewide transportation plan and STIPs.

"(ii) Within 24 months of enactment of this section States shall develop and publish a system performance report describing the condition of, and performance of, the transportation system in relation to the performance measures and objectives established in subparagraphs (A) through (C).

"(iii) States shall periodically update the system performance report no later than 24 months after the adoption of the most recent statewide transportation plan, except for any statewide transportation plans adopted within 24 months of the enactment of this section. Updates to the system performance report shall describe the condition of, and performance of, the transportation system in relation to the performance measures and objectives established in subparagraphs (A) through (C), and include a report of progress achieved in meeting performance goals

and objectives in comparison with system performance recorded in past system performance reports.

"(iv) Updates to the system performance report shall include an accounting of the State's performance on outlay of obligated project funds and delivery of projects that have reached substantial completion in relation to the projects currently on the STIP and those projects that have been removed from the previous STIP.

"(v) The system performance report described in subparagraph (i) shall be submitted to the Secretary on the World Wide Web in an electronically accessible format, by means to be determined by the Secretary.

"(F) USE OF PERFORMANCE MEASURES AND SYSTEM PERFORMANCE REPORTS.--The performance measures and system performance reports shall be used, at a minimum, as the basis for development of policies, programs, and investment priorities reflected in the statewide transportation plan and STIP.

"(G) PERFORMANCE-BASED PLAN DEVELOPMENT.--Statewide transportation plan amendments or updates, except those that are adopted within 24 months of enactment of this subsection, shall incorporate a performance-based approach to statewide transportation planning. STIPs updated or amended after enactment of this subsection shall be consistent with the most recent statewide transportation plan.

"(H) EVALUATION OF PERFORMANCE-BASED PLANNING.--The Secretary shall consider the State's effectiveness in implementing and maintaining a performance-based planning process that addresses the outcomes in subsection (h) and demonstrates progress on the achievement of those outcomes when periodically reviewing the State under subsection (m).

"(3) FAILURE TO CONSIDER FACTORS.--The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title, chapter 53 of Title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a statewide transportation plan, the transportation improvement program, a project or strategy, or the certification of a planning process.

"(f) PARTICIPATION BY INTERESTED PARTIES.--

"(1) IN GENERAL.--Each State shall provide citizens; affected public agencies; representatives of public transportation employees; freight shippers and providers of freight transportation services; private providers of transportation; representatives of users of public transportation, pedestrian walkways and bicycle transportation facilities; representatives of people with disabilities, older Americans, and low

income individuals; and other interested parties with a reasonable opportunity to comment on the statewide transportation plan and STIP.

"(2) METHODS.--In carrying out paragraph (1), the State shall, to the maximum extent practicable--

"(A) develop the statewide transportation plan and STIP in consultation with all interested parties;

"(B) provide that all interested parties have reasonable opportunities to comment on the contents of the statewide transportation plan and STIP;

"(C) hold any public meetings at convenient and accessible locations and times;

"(D) employ interactive visualization techniques to describe plans and STIPs; and,

"(E) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

"(3) NOTICE AND COMMENT.--Before approving a statewide transportation plan or STIP, the State, in cooperation with MPOs and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the plan and program documents, in accordance with this section. The notice shall include the public outreach methods used to develop the statewide transportation plan or STIP.

"(g) COORDINATION AND CONSULTATION WITH GOVERNMENTS.--

"(1) METROPOLITAN AREAS.--The statewide transportation plan and STIP shall be developed for each metropolitan area in the State by incorporating without change, or by reference, the metropolitan transportation plans and TIPs respectively prepared by MPOs designated for the metropolitan areas under section 134 .

"(2) NON-METROPOLITAN AREAS.--With respect to non-metropolitan areas, the statewide transportation plan and STIP shall be developed in coordination with affected non-metropolitan officials with responsibility for transportation.

"(3) INDIAN TRIBAL AREAS.--With respect to each area of the State under the jurisdiction of an Indian tribal government, the statewide transportation plan and STIP shall be developed in consultation with the tribal government and the Secretary of the Interior.

"(4) CONSULTATION, COMPARISON, AND CONSIDERATION.--

"(A) IN GENERAL.--The statewide transportation plan and STIP shall be developed, as appropriate, in consultation with State, tribal, and local agencies responsible for land use management,

natural resources, environmental protection, conservation, and historic preservation.

"(B) COMPARISON AND CONSIDERATION.--

Consultation under subparagraph (A) shall involve comparison of statewide transportation plans to State and tribal conservation plans or maps, if available, and comparison of statewide transportation plans to inventories of natural or historic resources, if available.

"(h) STATEWIDE TRANSPORTATION PLAN.--

"(1) DEVELOPMENT OF A STATEWIDE TRANSPORTATION PLAN.--Each State shall develop a statewide transportation plan, with a minimum 20-year forecast period for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State. The plan shall identify existing and future transportation facilities that should function as an integrated statewide transportation system, giving emphasis to those facilities that serve important national and regional transportation functions. The plan shall be updated by the State at least once every five years and prepared in a form that the Secretary determines to be appropriate, containing, at a minimum, the following:

"(A) the existing transportation infrastructure, including an inventory of highways, local streets and roads, bicycle and pedestrian facilities, transit facilities and services, commuter rail facilities and services, high-speed and intercity passenger rail facilities and services, freight facilities (including freight railroad and port facilities), multimodal and intermodal facilities, and intermodal connectors that, together, function as an integrated metropolitan transportation system;

"(B) the performance measures and regionally adopted performance targets for use in assessing the existing and future performance of the transportation system with respect to the outcomes identified in subsection (e) paragraph (1) and other outcomes that the State deems appropriate, including the projected progress towards outcomes, where investment priorities identified through the most recent system performance report are linked to the National objectives and locally adopted performance targets under subsection (e) paragraph (2).

"(C) the current and projected future usage of the transportation system, by using analyses and forecasts of key socio-economic and demographic factors that affect system outcomes;

"(D) an evaluation of the existing and future condition and performance of the transportation system with respect to the performance outcomes identified in subsection (e);

"(E) recommended strategies and investments for improving system performance over the planning horizon,

including system operations strategies, maintenance strategies, demand management strategies, asset management strategies, capacity and enhancement investments, land use improvements, intelligent transportation systems deployment, technology adoption strategies, and others, and, for informational purposes, high-speed and intercity passenger rail, and freight rail and services, as determined by their projected support of outcomes identified in subsection (h);

"(F) recommended strategies and investments to improve and integrate disability-related access to transportation infrastructure;

"(G) investment priorities for using projected available and proposed revenues over the short and long-term stages of the planning horizon, in accordance with the financial plan required under paragraph (3);

"(H) a description of Interstate compacts entered into in order to promote coordinated transportation planning in multistate areas, if applicable

"(I) recommended strategies and investments including those developed by the State as part of interstate compacts, agreements, or organizations, that support intercity transportation;

"(J) to the extent practicable, an identification of existing or planned transportation rights-of-way, corridors, facilities, and related real properties at risk of abandonment or development for non-transportation uses;

"(K) an illustrative list of projects, containing investments not included in the metropolitan transportation plan but that would be included if additional resources beyond those identified in the financial plan were available.

"(L) a coordinated public transit human services transportation element that identifies community-based priorities for coordinated delivery strategies for meeting the access and mobility needs of people with disabilities, older Americans, and low income individuals.

"(M) a discussion (developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies) of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

"(2) FINANCIAL PLAN.--

"(A) PLAN CONTENTS.--A Financial Plan shall be prepared to support the statewide transportation plan containing--

"(i) projected resource requirements for implementing projects, strategies, and services recommended in the statewide transportation plan,

including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from federal, state, local, and private sources, innovative financing techniques to finance projects and programs; and

"(ii) the projected difference between costs and revenues, and strategies for securing additional new revenue will be included in the financial plan.

"(B) COOPERATIVE REVENUE FORECASTS.--The State, public transportation agency, and MPOs shall cooperatively develop estimates of future funds included in the financial plan that are reasonably expected to be available to support the investment priorities recommended in the statewide transportation plan.

"(C) REQUIREMENT OF ANTICIPATED FULL FUNDING.--The statewide transportation plan shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

"(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.--

In non-metropolitan areas that are nonattainment or maintenance areas under the Clean Air Act, the State shall coordinate the development of the statewide transportation plan with the process for development of the transportation control measures of the state implementation plan required by the Clean Air Act.

"(4) PUBLICATION OF STATEWIDE TRANSPORTATION PLANS.--A statewide transportation plan involving Federal and non-federal participation in regionally significant programs, projects, and strategies shall be published or otherwise made readily available by the State for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, in such manner as the Secretary shall establish.

"(5) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.--Notwithstanding paragraph (2), a State shall not be required to select any project from the illustrative list of additional projects included in the statewide transportation plan under paragraph (1) subparagraph (K).

"(i) STIP.--

"(1) DEVELOPMENT.--

"(A) IN GENERAL.--In cooperation with non-metropolitan officials with responsibility for transportation and any affected public transportation operator, the State shall develop a STIP for the State that contains projects drawn exclusively from the statewide transportation plan and reflects the investment priorities set forth in the statewide transportation plan. The STIP shall cover a period of 4 years and be updated every 4 years or more

frequently if the Governor elects to update more frequently. The STIP shall incorporate the TIPs developed by MPOs under section 134 of this title without change. Each project included in the STIP shall be--

"(i) consistent with the statewide transportation plan developed under this section for the State;

"(ii) identical to the project or phase of the project as described in an approved metropolitan TIP; and

"(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act, if the project is carried out in an area designated as a nonattainment or maintenance area under that Act.

"(B) OPPORTUNITY FOR COMMENT.--In developing the STIP, the State, in cooperation with any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (f).

"(2) CONTENTS.--

"(A) PRIORITY LIST.--The STIP shall include a priority list of proposed federally supported projects and strategies, and, for informational purposes, non-federally supported regionally significant programs, projects, and strategies to be carried out within each 4-year period after the initial adoption of the STIP using existing and reasonably available revenues in accordance with the financial plan required under paragraph (3).

"(B) DESCRIPTIONS.--Each project in the STIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project, and the effect that the project or phase of the project will have in addressing the outcomes identified in subsection (e), above.

"(C) OUTCOME ACHIEVEMENT.--Each project in the STIP shall include a projected attainment of outcomes associated with such project, linking investment priorities to outcomes and locally adopted performance targets; and

"(D) BENEFIT-COST ANALYSIS.--The STIP shall, for illustrative purposes, include preliminary elements of benefit-cost analysis for each project (including multi-phase projects) included in either of the Year 1 forecast or the Year 2 forecast of the STIP that have an expected total cost of at least ****[need entry]**\$_____ million.

"(E) ILLUSTRATIVE LIST OF PROJECTS.--An illustrative list of projects may be prepared containing additional investment priorities not included in the STIP that would be included if reasonable additional resources beyond those identified in the financial plan for the STIP were available.

"(3) FINANCIAL PLAN.--

"(A) IN GENERAL.--A Financial Plan shall be prepared to support the STIP containing--

"(i) projected resource requirements will be included for implementing projects, strategies, and services recommended in the STIP, including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from federal, state, local, and private sources, innovative financing techniques to finance projects and programs;

"(ii) the projected difference between costs and revenues, and strategies for securing additional new revenue will be included in the financial plan.

"(B) COOPERATIVE REVENUE FORECASTS.--The State, public transportation agency, and MPOs shall cooperatively develop estimates of future funds included in the financial plan that are reasonably expected to be available to support the investment priorities recommended in the STIP.

"(C) REQUIREMENT OF ANTICIPATED FULL FUNDING.--The STIP shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

"(4) INCLUDED PROJECTS.--

"(A) PROJECTS UNDER THIS TITLE AND CHAPTER 53 OF TITLE 49 .--A STIP developed under this subsection for a State shall include the projects within the area that are proposed for funding under chapter 1 of this title and chapter 53 of Title 49.

"(B) PROJECTS UNDER CHAPTER 2 OF TITLE 23.----

"(i) Regionally significant projects proposed for funding under chapter 2 of this title shall be identified individually in the STIP.

"(ii) Projects proposed for funding under chapter 2 of this title that are not determined to be regionally significant shall be grouped in one line item or identified individually in the STIP.

"(C) PROJECTS NOT UNDER THIS TITLE OR CHAPTER 53 OF TITLE 49.--

"(i) For information and coordination purposes, regionally significant projects not proposed for funding under this title or chapter 53 of Title 49 for which implementation is planned in the State over the program period of the STIP shall be identified individually in the STIP.

"(ii) For information and coordination purposes, high-speed and intercity passenger rail projects, and freight rail projects proposed for funding under subtitle V of title 49 for which implementation is planned in the State over the program period of the STIP shall be identified individually in the STIP.

"(5) PUBLICATION.--

"(A) PUBLICATION OF STIPS.--A STIP shall be published or otherwise made readily available by the State in electronically accessible format and means, such as the World Wide Web, for public review.

"(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.--An annual listing of projects, including investments in accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation, for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and MPO in electronically accessible format and means, such as the World Wide Web, for public review. The listing shall be consistent with the categories identified in the TIP.

"(6) PROJECT SELECTION FOR URBANIZED AREAS OF LESS THAN 200,000 POPULATION AND ARE NOT METROPOLITAN PLANNING AREAS.--Projects carried out in urbanized areas with populations of less than 200,000 individuals shall be selected, from the approved transportation improvement program (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program under this title or sections 5310, 5311, 5316, and 5317 of Title 49) by the State in cooperation with the affected nonmetropolitan local officials with responsibility for transportation. Projects carried out in urbanized areas with populations of less than 200,000 individuals and that are not metropolitan planning areas on the National Highway System or under the bridge program or the Interstate maintenance program under this title or sections 5310, 5311, 5316, and 5317 of Title 49 shall be selected, from the approved statewide transportation improvement program, by the State in consultation with the affected nonmetropolitan local officials with responsibility for transportation.

"(7) STIP APPROVAL.--Every 4 years, a transportation improvement program developed under this subsection shall be reviewed and approved by the Secretary if based on a current planning finding.

"(8) PLANNING FINDING.--A finding shall be made by the Secretary at least every 5 years that the transportation planning process through which statewide transportation plans and programs are developed is consistent with this section and section 134.

"(9) MODIFICATIONS TO PROJECT PRIORITY.--

Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved STIP in place of another project in the program.

"(j) FUNDING.--Funds set aside pursuant to section 104 (i) of this title and section 5305(g) of Title 49 shall be available to carry out this section.

"(k) CONTINUATION OF CURRENT REVIEW PRACTICE.--Since the statewide transportation plan and the STIP described in this section are subject to a reasonable opportunity for public comment, since individual projects included in the statewide transportation plans and the STIPs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning statewide transportation plans or the STIPs described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a metropolitan or statewide transportation plan or the TIP or STIP described in this section shall not be considered to be a Federal action subject to review under such Act.

"(l) CERTIFICATION. --

"(1) IN GENERAL.--The Secretary shall --

"(A) ensure that the statewide transportation planning process of a State is being carried out in accordance with applicable provisions of Federal law; and

"(B) subject to paragraph (2), certify, not less often than once every 5 years, that the requirements of this paragraph are met with respect to the statewide transportation planning process.

"(2) REQUIREMENTS FOR CERTIFICATION.--The Secretary may make the certification under paragraph (1) if--

"(A) the statewide transportation planning process complies with the requirements of this section and other applicable requirements of Federal law; and

"(B) there is a STIP for the State that has been approved by the Governor.

"(3) EFFECT OF FAILURE TO CERTIFY.--

"(A) WITHHOLDING OF PROJECT FUNDS.--If a statewide transportation planning process of a State is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the State for projects funded under this title and chapter 53 of Title 49.

"(B) RESTORATION OF WITHHELD FUNDS.--The withheld funds shall be restored to the State at such time as the statewide transportation planning process is certified by the Secretary.

"(4) REVIEW OF CERTIFICATION.--In making certification determinations under this paragraph, the Secretary shall provide for public involvement appropriate to the State under review.

"(m) PERFORMANCE-BASED PLANNING PROCESSES EVALUATION.--

"(1) IN GENERAL.--The Secretary may establish criteria to evaluate the effectiveness of the performance-based planning processes of States. The Secretary may, in making certification determinations under this section, designate certain States as exhibiting highly-effective or highly-improved performance-based planning processes, subject to the criteria that the Secretary establishes. The Secretary may consider the designation of a State as exhibiting highly-effective or highly-improved performance-based planning processes as a selection criterion when administering certain discretionary programs.

"(2) CRITERIA.--In establishing criteria to evaluate the effectiveness of the performance-based planning process of States the Secretary shall consider the following:

"(A) The extent to which the State has achieved, or is currently making substantial progress towards achieving, the outcomes specified in its performance measurement plan, including the outcomes specified above in subsection (e). In evaluating this criterion, the Secretary shall consider whether the State developed a meaningful performance measurement plan that-

"(i) is based on a realistic inventory of current performance;

"(ii) identifies appropriately ambitious outcomes;

"(iii) sets significant and consequential targets; and,

"(iv) is regularly modified or adjusted to incorporate best practices and lessons learned.

"(B) The extent to which the State has used proven best practices that help ensure robust, sustainable multi-modal transportation investment that is both efficient and cost-effective. The Secretary shall consider the following best practices in evaluating a State's alignment with this criterion--

"(i) Commitment to a variety of sustainable transportation funding options (including taxes, fees and user charges) that provide flexibility to make investments across all modes of transportation.

"(ii) Use of analytical tools in the investment decision-making process, including economic analysis, life-cycle costing, asset management, value for money and public sector comparator approaches, and use of innovations in design, procurement, purchasing or other elements of project delivery.

"(iii) Use of operating practices, such as congestion pricing, ramp metering, and market-oriented pricing for curbside parking, that make more efficient use of capacity and reduce the need for investing in new highway capacity.

"(iv) Deployment of technologies and to improve the condition and performance of transportation networks and address other transportation challenges.

"(v) Adoption of laws, rules and regulations, and commitment of resources toward practices that are proven to reduce transportation-related fatalities and injuries.

"(vi) Integration of transportation planning and investment decisions with other land-use and economic development decisions to improve connectivity and accessibility.

"(vii) Collection and use of data in longitudinal analyses of investment performance.

"(viii) Adoption of laws, regulations, and practices that are proven to improve air quality, reduce greenhouse gas emissions, enhance community quality of life, and expand transportation choices, including adoption of a complete streets policy that considers the needs of all transportation users.

"(C) The extent to which the State has developed an investment process that relies on public input and awareness to ensure that investments are transparent and accountable, and the extent to which the State provides regular reports allowing the public to have access to the information that is being collected in a format that allows the public to meaningfully assess the State's performance.

"(n) TRANSPORTATION LEADERSHIP AWARDS.--The Secretary shall establish a competitive program to promote the implementation of policies and procedures that support a performance-based transportation system. The program shall be jointly administered by the Office of the Secretary, the Federal Highway Administration and Federal Transit Administration.

"(1) PURPOSES.--The purpose of this program is to--

"(A) reform the way transportation investments and decisions are made and implemented to achieve performance outcomes and integrate performance management into project selection;

"(B) encourage innovation and reward applicants that are most aggressive in implementing best practices;

"(C) strengthen collaboration among different levels of government and across governmental agencies to create a more interconnected transportation system;

"(D) increase the amount of transportation funding at all levels that is allocated in ways that generate the strongest performance and multiple outcomes; and

"(E) encourage the development of a multimodal transportation system focused on connecting people to opportunities and goods to markets.

"(2) BEST PRACTICES.--Applicants shall be evaluated based on the extent to which each has adopted or implemented best practices that help create a robust, sustainable multimodal transportation investment that is both efficient and cost-effective, with a demonstrated broad impact, and describe how these practices are reflected in the list of projects required under paragraph (3), including the following best practices:

"(A) Commitment to a variety of sustainable and innovative non-federal sources of transportation funding that provide flexibility to make investments across all modes of transportation, including value capture and tax increment financing.

"(B) Use of analytical tools in the investment decision-making process, including economic analysis, life-cycle costing, asset management, value for money and public sector comparator approaches, and use of innovations in design, procurement, purchasing, and other elements of project delivery.

"(C) Use of operating practices that increase the efficient use of system capacity and reduce the need to invest in new highway capacity, including the use of congestion pricing, ramp metering, and market-oriented pricing for parking.

"(D) Deployment of technologies to improve the condition and performance of transportation networks and to address other transportation needs.

"(E) Adoption of laws, rules and regulations, and commitment of resources toward practices that are proven to reduce transportation-related fatalities and injuries.

"(F) Integration of transportation planning and investment decisions with other land-use and economic development decisions to improve connectivity and accessibility and to focus transportation investments near existing infrastructure.

"(G) Collection and use of data in longitudinal analyses of investment performance.

"(H) Adoption of laws, regulations, and practices that are proven to improve air quality, reduce greenhouse gas emissions, enhance community quality of life, and expand transportation choices, including adoption of a complete streets policy that considers the needs of all transportation users and passenger-based level of service standards.

"(I) Use of a performance-based distribution process for the allocation of a significant portion of non-Federal funds and Federal transportation formula funds under the control of the applicant, as developed in accordance with the planning requirements developed under this Section and Sections 134 of Title 23 and 5303 and 5304 of Title 49.

"(3) LIST OF PROJECTS.--Applicants shall submit a program of transportation projects, developed with Metropolitan Planning Organizations and local governments within the applicant's jurisdiction, that are related to the best practices identified in paragraph (2) to demonstrate how funds, if awarded, will be spent. The extent to which best practices have been incorporated into this list shall be evaluated based on how the list of projects--

"(A) includes priorities of Metropolitan Planning Organizations within the applicant's jurisdiction as identified in their TIPs;

"(B) promotes national transportation priorities, including--

"(i) Strengthening economic competitiveness, including improvement to goods movement and encouragement of reuse of underutilized developed land;

"(ii) Reducing transportation fatalities;

"(iii) Improving the state of repair of the transportation system;

"(iv) Improving community livability by increasing access to jobs and necessities, particularly for non drivers; and

"(v) Supporting environmental sustainability by reducing emissions and water pollution and protecting sensitive lands;

"(C) was developed through the use of a multimodal, performance-based, comprehensive transportation planning process that includes linkage to housing, economic development, environmental, land use and other infrastructure investment planning and investment and a strong, interactive public input and awareness process; and

"(D) furthers the best practices and reform initiatives identified under subsection (2) in the areas most aggressively implementing them and relied upon in the application.

"(4) ELIGIBILITY.--States, the District of Columbia, Puerto Rico, and Tribal Governments are eligible for funding under this section, provided that the entity--

"(A) demonstrates meaningful participation of MPOs and local governments within the applicant's jurisdiction in the development of the application; and

"(B) has experience in successfully and independently administering Federal-aid highway or transit programs or projects.

"(5) AWARD OF FUNDS.--The Secretary, in conjunction with the Federal Highway Administrator and Federal Transit Administrator, shall make ****\$31,866,000,000** available for this program and shall--

"(A) award funds under this section annually, starting in 2013, which shall include--

"(i) the publishing of detailed criteria for the first round grant awards at least one year before making awards.

"(ii) making available for awards up to--

"(I) \$3,400,000,000 in 2013;

**"(II) \$5,000,000,000 in 2014 and 2015; and
"(III) \$8,000,000,000 in 2016 and 2017.**

"(iii) withholding a reasonable amount of funds under this section for administration of the program, but not to exceed \$100,000,000;

"(B) devise a methodology for the award of funds under this program based on a State's share of the Federal transportation formula allocation with awards being no less than \$100,000,000 and no more than \$1,000,000,000;

"(C) reserve the right to adjust an award amount for a Tribal Government as appropriate relative to the applicant's share of Federal transportation formula allocation;

"(D) award funding to applicants that demonstrate the greatest performance as well as applicants that have made the greatest progress in implementing the best practices listed in paragraph (2);

"(E) for applicants who are awarded funding under paragraph (7), consider the progress in implementing the grant and the best practices for which the capacity building funding was sought;

"(F) take such measures so as to ensure an equitable geographic distribution of funds and an appropriate balance in addressing the needs of urban and rural communities; and

"(G) consider the performance of recipients of earlier grants if awardees apply for subsequent rounds of funding under this program.

"(6) ELIGIBLE ACTIVITIES.--

"(A) **\$17,152,000,000** of funds provided under this program will be reserved for projects eligible for funding under Title 23 and **\$14,714,000,000** of funds provided for under this program will be reserved for projects eligible for funding under chapter 53 of title 49.

"(B) A portion of the funding awarded under this program may be reserved to create a State-based competitive grant program that supports the implementation of reforms contained in this section at the local level and that includes at least an equal amount of non-Federal funds.

"(7) MANAGING PERFORMANCE GRANT PROGRAM.--

Three percent of the funds made available under this section shall be reserved for a managing performance grant program to build capacity to implement best practices listed in paragraph (2).

"(A) **AWARD OF FUNDS.--**The Secretary, in conjunction with the Federal Highway Administrator and Federal Transit Administrator, shall conduct three rounds of grant-making in the first three years of the this Act, which shall include--

"(i) awards of no less than \$1,000,000 and no more than \$25,000,000; and

"(ii) ensuring an equitable geographic distribution of funds and an appropriate balance of the variety of State needs to improve

capability and resource capacity.

"(B) ELIGIBILITY.--Entities eligible for funding under this section may include States, local governments, Metropolitan Planning Organizations, transit providers, and Tribal Governments, provided that the entity--

"(i) has a recognized need to improve its capability and resource capacity to better manage performance;

"(ii) has experience in successfully and independently administering Federal-aid highway programs or projects;

"(iii) has clearly demonstrated the need to improve the process to manage performance in a strategic priority area; and

"(iv) has developed a well-defined plan to implement changes in its business practice to improve the process used to manage performance.

"(C) CRITERIA FOR GRANT SELECTION.--In awarding a grant under this subsection, the Secretary shall consider the extent to which the application--

"(i) shows how funds awarded will promote national transportation priorities as identified under paragraph(3)(B);

"(ii) demonstrates an ability for organizational transformation in the use of performance-based program management for transportation decision making;

"(iii) builds on an existing or develops a new performance management system;

"(iv) provides for a multi-modal approach to solving transportation needs;

"(v) provides for multi-jurisdictional planning;

"(vi) demonstrates the progress made through earlier grant awards, for applicants who are awarded funding in previous rounds of grant-making under this program; and

"(v) meets such other criteria as the Secretary may require.

"(D) Eligible activities may include but are not limited to improvements in and implementation of--

"(i) data collection, storage and analysis systems;

"(ii) advanced transportation modeling, simulation, and analysis capable of providing reliable information for such applications as multimodal investment analyses, operational analyses, environmental assessments, evaluations of a wide range of policy alternatives, toll-facility revenue forecasts, and freight forecasts; and

(iii) staff training to utilize new, more advanced systems and departmental reorganization to support implementation of best practices."

(b) CONFORMING AMENDMENT.--The item relating to section 135 in the analysis of Title 23 is amended to read as follows:

"135. Statewide and non-metropolitan transportation planning."

Part 3--Improved Federal Stewardship

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

(a) IN GENERAL.--Section 127 of title 23, United States Code, is amended by inserting at the end the following:

"(i) SPECIAL PERMITS DURING PERIODS OF NATIONAL EMERGENCY.-
-Notwithstanding any other provision of this section, States are authorized to issue special permits during an emergency to overweight vehicles and loads which can easily be dismantled or divided, except that (1) the President has declared such emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), (2) permits under this subsection are issued in accordance with the laws of the State, and (3) such permits are issued exclusively to vehicles and loads which are delivering relief supplies. All permits issued under this subsection shall expire not later than 120 days after the declaration of emergency."

(b) SPECIAL PERMITS DURING PERIODS OF NATIONAL EMERGENCY.--
Section 31112 of title 49, United States Code, is amended by inserting at the end the following:

"(h) SPECIAL PERMITS DURING PERIODS OF NATIONAL EMERGENCY.-
- Notwithstanding any other provision of this section, States are authorized to issue special permits during an emergency to vehicles and loads which can easily be dismantled or divided and which exceed the length limitation authorized by this section, except that (1) the President has declared such emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), (2) permits under this subsection are issued in accordance with the laws of the State, and (3) such permits are issued exclusively to vehicles and loads which are delivering relief supplies. All permits issued under this subsection shall expire not later than 120 days after the declaration of emergency."

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

Section 111 of title 23, United States Code, is amended by adding at the end the following:

"(d) CHARGING INFRASTRUCTURE IN INTERSTATE RIGHTS-OF-WAY.--

"(1) IN GENERAL.--To foster the use of electric vehicles, and notwithstanding subsection (a), a State may--

"(A) permit charging infrastructure to be placed in safety rest areas or other sites constructed or located within rights-of-way of the Interstate System in the State, so long as such use will not impair the highway or interfere with the free and safe flow of traffic thereon; and

"(B) charge a fee, or permit the charging of a fee, for electric vehicles to use the charging infrastructure.

"(2) SUBJECT TO APPROVAL BY SECRETARY.--Use of a safety rest area or other site within the right-of-way of an Interstate for the purpose described in paragraph (1) is subject to approval by the Secretary.

"(3) CHARGING INFRASTRUCTURE.--For purposes of this subsection, the term 'charging infrastructure' means any property (not including a building or the structural components of a building) if the property is used for the recharging of motor vehicles propelled by electricity, including electrical panel upgrades, wiring, conduit, trenching, pedestals, and related equipment."

Sec. 2503. FEDERAL SHARE PAYABLE.

Section 120 of title 23, United States Code, is amended--

(1) in subsection (c)--

(A) by striking paragraph (2); and

(B) in paragraph (1), by--

(i) inserting "shoulder and centerline rumble strips and stripes" after "pavement marking"; and

(ii) striking the heading and moving the matter following such heading to after the heading of subsection (c);

(2) in subsection (e), by--

(A) striking "on such highway" and inserting "on such system";

(B) striking "forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads" and inserting "Federal lands transportation facilities and tribal transportation facilities"; and

(C) striking "The total cost of a project may not exceed the cost of repair or reconstruction of a comparable facility. As used in this section with respect to bridges and in section 144 of this title, the term, 'a comparable facility,' means a facility that meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry over its design life.";

(3) by striking subsection (g) and redesignating subsections (h) through (l) as (g) through (k) respectively;

(4) in subsection (j), as redesignated, by--

(A) striking the heading "USE OF FEDERAL LAND MANAGEMENT AGENCY FUNDS" and inserting "USE OF FEDERAL AGENCY FUNDS"; and

(B) striking "the funds appropriated to any Federal land management agency" and inserting "any non-title 23 Federal funds"; and

(5) in subsection (k), as redesignated--

(A) by striking the heading "USE OF FEDERAL LANDS HIGHWAY PROGRAM FUNDS" and inserting "USE OF FEDERAL LANDS AND TRIBAL TRANSPORTATION FUNDS";

(B) by striking "Federal lands highways program under section 204," and inserting "Tribal transportation program under section 202, the Federal lands transportation program under section 203, and the Federal lands access program under section 204"; and

(C) by striking "Indian" and inserting "tribal".

SEC. 2504. HOV FACILITIES.

Section 166 of title 23, United States Code, is amended--

(1) in subsection (b)--

(A) in paragraph (1), by striking "5" and inserting "4"; and

(B) by striking paragraph (5);

(2) in subsection (c)--

(A) in paragraph (1), by--

(i) striking "paragraphs" in the first place it appears and inserting "paragraph"; and

(ii) striking "and (5)";

(B) in paragraph (2) by--

(i) striking "paragraphs" and inserting "paragraph"; and

(ii) striking "and (5)";

(C) in paragraph (3) by--

(i) striking "paragraphs" and inserting "paragraph"; and

(ii) striking "and (5)";

(3) in subsection (d)--

(A) in paragraph (1), by--

(i) striking "or (5)"; and

(ii) inserting "submit a report to the Secretary

demonstrating that the facility is not already degraded and that the presence of such vehicles will not cause the facility to become degraded and" before the word "certify";

(B) in paragraph (1)(A), by inserting "and providing semi-annual reports of such impacts to the Secretary" after "adjacent highways";

(C) in paragraph (1)(C), by striking "if the presence of the vehicles has degraded the operation of the facility" and inserting "whenever the operation of the facility is degraded";

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

"(C) MAINTENANCE OF OPERATING PERFORMANCE.--

Facilities which have become degraded must be brought back into compliance with the minimum average operating speed performance standard within six (6) months through changes to operation including the following:

"(i) Increase the occupancy requirement for HOVs.

"(ii) Vary the toll charged to vehicles allowed under subsection (b) to reduce demand.

"(iii) Discontinue allowing vehicles under subsection (b).

"(iv) Increase the available capacity of the HOV facility.;

and

(E) by adding at the end the following new subparagraph:

"(D) COMPLIANCE.--If the State fails to bring the facility into compliance, the Secretary shall subject the State to appropriate program sanctions under 23 CFR 1.36 until the performance is no longer degraded.";

(4) by striking subsection (e);

(5) by redesignating subsection (f) as subsection (e); and

(6) by amending subsection (e), as redesignated, to read as follows:

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

"(1) HOV FACILITY.--The term 'HOV facility' means a high occupancy vehicle facility.

"(2) PUBLIC TRANSPORTATION VEHICLE.--The term 'public transportation vehicle' means a vehicle that-

"(A) provides designated public transportation (as defined in section 221 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12141) or provides public school transportation (to and from public or private primary, secondary, or tertiary schools); and

"(B)(i) is owned or operated by a public entity;

"(ii) is operated under a contract with a public entity; or

"(iii) is operated pursuant to a license by the Secretary or a State agency to provide motorbus or school vehicle transportation services to the public.

"(3) STATE AGENCY.--

"(A) IN GENERAL.--The term 'State agency', as used with respect to a HOV facility, means an agency of a State or local government having jurisdiction over the operation of the facility.

"(B) INCLUSION.--The term 'State agency' includes a State transportation department."

Part 4--Other

SEC. 2601. PROGRAM EFFICIENCIES.

Section 102(b) of title 23, United States Code, is amended by striking "made available" the second time it appears and inserting "reimbursed."

SEC. 2602. ALASKA HIGHWAY.

Section 218(c) of title 23, United States Code, is amended by inserting "related to the State's ferry system" after "equipment in Alaska".

SEC. 2603. LETTING OF CONTRACTS.

(a) FLEXIBILITY.--Section 112(a) of title 23, United States Code, is amended by inserting before the period at the end of the second sentence "unless the Secretary affirmatively finds that, under the circumstances relating to the relevant project, it is not in the public interest to do so".

(b) BIDDING FLEXIBILITY.-- Section 112(b)(1) of title 23, United States Code, is amended by inserting before the period at the end of the first sentence ", or unless the Secretary affirmatively finds that, under the circumstances relating to such project, some other method is in the public interest".

SEC. 2604. CONSTRUCTION.

Section 114 of title 23, United States Code, is amended--

(1) in subsection (a), by inserting ", except as provided in section 321 of this title" after "Secretary of Transportation";

(2) in subsection (b)--

(A) in paragraph (1), by--

(i) inserting "Federal-aid" before "highways" each time it appears; and

(ii) striking "located on a Federal-aid system"; and

(B) in paragraph (3), by inserting "in existence at that time" after "located on a Federal-aid system"; and

(3) in subsection (c)--

(A) in paragraph (1), by--

(i) inserting "Federal-aid" before "highway" each time it appears; and

(ii) striking "located on a Federal-aid system"; and

(B) in paragraph (3)(C) by--

(i) inserting "Federal-aid" before "highway" each time it appears; and

(ii) striking "located on a Federal-aid system".

SEC. 2605. MAINTENANCE.

Section 116 of title 23, United States Code, is amended--

(1) in subsection (a), by--

(A) inserting "or other direct recipient" after "State transportation department"; and

(B) striking "The State's obligation to the United States to maintain any such project shall cease when it no longer constitutes a part of a Federal-aid system";

(2) in subsection (b), by--

(A) inserting "or other direct recipient" after "State transportation department";

(B) striking "constructed on the Federal-aid secondary system, or within a municipality," and inserting "described under (a)"; and

(C) inserting "or other direct recipient" after "such transportation department"; and

(3) in subsection (c), by inserting "or other direct recipient" after "State transportation department".

SEC. 2606. PROJECT APPROVAL AND OVERSIGHT.

Section 106 of title 23, United States Code, is amended--

(1) in subsection (a)(2) by inserting "recipient" before "formalizing";

(2) in subsection (c)--

(A) by striking "Non-Interstate" in the heading of paragraph (1);

(B) by striking "but not on the Interstate System" in paragraph (1);

and

(C) by amending paragraph (4) to read as follows:

"(4) **LIMITATION ON INTERSTATE PROJECTS.**--The Secretary shall not assign any responsibilities to a State for projects the Secretary deems high risk. The high risk categories may be defined by the Secretary on a national basis or on a State-by-State basis, or both, as deemed appropriate by the Secretary.";

(3) in subsection (e)--

(A) in paragraph (1)(A)--

(i) by striking "concept" and inserting "planning"; and

(ii) by striking "multidisciplined" and inserting "multi-disciplinary";

(B) in paragraph (1)(A)(i)--

(i) by inserting "and achieving the established commitments (including environmental, community, agency)" before "safely"; and

(ii) by inserting "life-cycle" after "overall";

(C) in paragraph (1)(B)(ii)--

(i) by striking "completely" and inserting "refining or";

(ii) by inserting ", as appropriate," after "redesigning"; and

(iii) by striking "original purpose of the project" and inserting "purpose, functions, and established commitments (including environmental, community, agency) of the project";

(D) in paragraph (2), by striking "or other cost reduction analysis";

(E) in paragraph (2)(A,) by striking "Federal-aid system" and inserting "National Highway System receiving Federal assistance";

(F) in paragraph (2)(B), by inserting "on the National Highway System receiving Federal assistance" after "project"; and

(G) by amending paragraph (4) to read as follows:

"(4) **REQUIREMENTS.**--

"(A) **VALUE ENGINEERING PROGRAM.**--The State shall develop and sustain a value engineering program that--

"(i) establishes and documents value engineering program policies and procedures;

"(ii) ensures that the required value engineering analysis is conducted prior to completing the final design of a project;

"(iii) ensures that the value engineering analysis that is conducted and the recommendations developed and implemented for each project are documented in a final value engineering report; and

"(iv) monitors, evaluates and reports annually to the Secretary the results of the value analyses that are conducted and the recommendations implemented for all of the projects described in paragraph (2) that are completed in the State.

"(B) BRIDGE PROJECTS.--Analyses described in paragraph (1) for a bridge project shall include bridge superstructure and substructure requirements based on construction material and shall be evaluated--

"(i) on engineering and economic bases, taking into consideration acceptable designs for bridges; and

"(ii) using an analysis of life-cycle costs and duration of project construction."; and

(4) in subsection (g)(4), by adding at the end the following:

"(C) FUNDING.--Subject to project approval by the Secretary, a State may obligate funds apportioned to the State under section 104(b)(2) for carrying out its responsibilities as provided in subparagraph (A). Eligible activities include State administration of subgrants and oversight of subrecipients. To avail itself of such funding, the State shall submit an annual work plan identifying activities to be carried out during the course of the year. The Federal share of the cost of activities carried out in accordance with this subsection shall be 100 percent."

SEC. 2607. ADJUSTMENTS TO PENALTY PROVISIONS.

(a) VEHICLE WEIGHT LIMITATIONS.--Section 127(a)(1) of title 23, United States Code, is amended by striking "No funds shall be apportioned in any fiscal year under section 104(b)(1) of this title to any State which" and inserting "The Secretary shall withhold 50 percent of the apportionment under section 104(b)(1) of this title in any fiscal year in which a State".

(b) ENFORCEMENT OF VEHICLE SIZE AND WEIGHT LAWS.--Section 141(b)(2) of such title is amended by--

(1) striking "10 per centum" and inserting "7 percent"; and

(2) striking "section 104" and inserting "paragraphs (1) through (4) of section 104(b)".

(c) PROOF OF PAYMENT OF THE HEAVY VEHICLE USE TAX.--Section 141(c) of such title is amended by--

(1) striking "section 104(b)(4)" each place it appears and inserting "section 104(b)(1)"; and

(2) striking "25 per centum" and inserting "10 percent".

(d) CONTROL OF JUNKYARDS.--Section 136(b) of such title is amended by--
 (1) striking "10 per centum" and inserting "7 percent"; and
 (2) striking "section 104" and inserting "paragraphs (1) through (4) of section 104(b)".

(e) NATIONAL MINIMUM DRINKING AGE.--Section 158(a)(1) of such title is amended by adding at the end, "For fiscal years beginning after September 30, 2011, the amount to be withheld under this section shall be 7 percent of the amount apportioned to the noncompliant State under paragraphs (1) and (2) of section 104(b) of this title."

(f) DRUG OFFENDERS.--Section 159 of such title is amended--

 (1) in subsection (a), by striking paragraph (1), redesignating paragraph (2) as paragraph (1) and inserting after redesignated paragraph (1) the following:

 "(2) BEGINNING IN FISCAL YEAR 2012.--The Secretary shall withhold 7 percent of the amount required to be apportioned to any State under each of paragraphs (1) and (2) of section 104(b) on the first day of each fiscal year that begins after September 30, 2011, if the State does not meet the requirements of paragraph (3) on the first day of such fiscal year."; and

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

 "(b) EFFECT OF NONCOMPLIANCE.--No funds withheld under this section from apportionments to any State shall be available for apportionment to such State.".

(g) USE OF SAFETY BELTS.--Section 153(h) of such title is amended--

 (1) by striking paragraph (1) and redesignating paragraph (2) as paragraph (1);

 (2) in paragraph (1) as redesignated--

 (A) in the heading, by striking "THEREAFTER" and inserting "PRIOR TO FISCAL YEAR 2012"; and

 (B) by inserting "and before October 1, 2011," after "September 30, 1994,"; and

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

 "(2) THEREAFTER.--If, at any time in a fiscal year beginning after September 30, 2011, a State does not have in effect a law described in subsection (a)(2), the Secretary shall transfer 1.5 percent of the funds apportioned to the State for the succeeding fiscal year under each of paragraphs (1) through (3) of section 104(b) of this title to the apportionment of the State under section 402 of this title.".

(h) ZERO TOLERANCE BLOOD ALCOHOL CONCENTRATION FOR MINORS.--Section 161(a) of such title is amended--

 (1) by striking paragraph (1) and redesignating paragraph (2) as paragraph (1);

 (2) in paragraph (1) as redesignated--

 (A) in the heading, by striking "THEREAFTER" and inserting "PRIOR TO FISCAL YEAR 2012";

(B) by inserting "through October 1, 2010" after "each fiscal year thereafter"; and

(C) by inserting after redesignated paragraph (1) the following:

"(2) THEREAFTER.--The Secretary shall withhold 7 percent of the amount required to be apportioned to any State under each of paragraphs (1) and (2) of section 104(b) on October 1, 2011, and on October 1 of each fiscal year thereafter, if the State does not meet the requirement of paragraph (3) on that date."

(i) OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS.--Section 163(e) of such title is amended by amending paragraphs (1) and (2) to read as follows:-

"(1) BEFORE FISCAL YEAR 2012.--On October 1, 2006 and October 1 of each fiscal year thereafter through October 1, 2010, if a State has not enacted or is not enforcing a law described in subsection (a), the Secretary shall withhold 8 percent of the amounts to be apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b).

"(2) FISCAL YEAR 2012 AND THEREAFTER.--On October 1, 2011 and October 1 of each fiscal year thereafter, if a State has not enacted or is not enforcing a law described in subsection (a), the Secretary shall withhold 6 percent of the amounts to be apportioned to the State on that date under each of paragraphs (1) and (2) of section 104(b)."

(j) COMMERCIAL DRIVER'S LICENSE.--Section 31314 of title 49, United States Code is amended by redesignating subsection (c) as subsection (d) and inserting the following after subsection (b):

"(c) PENALTIES IMPOSED IN FISCAL YEAR 2012 AND THEREAFTER.--After September 30, 2011, the penalty for the first noncompliance shall be up to 4 percent of funds required to be apportioned to the noncompliant State under paragraphs (1) and (2) of section 104(b) of title 23, United States Code. The penalty for subsequent noncompliance shall be up to 8 percent of such funds."

SEC. 2608. OPEN CONTAINER REQUIREMENTS.

Section 154(c) of title 23, United States Code, is amended--

(1) by revising paragraph (2) to read as follows:

"(2) FISCAL YEAR 2012 AND THEREAFTER.--On October 1, 2011, and each October 1, thereafter, if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall reserve an amount equal to 2 percent of the funds to be apportioned to the State on that date under each of paragraphs (1) and (2) of section 104(b) until the State identifies to the Secretary how it will use such reserved funds among the uses authorized under subparagraph (A) and (B) of paragraph (1) and paragraph (3). Thereafter, the Secretary shall transfer those funds identified by the State for use as described under subparagraph (A) and (B) of paragraph (1) to the apportionment of the State

under section 402, and shall release those funds identified by the State for use as described under paragraph (3).";

(2) by revising paragraph (3) to read as follows:

"(3) USE FOR HIGHWAY SAFETY IMPROVEMENT PROGRAM.--A State may elect to use all or a portion of the funds transferred under paragraph (2) for activities eligible under section 148 of this title."; and

(3) by revising paragraph (5) to read as follows:

"(5) DERIVATION OF AMOUNT TO BE TRANSFERRED.--The amount to be transferred under paragraph (2) may be derived from the following:

"(A) The apportionment of the State under section 104(b)(1).

"(B) The apportionment of the State under section 104(b)(2).".

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

(a) REPEAT INTOXICATED DRIVER LAW.--Section 164(a)(5) of title 23, United States Code, is amended by striking, in subparagraph (A)(ii), "for the purpose of getting to and from work, school, or an alcohol treatment program".

(b) TRANSFER OF FUNDS.--Section 164(b) of such title is amended--

(1) by revising paragraph (2) to read as follows:

"(2) FISCAL YEAR 2012 AND THEREAFTER.--

"(A) RESERVATION OF FUNDS.--On October 1, 2011, and each October 1, thereafter, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall reserve an amount equal to 2 percent of the funds to be apportioned to the State on that date under each of paragraphs (1) and (2) of section 104(b) until the State identifies to the Secretary how it will use such reserved funds among the uses authorized under subparagraph (A) and (B) of paragraph (1), and paragraph (3).

"(B) TRANSFER OF FUNDS.--Thereafter, the Secretary shall transfer those funds identified by the State for use as described under subparagraph (A) and (B) of paragraph (1) to the apportionment of the State under section 402, and shall release those funds identified by the State for use as described under paragraph (3).";

(2) by revising paragraph (3) to read as follows:

"(3) USE FOR HIGHWAY SAFETY IMPROVEMENT PROGRAM.--A State may elect to use all or a portion of the funds transferred under paragraph (2) for activities eligible under section 148."; and

(3) by revising paragraph (5) to read as follows:

"(5) DERIVATION OF AMOUNT TO BE TRANSFERRED.--The amount to be transferred under paragraph (2) may be derived from the following:

"(A) The apportionment of the State under section 104(b)(1).

"(B) The apportionment of the State under section 104(b)(2).".

SEC. 2610. UNIFORM RELOCATION ASSISTANCE ACT AMENDMENTS.

(a) MOVING AND RELATED EXPENSES.--Section 202 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4622) is amended--

- (1) in subsection (a)(4), by striking "\$10,000" and inserting "\$25,000, as adjusted by regulation, in accordance with section 213(d) of this Act"; and
- (2) in subsection (c), by striking "\$20,000" and inserting "\$40,000, as adjusted by regulation, in accordance with section 213(d) of this Act".

(b) REPLACEMENT HOUSING FOR HOMEOWNERS.--Section 203(a)(1) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4623(a)(1)) is amended by--

- (1) striking "\$22,500" and inserting "\$31,000, as adjusted by regulation, in accordance with 213(d) of this Act,"; and
- (2) striking "one hundred and eighty" and inserting "90".

(c) REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS.--Section 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4624) is amended--

- (1) in subsection (a), by striking "\$5,250" and inserting "\$7,200, as adjusted by regulation, in accordance with section 213(d) of this Act"; and
- (2) in subsection (b), by striking ", except" and all that follows through the end of the subsection.

(d) DUTIES OF LEAD AGENCY.--Section 213 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4633) is amended--

- (1) in subsection (b), by--
 - (A) striking "and" at the end of paragraph (2);
 - (B) striking the period at the end of paragraph (3) and inserting "; and"; and
 - (C) by adding at the end the following:

"(4) that each Federal agency that has programs or projects requiring the acquisition of real property or causing a displacement from real property subject to the provisions of this Act shall provide an annual summary report of its activities to the lead agency."; and

(2) by adding at the end the following:

"(d) ADJUSTMENT OF PAYMENTS.--The head of the lead agency may adjust, by regulation, the amounts of relocation payments provided under sections 202(a)(4), 202(c), 203(a), and 204(a) of this Act when the head of the lead agency determines that cost of living, inflation, or other factors indicate that the payments should be adjusted to meet the policy objectives of this Act."

(e) AGENCY COORDINATION.--Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) is amended by adding the following new section:

"Sec. 214. AGENCY COORDINATION

"(a) AGENCY CAPACITY.--Each Federal agency responsible for funding or carrying out relocation and acquisition activities shall have adequately trained personnel, and such other resources as are necessary, to manage and oversee its relocation and acquisition program in accordance with this Act.

"(b) INTERAGENCY AGREEMENTS. --Each Federal agency responsible for funding relocation and acquisition activities (other than the agency serving as the lead agency) shall, within one year after the date of the enactment of this section, enter into a memorandum of understanding with the lead agency that--

"(1) provides for periodic training of the Federal agency's personnel, and in the case of a Federal agency that provides Federal financial assistance, such training may include personnel of any displacing agency that receives Federal financial assistance;

"(2) addresses ways in which the lead agency may provide assistance and coordination to the Federal agency, relating to compliance with the Act, on a program or project basis; and

"(3) addresses the funding of the training, assistance, and coordination activities provided by the lead agency, in accordance with subsection (c).

"(c) INTERAGENCY PAYMENTS.--

"(1) Beginning in the first fiscal year that commences one year after the date of the enactment of this section, each Federal agency responsible for funding relocation and acquisition activities (other than the agency serving as the lead agency) shall transfer to the lead agency each fiscal year, such funds as are necessary, but not less than \$35,000, to support the training, assistance, and coordination activities of the lead agency described in subsection (b).

"(2) The cost to a Federal agency of providing the funds described in paragraph (1) shall be included as part of the cost of one or more programs or projects, undertaken by the Federal agency or with Federal financial assistance, that result in the displacement of persons or the acquisition of real property."

(f) COOPERATION WITH FEDERAL AGENCIES.--Section 308(a) of title 23, United States Code, is amended to read as follows:

"(a) The Secretary is authorized to perform, by contract or otherwise, authorized engineering or other services in connection with the survey, construction, maintenance, or improvement of highways for other Government agencies, cooperating foreign countries, and State cooperating agencies. Such other services may include activities authorized under section 214 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Reimbursement for services rendered under this subsection, which may include depreciation on engineering and road-building equipment used, shall be credited to the appropriation concerned."

(g) EFFECTIVE DATES.--

(1) Except as provided in paragraph (2), the amendments made by this section, shall take effect on the date of the enactment of this Act.

(2) The amendments made to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 by subsections (a) through (c) of this section, shall take effect 2 years after the date of the enactment of this Act.

SEC. 2611. COMPLETE STREETS.

(a) IN GENERAL.--Section 109(a)(1) of title 23, United States Code, is amended by inserting before the semicolon the following: "and consistent with complete street design policies and principles and practical design standards".

(b) DESIGN CRITERIA FOR NATIONAL HIGHWAY SYSTEM.--Section 109(c) of title 23, United States Code, is amended--

(1) in paragraph (1) by striking "may take into account" and inserting "shall take into account"; and

(2) in paragraph (2) by striking "may develop" and inserting "shall develop".

(c) PROTECTION OF NONMOTORIZED TRANSPORTATION TRAFFIC.--Section 109(m) of title 23, United States Code, is amended by inserting before the period at the end the following: "to provide a safe and continuous route for all nonmotorized and light motorcycle traffic".

(d) DEFINITION.--Section 109 of title 23, United States Code, is amended by adding at the end the following:

"(r) DEFINITIONS.--In this section, the term 'complete street' means a transportation facility that is planned, designed, operated, and maintained to provide safe mobility for all users, including bicyclists, pedestrians, transit vehicles, truckers and motorists, appropriate to the function and context of the facility."

(e) GUIDANCE ON COMPREHENSIVE STREET DESIGN PRINCIPLES--Not later than one year after the date of the enactment of this Act, the Secretary shall issue guidance on the Department's implementation of the requirements related to comprehensive street design policies and principles and practical design standards under section 109(a) of title 23, United States Code, as they relate to all users.