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# Title 23, United States Code

(current as of October 19, 2012, including public laws  
through P.L. 112-196)

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2. **Formatting.** The majority of this document is formatted via Word's multilevel list feature, rather than as standard text. The intent behind this was to help in drafting amendatory language or redlining existing text to reflect subsequently enacted provisions. For example, the "increase indent" and "decrease indent" buttons allow a drafter to shift from subsection to subitem (and vice versa), and the auto-numbering should assist in redesignation of statutory subdivisions.



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**Sec. 101. Definitions and declaration of policy**

(a) Definitions. - In this title, the following definitions apply:

(1) Apportionment. - The term "apportionment" includes unexpended apportionments made under prior authorization laws.

(2) Asset management. - The term "asset management" means a strategic and systematic process of operating, maintaining, and improving physical assets, with a focus on both engineering and economic analysis based upon quality information, to identify a structured sequence of maintenance, preservation, repair, rehabilitation, and replacement actions that will achieve and sustain a desired state of good repair over the lifecycle of the assets at minimum practicable cost.

(3) Carpool project. - The term "carpool project" means any project to encourage the use of carpools and vanpools, including provision of carpooling opportunities to the elderly and individuals with disabilities, systems for locating potential riders and informing them of carpool opportunities, acquiring vehicles for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, designating existing facilities for use for preferential parking for carpools, and real-time ridesharing projects, such as projects where drivers, using an electronic transfer of funds, recover costs directly associated with the trip provided through the use of location technology to quantify those direct costs, subject to the condition that the cost recovered does not exceed the cost of the trip provided.

(4) Construction. - The term "construction" means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a highway or any project eligible for assistance under this title, including bond costs and other costs relating to the issuance in accordance with section 122 of bonds or other debt financing instruments and costs incurred by the State in performing Federal-aid project related audits that directly benefit the Federal-aid highway program. Such term includes -

(A) preliminary engineering, engineering, and design-related services directly relating 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 control in accordance with specifications of the National Oceanic and Atmospheric Administration), and architectural-related services;

(B) reconstruction, resurfacing, restoration, rehabilitation, and preservation;

(C) acquisition of rights-of-way;

(D) relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

(E) elimination of hazards of railway-highway grade crossings;

(F) elimination of roadside hazards;

(G) improvements that directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas; and

(H) capital improvements that directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses.

(5) County. - The term "county" includes corresponding units of government under any other name in States that do not have county organizations and, in those States in which the county government does not have jurisdiction over highways, any local government unit vested with jurisdiction over local highways.

(6) Federal-aid highway. - The term "Federal-aid highway" means a public highway eligible for assistance under this chapter other than a highway functionally classified as a local road or rural minor collector.

(7) Federal lands access transportation facility. - The term "Federal Lands access transportation facility" means a public highway, road, bridge, trail, or transit system that is located on, is adjacent to, or provides access to Federal lands for which title or maintenance responsibility is vested in a State, county, town, township, tribal, municipal, or local government.

(8) Federal lands transportation facility. - The term "Federal lands transportation facility" means a public highway, road, bridge, trail, or transit system that is located on, is adjacent to, or provides access to 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 described in section 203(c).

(9) Forest development roads and trails. - The term "forest development roads and trails" means forest roads and trails under the jurisdiction of the Forest Service.

(10) Forest road or trail. - The term "forest road or trail" means a road or trail wholly or partly within, or adjacent to, and serving the National Forest System that is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

(11) Highway. - The term "highway" includes -

(A) a road, street, and parkway;

(B) a right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure including public roads on dams, sign, guardrail, and protective structure, in connection with a highway; and

(C) a portion of any interstate or international bridge or tunnel and the approaches thereto, the cost of which is assumed by a State transportation department, including such facilities as may be required by the United States Customs and Immigration Services in connection with the operation of an international bridge or tunnel.

(12) Interstate System. - The term "Interstate System" means the Dwight D. Eisenhower National System of Interstate and Defense Highways described in section 103(c).

(13) Maintenance. - The term "maintenance" means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway.

(14) 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)).

(15) National Highway System. - The term "National Highway System" means the Federal-aid highway system described in section 103(b).

(16) Operating costs for traffic monitoring, management, and control. - The term "operating costs for traffic monitoring, management, and control" includes labor costs, administrative costs, costs of utilities and rent, and other costs associated with the continuous

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operation of traffic control, such as integrated traffic control systems, incident management programs, and traffic control centers.

(17) Operational improvement. - The term "operational improvement" -

(A) means (i) a capital improvement for installation of traffic surveillance and control equipment, computerized signal systems, motorist information systems, integrated traffic control systems, incident management programs, and transportation demand management facilities, strategies, and programs, and (ii) such other capital improvements to public roads as the Secretary may designate, by regulation; and

(B) does not include resurfacing, restoring, or rehabilitating improvements, construction of additional lanes, interchanges, and grade separations, and construction of a new facility on a new location.

(18) Project. - The term "project" means any undertaking eligible for assistance under this title.

(19) Project agreement. - The term "project agreement" means the formal instrument to be executed by the Secretary and the recipient as required by section 106.

(20) Public authority. - The term "public authority" means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

(21) Public road. - The term "public road" means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

(22) Rural areas. - The term "rural areas" means all areas of a State not included in urban areas.

(23) Safety improvement project. - The term "safety improvement project" means a strategy, activity, or project on a public road that is consistent with the State strategic highway safety plan and corrects or improves a roadway feature that constitutes a hazard to road users or addresses a highway safety problem.

(24) Secretary. - The term "Secretary" means Secretary of Transportation.

(25) State. - The term "State" means any of the 50 States, the District of Columbia, or Puerto Rico.

(26) State funds. - The term "State funds" includes funds raised under the authority of the State or any political or other subdivision thereof, and made available for expenditure under the direct control of the State transportation department.

(27) State strategic highway safety plan. - The term "State strategic highway safety plan" has the same meaning given such term in section 148(a).

(28) State transportation department. - The term "State transportation department" means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction.

(29) Transportation alternatives. - The term "transportation alternatives" means any of the following activities when carried out as part of any program or project authorized or funded under this title, or as an independent program or project related to surface transportation:

(A) Construction, planning, and design of 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 safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(B) Construction, planning, and design of infrastructure- related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs.

(C) Conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other nonmotorized transportation users.

(D) Construction of turnouts, overlooks, and viewing areas.

(E) Community improvement activities, including -

(i) inventory, control, or removal of outdoor advertising;

(ii) historic preservation and rehabilitation of historic transportation facilities;

(iii) vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control; and

(iv) archaeological activities relating to impacts from implementation of a transportation project eligible under this title.

(F) Any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to -

(i) address stormwater management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff, including activities described in sections 133(b)(11), 328(a), and 329; or

(ii) reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.

(30) Transportation systems management and operations. -

(A) In general. - The term "transportation systems management and operations" means integrated strategies to optimize the performance of existing infrastructure through the implementation of multimodal and intermodal, cross-jurisdictional systems, services, and projects designed to preserve capacity and improve security, safety, and reliability of the transportation system.

(B) Inclusions. - The term "transportation systems management and operations" includes -

(i) actions such as traffic detection and surveillance, corridor management, freeway management, arterial management, active transportation and demand management, work zone management, emergency 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) coordination of the implementation of regional transportation system management and operations investments (such as traffic incident management, traveler information services, emergency management, roadway weather management, intelligent transportation systems, communication networks, and information sharing systems) requiring agreements, integration, and interoperability to achieve targeted system performance, reliability, safety, and customer service levels.

(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

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land and appears on the national tribal transportation facility inventory described in section 202(b)(1).

(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.

(33) Urban area. - The term "urban area" means an urbanized area or, in the case of an urbanized area encompassing more than one State, that part of the urbanized area in each such State, or urban place as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall encompass, at a minimum, the entire urban place designated by the Bureau of the Census, except in the case of cities in the State of Maine and in the State of New Hampshire.

(34) Urbanized area. - The term "urbanized area" means an area with a population of 50,000 or more designated by the Bureau of the Census, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall encompass, at a minimum, the entire urbanized area within a State as designated by the Bureau of the Census.

(b) Declaration of Policy. -

(1) Acceleration of construction of federal-aid highway systems. - Congress declares that it is in the national interest to accelerate the construction of Federal-aid highway systems, including the Dwight D. Eisenhower National System of Interstate and Defense,<sup>1</sup> because many of the highways (or portions of the highways) are inadequate to meet the needs of local and interstate commerce for the national and civil defense.

(2) Completion of interstate system. - Congress declares that the prompt and early completion of the Dwight D. Eisenhower National System of Interstate and Defense Highways (referred to in this section as the "Interstate System"), so named because of its primary importance to the national defense, is essential to the national interest. It is the intent of Congress that the Interstate System be completed as nearly as practicable over the period of availability of the forty years' appropriations authorized for the purpose of expediting its construction, reconstruction, or improvement, inclusive of necessary tunnels and bridges, through the fiscal year ending September 30, 1996, under section 108(b) of the Federal-Aid Highway Act of 1956 (70 Stat. 374), and that the entire system in all States be brought to simultaneous completion. Insofar as possible in consonance with this objective, existing highways located on an interstate route shall be used to the extent that such use is practicable, suitable, and feasible, it being the intent that local needs, to the extent practicable, suitable, and feasible, shall be given equal consideration with the needs of interstate commerce.

(3) Transportation needs of 21st century. - Congress declares that -

(A) it is in the national interest to preserve and enhance the surface transportation system to meet the needs of the United States for the 21st Century;

(B) the current urban and long distance personal travel and freight movement demands have surpassed the original forecasts and travel demand patterns are expected to continue to change;

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<sup>1</sup> So in original. Probably should be "Defense Highways,".

(C) continued planning for and investment in surface transportation is critical to ensure the surface transportation system adequately meets the changing travel demands of the future;

(D) among the foremost needs that the surface transportation system must meet to provide for a strong and vigorous national economy are safe, efficient, and reliable -

(i) national and interregional personal mobility (including personal mobility in rural and urban areas) and reduced congestion;

(ii) flow of interstate and international commerce and freight transportation; and

(iii) travel movements essential for national security;

(E) special emphasis should be devoted to providing safe and efficient access for the type and size of commercial and military vehicles that access designated National Highway System intermodal freight terminals;

(F) the connection between land use and infrastructure is significant;

(G) transportation should play a significant role in promoting economic growth, improving the environment, and sustaining the quality of life; and

(H) the Secretary should take appropriate actions to preserve and enhance the Interstate System to meet the needs of the 21st Century.

(4) Expedited project delivery. -

(A) In general. - Congress declares that it is in the national interest to expedite the delivery of surface transportation projects by substantially reducing the average length of the environmental review process.

(B) Policy of the united states. - Accordingly, it is the policy of the United States that -

(i) the Secretary shall have the lead role among Federal agencies in carrying out the environmental review process for surface transportation projects;

(ii) each Federal agency shall cooperate with the Secretary to expedite the environmental review process for surface transportation projects;

(iii) project sponsors shall not be prohibited from carrying out preconstruction project development activities concurrently with the environmental review process;

(iv) programmatic approaches shall be used to reduce the need for project-by-project reviews and decisions by Federal agencies; and

(v) the Secretary shall identify opportunities for project sponsors to assume responsibilities of the Secretary where such responsibilities can be assumed in a manner that protects public health, the environment, and public participation.

(c) It is the sense of Congress that under existing law no part of any sums authorized to be appropriated for expenditure upon any Federal-aid highway which has been apportioned pursuant to the provisions of this title shall be impounded or withheld from obligation, for purposes and projects as provided in this title, by any officer or employee in the executive branch of the Federal Government, except such specific sums as may be determined by the Secretary of the Treasury, after consultation with the Secretary of Transportation, are necessary to be withheld from obligation for specific periods of time

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to assure that sufficient amounts will be available in the Highway Trust Fund to defray the expenditures which will be required to be made from such fund.

(d) No funds authorized to be appropriated from the Highway Trust Fund shall be expended by or on behalf of any Federal department, agency, or instrumentality other than the Federal Highway Administration unless funds for such expenditure are identified and included as a line item in an appropriation Act and are to meet obligations of the United States heretofore or hereafter incurred under this title attributable to the construction of Federal-aid highways or highway planning, research, or development, or as otherwise specifically authorized to be appropriated from the Highway Trust Fund by Federal-aid highway legislation.

(e) It is the national policy that to the maximum extent possible the procedures to be utilized by the Secretary and all other affected heads of Federal departments, agencies, and instrumentalities for carrying out this title and any other provision of law relating to the Federal highway programs shall encourage the substantial minimization of paperwork and interagency decision procedures and the best use of available manpower and funds so as to prevent needless duplication and unnecessary delays at all levels of government.

### **Sec. 102. Program efficiencies**

(a) Access of Motorcycles. - No State or political subdivision of a State may enact or enforce a law that applies only to motorcycles and the principal purpose of which is to restrict the access of motorcycles to any highway or portion of a highway for which Federal-aid highway funds have been utilized for planning, design, construction, or maintenance. Nothing in this subsection shall affect the authority of a State or political subdivision of a State to regulate motorcycles for safety.

(b) Engineering Cost Reimbursement. - If on-site construction of, or acquisition of right-of-way for, a highway project is not commenced within 10 years (or such longer period as the State requests and the Secretary determines to be reasonable) after the date on which Federal funds are first made available, out of the Highway Trust Fund (other than Mass Transit Account), for preliminary engineering of such project, the State shall pay an amount equal to the amount of Federal funds reimbursed for the preliminary engineering. The Secretary shall deposit in such Fund all amounts paid to the Secretary under this section.

### **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 before the date of enactment of the MAP-21.

(B) Other urban and rural principal arterial routes, and border crossings on those routes, that were not included on the National Highway System before the date of enactment of the MAP- 21.

(C) Other connector highways (including toll facilities) that were not included in the National Highway System before the date of enactment of the MAP-21 but that provide motor vehicle access between arterial routes on the National Highway System and a major intermodal transportation facility.

(D) A strategic highway network that -

(i) consists of a network of highways that are important to the United States strategic defense policy, that provide defense access, continuity, and emergency capabilities for the movement of personnel, materials, and equipment in both peacetime and wartime, and that were not included on the National Highway System before the date of enactment of the MAP-21;

(ii) may include highways on or off the Interstate System; and

(iii) shall be designated by the Secretary, in consultation with appropriate Federal agencies and the States.

(E) Major strategic highway network connectors that -

(i) consist 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 before the date of enactment of the MAP-21; and shall be designated by the Secretary, in consultation with appropriate Federal agencies and the States.

(3) Modifications to nhs. -

(i) 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 - meets the criteria established for the National Highway System under this title after the date of enactment of the MAP-21; 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.

(c) 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).

(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) In general. - Subject to clauses (ii) through (vi), if the Secretary determines that a highway on the National Highway System would be a logical addition or connection to the Interstate System and would qualify for designation as a route on the Interstate System under subparagraph (A) if the highway met all standards of a highway on the Interstate System, the Secretary may, upon the affirmative recommendation of the State or States in which the highway is located, designate the highway as a future Interstate System route.

(ii) Written agreement. - A designation under clause (i) shall be made only upon the written agreement of each State described in that clause that the highway will be constructed to meet all standards of a highway on the Interstate System by not later than the date that is 25 years after the date of the agreement.

(iii) Failure to complete construction. - If a State described in clause (i) has not substantially completed the construction of a highway designated under this subparagraph by the date specified in clause (ii), the Secretary shall remove the designation of the highway as a future Interstate System route.

(iv) Effect of removal. - Removal of the designation of a highway under clause (iii) 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.

(v) Retroactive effect. - 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.

(vi) References. - 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, and no such highway shall be signed or marked, as a highway on the Interstate System, until such time as the highway -

(I) is constructed to the geometric and construction standards for the Interstate System; and

(II) 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) -

(i) 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); and

(ii) those elements shall be considered to be historic sites 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, preservation, 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).

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**Sec. 104. Apportionment**

(a) Administrative Expenses. -

(1) In general. - There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to be made available to the Secretary for administrative expenses of the Federal Highway Administration -

(A) \$454,180,326 for fiscal year 2013; and

(B) \$440,000,000 for fiscal year 2014.

(2) Purposes. - The amounts authorized to be appropriated 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;

(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; and

(C) to reimburse, as appropriate, the Office of Inspector General of the Department of Transportation for the conduct of annual audits of financial statements in accordance with section 3521 of title 31.

(3) Availability. - The amounts made available under paragraph (1) shall remain available until expended.

(b) Division of State Apportionments Among Programs. - The Secretary shall distribute the amount apportioned to a State for a fiscal year under subsection (c) among the national highway performance program, the surface transportation program, the highway safety improvement program, and the congestion mitigation and air quality improvement program, and to carry out section 134 as follows:

(1) National highway performance program. - For the national highway performance program, 63.7 percent of the amount remaining after distributing amounts under paragraphs (4) and (5).

(2) Surface transportation program. - For the surface transportation program, 29.3 percent of the amount remaining after distributing amounts under paragraphs (4) and (5).

(3) Highway safety improvement program. - For the highway safety improvement program, 7 percent of the amount remaining after distributing amounts under paragraphs (4) and (5).

(4) Congestion mitigation and air quality improvement program. - For the congestion mitigation and air quality improvement program, an amount determined by multiplying the amount determined for the State under subsection (c) by the proportion that -

(A) the amount apportioned to the State for the congestion mitigation and air quality improvement program for fiscal year 2009; bears to

(B) the total amount of funds apportioned to the State for that fiscal year for the programs referred to in section 105(a)(2) (except for the high priority projects program referred to in section 105(a)(2)(H)), as in effect on the day before the date of enactment of the MAP-21.

(5) Metropolitan planning. - To carry out section 134, an amount determined by multiplying the amount determined for the State under subsection (c) by the proportion that -

(A) the amount apportioned to the State to carry out section 134 for fiscal year 2009; bears to

(B) the total amount of funds apportioned to the State for that fiscal year for the programs referred to in section 105(a)(2) (except for the high priority projects program referred to in section 105(a)(2)(H)), as in effect on the day before the date of enactment of the MAP-21.

(c) Calculation of State Amounts. -

(1) For fiscal year 2013. -

(A) Calculation of amount. - For fiscal year 2013, the amount for each State of combined apportionments for the national highway performance program under section 119, the surface transportation program under section 133, the highway safety improvement program under section 148, the congestion mitigation and air quality improvement program under section 149, and to carry out section 134 shall be equal to the combined amount of apportionments that the State received for fiscal year 2012.

(B) State apportionment. - On October 1 of such fiscal year, the Secretary shall apportion the sum authorized to be appropriated for expenditure on the national highway performance program under section 119, the surface transportation program under section 133, the highway safety improvement program under section 148, the congestion mitigation and air quality improvement program under section 149, and to carry out section 134 in accordance with subparagraph (A).

(2) For fiscal year 2014. -

(A) State share. - For fiscal year 2014, the amount for each State of combined apportionments for the national highway performance program under section 119, the surface transportation program under section 133, the highway safety improvement program under section 148, the congestion mitigation and air quality improvement program under section 149, and to carry out section 134 shall be determined as follows:

(i) Initial amount. - The initial amount for each State shall be determined by multiplying the total amount available for apportionment by the share for each State which shall be equal to the proportion that -

(I) the amount of apportionments that the State received for fiscal year 2012; bears to

(II) the amount of those apportionments received by all States for that fiscal year.

(ii) Adjustments to amounts. - The initial amounts resulting from the calculation under clause (i) shall be adjusted to ensure that, for each State, the amount of combined apportionments for the programs shall not be less than 95 percent of the estimated tax payments attributable to highway users in the State paid into the Highway Trust Fund (other than the Mass Transit Account) in the most recent fiscal year for which data are available.

(B) State apportionment. - On October 1 of such fiscal year, the Secretary shall apportion the sum authorized to be appropriated for expenditure on the national highway performance program under section 119, the surface transportation program under section 133, the highway safety improvement program under section 148, the congestion mitigation and air quality improvement program under section 149, and to carry out section 134 in accordance with subparagraph (A).

(d) Metropolitan Planning. -

(1) Use of amounts. -

(A) Use. -

(i) In general. - Except as provided in clause (ii), the amounts apportioned to a State under subsection (b)(5) shall be made available by the State to the metropolitan planning organizations responsible for carrying out section 134 in the State.

(ii) States receiving minimum apportionment. - A State that received the minimum apportionment for use in carrying out section 134 for fiscal year 2009 may, subject to the approval of the Secretary, use the funds apportioned under subsection (b)(5) to fund 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.

(2) Distribution of amounts within states. -

(A) In general. - The distribution within any State of the planning funds made available to organizations under paragraph (1) shall be in accordance with a formula that -

(i) is developed by each State and approved by the Secretary; and

(ii) takes into consideration, at a minimum, 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 section 134 and other applicable requirements of Federal law.

(B) Reimbursement. - Not later than 15 business 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, the State shall reimburse, from amounts distributed under this paragraph to the metropolitan planning organization by the State, the metropolitan planning organization for those expenditures.

(3) Determination of population figures. - For the purpose of determining population figures under this subsection, the Secretary shall use the latest available data from the decennial census conducted under section 141(a) of title 13, United States Code.

(e) Certification of Apportionments. -

(1) In general. - The Secretary shall -

(A) on October 1 of each fiscal year, certify to each of the State transportation departments the amount that has been apportioned to the State under this section for the fiscal year; and

(B) to permit the States to develop adequate plans for the use of amounts apportioned under this section, advise each State of the amount that will be apportioned to the State under this section for a fiscal year not later than 90 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 this section for a fiscal year beginning after September 30, 1998, by not later than the date that is the twenty-first day of that fiscal year, the Secretary shall submit, by not later than that date, 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 the apportionment in a timely manner.

(3) Apportionment calculations. -

(A) In general. - The calculation of official apportionments of funds to the States under this title is a primary responsibility of the Department and shall be carried out only by employees (and not contractors) of the Department.

(B) Prohibition on use of funds to hire contractors. - None of the funds made available under this title shall be used to hire contractors to calculate the apportionments of funds to States.

(f) Transfer of Highway and Transit Funds. -

(1) Transfer of highway funds for transit projects. -

(A) In general. - Subject to subparagraph (B), amounts 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 amounts transferred under subparagraph (A).

(2) Transfer of transit funds for highway projects. -

(A) In general. - Subject to subparagraph (B), amounts 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 amounts 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 amounts apportioned or allocated under this title to the State to another State, or to the Federal Highway Administration, for the purpose of funding 1 or more projects that are eligible for assistance with amounts so apportioned or allocated.

(B) Apportionment. - The transfer shall have no effect on any apportionment of amounts to a State under this section.

(C) Funds suballocated to urbanized areas. - Amounts that are apportioned or allocated to a State under subsection (b)(3) (as in effect on the day before the date of enactment of the MAP- 21) or subsection (b)(2) and attributed to an urbanized area of a State with a population of more than 200,000 individuals under section 133(d) may be transferred under this paragraph only if the metropolitan planning organization designated for the area concurs, in writing, with the transfer request.

(4) Transfer of obligation authority. - Obligation authority for amounts transferred under this subsection shall be transferred in the same manner and amount as the amounts for the projects that are transferred under this section.

(g) Report to Congress. - For each fiscal year, the Secretary shall make available to the public, in a user-friendly format via the Internet, a report that describes -

(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 balance of unobligated sums available for expenditure at the discretion of the Secretary for such highways and programs for the fiscal year; and

(4) the rates of obligation of funds apportioned or set aside under this section, according to -

- (A) program;
- (B) funding category of subcategory;
- (C) type of improvement;
- (D) State; and
- (E) sub-State geographical area, including urbanized and rural areas, on the basis of the population of each such area.

**Sec. 105. [Repealed]**

**Sec. 106. Project approval and oversight**

(a) In General. -

(1) Submission of plans, specifications, and estimates. - Except as otherwise provided in this section, each State transportation department shall submit to the Secretary for approval such plans, specifications, and estimates for each proposed project as the Secretary may require.

(2) Project agreement. - The Secretary shall act on the plans, specifications, and estimates as soon as practicable after the date of their submission and shall enter into a formal project agreement with the State transportation department recipient formalizing the conditions of the project approval.

(3) Contractual obligation. - The execution of the project agreement shall be deemed a contractual obligation of the Federal Government for the payment of the Federal share of the cost of the project.

(4) Guidance. - In taking action under this subsection, the Secretary shall be guided by section 109.

(b) Project Agreement. -

(1) Provision of state funds. - The project agreement shall make provision for State funds required to pay the State's non-Federal share of the cost of construction of the project and to pay for maintenance of the project after completion of construction.

(2) Representations of state. - If a part of the project is to be constructed at the expense of, or in cooperation with, political subdivisions of the State, the Secretary may rely on representations made by the State transportation department with respect to the arrangements or agreements made by the State transportation department and appropriate local officials for ensuring that the non-Federal contribution will be provided under paragraph (1).

(c) Assumption by States of Responsibilities of the Secretary. -

(1) nhs projects. - For projects under this title that are on the National Highway System, including projects on the Interstate System, the State may assume the responsibilities of the Secretary under this title for design, plans, specifications, estimates, contract awards, and inspections with respect to the projects unless the Secretary determines that the assumption is not appropriate.

(2) Non-nhs projects. - For projects under this title that are not on the National Highway System, the State shall assume the responsibilities of the Secretary under this title for design, plans, specifications, estimates, contract awards, and inspection of projects, unless the State determines that such assumption is not appropriate.

(3) Agreement. - The Secretary and the State shall enter into an agreement relating to the extent to which the State assumes the responsibilities of the Secretary under this subsection.

(4) Limitation on interstate projects. -

(A) In general. - The Secretary shall not assign any responsibilities to a State for projects the Secretary determines to be in a high risk category, as defined under subparagraph (B).

(B) High risk categories. - The Secretary may define the high risk categories under this subparagraph on a national basis, a State-by-State basis, or a national and State-by-State basis, as determined to be appropriate by the Secretary.

(d) Responsibilities of the Secretary. - Nothing in this section, section 133, or section 149 shall affect or discharge any responsibility or obligation of the Secretary under -

(1) section 113 or 114; or

(2) any Federal law other than this title (including section 5333 of title 49).

(e) Value Engineering Analysis. -

(1) Definition of value engineering analysis. -

(A) In general. - In this subsection, the term "value engineering analysis" means a systematic process of review and analysis of a project, during the planning and design phases, by a multidisciplinary team of persons not involved in the project, that is conducted to provide recommendations such as those described in subparagraph (B) for -

(i) providing the needed functions safely, reliably, and at the lowest overall lifecycle cost;

(ii) improving the value and quality of the project; and

(iii) reducing the time to complete the project.

(B) Inclusions. - The recommendations referred to in subparagraph (A) include, with respect to a project -

(i) combining or eliminating otherwise inefficient use of costly parts of the original proposed design for the project; and

(ii) completely redesigning the project using different technologies, materials, or methods so as to accomplish the original purpose of the project.

(2) Analysis. - The State shall provide a value engineering analysis for -

(A) each project on the National Highway System receiving Federal assistance with an estimated total cost of \$50,000,000 or more;

(B) a bridge project on the National Highway System receiving Federal assistance with an estimated total cost of \$40,000,000 or more; and

(C) any other project the Secretary determines to be appropriate.

(3) Major projects. - The Secretary may require more than 1 analysis described in paragraph (2) for a major project described in subsection (h).

(4) Requirements. -

(A) Value engineering program. - The State shall develop and carry out 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 before 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 annually submits to the Secretary a report that describes the results of the value analyses that are conducted and the recommendations implemented for each of the projects described in paragraph (2) that are completed in the State.

(B) Bridge projects. - The value engineering analysis for a bridge project under paragraph (2) shall -

(i) include bridge superstructure and substructure requirements based on construction material; and

(ii) be evaluated by the State -

(I) on engineering and economic bases, taking into consideration acceptable designs for bridges; and

(II) using an analysis of lifecycle costs and duration of project construction.

(5) Design-build projects. - A requirement to provide a value engineering analysis under this subsection shall not apply to a project delivered using the design-build method of construction.

(f) Life-Cycle Cost Analysis. -

(1) Use of life-cycle cost analysis. - The Secretary shall develop recommendations for the States to conduct life-cycle cost analyses. The recommendations shall be based on the principles contained in section 2 of Executive Order No. 12893 and shall be developed in consultation with the American Association of State Highway and Transportation Officials. The Secretary shall not require a State to conduct a life-cycle cost analysis for any project as a result of the recommendations required under this subsection.

(2) Life-cycle cost analysis defined. - In this subsection, the term "life-cycle cost analysis" means a process for evaluating the total economic worth of a usable project segment by analyzing initial costs and discounted future costs, such as maintenance, user costs, reconstruction, rehabilitation, restoring, and resurfacing costs, over the life of the project segment.

(g) Oversight Program. -

(1) Establishment. -

(A) In general. - The Secretary shall establish an oversight program to monitor the effective and efficient use of funds authorized to carry out this title.

(B) Minimum requirement. - At a minimum, the program shall be responsive to all areas relating to financial integrity and project delivery.

(2) Financial integrity. -

(A) Financial management systems. - The Secretary shall perform annual reviews that address elements of the State transportation departments' financial management systems that affect projects approved under subsection (a).

(B) Project costs. - The Secretary shall develop minimum standards for estimating project costs and shall periodically evaluate the practices of States for estimating project costs, awarding contracts, and reducing project costs.

(3) Project delivery. - The Secretary shall perform annual reviews that address elements of the project delivery system of a State, which elements include one or more activities that are involved in the life cycle of a project from conception to completion of the project.

(4) Responsibility of the states. -

(A) In general. - The States shall be responsible for determining that subrecipients of Federal funds under this title have -

(i) adequate project delivery systems for projects approved under this section; and

(ii) sufficient accounting controls to properly manage such Federal funds.

(B) Periodic review. - The Secretary shall periodically review the monitoring of subrecipients by the States.

(5) Specific oversight responsibilities. -

(A) Effect of section. - Nothing in this section shall affect or discharge any oversight responsibility of the Secretary specifically provided for under this title or other Federal law.

(B) Appalachian development highways. - The Secretary shall retain full oversight responsibilities for the design and construction of all Appalachian development highways under section 14501 of title 40.

(h) Major Projects. -

(1) In general. - Notwithstanding any other provision of this section, a recipient of Federal financial assistance for a project under this title with an estimated total cost of \$500,000,000 or more, and recipients for such other projects as may be identified by the Secretary, shall submit to the Secretary for each project -

(A) a project management plan; and

(B) an annual financial plan, including a phasing plan when applicable.

(2) Project management plan. - A project management plan shall document -

(A) the procedures and processes that are in effect to provide timely information to the project decisionmakers to effectively manage the scope, costs, schedules, and quality of, and the Federal requirements applicable to, the project; and

(B) the role of the agency leadership and management team in the delivery of the project.

(3) Financial plan. - A financial plan -

(A) shall be based on detailed estimates of the cost to complete the project;

(B) shall provide for the annual submission of updates to the Secretary that are based on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project;

(C) may include a phasing plan that identifies fundable incremental improvements or phases that will address the purpose and the need of the project in the short term in the event there are insufficient financial resources to complete the entire project. If a phasing plan is adopted for a project pursuant to this section, the project shall

be deemed to satisfy the fiscal constraint requirements in the statewide and metropolitan planning requirements in sections 134 and 135; and

(D) shall assess the appropriateness of a public-private partnership to deliver the project.

(i) Other Projects. - A recipient of Federal financial assistance for a project under this title with an estimated total cost of \$100,000,000 or more that is not covered by subsection (h) shall prepare an annual financial plan. Annual financial plans prepared under this subsection shall be made available to the Secretary for review upon the request of the Secretary.

(j) Use of Advanced Modeling Technologies. -

(1) Definition of advanced modeling technology. - In this subsection, the term "advanced modeling technology" means an available or developing technology, including 3-dimensional digital modeling, that can -

(A) accelerate and improve the environmental review process;

(B) increase effective public participation;

(C) enhance the detail and accuracy of project designs;

(D) increase safety;

(E) accelerate construction, and reduce construction costs; or

(F) otherwise expedite project delivery with respect to transportation projects that receive Federal funding.

(2) Program. - With respect to transportation projects that receive Federal funding, the Secretary shall encourage the use of advanced modeling technologies during environmental, planning, financial management, design, simulation, and construction processes of the projects.

(3) Activities. - In carrying out paragraph (2), the Secretary shall -

(A) compile information relating to advanced modeling technologies, including industry best practices with respect to the use of the technologies;

(B) disseminate to States information relating to advanced modeling technologies, including industry best practices with respect to the use of the technologies; and

(C) promote the use of advanced modeling technologies.

(4) Comprehensive plan. - The Secretary shall develop and publish on the public website of the Department of Transportation a detailed and comprehensive plan for the implementation of paragraph (2).

### **Sec. 107. Acquisition of rights-of-way - Interstate System**

(a) In any case in which the Secretary is requested by a State to acquire lands or interests in lands (including within the term "interests in lands", the control of access thereto from adjoining lands) required by such State for right-of-way or other purposes in connection with the prosecution of any project for the construction, reconstruction, or improvement of any section of the Interstate System, the Secretary is authorized, in the name of the United States and prior to the approval of title by the Attorney General, to acquire, enter upon, and take possession of such lands or interests in lands by purchase, donation, condemnation, or otherwise in accordance with the laws of the United States (including sections 3114 to 3116 and 3118 of title 40), if -

(1) the Secretary has determined either that the State is unable to acquire necessary lands or interests in lands, or is unable to acquire such lands or interests in lands with sufficient promptness; and

(2) the State has agreed with the Secretary to pay, at such time as may be specified by the Secretary an amount equal to 10 per centum of the costs incurred by the Secretary, in acquiring such lands or interests in lands, or such lesser percentage which represents the State's pro rata share of project costs as determined in accordance with subsection (c)<sup>2</sup> of section 120 of this title.

(3) The authority granted by this section shall also apply to lands and interests in lands received as grants of land from the United States and owned or held by railroads or other corporations.

(b) The costs incurred by the Secretary in acquiring any such lands or interests in lands may include the cost of examination and abstract of title, certificate of title, advertising, and any fees incidental to such acquisition. All costs incurred by the Secretary in connection with the acquisition of any such lands or interests in lands shall be paid from the funds for construction, reconstruction, or improvement of the Interstate System apportioned to the State upon the request of which such lands or interests in lands are acquired, and any sums paid to the Secretary by such State as its share of the costs of acquisition of such lands or interests in lands shall be deposited in the Treasury to the credit of the appropriation for Federal-aid highways and shall be credited to the amount apportioned to such State as its apportionment of funds for construction, reconstruction, or improvement of the Interstate System, or shall be deducted from other moneys due the State for reimbursement from funds authorized to be appropriated under section 108(b) of the Federal-Aid Highway Act of 1956.

(c) The Secretary is further authorized and directed by proper deed, executed in the name of the United States, to convey any such lands or interests in lands acquired in any State under the provisions of this section, except the outside five feet of any such right-of-way in any State which does not provide control of access, to the State transportation department of such State or such political subdivision thereof as its laws may provide, upon such terms and conditions as to such lands or interests in lands as may be agreed upon by the Secretary and the State transportation department or political subdivisions to which the conveyance is to be made. Whenever the State makes provision for control of access satisfactory to the Secretary, the outside five feet then shall be conveyed to the State by the Secretary, as herein provided.

(d) Whenever rights-of-way, including control of access, on the Interstate System are required over lands or interests in lands owned by the United States, the Secretary may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or other person constructing the projects on such lands adequate rights-of-way and control of access thereto from adjoining lands, and any such agency is directed to cooperate with the Secretary in this connection.

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<sup>2</sup> Subsection (c) of section 120 of this title, referred to in subsec. (a)(2), was struck out and a new subsec. (c) was added by Pub. L. 102-240, title I, §1021(a), Dec. 18, 1991, 105 Stat. 1950.

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**Sec. 108. Advance acquisition of real property**

## (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 this title, the Secretary, upon the request of a State, may make available, for the acquisition of real property interests, such funds apportioned to the State as may be expended on the transportation improvement, under such rules and regulations as the Secretary may issue.

(2) Construction. - The agreement between the Secretary and the State 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) Federal participation in the cost of real property interests acquired under subsection (a) of this section shall not exceed the Federal pro rata share applicable to the class of funds from which Federal reimbursement is made.

## (c) State-funded Early Acquisition of Real Property Interests. -

(1) In general. - A State may carry out, at the expense of the State, acquisitions of interests in real property for a project before completion of the review process required for the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) without affecting subsequent approvals required for the project by the State or any Federal agency.

(2) Eligibility for reimbursement. - Subject to paragraph (3), funds apportioned to a State under this title may be used to participate in the payment of -

(A) costs incurred by the State for acquisition of real property interests, acquired in advance of any Federal approval or authorization, if the real property interests are subsequently incorporated into a project eligible for surface transportation program funds; and

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

(3) Terms and conditions. - The Federal share payable of the costs described in paragraph (2) shall be eligible for reimbursement out of funds apportioned to a State under this title when the real property interests acquired are incorporated into a project eligible for surface transportation program funds, if the State demonstrates to the Secretary and the Secretary finds that -

(A) any land acquired, and relocation assistance provided, complied with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(B) the requirements of title VI of the Civil Rights Act of 1964 have been complied with;

(C) the State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and the acquisition is certified by the Governor as consistent with the State plans before the acquisition;

(D) the acquisition is determined in advance by the Governor to be consistent with the State transportation planning process pursuant to section 135 of this title;

(E) the alternative for which the real property interest is acquired is selected by the State pursuant to regulations to be issued by the Secretary which provide for the consideration of the environmental impacts of various alternatives;

(F) before the time that the cost incurred by a State is approved for Federal participation, environmental compliance pursuant to the National Environmental Policy Act has been completed for the project for which the real property interest was acquired by the State, and the acquisition has been approved by the Secretary under this Act,<sup>3</sup> and in compliance with section 303 of title 49, section 7 of the Endangered Species Act, and all other applicable environmental laws shall be identified by the Secretary in regulations; and

(G) before the time that the cost incurred by a State is approved for Federal participation, the Secretary has determined that the property acquired in advance of Federal approval or authorization did not influence the environmental assessment of the project, the decision relative to the need to construct the project, or the selection of the project design or location.

(d) Federally Funded Early Acquisition of Real Property Interests. -

(1) Definition of acquisition of a real property interest. - In this subsection, the term "acquisition of a real property interest" includes the acquisition of -

(A) any interest in land;

(B) a contractual right to acquire any interest in land; or

(C) any other similar action to acquire or preserve rights-of-way for a transportation facility.

(2) Authorization. - The Secretary may authorize the use of funds apportioned to a State under this title for the acquisition of a real property interest by a State.

(3) State certification. - A State requesting Federal funding for an acquisition of a real property interest shall certify in writing, with concurrence by the Secretary, that -

(A) the State has authority to acquire the real property interest under State law; and

(B) the acquisition of the real property interest -

(i) is for a transportation purpose;

(ii) will not cause any significant adverse environmental impact;

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

(iv) does not prevent the lead agency from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process;

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<sup>3</sup> The National Environmental Policy Act, referred to in subsec. (c)(3)(F), probably means the National Environmental Policy Act of 1969, Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

- (v) is consistent with the State transportation planning process under section 135;
- (vi) complies with other applicable Federal laws (including regulations);
- (vii) will be acquired through negotiation, without the threat of condemnation; and
- (viii) will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(4) Environmental compliance. -

(A) In general. - Before authorizing Federal funding for an acquisition of a real property interest, the Secretary shall complete the review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the acquisition of the real property interest.

(B) Independent utility. - The acquisition of a real property interest -

(i) shall be treated as having independent utility for purposes of the review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) shall not limit consideration of alternatives for future transportation improvements with respect to the real property interest.

(5) Programming. -

(A) In general. - The acquisition of a real property interest for which Federal funding is requested shall be included as a project in an applicable transportation improvement program under sections 134 and 135 and sections 5303 and 5304 of title 49.

(B) Acquisition project. - The acquisition project may consist of the acquisition of a specific parcel, a portion of a transportation corridor, or an entire transportation corridor.

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

(7) Reimbursement. - If Federal-aid reimbursement is made for real property interests acquired early under this section and the real property interests are 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 reimbursed against funds apportioned to the State.

(8) Other requirements and conditions. -

(A) Applicable law. - The acquisition of a real property interest shall be carried out in compliance with all requirements applicable to the acquisition of real property interests for federally funded transportation projects.

(B) Additional conditions. - The Secretary may establish such other conditions or restrictions on acquisitions under this subsection as the Secretary determines to be appropriate.

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**Sec. 109. Standards**

(a) In General. - The Secretary shall ensure that the plans and specifications for each proposed highway project under this chapter provide for a facility that will -

(1) adequately serve the existing and planned future traffic of the highway in a manner that is conducive to safety, durability, and economy of maintenance; and

(2) be designed and constructed in accordance with criteria best suited to accomplish the objectives described in paragraph (1) and to conform to the particular needs of each locality.

(b) The geometric and construction standards to be adopted for the Interstate System shall be those approved by the Secretary in cooperation with the State transportation departments. Such standards, as applied to each actual construction project, shall be adequate to enable such project to accommodate the types and volumes of traffic anticipated for such project for the twenty-year period commencing on the date of approval by the Secretary, under section 106 of this title, of the plans, specifications, and estimates for actual construction of such project. Such standards shall in all cases provide for at least four lanes of traffic. The right-of-way width of the Interstate System shall be adequate to permit construction of projects on the Interstate System to such standards. The Secretary shall apply such standards uniformly throughout all the States.

(c) Design Criteria for National Highway System. -

(1) In general. - A design for new construction, reconstruction, resurfacing (except for maintenance resurfacing), restoration, or rehabilitation of a highway on the National Highway System (other than a highway also on the Interstate System) may take into account, in addition to the criteria described in subsection (a) -

(A) the constructed and natural environment of the area;

(B) the environmental, scenic, aesthetic, historic, community, and preservation impacts of the activity; and

(C) access for other modes of transportation.

(2) Development of criteria. - The Secretary, in cooperation with State transportation departments, may develop criteria to implement paragraph (1). In developing criteria under this paragraph, the Secretary shall consider -

(A) the results of the committee process of the American Association of State Highway and Transportation Officials as used in adopting and publishing "A Policy on Geometric Design of Highways and Streets", including comments submitted by interested parties as part of such process;

(B) the publication entitled "Flexibility in Highway Design" of the Federal Highway Administration;

(C) "Eight Characteristics of Process to Yield Excellence and the Seven Qualities of Excellence in Transportation Design" developed by the conference held during 1998 entitled "Thinking Beyond the Pavement National Workshop on Integrating Highway Development with Communities and the Environment while Maintaining Safety and Performance"; and

(D) any other material that the Secretary determines to be appropriate.

(d) On any highway project in which Federal funds hereafter participate, or on any such project constructed since December 20, 1944, the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings, and traffic signals installed or placed by any public



authority or other agency, shall be subject to the approval of the State transportation department with the concurrence of the Secretary, who is directed to concur only in such installations as will promote the safe and efficient utilization of the highways.

(e) Installation of Safety Devices. -

(1) Highway and railroad grade crossings and drawbridges. - No funds shall be approved for expenditure on any Federal-aid highway, or highway affected under chapter 2 of this title, unless proper safety protective devices complying with safety standards determined by the Secretary at that time as being adequate shall be installed or be in operation at any highway and railroad grade crossing or drawbridge on that portion of the highway with respect to which such expenditures are to be made.

(2) Temporary traffic control devices. - No funds shall be approved for expenditure on any Federal-aid highway, or highway affected under chapter 2, unless proper temporary traffic control devices to improve safety in work zones will be installed and maintained during construction, utility, and maintenance operations on that portion of the highway with respect to which such expenditures are to be made. Installation and maintenance of the devices shall be in accordance with the Manual on Uniform Traffic Control Devices.

(f) The Secretary shall not, as a condition precedent to his approval under section 106 of this title, require any State to acquire title to, or control of, any marginal land along the proposed highway in addition to that reasonably necessary for road surfaces, median strips, bikeways, gutters, ditches, and side slopes, and of sufficient width to provide service roads for adjacent property to permit safe access at controlled locations in order to expedite traffic, promote safety, and minimize roadside parking.

(g) Not later than January 30, 1971, the Secretary shall issue guidelines for minimizing possible soil erosion from highway construction. Such guidelines shall apply to all proposed projects with respect to which plans, specifications, and estimates are approved by the Secretary after the issuance of such guidelines.

(h) Not later than July 1, 1972, the Secretary, after consultation with appropriate Federal and State officials, shall submit to Congress, and not later than 90 days after such submission, promulgate guidelines designed to assure that possible adverse economic, social, and environmental effects relating to any proposed project on any Federal-aid system have been fully considered in developing such project, and that the final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe and efficient transportation, public services, and the costs of eliminating or minimizing such adverse effects and the following:

- (1) air, noise, and water pollution;
- (2) destruction or disruption of man-made and natural resources, aesthetic values, community cohesion and the availability of public facilities and services;
- (3) adverse employment effects, and tax and property value losses;
- (4) injurious displacement of people, businesses and farms; and
- (5) disruption of desirable community and regional growth.

Such guidelines shall apply to all proposed projects with respect to which plans, specifications, and estimates are approved by the Secretary after the issuance of such guidelines.

(i) The Secretary, after consultation with appropriate Federal, State, and local officials, shall develop and promulgate standards for highway noise levels compatible with different land uses and after July 1, 1972, shall not approve plans and specifications for any proposed project on any Federal-aid system for which location approval has not yet been secured unless he determines that such plans and specifications include adequate measures to implement the appropriate noise level standards. The Secretary, after consultation with the Administrator of the Environmental Protection Agency and appropriate Federal, State, and local officials, may promulgate standards for the control of highway noise

levels for highways on any Federal-aid system for which project approval has been secured prior to July 1, 1972. The Secretary may approve any project on a Federal-aid system to which noise-level standards are made applicable under the preceding sentence for the purpose of carrying out such standards. Such project may include, but is not limited to, the acquisition of additional rights-of-way, the construction of physical barriers, and landscaping. Sums apportioned for the Federal-aid system on which such project will be located shall be available to finance the Federal share of such project. Such project shall be deemed a highway project for all purposes of this title.

(j) The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall develop and promulgate guidelines to assure that highways constructed pursuant to this title are consistent with any approved plan for -

(1) the implementation of a national ambient air quality standard for each pollutant for which an area is designated as a nonattainment area under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)); or

(2) the maintenance of a national ambient air quality standard in an area that was designated as a nonattainment area but that was later redesignated by the Administrator as an attainment area for the standard and that is required to develop a maintenance plan under section 175A of the Clean Air Act (42 U.S.C. 7505a).

(k) The Secretary shall not approve any project involving approaches to a bridge under this title, if such project and bridge will significantly affect the traffic volume and the highway system of a contiguous State without first taking into full consideration the views of that State.

(l) (1) In determining whether any right-of-way on any Federal-aid highway should be used for accommodating any utility facility, the Secretary shall -

(A) first ascertain the effect such use will have on highway and traffic safety, since in no case shall any use be authorized or otherwise permitted, under this or any other provision of law, which would adversely affect safety;

(B) evaluate the direct and indirect environmental and economic effects of any loss of productive agricultural land or any impairment of the productivity of any agricultural land which would result from the disapproval of the use of such right-of-way for the accommodation of such utility facility; and

(C) consider such environmental and economic effects together with any interference with or impairment of the use of the highway in such right-of-way which would result from the use of such right-of-way for the accommodation of such utility facility.

(2) For the purpose of this subsection -

(A) the term "utility facility" means any privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public; and

(B) the term "right-of-way" means any real property, or interest therein, acquired, dedicated, or reserved for the construction, operation, and maintenance of a highway.

(m) Protection of Nonmotorized Transportation Traffic. - The Secretary shall not approve any project or take any regulatory action under this title that will result in the severance of an existing major route or have significant adverse impact on the safety for nonmotorized transportation traffic and light

motorcycles, unless such project or regulatory action provides for a reasonable alternate route or such a route exists.

(n) It is the intent of Congress that any project for resurfacing, restoring, or rehabilitating any highway, other than a highway access to which is fully controlled, in which Federal funds participate shall be constructed in accordance with standards to preserve and extend the service life of highways and enhance highway safety.

(o) Compliance With State Laws for Non-NHS Projects. - Projects (other than highway projects on the National Highway System) shall be designed, constructed, operated, and maintained in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards.

(p) Scenic and Historic Values. - Notwithstanding subsections (b) and (c), the Secretary may approve a project for the National Highway System if the project is designed to -

- (1) allow for the preservation of environmental, scenic, or historic values;
- (2) ensure safe use of the facility; and
- (3) comply with subsection (a).

(q) Phase Construction. - Safety considerations for a project under this title may be met by phase construction consistent with the operative safety management system established in accordance with a statewide transportation improvement program approved by the Secretary.

(r) Pavement Markings. - The Secretary shall not approve any pavement markings project that includes the use of glass beads containing more than 200 parts per million of arsenic or lead, as determined in accordance with Environmental Protection Agency testing methods 3052, 6010B, or 6010C.

#### **Sec. 110. [Repealed]**

#### **Sec. 111. Agreements relating to use of and access to rights-of-way - Interstate System**

(a) In General. - All agreements between the Secretary and the State transportation department for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. Such agreements shall also contain a clause providing that the State will not permit automotive service stations or other commercial establishments for serving motor vehicle users to be constructed or located on the rights-of-way of the Interstate System and will not change the boundary of any right-of-way on the Interstate System to accommodate construction of, or afford access to, an automotive service station or other commercial establishment. Such agreements may, however, authorize a State or political subdivision thereof to use or permit the use of the airspace above and below the established grade line of the highway pavement for such purposes as will not impair the full use and safety of the highway, as will not require or permit vehicular access to such space directly from such established grade line of the highway, or otherwise interfere in any way with the free flow of traffic on the Interstate System. Nothing in this section, or in any agreement entered into under this section, shall require the discontinuance, obstruction, or removal of any establishment for serving motor vehicle users on any highway which has been, or is hereafter, designated as a highway or route on the Interstate System (1) if such establishment (A) was in existence before January 1, 1960, (B) is owned by a State, and (C) is operated through concessionaries or otherwise, and (2) if all access to, and exits from, such establishment conform to the standards established for such a highway under this title.

(b) Rest Areas. -

(1) In general. - Notwithstanding subsection (a), the Secretary shall permit a State to acquire, construct, operate, and maintain a rest area along a highway on the Interstate System in such State.

(2) Limited activities. - The Secretary shall permit limited commercial activities within a rest area under paragraph (1), if the activities are available only to customers using the rest area and are limited to -

(A) commercial advertising and media displays if such advertising and displays are -

(i) exhibited solely within any facility constructed in the rest area;

and

(ii) not legible from the main traveled way;

(B) items designed to promote tourism in the State, limited to books, DVDs, and other media;

(C) tickets for events or attractions in the State of a historical or tourism-related nature;

(D) travel-related information, including maps, travel booklets, and hotel coupon booklets; and

(E) lottery machines, provided that the priority afforded to blind vendors under subsection (c) applies to this subparagraph.

(3) Private operators. - A State may permit a private party to operate such commercial activities.

(4) Limitation on use of revenues. - A State shall use any revenues received from the commercial activities in a rest area under this section to cover the costs of acquiring, constructing, operating, and maintaining rest areas in the State.

(c) Vending Machines. - Notwithstanding subsection (a), any State may permit the placement of vending machines in rest and recreation areas, and in safety rest areas, constructed or located on rights-of-way of the Interstate System in such State. Such vending machines may only dispense such food, drink, and other articles as the State transportation department determines are appropriate and desirable. Such vending machines may only be operated by the State. In permitting the placement of vending machines, the State shall give priority to vending machines which are operated through the State licensing agency designated pursuant to section 2(a)(5) of the Act of June 20, 1936, commonly known as the "Randolph-Sheppard Act" (20 U.S.C. 107a(a)(5)). The costs of installation, operation, and maintenance of vending machines shall not be eligible for Federal assistance under this title.

(d) Motorist Call Boxes. -

(1) In general. - Notwithstanding subsection (a), a State may permit the placement of motorist call boxes on rights-of-way of the National Highway System. Such motorist call boxes may include the identification and sponsorship logos of such call boxes.

(2) Sponsorship logos. -

(A) Approval by state and local agencies. - All call box installations displaying sponsorship logos under this subsection shall be approved by the highway agencies having jurisdiction of the highway on which they are located.

(B) Size on box. - A sponsorship logo may be placed on the call box in a dimension not to exceed the size of the call box or a total dimension in excess of 12 inches by 18 inches.

(C) Size on identification sign. - Sponsorship logos in a dimension not to exceed 12 inches by 30 inches may be displayed on a call box identification sign affixed to the call box post.

(D) Spacing of signs. - Sponsorship logos affixed to an identification sign on a call box post may be located on the rights-of-way at intervals not more frequently than 1 per every 5 miles.

(E) Distribution throughout state. - Within a State, at least 20 percent of the call boxes displaying sponsorship logos shall be located on highways outside of urbanized areas with a population greater than 50,000.

(3) Nonsafety hazards. - The call boxes and their location, posts, foundations, and mountings shall be consistent with requirements of the Manual on Uniform Traffic Control Devices or any requirements deemed necessary by the Secretary to assure that the call boxes shall not be a safety hazard to motorists.

(e) Justification Reports. - If the Secretary requests or requires a justification report for a project that would add a point of access to, or exit from, the Interstate System, the Secretary may permit a State transportation department to approve the report.

### Sec. 112. Letting of contracts

(a) In all cases where the construction is to be performed by the State transportation department or under its supervision, a request for submission of bids shall be made by advertisement unless some other method is approved by the Secretary. The Secretary shall require such plans and specifications and such methods of bidding as shall be effective in securing competition.

(b) Bidding Requirements. -

(1) In general. - Subject to paragraphs (2) and (3), construction of each project, subject to the provisions of subsection (a) of this section, shall be performed by contract awarded by competitive bidding, unless the State transportation department demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective or that an emergency exists. Contracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility. No requirement or obligation shall be imposed as a condition precedent to the award of a contract to such bidder for a project, or to the Secretary's concurrence in the award of a contract to such bidder, unless such requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications.

(2) Contracting for engineering and design services. -

(A) General rule. - Subject to paragraph (3), each contract for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services with respect to a project subject to the provisions of subsection (a) of this section shall be awarded in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40.

(B) Performance and audits. - Any contract or subcontract awarded in accordance with subparagraph (A), whether funded in whole or in part with Federal-aid highway funds, shall be performed and audited in compliance with cost principles contained in the Federal Acquisition Regulations of part 31 of title 48, Code of Federal Regulations.

(C) Indirect cost rates. - Instead of performing its own audits, a recipient of funds under a contract or subcontract awarded in accordance with subparagraph (A) shall accept indirect cost rates established in accordance with the Federal Acquisition Regulations for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently under dispute.

(D) Application of rates. - Once a firm's indirect cost rates are accepted under this paragraph, the recipient of the funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and shall not be limited by administrative or de facto ceilings of any kind.

(E) Prenotification; confidentiality of data. - A recipient of funds requesting or using the cost and rate data described in subparagraph (D) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided, in whole or in part, to another firm or to any government agency which is not part of the group of agencies sharing cost data under this paragraph, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

(F) <sup>4</sup> Subparagraphs (B), (C), (D) and (E) herein shall not apply to the States of West Virginia or Minnesota.

(3) Design-build contracting. -

(A) In general. - A State transportation department or local transportation agency may award a design-build contract for a qualified project described in subparagraph (C) using any procurement process permitted by applicable State and local law.

(B) Limitation on final design. - Final design under a design-build contract referred to in subparagraph (A) shall not commence before compliance with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(C) Qualified projects. - A qualified project referred to in subparagraph (A) is a project under this chapter (including intermodal projects) for which the Secretary has approved the use of design-build contracting under criteria specified in regulations issued by the Secretary.

(D) Regulatory process. - Not later than 90 days after the date of enactment of the SAFETEA-LU, the Secretary shall issue revised regulations under section 1307(c) of the Transportation Equity Act for 21st Century (23 U.S.C. 112 note; 112 Stat. 230) that -

(i) do not preclude a State transportation department or local transportation agency, prior to compliance with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), from -

(I) issuing requests for proposals;

(II) proceeding with awards of design-build contracts; or

(III) issuing notices to proceed with preliminary design work under design-build contracts;

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<sup>4</sup> So in original.

(ii) require that the State transportation department or local transportation agency receive concurrence from the Secretary before carrying out an activity under clause (i); and (iii) preclude the design-build contractor from proceeding with final design or construction of any permanent improvement prior to completion of the process under such section 102.

(E) Design-build contract defined. - In this paragraph, the term "design-build contract" means an agreement that provides for design and construction of a project by a contractor, regardless of whether the agreement is in the form of a design-build contract, a franchise agreement, or any other form of contract approved by the Secretary.

(4) Method of contracting. -

(A) In general. -

(i) 2-phase contract. - A contracting agency may award a 2-phase contract to a construction manager or general contractor for preconstruction and construction services.

(ii) Preconstruction services phase. - In the preconstruction services phase of a contract under this paragraph, the contractor shall provide the contracting agency with advice for scheduling, work sequencing, cost engineering, constructability, cost estimating, and risk identification.

(iii) Agreement. - Prior to the start of the construction services phase, the contracting agency and the contractor may agree to a price and other factors specified in regulation for the construction of the project or a portion of the project.

(iv) Construction phase. - If an agreement is reached under clause (iii), the contractor shall be responsible for the construction of the project or portion of the project at the negotiated price and in compliance with the other factors specified in the agreement.

(B) Selection. - A contract shall be awarded to a contractor under this paragraph using a competitive selection process based on qualifications, experience, best value, or any other combination of factors considered appropriate by the contracting agency.

(C) Timing. -

(i) Relationship to nepa process. - Prior to the completion of the environmental review process required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), a contracting agency may -

(I) issue requests for proposals;

(II) proceed with the award of a contract for preconstruction services under subparagraph (A)(ii); and

(III) issue notices to proceed with a preliminary design and any work related to preliminary design, to the extent that those actions do not limit any reasonable range of alternatives.

(ii) Construction services phase. - A contracting agency shall not proceed with the award of the construction services phase of a contract under subparagraph (A)(iv) and shall not proceed, or permit any consultant or contractor to proceed, with final design or construction until completion of the environmental review process required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

- (iii) Approval requirement. - Prior to authorizing construction activities, the Secretary shall approve -
  - (I) the price estimate of the contracting agency for the entire project; and
  - (II) any price agreement with the general contractor for the project or a portion of the project.
- (iv) Design activities. -
  - (I) In general. - A contracting agency may proceed, at the expense of the contracting agency, with design activities at any level of detail for a project before completion of the review process required for the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) without affecting subsequent approvals required for the project.
  - (II) Reimbursement. - Design activities carried out under subclause (I) shall be eligible for Federal reimbursement as a project expense in accordance with the requirements under section 109(r).
- (v) Termination provision. - The Secretary shall require a contract to include an appropriate termination provision in the event that a no-build alternative is selected.

(c) The Secretary shall require as a condition precedent to his approval of each contract awarded by competitive bidding pursuant to subsection (b) of this section, and subject to the provisions of this section, a sworn statement, executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract.

(d) No contract awarded by competitive bidding pursuant to subsection (b) of this section, and subject to the provisions of this section, shall be entered into by any State transportation department or local subdivision of the State without compliance with the provisions of this section, and without the prior concurrence of the Secretary in the award thereof.

(e) Standardized Contract Clause Concerning Site Conditions. -

(1) General rule. - The Secretary shall issue regulations establishing and requiring, for inclusion in each contract entered into with respect to any project approved under section 106 of this title a contract clause, developed in accordance with guidelines established by the Secretary, which equitably addresses each of the following:

- (A) Site conditions.
- (B) Suspensions of work ordered by the State (other than a suspension of work caused by the fault of the contractor or by weather).
- (C) Material changes in the scope of work specified in the contract. The guidelines established by the Secretary shall not require arbitration.

(2) Limitation on applicability. -

(A) State law. - Paragraph (1) shall apply in a State except to the extent that such State adopts or has adopted by statute a formal procedure for the development of a contract clause described in paragraph (1) or adopts or has adopted a statute which does not permit inclusion of such a contract clause.

(B) Design-build contracts. - Paragraph (1) shall not apply to any design-build contract approved under subsection (b)(3).



(f) Selection Process. - A State may procure, under a single contract, the services of a consultant to prepare any environmental impact assessments or analyses required for a project, including environmental impact statements, as well as subsequent engineering and design work on the project if the State conducts a review that assesses the objectivity of the environmental assessment, environmental analysis, or environmental impact statement prior to its submission to the Secretary.

(g) Temporary Traffic Control Devices. -

(1) Issuance of regulations. - The Secretary, after consultation with appropriate Federal and State officials, shall issue regulations establishing the conditions for the appropriate use of, and expenditure of funds for, uniformed law enforcement officers, positive protective measures between workers and motorized traffic, and installation and maintenance of temporary traffic control devices during construction, utility, and maintenance operations.

(2) Effects of regulations. - Based on regulations issued under paragraph (1), a State shall

(A) develop separate pay items for the use of uniformed law enforcement officers, positive protective measures between workers and motorized traffic, and installation and maintenance of temporary traffic control devices during construction, utility, and maintenance operations; and

(B) incorporate such pay items into contract provisions to be included in each contract entered into by the State with respect to a highway project to ensure compliance with section 109(e)(2).

(3) Limitation. - Nothing in the regulations shall prohibit a State from implementing standards that are more stringent than those required under the regulations.

(4) Positive protective measures defined. - In this subsection, the term "positive protective measures" means temporary traffic barriers, crash cushions, and other strategies to avoid traffic accidents in work zones, including full road closures.

### **Sec. 113. Prevailing rate of wage**

(a) The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on the construction work performed on highway projects on the Federal-aid highways authorized under the highway laws providing for the expenditure of Federal funds upon Federal-aid highways, 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 in accordance with sections 3141-3144, 3146, and 3147 of title 40.

(b) In carrying out the duties of subsection (a) of this section, the Secretary of Labor shall consult with the highway department of the State in which a project on any Federal-aid highway is to be performed. After giving due regard to the information thus obtained, he shall make a predetermination of the minimum wages to be paid laborers and mechanics in accordance with the provisions of subsection (a) of this section which shall be set out in each project advertisement for bids and in each bid proposal form and shall be made a part of the contract covering the project.

(c) The provisions of the section shall not be applicable to employment pursuant to apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal employment opportunity in connection with Federal-aid highway construction programs.

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**Sec. 114. Construction**

(a) Construction Work In General. - The construction of any Federal-aid highway or a portion of a Federal-aid highway shall be undertaken by the respective State transportation departments or under their direct supervision. The Secretary shall have the right to conduct such inspections and take such corrective action as the Secretary determines to be appropriate. The construction work and labor in each State shall be performed under the direct supervision of the State transportation department and in accordance with the laws of that State and applicable Federal laws. Construction may be begun as soon as funds are available for expenditure pursuant to subsection (a) of section 118 of this title. After July 1, 1973, the State transportation department shall not erect on any project where actual construction is in progress and visible to highway users any informational signs other than official traffic control devices conforming with standards developed by the Secretary of Transportation.

(b) Convict Labor and Convict Produced Materials. -

(1) Limitation on convict labor. - Convict labor shall not be used in construction of Federal-aid highways or portions of Federal-aid highways unless the labor is performed by convicts who are on parole, supervised release, or probation.

(2) Limitation on convict produced materials. - Materials produced after July 1, 1991, by convict labor may only be used in such construction -

(A) if such materials are produced by convicts who are on parole, supervised release, or probation from a prison; or

(B) if such materials are produced by convicts in a qualified prison facility and the amount of such materials produced in such facility for use in such construction during any 12-month period does not exceed the amount of such materials produced in such facility for use in such construction during the 12-month period ending July 1, 1987.

(3) Qualified prison facility defined. - As used in this subsection, "qualified prison facility" means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in construction of highways or portions of highways located on a Federal-aid system in existence during that period.

(c) Construction Work in Alaska. -

(1) In general. - The Secretary shall ensure that a worker who is employed on a remote project for the construction of a highway or portion of a highway located on a Federal-aid system in the State of Alaska and who is not a domiciled resident of the locality shall receive meals and lodging.

(2) Lodging. - The lodging under paragraph (1) shall be in accordance with section 1910.142 of title 29, Code of Federal Regulations (relating to temporary labor camp requirements).

(3) Per diem. -

(A) In general. - Contractors are encouraged to use commercial facilities and lodges on remote projects, however, when such facilities are not available, per diem in lieu of room and lodging may be paid on remote Federal highway projects at a basic rate of \$75.00 per day or part of a day the worker is employed on the project. Where the contractor provides or furnishes room and lodging or pays a per diem, the cost of the amount shall not be considered a part of wages and shall be excluded from the calculation of wages.

(B) Secretary of labor. - Such per diem rate shall be adopted by the Secretary of Labor for all applicable remote Federal highway projects in Alaska.

(C) Exception. - Per diem shall not be allowed on any of the following remote projects for the construction of a highway or portion of a highway located on a Federal-aid system:

(i) West of Livengood on the Elliot Highway.

(ii) Mile 0 on the Dalton Highway to the North Slope of Alaska; north of Mile 20 on the Taylor Highway.

(iii) East of Chicken on the Top of the World Highway and south of Tetlin Junction to the Alaska Canadian border.

(4) Definitions. - In this subsection, the following definitions apply:

(A) Remote. - The term "remote", as used with respect to a project, means that the project is 65 road miles or more from the international airport in Fairbanks, Anchorage, or Juneau, Alaska, as the case may be, or is inaccessible by road in a 2-wheel drive vehicle.

(B) Resident. - The term "resident", as used with respect to a project, means a person living within 65 road miles of the midpoint of the project for at least 12 consecutive months prior to the award of the project.

(d) Veterans Employment. -

(1) In general. - Subject to paragraph (2), a recipient of Federal financial assistance under this chapter shall, to the extent practicable, encourage contractors working on a highway project funded using the assistance to make a best faith effort in the hiring or referral of laborers on any project for the construction of a highway to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract.

(2) Administration. - This subsection shall not -

(A) apply to projects subject to section 140(d); or

(B) be administered or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, a female, or any equally qualified former employee.

### Sec. 115. Advance construction

(a) In General. - The Secretary may authorize a State to proceed with a project authorized under this title -

(1) without the use of Federal funds; and

(2) in accordance with all procedures and requirements applicable to the project other than those procedures and requirements that limit the State to implementation of a project -

(A) with the aid of Federal funds previously apportioned or allocated to the State; or

(B) with obligation authority previously allocated to the State.

(b) **Obligation of Federal Share.** - The Secretary, on the request of a State and execution of a project agreement, may obligate all or a portion of the Federal share of a project authorized to proceed under this section from any category of funds for which the project is eligible.

(c) **Inclusion in Transportation Improvement Program.** - The Secretary may approve an application for a project under this section only if the project is included in the transportation improvement program of the State developed under section 135(f).

### **Sec. 116. Maintenance**

(a) **Definitions.** - In this section, the following definitions apply:

(1) **Preventive maintenance.** - The term "preventive maintenance" includes pavement preservation programs and activities.

(2) **Pavement preservation programs and activities.** - The term "pavement preservation programs and activities" means programs and activities employing a network level, long-term strategy that enhances pavement performance by using an integrated, cost-effective set of practices that extend pavement life, improve safety, and meet road user expectations.

(b) It shall be the duty of the State transportation department or other direct recipient to maintain, or cause to be maintained, any project constructed under the provisions of this chapter or constructed under the provisions of prior Acts.

(c) **Agreement.** - In any State in which the State transportation department or other direct recipient is without legal authority to maintain a project described in subsection (b), the transportation department or direct recipient shall enter into a formal agreement with the appropriate officials of the county or municipality in which the project is located to provide for the maintenance of the project.

(d) If at any time the Secretary shall find that any project constructed under the provisions of this chapter, or constructed under the provisions of prior Acts, is not being properly maintained, he shall call such fact to the attention of the State transportation department or other direct recipient. If, within ninety days after receipt of such notice, such project has not been put in proper condition of maintenance, the Secretary shall withhold approval of further projects of all types in the State highway district, municipality, county, other political or administrative subdivision of the State, or the entire State in which such project is located, whichever the Secretary deems most appropriate, until such project shall have been put in proper condition of maintenance.

(e) **Preventive Maintenance.** - A preventive maintenance activity shall be eligible for Federal assistance under this title if the State demonstrates to the satisfaction of the Secretary that the activity is a cost-effective means of extending the useful life of a Federal-aid highway.

### **Sec. 117. [Repealed]**

### **Sec. 118. Availability of funds**

(a) **Date Available for Obligation.** - Except as otherwise specifically provided, authorizations from the Highway Trust Fund (other than the Mass Transit Account) to carry out this title shall be available for obligation on the date of their apportionment or allocation or on October 1 of the fiscal year for which they are authorized, whichever occurs first.

(b) **Period of Availability.** - Except as otherwise specifically provided, funds apportioned or allocated pursuant to this title in a State shall remain available for obligation in that State for a period of 3

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

(c) Obligation and Release of Funds. -

(1) In general. - Funds apportioned or allocated to a State for a purpose for any fiscal year shall be considered to be obligated if a sum equal to the total of the funds apportioned or allocated to the State for that purpose for that fiscal year and previous fiscal years is obligated.

(2) Released funds. - Any funds released by the final payment for a project, or by modifying the project agreement for a project, shall be -

(A) credited to the same class of funds previously apportioned or allocated to the State for the project; and

(B) immediately available for obligation.

(3) Net obligations. - Notwithstanding any other provision of law (including a regulation), obligations recorded against funds made available under this subsection shall be recorded and reported as net obligations.

(d) <sup>5</sup> Funds made available to the State of Alaska and the Commonwealth of Puerto Rico under this title may be expended for construction of access and development roads that will serve resource development, recreational, residential, commercial, industrial, or other like purposes.

#### **Sec. 119. National highway performance program**

(a) Establishment. - The Secretary shall establish and implement a national highway performance program under this section.

(b) Purposes. - The purposes of the national highway performance program shall be -

(1) to provide support for the condition and performance of the National Highway System;

(2) to provide support for the construction of new facilities on the National Highway System; and

(3) to ensure that investments of Federal-aid funds in highway construction are directed to support progress toward the achievement of performance targets established in an asset management plan of a State for the National Highway System.

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<sup>5</sup> Subsec. (d). Pub. L. 105-178, §1106(c)(1)(B), which directed the redesignation of subsec. (e) as (d) and the striking out of former subsec. (d), was executed by redesignating the subsec. (e) added by Pub. L. 105-178, §1226(b)(2) as (d), and striking out former subsec. (d), to reflect the probable intent of Congress. Former subsec. (d) read as follows: "In addition to amounts otherwise available to carry out this section, an amount equal to the amount by which the unobligated apportionment for the Interstate System in any State is reduced under section 103(e)(4) of this title on account of the withdrawal of a route or portion thereof on the Interstate System, which withdrawal is approved after the date of enactment of this subsection, shall be available to the Secretary for obligation in accordance with subsection (b)(1) of this section."

(c) Eligible Facilities. - Except as provided in subsection (d), to be eligible for funding apportioned under section 104(b)(1) to carry out this section, a facility shall be located on the National Highway System, as defined in section 103.

(d) Eligible Projects. - Funds apportioned to a State to carry out the national highway performance program may be obligated only for a project on an eligible facility that is -

(1)

(A) a project or 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

(B) consistent with sections 134 and 135; and

(2) for 1 or more of the following purposes:

(A) Construction, reconstruction, resurfacing, restoration, rehabilitation, preservation, or operational improvement of segments of the National Highway System.

(B) Construction, 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) Construction, 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 described in section 144, 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 described in section 144.

(F) Construction, rehabilitation, or replacement of existing ferry boats and ferry boat facilities, including approaches, that connect road segments of the National Highway System.

(G) Construction, reconstruction, resurfacing, restoration, rehabilitation, and preservation of, and operational improvements for, a Federal-aid highway not on the National Highway System, and construction of a transit project eligible for assistance under chapter 53 of title 49, if -

(i) the highway project or transit project is in the same corridor as, and in proximity to, a fully access-controlled highway designated as a part of the National Highway System;

(ii) the construction or improvements will reduce delays or produce travel time savings on the fully access-controlled highway described in clause (i) and improve regional traffic flow; and

(iii) the construction or improvements are more cost-effective, 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.

- (I) Highway safety improvements for segments of the National Highway System.
- (J) Capital and operating costs for traffic 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 in accordance with this section, 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) Infrastructure-based intelligent transportation systems capital improvements.
- (M) Environmental restoration and pollution abatement in accordance with section 328.
- (N) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329.
- (O) Environmental mitigation efforts related to projects funded under this section, as described in subsection (g).
- (P) Construction of publicly owned intracity or intercity bus terminals servicing the National Highway System.

(e) State Performance Management. -

(1) In general. - A State shall develop a risk-based asset management plan for the National Highway System to improve or preserve the condition of the assets and the performance of the system.

(2) Performance driven plan. - A State asset management plan shall include strategies leading to a program of projects that would make progress toward achievement of the State targets for asset condition and performance of the National Highway System in accordance with section 150(d) and supporting the progress toward the achievement of the national goals identified in section 150(b).

(3) Scope. - In developing a risk-based asset management plan, the Secretary shall encourage States to include all infrastructure assets within the right-of-way corridor in such plan.

(4) Plan contents. - A State asset management plan shall, at a minimum, be in a form that the Secretary determines to be appropriate and include -

- (A) a summary listing of the pavement and bridge assets on the National Highway System in the State, including a description of the condition of those assets;
- (B) asset management objectives and measures;
- (C) performance gap identification;
- (D) lifecycle cost and risk management analysis;
- (E) a financial plan; and
- (F) investment strategies.

(5) Requirement for plan. - Notwithstanding section 120, with respect to the second fiscal year beginning after the date of establishment of the process established in paragraph (8) or any subsequent fiscal year, if the Secretary determines that a State has not developed and implemented a State asset management plan consistent with this section, the Federal share payable on account of any project or activity carried out by the State in that fiscal year under this section shall be 65 percent.

(6) Certification of plan development process. -

(A) In general. - Not later than 90 days after the date on which a State submits a request for approval of the process used by the State to develop the State asset management plan for the National Highway System, the Secretary shall -

(i) review the process; and

(ii)

(I) certify that the process meets the requirements established by the Secretary; or

(II) deny certification and specify actions necessary for the State to take to correct deficiencies in the State process.

(B) Recertification. - Not less frequently than once every 4 years, the Secretary shall review and recertify that the process used by a State to develop and maintain the State asset management plan for the National Highway System meets the requirements for the process, as established by the Secretary.

(C) Opportunity to cure. - If the Secretary denies certification under subparagraph (A), the Secretary shall provide the State with -

(i) not less than 90 days to cure the deficiencies of the plan, during which time period all penalties and other legal impacts of a denial of certification shall be stayed; and

(ii) a written statement of the specific actions the Secretary determines to be necessary for the State to cure the plan.

(7) Performance achievement. - A State that does not achieve or make significant progress toward achieving the targets of the State for performance measures described in section 150(d) for the National Highway System for 2 consecutive reports submitted under this paragraph shall include in the next report submitted a description of the actions the State will undertake to achieve the targets.

(8) Process. - Not later than 18 months after the date of enactment of the MAP-21, the Secretary shall, by regulation and in consultation with State departments of transportation, establish the process to develop the State asset management plan described in paragraph (1).

(f) Interstate System and NHS Bridge Conditions. -

(1) Condition of interstate system. -

(A) Penalty. - If, during 2 consecutive reporting periods, the condition of the Interstate System, excluding bridges on the Interstate System, in a State falls below the minimum condition level established by the Secretary under section 150(c)(3), the State shall be required, during the following fiscal year -

(i) to obligate, from the amounts apportioned to the State under section 104(b)(1), an amount that is not less than the amount of funds apportioned to the State for fiscal year 2009 under the Interstate maintenance program for the purposes described in this section (as in effect on the day before the date of enactment of the MAP-21), except that for each year after fiscal year 2013, the amount required to be obligated under this clause shall be increased by 2 percent over the amount required to be obligated in the previous fiscal year; and

(ii) to transfer, from the amounts apportioned to the State under section 104(b)(2) (other than amounts suballocated to metropolitan areas and other areas of the State under section 133(d)) to the apportionment of the State



under section 104(b)(1), an amount equal to 10 percent of the amount of funds apportioned to the State for fiscal year 2009 under the Interstate maintenance program for the purposes described in this section (as in effect on the day before the date of enactment of the MAP-21).

(B) Restoration. - The obligation requirement for the Interstate System in a State required by subparagraph (A) for a fiscal year shall remain in effect for each subsequent fiscal year until such time as the condition of the Interstate System in the State exceeds the minimum condition level established by the Secretary.

(2) Condition of nhs bridges. -

(A) Penalty. - If the Secretary determines that, for the 3- year-period preceding the date of the determination, more than 10 percent of the total deck area of bridges in the State on the National Highway System is located on bridges that have been classified as structurally deficient, an amount equal to 50 percent of funds apportioned to such State for fiscal year 2009 to carry out section 144 (as in effect the day before enactment of MAP-21) shall be set aside from amounts apportioned to a State for a fiscal year under section 104(b)(1) only for eligible projects on bridges on the National Highway System.

(B) Restoration. - The set-aside requirement for bridges on the National Highway System in a State under subparagraph (A) for a fiscal year shall remain in effect for each subsequent fiscal year until such time as less than 10 percent of the total deck area of bridges in the State on the National Highway System is located on bridges that have been classified as structurally deficient, as determined by the Secretary.

(g) Environmental Mitigation. -

(1) Eligible activities. - In accordance with all applicable Federal law (including regulations), environmental mitigation efforts referred to in subsection (d)(2)(O) include participation in natural habitat and wetlands mitigation efforts relating to projects funded under this title, which may include -

(A) participation in mitigation banking or other third-party mitigation arrangements, such as -

(i) the purchase of credits from commercial mitigation banks;

(ii) the establishment and management of agency-sponsored mitigation banks; and

(iii) the purchase of credits or establishment of in-lieu fee mitigation programs;

(B) contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands; and

(C) the development of statewide and regional environmental protection plans, including natural habitat and wetland conservation and restoration plans.

(2) Inclusion of other activities. - The banks, efforts, and plans described in paragraph (1) include any such banks, efforts, and plans developed in accordance with applicable law (including regulations).

(3) Terms and conditions. - The following terms and conditions apply to natural habitat and wetlands mitigation efforts under this subsection:

(A) Contributions to the mitigation effort may -

(i) take place concurrent with, or in advance of, commitment of funding under this title to a project or projects; and

(ii) occur in advance of project construction only if the efforts are consistent with all applicable requirements of Federal law (including regulations) and State transportation planning processes.

(B) Credits from any agency-sponsored mitigation bank that are attributable to funding under this section 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.

(4) Preference. - At the discretion of the project sponsor, preference shall be given, to the maximum extent practicable, to mitigating an environmental impact through the use of a mitigation bank, in-lieu fee, or other third-party mitigation arrangement, if the use of credits from the mitigation bank or in-lieu fee, or the other third-party mitigation arrangement for the project, is approved by the applicable Federal agency.

### Sec. 120. Federal share payable

(a) Interstate System Projects. -

(1) In general. - Except as otherwise provided in this chapter, the Federal share payable on account of any project on the Interstate System (including a project to add high occupancy vehicle lanes and a project to add auxiliary lanes but excluding a project to add any other lanes) shall be 90 percent of the total cost thereof, plus a percentage of the remaining 10 percent of such cost in any State containing unappropriated and unreserved public lands and nontaxable Indian lands, individual and tribal, exceeding 5 percent of the total area of all lands therein, equal to the percentage that the area of such lands in such State is of its total area; except that such Federal share payable on any project in any State shall not exceed 95 percent of the total cost of such project.

(2) State-determined lower federal share. - In the case of any project subject to paragraph (1), a State may determine a lower Federal share than the Federal share determined under such paragraph.

(b) Other Projects. - Except as otherwise provided in this title, the Federal share payable on account of any project or activity carried out under this title (other than a project subject to subsection (a)) shall be -

(1) 80 percent of the cost thereof, except that in the case of any State containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments, exceeding 5 percent of the total area of all lands therein, the Federal share, for purposes of this chapter, shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is of its total area; or

(2) 80 percent of the cost thereof, except that in the case of any State containing nontaxable Indian lands, individual and tribal, public domain lands (both reserved and unreserved), national forests, and national parks and monuments, the Federal share, for purposes of this chapter, shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State is of its total area;

except that the Federal share payable on any project in a State shall not exceed 95 percent of the total cost of any such project. In any case where a State elects to have the Federal share provided in paragraph (2) of this subsection, the State must enter into an agreement with the Secretary covering a period of not less than 1 year, requiring such State to use solely for purposes eligible for assistance under this title (other

than paying its share of projects approved under this title) during the period covered by such agreement the difference between the State's share as provided in paragraph (2) and what its share would be if it elected to pay the share provided in paragraph (1) for all projects subject to such agreement. In the case of any project subject to this subsection, a State may determine a lower Federal share than the Federal share determined under the preceding sentences of this subsection.

(c) Increased Federal Share. -

(1) Certain safety projects. - The Federal share payable on account of any project for traffic control signalization, maintaining minimum levels of retroreflectivity of highway signs or pavement markings, traffic circles (also known as "roundabouts"), safety rest areas, pavement marking, shoulder and centerline rumble strips and stripes, commuter carpooling and vanpooling, rail-highway crossing closure, or installation of traffic signs, traffic lights, guardrails, impact attenuators, concrete barrier endtreatments, breakaway utility poles, or priority control systems for emergency vehicles or transit vehicles at signalized intersections may amount to 100 percent of the cost of construction of such projects; except that not more than 10 percent of all sums apportioned for all the Federal-aid programs for any fiscal year in accordance with section 104 of this title shall be used under this subsection. In this subsection, the term "safety rest area" means an area where motor vehicle operators can park their vehicles and rest, where food, fuel, and lodging services are not available, and that is located on a segment of highway with respect to which the Secretary determines there is a shortage of public and private areas at which motor vehicle operators can park their vehicles and rest.

(2) CMAQ projects. - The Federal share payable on account of a project or program carried out under section 149 with funds obligated in fiscal year 2008 or 2009, or both, shall be not less than 80 percent and, at the discretion of the State, may be up to 100 percent of the cost thereof.

(3) Innovative project delivery. -

(A) In general. - Except as provided in subparagraph (C), the Federal share payable on account of a project, program, or activity carried out with funds apportioned under paragraph (1), (2), or (5) of section 104(b) may, at the discretion of the State, be up to 100 percent for any such project, program, or activity that the Secretary determines -

(i) contains innovative project delivery methods that improve work zone safety for motorists or workers and the quality of the facility;

(ii) contains innovative technologies, manufacturing processes, financing, or contracting methods that improve the quality of, extend the service life of, or decrease the long- term costs of maintaining highways and bridges;

(iii) accelerates project delivery while complying with other applicable Federal laws (including regulations) and not causing any significant adverse environmental impact; or

(iv) reduces congestion related to highway construction.

(B) Examples. - Projects, programs, and activities described in subparagraph (A) may include the use of -

(i) prefabricated bridge elements and systems and other technologies to reduce bridge construction time;

(ii) innovative construction equipment, materials, or techniques, including the use of in-place recycling technology and digital 3-dimensional modeling technologies;

(iii) innovative contracting methods, including the design- build and the construction manager-general contractor contracting methods;

- 
- (iv) intelligent compaction equipment; or
  - (v) contractual provisions that offer a contractor an incentive payment for early completion of the project, program, or activity, subject to the condition that the incentives are accounted for in the financial plan of the project, when applicable.
- (C) Limitations. -
- (i) In general. - In each fiscal year, a State may use the authority under subparagraph (A) for up to 10 percent of the combined apportionments of the State under paragraphs (1), (2), and (5) of section 104(b).
  - (ii) Federal share increase. - The Federal share payable on account of a project, program, or activity described in subparagraph (A) may be increased by up to 5 percent of the total project cost.
- (d) The Secretary may rely on a statement from the Secretary of the Interior as to the area of the lands referred to in subsections (a) and (b) of this section. The Secretary of the Interior is authorized and directed to provide such statement annually.
- (e) Emergency Relief. - The Federal share payable for any repair or reconstruction provided for by funds made available under section 125 for any project on a Federal-aid highway, including the Interstate System, shall not exceed the Federal share payable on a project on the system as provided in subsections (a) and (b), except that -
- (1) the Federal share payable for eligible emergency repairs to minimize damage, protect facilities, or restore essential traffic accomplished within 180 days after the actual occurrence of the natural disaster or catastrophic failure may amount to 100 percent of the cost of the repairs;
  - (2) the Federal share payable for any repair or reconstruction of Federal land transportation facilities, Federal land access transportation facilities, and tribal transportation facilities may amount to 100 percent of the cost of the repair or reconstruction;
  - (3) the Secretary shall extend the time period in paragraph (1) taking into consideration any delay in the ability of the State to access damaged facilities to evaluate damage and the cost of repair; and
  - (4) the Federal share payable for eligible permanent repairs to restore damaged facilities to predisaster condition may amount to 90 percent of the cost of the repairs if the eligible expenses incurred by the State due to natural disasters or catastrophic failures in a Federal fiscal year exceeds the annual apportionment of the State under section 104 for the fiscal year in which the disasters or failures occurred.
- (f) The Secretary is authorized to cooperate with the State transportation departments and with the Department of the Interior in the construction of Federal-aid highways within Indian reservations and national parks and monuments under the jurisdiction of the Department of the Interior and to pay the amount assumed therefor from the funds apportioned in accordance with section 104 of this title to the State wherein the reservations and national parks and monuments are located.
- (g) Notwithstanding any other provision of this section or of this title, the Federal share payable on account of any project under this title in the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands shall be 100 per centum of the total cost of the project.
- (h) Increased Non-Federal Share. - Notwithstanding any other provision of this title and subject to such criteria as the Secretary may establish, a State may contribute an amount in excess of the non-Federal share of a project under this title so as to decrease the Federal share payable on such project.
- (i) Credit for Non-Federal Share. -
- (1) Eligibility. -

(A) In general. - A State may use as a credit toward the non-Federal share requirement for any funds made available to carry out this title (other than the emergency relief program authorized by section 125) or chapter 53 of title 49 toll revenues that are generated and used by public, quasi-public, and private agencies to build, improve, or maintain highways, bridges, or tunnels that serve the public purpose of interstate commerce.

(B) Special rule for use of federal funds. - If the public, quasi-public, or private agency has built, improved, or maintained the facility using Federal funds, the credit under this paragraph shall be reduced by a percentage equal to the percentage of the total cost of building, improving, or maintaining the facility that was derived from Federal funds.

(C) Federal funds defined. - In this paragraph, the term "Federal funds" does not include loans of Federal funds or other financial assistance that must be repaid to the Government.

(2) Maintenance of effort. -

(A) In general. - The credit for any non-Federal share provided under this subsection shall not reduce nor replace State funds required to match Federal funds for any program under this title.

(B) Condition on receipt of credit. - To receive a credit under paragraph (1) for a fiscal year, a State shall enter into such agreement as the Secretary may require to ensure that the State will maintain its non-Federal transportation capital expenditures in such fiscal year at or above the average level of such expenditures for the preceding 3 fiscal years; except that if, for any 1 of the preceding 3 fiscal years, the non-Federal transportation capital expenditures of the State were at a level that was greater than 130 percent of the average level of such expenditures for the other 2 of the preceding 3 fiscal years, the agreement shall ensure that the State will maintain its non-Federal transportation capital expenditures in the fiscal year of the credit at or above the average level of such expenditures for the other 2 fiscal years.

(C) Transportation capital expenditures defined. - In subparagraph (B), the term "non-Federal transportation capital expenditures" includes any payments made by the State for issuance of transportation-related bonds.

(3) Treatment. -

(A) Limitation on liability. - Use of a credit for a non-Federal share under this subsection that is received from a public, quasi-public, or private agency -

(i) shall not expose the agency to additional liability, additional regulation, or additional administrative oversight; and

(ii) shall not subject the agency to any additional Federal design standards or laws (including regulations) as a result of providing the non-Federal share other than those to which the agency is already subject.

(B) Chartered multistate agencies. - When a credit that is received from a chartered multistate agency is applied to a non-Federal share under this subsection, such credit shall be applied equally to all charter States.

(j) Use of Federal Agency Funds. - Notwithstanding any other provision of law, any Federal funds other than those made available under this title and title 49 may be used to pay the non-Federal share of the cost of any transportation project that is within, adjacent to, or provides access to Federal land, the Federal share of which is funded under this title or chapter 53 of title 49.

(k) Use of Federal Land and Tribal Transportation Funds. - Notwithstanding any other provision of law, the funds authorized to be appropriated to carry out the tribal transportation program under section 202 and the Federal lands transportation program under section 203 may be used to pay the non-Federal share of the cost of any project that is funded under this title or chapter 53 of title 49 and that provides access to or within Federal or tribal land.

### **Sec. 121. Payment to States for construction**

(a) In General. - The Secretary, from time to time as the work progresses, may make payments to a State for costs of construction incurred by the State on a project. Such payments may also be made for the value of the materials -

(1) that have been stockpiled in the vicinity of the construction in conformity to plans and specifications for the projects; and

(2) that are not in the vicinity of the construction if the Secretary determines that because of required fabrication at an off-site location the material cannot be stockpiled in such vicinity.

(b) Project Agreement. - No payment shall be made under this chapter except for a project covered by a project agreement. After completion of the project in accordance with the project agreement, a State shall be entitled to payment out of the appropriate sums apportioned or allocated to the State of the unpaid balance of the Federal share payable for such project.

(c) Such payments shall be made to such official or officials or depository as may be designated by the State transportation department and authorized under the laws of the State to receive public funds of the State.

### **Sec. 122. Payments to States for bond and other debt instrument financing**

(a) Definition of Eligible Debt Financing Instrument. - In this section, the term "eligible debt financing instrument" means a bond or other debt financing instrument, including a note, certificate, mortgage, or lease agreement, issued by a State or political subdivision of a State or a public authority, the proceeds of which are used for an eligible project under this title.

(b) Federal Reimbursement. - Subject to subsections (c) and (d), the Secretary may reimburse a State for expenses and costs incurred by the State or a political subdivision of the State and reimburse a public authority for expenses and costs incurred by the public authority for -

(1) interest payments under an eligible debt financing instrument;

(2) the retirement of principal of an eligible debt financing instrument;

(3) the cost of the issuance of an eligible debt financing instrument;

(4) the cost of insurance for an eligible debt financing instrument; and

(5) any other cost incidental to the sale of an eligible debt financing instrument (as determined by the Secretary).

(c) Conditions on Payment. - The Secretary may reimburse a State or public authority under subsection (b) with respect to a project funded by an eligible debt financing instrument after the State or public authority has complied with this title with respect to the project to the extent and in the manner that would be required if payment were to be made under section 121.

(d) Federal Share. - The Federal share of the cost of a project payable under this section shall not exceed the Federal share of the cost of the project as determined under section 120.

(e) Statutory Construction. - Notwithstanding any other provision of law, the eligibility of an eligible debt financing instrument for reimbursement under subsection (b) shall not -

(1) constitute a commitment, guarantee, or obligation on the part of the United States to provide for payment of principal or interest on the eligible debt financing instrument; or

(2) create any right of a third party against the United States for payment under the eligible debt financing instrument.

### **Sec. 123. Relocation of utility facilities**

(a) When a State shall pay for the cost of relocation of utility facilities necessitated by the construction of a project on any Federal-aid highway, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are expended on the project. Federal funds shall not be used to reimburse the State under this section when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State. Such reimbursement shall be made only after evidence satisfactory to the Secretary shall have been presented to him substantiating the fact that the State has paid such cost from its own funds with respect to Federal-aid highway projects for which Federal funds are obligated subsequent to April 16, 1958, for work, including relocation of utility facilities.

(b) The term "utility", for the purposes of this section, shall include publicly, privately, and cooperatively owned utilities.

(c) The term "cost of relocation", for the purposes of this section, shall include the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

### **Sec. 124. [Repealed]**

### **Sec. 125. Emergency relief**

(a) In General. - Subject to this section and section 120, an emergency fund is authorized for expenditure by the Secretary for the repair or reconstruction of highways, roads, and trails, in any area of the United States, including Indian reservations, that the Secretary finds have suffered serious damage as a result of -

(1) a 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. -

(1) Definition of construction phase. - In this subsection, the term "construction phase" means the phase of physical construction of a highway or bridge facility that is separate from any other identified phases, such as planning, design, or right-of-way phases, in the State transportation improvement program.

(2) Restriction. - In no case shall funds be used under this section for the repair or reconstruction of a bridge -

(A) that has 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

(B) if a construction phase of a replacement structure is included in the approved Statewide transportation improvement program at the time of an event described in subsection (a).

(c) Funding. -

(1) In general. - Subject to the limitations described in paragraph (2), there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as are necessary to establish the fund authorized by this section and to replenish that fund on an annual basis.

(2) Limitations. - The limitations referred to in paragraph (1) are that -

(A) not more than \$100,000,000 is authorized to be obligated in any 1 fiscal year commencing after September 30, 1980, to carry out this section, except that, if for any fiscal year the total of all obligations under this section is less than the amount authorized to be obligated for the fiscal year, the unobligated balance of that amount shall -

(i) remain available until expended; and

(ii) be in addition to amounts otherwise available to carry out this section for each year; and

(B)

(i) pending such appropriation or replenishment, the Secretary may obligate from any funds appropriated at any time for obligation in accordance with this title, including existing Federal-aid appropriations, such sums as are necessary for the immediate prosecution of the work herein authorized; and

(ii) funds obligated under this subparagraph shall be reimbursed from the appropriation or replenishment.

(d) Eligibility. -

(1) In general. - The Secretary may expend funds from the emergency fund authorized by this section only for the repair or reconstruction of highways on Federal-aid highways in accordance with 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 by not later than 2 years after the natural disaster or catastrophic failure.

(2) Cost limitation. -

(A) Definition of comparable facility. - In this paragraph, the term "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.



(B) Limitation. - The total cost of a project funded under this section may not exceed the cost of repair or reconstruction of a comparable facility.

(3) Debris removal. - The costs of debris removal shall be an eligible expense under this section only for -

(A) an event not declared a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); or

(B) an event declared a major disaster or emergency by the President under that Act if the debris removal is not eligible for assistance under section 403, 407, or 502 of that Act (42 U.S.C. 5170b, 5173, 5192).

(4) Territories. - The total obligations for projects under this section for 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 other 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 charged for comparable service, may be expended from the emergency fund authorized by this section for Federal-aid highways.

(e) Tribal Transportation Facilities, Federal Lands Transportation Facilities, and Public Roads on Federal Lands. -

(1) Definition of open to public travel. - In this subsection, the term "open to public travel" means, with respect to a road, that, except during scheduled periods, extreme weather conditions, or emergencies, the road is open to the general public for use with a standard passenger vehicle, without restrictive gates or prohibitive signs or regulations, other than for general traffic control or restrictions based on size, weight, or class of registration.

(2) Expenditure of funds. - Notwithstanding subsection (d)(1), the Secretary may expend funds from the emergency fund authorized by this section, independently or in cooperation with any other branch of the Federal Government, a State agency, a tribal government, an organization, or a person, for the repair or reconstruction of tribal transportation facilities, Federal lands transportation facilities, and other federally owned roads that are open to public travel, whether or not those facilities are Federal-aid highways.

(3) Reimbursement. -

(A) In general. - The Secretary may reimburse Federal and State agencies (including political subdivisions) for expenditures made for projects determined eligible under this section, including expenditures for emergency repairs made before a determination of eligibility.

(B) Transfers. - With respect to reimbursements described in subparagraph

(A) -

(i) those 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

(ii) the budget authority associated with the expenditure shall be restored to the agency from which the authority 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.

(g) Protecting Public Safety and Maintaining Roadways. - The Secretary may use not more than 5 percent of amounts from the emergency fund authorized by this section to carry out projects that the Secretary determines are necessary to protect the public safety or to maintain or protect roadways that are included within the scope of an emergency declaration by the Governor of the State or by the President, in accordance with this section, and the Governor deems to be an ongoing concern in order to maintain vehicular traffic on the roadway

### **Sec. 126. Transferability of Federal-aid highway funds**

(a) In General. - Notwithstanding any other provision of law, subject to subsection (b), a State may transfer from an apportionment under section 104(b) not to exceed 50 percent of the amount apportioned for the fiscal year to any other apportionment of the State under that section.

(b) Application to Certain Set-asides. -

(1) In general. - Funds that are subject to sections 104(d) and 133(d) shall not be transferred under this section.

(2) Funds transferred by states. - Funds transferred by a State under this section of the funding reserved for the State under section 213 for a fiscal year may only come from the portion of those funds that are available for obligation in any area of the State under section 213(c)(1)(B).

### **Sec. 127. Vehicle weight limitations - Interstate System**

(a) In General. -

(1) The Secretary shall withhold 50 percent of the apportionment of a State under section 104(b)(1) in any fiscal year in which the State does not permit the use of The Dwight D. Eisenhower System of Interstate and Defense Highways within its boundaries by vehicles with a weight of twenty thousand pounds carried on any one axle, including enforcement tolerances, or with a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances, or a gross weight of at least eighty thousand pounds for vehicle combinations of five axles or more.

(2) However, the maximum gross weight to be allowed by any State for vehicles using The Dwight D. Eisenhower System of Interstate and Defense Highways shall be twenty thousand pounds carried on one axle, including enforcement tolerances, and a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances and with an overall maximum gross weight, including enforcement tolerances, on a group of two or more consecutive axles produced by application of the following formula:

$$W=500(LN/(N-1)+12N+36)$$

where W equals overall gross weight on any group of two or more consecutive axles to the nearest five hundred pounds, L equals distance in feet between the extreme of any group of two or more consecutive axles, and N equals number of axles in group under consideration, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each providing the overall distance

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between the first and last axles of such consecutive sets of tandem axles (1) is thirty-six feet or more, or (2) in the case of a motor vehicle hauling any tank trailer, dump trailer, or ocean transport container before September 1, 1989, is 30 feet or more: Provided, That such overall gross weight may not exceed eighty thousand pounds, including all enforcement tolerances, except for vehicles using Interstate Route 29 between Sioux City, Iowa, and the border between Iowa and South Dakota or vehicles using Interstate Route 129 between Sioux City, Iowa, and the border between Iowa and Nebraska, and except for those vehicles and loads which cannot be easily dismantled or divided and which have been issued special permits in accordance with applicable State laws, or the corresponding maximum weights permitted for vehicles using the public highways of such State under laws or regulations established by appropriate State authority in effect on July 1, 1956, except in the case of the overall gross weight of any group of two or more consecutive axles on any vehicle (other than a vehicle comprised of a motor vehicle hauling any tank trailer, dump trailer, or ocean transport container on or after September 1, 1989), on the date of enactment of the Federal-Aid Highway Amendments of 1974, whichever is the greater.

(3) Any amount which is withheld from apportionment to any State pursuant to the foregoing provisions shall lapse if not released and obligated within the availability period specified in section 118(b)(2)<sup>6</sup> of this title.

(4) This section shall not be construed to deny apportionment to any State allowing the operation within such State of any vehicles or combinations thereof, other than vehicles or combinations subject to subsection (d) of this section, which the State determines could be lawfully operated within such State on July 1, 1956, except in the case of the overall gross weight of any group of two or more consecutive axles, on the date of enactment of the Federal-Aid Highway Amendments of 1974.

(5) With respect to the State of Hawaii, laws or regulations in effect on February 1, 1960, shall be applicable for the purposes of this section in lieu of those in effect on July 1, 1956.

(6) With respect to the State of Colorado, vehicles designed to carry 2 or more precast concrete panels shall be considered a nondivisible load.

(7) With respect to the State of Michigan, laws or regulations in effect on May 1, 1982, shall be applicable for the purposes of this subsection.

(8) With respect to the State of Maryland, laws and regulations in effect on June 1, 1993, shall be applicable for the purposes of this subsection.

(9) The State of Louisiana may allow, by special permit, the operation of vehicles with a gross vehicle weight of up to 100,000 pounds for the hauling of sugarcane during the harvest season, not to exceed 100 days annually.

(10) With respect to Interstate Routes 89, 93, and 95 in the State of New Hampshire, State laws (including regulations) concerning vehicle weight limitations that were in effect on January 1, 1987, and are applicable to State highways other than the Interstate System, shall be applicable in lieu of the requirements of this subsection.

(11)

(A) With respect to all portions of the Interstate Highway System in the State of Maine, laws (including regulations) of that State concerning vehicle weight limitations

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<sup>6</sup> Section 118(b) of this title, referred to in subsec. (a)(3), was amended by section 1519(c)(5) of Pub. L. 112-141 and no longer contains a par. (2).

applicable to other State highways shall be applicable in lieu of the requirements under this subsection through December 31, 2031.

(B) With respect to all portions of the Interstate Highway System in the State of Vermont, laws (including regulations) of that State concerning vehicle weight limitations applicable to other State highways shall be applicable in lieu of the requirements under this subsection through December 31, 2031.

(12) Heavy duty vehicles. -

(A) In general. - Subject to subparagraphs (B) and (C), in order to promote reduction of fuel use and emissions because of engine idling, the maximum gross vehicle weight limit and the axle weight limit for any heavy-duty vehicle equipped with an idle reduction technology shall be increased by a quantity necessary to compensate for the additional weight of the idle reduction system.

(B) Maximum weight increase. - The weight increase under subparagraph (A) shall be not greater than 550 pounds.

(C) Proof. - On request by a regulatory agency or law enforcement agency, the vehicle operator shall provide proof (through demonstration or certification) that -

(i) the idle reduction technology is fully functional at all times; and

(ii) the 550-pound gross weight increase is not used for any purpose other than the use of idle reduction technology described in subparagraph (A).

(b) Reasonable Access. - No State may enact or enforce any law denying reasonable access to motor vehicles subject to this title to and from the Interstate Highway System to terminals and facilities for food, fuel, repairs, and rest.

(c) Ocean Transport Container Defined. - For purposes of this section, the term "ocean transport container" has the meaning given the term "freight container" by the International Standards Organization in Series 1, Freight Containers, 3rd Edition (reference number ISO668-1979(E)) as in effect on the date of the enactment of this subsection.

(d) Longer Combination Vehicles. -

(1) Prohibition. -

(A) General continuation rule. - A longer combination vehicle may continue to operate only if the longer combination vehicle configuration type was authorized by State officials pursuant to State statute or regulation conforming to this section and in actual lawful operation on a regular or periodic basis (including seasonal operations) on or before June 1, 1991, or pursuant to section 335 of the Department of Transportation and Related Agencies Appropriations Act, 1991 (104 Stat. 2186).

(B) Applicability of state laws and regulations. - All such operations shall continue to be subject to, at the minimum, all State statutes, regulations, limitations and conditions, including, but not limited to, routing-specific and configuration-specific designations and all other restrictions, in force on June 1, 1991; except that subject to such regulations as may be issued by the Secretary pursuant to paragraph (5) of this subsection, the State may make minor adjustments of a temporary and emergency nature to route designations and vehicle operating restrictions in effect on June 1, 1991, for specific safety purposes and road construction.

(C) Wyoming. - In addition to those vehicles allowed under subparagraph (A), the State of Wyoming may allow the operation of additional vehicle configurations not in actual operation on June 1, 1991, but authorized by State law not later than November 3, 1992, if such vehicle configurations comply with the single axle, tandem

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axle, and bridge formula limits set forth in subsection (a) and do not exceed 117,000 pounds gross vehicle weight.

(D) Ohio. - In addition to vehicles which the State of Ohio may continue to allow to be operated under subparagraph (A), such State may allow longer combination vehicles with 3 cargo carrying units of 28 1/2 feet each (not including the truck tractor) not in actual operation on June 1, 1991, to be operated within its boundaries on the 1-mile segment of Ohio State Route 7 which begins at and is south of exit 16 of the Ohio Turnpike.

(E) Alaska. - In addition to vehicles which the State of Alaska may continue to allow to be operated under subparagraph (A), such State may allow the operation of longer combination vehicles which were not in actual operation on June 1, 1991, but which were in actual operation prior to July 5, 1991.

(F) Iowa. - In addition to vehicles that the State of Iowa may continue to allow to be operated under subparagraph (A), the State may allow longer combination vehicles that were not in actual operation on June 1, 1991, to be operated on Interstate Route 29 between Sioux City, Iowa, and the border between Iowa and South Dakota or Interstate Route 129 between Sioux City, Iowa, and the border between Iowa and Nebraska.

(2) Additional state restrictions. -

(A) In general. - Nothing in this subsection shall prevent any State from further restricting in any manner or prohibiting the operation of longer combination vehicles otherwise authorized under this subsection; except that such restrictions or prohibitions shall be consistent with the requirements of sections 31111-31114 of title 49.

(B) Minor adjustments. - Any State further restricting or prohibiting the operations of longer combination vehicles or making minor adjustments of a temporary and emergency nature as may be allowed pursuant to regulations issued by the Secretary pursuant to paragraph (5) of this subsection, shall, within 30 days, advise the Secretary of such action, and the Secretary shall publish a notice of such action in the Federal Register.

(3) Publication of list. -

(A) Submission to secretary. - Within 60 days of the date of the enactment of this subsection, each State (i) shall submit to the Secretary for publication in the Federal Register a complete list of (I) all operations of longer combination vehicles being conducted as of June 1, 1991, pursuant to State statutes and regulations; (II) all limitations and conditions, including, but not limited to, routing-specific and configuration-specific designations and all other restrictions, governing the operation of longer combination vehicles otherwise prohibited under this subsection; and (III) such statutes, regulations, limitations, and conditions; and (ii) shall submit to the Secretary copies of such statutes, regulations, limitations, and conditions.

(B) Interim list. - Not later than 90 days after the date of the enactment of this subsection, the Secretary shall publish an interim list in the Federal Register, consisting of all information submitted pursuant to subparagraph (A). The Secretary shall review for accuracy all information submitted by the States pursuant to subparagraph (A) and shall solicit and consider public comment on the accuracy of all such information.

(C) Limitation. - No statute or regulation shall be included on the list submitted by a State or published by the Secretary merely on the grounds that it authorized, or could have authorized, by permit or otherwise, the operation of longer

combination vehicles, not in actual operation on a regular or periodic basis on or before June 1, 1991.

(D) Final list. - Except as modified pursuant to paragraph (1)(C) of this subsection, the list shall be published as final in the Federal Register not later than 180 days after the date of the enactment of this subsection. In publishing the final list, the Secretary shall make any revisions necessary to correct inaccuracies identified under subparagraph (B). After publication of the final list, longer combination vehicles may not operate on the Interstate System except as provided in the list.

(E) Review and correction procedure. - The Secretary, on his or her own motion or upon a request by any person (including a State), shall review the list issued by the Secretary pursuant to subparagraph (D). If the Secretary determines there is cause to believe that a mistake was made in the accuracy of the final list, the Secretary shall commence a proceeding to determine whether the list published pursuant to subparagraph (D) should be corrected. If the Secretary determines that there is a mistake in the accuracy of the list the Secretary shall correct the publication under subparagraph (D) to reflect the determination of the Secretary.

(4) Longer combination vehicle defined. - For purposes of this section, the term "longer combination vehicle" means any combination of a truck tractor and 2 or more trailers or semitrailers which operates on the Interstate System at a gross vehicle weight greater than 80,000 pounds.

(5) Regulations regarding minor adjustments. - Not later than 180 days after the date of the enactment of this subsection, the Secretary shall issue regulations establishing criteria for the States to follow in making minor adjustments under paragraph (1)(B).

(e) Operation of Certain Specialized Hauling Vehicles on Interstate Route 68. - The single axle, tandem axle, and bridge formula limits set forth in subsection (a) shall not apply to the operation on Interstate Route 68 in Garrett and Allegany Counties, Maryland, of any specialized vehicle equipped with a steering axle and a tridem axle and used for hauling coal, logs, and pulpwood if such vehicle is of a type of vehicle as was operating in such counties on United States Route 40 or 48 for such purpose on August 1, 1991.

(f) Operation of Certain Specialized Hauling Vehicles on Certain Wisconsin Highways. - If the 104-mile portion of Wisconsin State Route 78 and United States Route 51 between Interstate Route 94 near Portage, Wisconsin, and Wisconsin State Route 29 south of Wausau, Wisconsin, is designated as part of the Interstate System under section 103(c)(4)(A), the single axle weight, tandem axle weight, gross vehicle weight, and bridge formula limits set forth in subsection (a) shall not apply to the 104-mile portion with respect to the operation of any vehicle that could legally operate on the 104-mile portion before the date of the enactment of this subsection.

(g) Operation of Certain Specialized Hauling Vehicles on Certain Pennsylvania Highways. - If the segment of United States Route 220 between Bedford and Bald Eagle, Pennsylvania, is designated as part of the Interstate System, the single axle weight, tandem axle weight, gross vehicle weight, and bridge formula limits set forth in subsection (a) shall not apply to that segment with respect to the operation of any vehicle which could have legally operated on that segment before the date of the enactment of this subsection.

(h) Waiver for a Route in State of Maine During Periods of National Emergency. -

(1) In general. - Notwithstanding any other provision of this section, the Secretary, in consultation with the Secretary of Defense, may waive or limit the application of any vehicle weight limit established under this section with respect to the portion of Interstate Route 95 in the State of Maine between Augusta and Bangor for the purpose of making bulk shipments of jet fuel

to the Air National Guard Base at Bangor International Airport during a period of national emergency in order to respond to the effects of the national emergency.

(2) Applicability. - Emergency limits established under paragraph (1) shall preempt any inconsistent State vehicle weight limits.

(i) Special Permits During Periods of National Emergency. -

(1) In general. - Notwithstanding any other provision of this section, a State may issue special permits during an emergency to overweight vehicles and loads that can easily be dismantled or divided if -

(A) the President has declared the emergency to be a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);

(B) the permits are issued in accordance with State law; and

(C) the permits are issued exclusively to vehicles and loads that are delivering relief supplies.

(2) Expiration. - A permit issued under paragraph (1) shall expire not later than 120 days after the date of the declaration of emergency under subparagraph (A) of that paragraph.

### **Sec. 128. Public hearings**

(a) Any State transportation department which submits plans for a Federal-aid highway project involving the by passing of or, going through any city, town, or village, either incorporated or unincorporated, shall certify to the Secretary that it has had public hearings, or has afforded the opportunity for such hearings, and has considered the economic and social effects of such a location, its impact on the environment, and its consistency with the goals and objectives of such urban planning as has been promulgated by the community. Any State transportation department which submits plans for an Interstate System project shall certify to the Secretary that it has had public hearings at a convenient location, or has afforded the opportunity for such hearings for the purpose of enabling persons in rural areas through or contiguous to whose property the highway will pass to express any objections they may have to the proposed locations of such highway. Such certification shall be accompanied by a report which indicates the consideration given to the economic, social, environmental and other effects of the plan or highway location or design and various alternatives which were raised during the hearing or which were otherwise considered.

(b) When hearings have been held under subsection (a), the State transportation department shall submit a copy of the transcript of said hearings to the Secretary, together with the certification and report.

### **Sec. 129. Toll roads, bridges, tunnels, and ferries**

(a) Basic Program. -

(1) Authorization for federal participation. - Subject to the provisions of this section, Federal participation shall be permitted on the same basis and in the same manner as construction of toll-free highways is permitted under this chapter in the -

(A) initial construction of a toll highway, bridge, or tunnel or approach to the highway, bridge, or tunnel;

(B) initial construction of 1 or more lanes or other improvements that increase capacity of a highway, bridge, or tunnel (other than a highway on the Interstate

System) and conversion of that highway, bridge, or tunnel to a tolled facility, if the number of toll-free lanes, excluding auxiliary lanes, after the construction is not less than the number of toll-free lanes, excluding auxiliary lanes, before the construction;

(C) initial construction of 1 or more lanes or other improvements that increase the capacity of a highway, bridge, or tunnel on the Interstate System and conversion of that highway, bridge, or tunnel to a tolled facility, if the number of toll-free non-HOV lanes, excluding auxiliary lanes, after such construction is not less than the number of toll-free non-HOV lanes, excluding auxiliary lanes, before such construction;

(D) reconstruction, resurfacing, restoration, rehabilitation, or replacement of a toll highway, bridge, or tunnel or approach to the highway, bridge, or tunnel;

(E) reconstruction or replacement of a toll-free bridge or tunnel and conversion of the bridge or tunnel to a toll facility;

(F) reconstruction of a toll-free Federal-aid highway (other than a highway on the Interstate System) and conversion of the highway to a toll facility;

(G) reconstruction, restoration, or rehabilitation of a highway on the Interstate System if the number of toll-free non-HOV lanes, excluding auxiliary lanes, after reconstruction, restoration, or rehabilitation is not less than the number of toll-free non-HOV lanes, excluding auxiliary lanes, before reconstruction, restoration, or rehabilitation;

(H) conversion of a high occupancy vehicle lane on a highway, bridge, or tunnel to a toll facility; and

(I) preliminary studies to determine the feasibility of a toll facility for which Federal participation is authorized under this paragraph.

(2) Ownership. - Each highway, bridge, tunnel, or approach to the highway, bridge, or tunnel constructed under this subsection shall -

(A) be publicly owned; or

(B) be privately owned if the public authority with jurisdiction over the highway, bridge, tunnel, or approach has entered into a contract with 1 or more private persons to design, finance, construct, and operate the facility and the public authority will be responsible for complying with all applicable requirements of this title with respect to the facility.

(3) Limitations on use of revenues. -

(A) In general. - A public authority with jurisdiction over a toll facility shall use all toll revenues received from operation of the toll facility only for -

(i) debt service with respect to the projects on or for which the tolls are authorized, including funding of reasonable reserves and debt service on refinancing;

(ii) a reasonable return on investment of any private person financing the project, as determined by the State or interstate compact of States concerned;

(iii) any costs necessary for the improvement and proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation;

(iv) if the toll facility is subject to a public-private partnership agreement, payments that the party holding the right to toll revenues owes to the other party under the public-private partnership agreement; and



(v) if the public authority certifies annually that the tolled facility is being adequately maintained, any other purpose for which Federal funds may be obligated by a State under this title.

(B) Annual audit. -

(i) In general. - A public authority with jurisdiction over a toll facility shall conduct or have an independent auditor conduct an annual audit of toll facility records to verify adequate maintenance and compliance with subparagraph (A), and report the results of the audits to the Secretary.

(ii) Records. - On reasonable notice, the public authority shall make all records of the public authority pertaining to the toll facility available for audit by the Secretary.

(C) Noncompliance. - If the Secretary concludes that a public authority has not complied with the limitations on the use of revenues described in subparagraph (A), the Secretary may require the public authority to discontinue collecting tolls until an agreement with the Secretary is reached to achieve compliance with the limitation on the use of revenues described in subparagraph (A).

(4) Limitations on conversion of high occupancy vehicle facilities on interstate system. -

(A) In general. - A public authority with jurisdiction over a high occupancy vehicle facility on the Interstate System may undertake reconstruction, restoration, or rehabilitation under paragraph (1)(G) on the facility, and may levy tolls on vehicles, excluding high occupancy vehicles, using the reconstructed, restored, or rehabilitated facility, if the public authority -

(i) in the case of a high occupancy vehicle facility that affects a metropolitan area, submits to the Secretary a written assurance that the metropolitan planning organization designated under section 5203<sup>7</sup> of title 49 for the area has been consulted concerning the placement and amount of tolls on the converted facility;

(ii) develops, manages, and maintains a system that will automatically collect the toll; and

(iii) establishes policies and procedures -

(I) to manage the demand to use the facility by varying the toll amount that is charged; and

(II) to enforce sanctions for violations of use of the facility.

(B) Exemption from tolls. - In levying tolls on a facility under subparagraph (A), a public authority may designate classes of vehicles that are exempt from the tolls or charge different toll rates for different classes of vehicles.

(5) Special rule for funding. -

(A) In general. - In the case of a toll facility under the jurisdiction of a public authority of a State (other than the State transportation department), on request of the State transportation department and subject to such terms and conditions as the department and public authority may agree, the Secretary, working through the State

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<sup>7</sup> So in original. Probably should be "section 5303".

department of transportation, shall reimburse the public authority for the Federal share of the costs of construction of the project carried out on the toll facility under this subsection in the same manner and to the same extent as the department would be reimbursed if the project was being carried out by the department.

(B) Source. - The reimbursement of funds under this paragraph shall be from sums apportioned to the State under this chapter and available for obligations on projects on the Federal-aid system in the State on which the project is being carried out.

(6) Limitation on federal share. - The Federal share payable for a project described in paragraph (1) shall be a percentage determined by the State, but not to exceed 80 percent.

(7) Modifications. - If a public authority (including a State transportation department) with jurisdiction over a toll facility subject to an agreement under this section or section 119(e), as in effect on the day before the effective date of title I of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1915), requests modification of the agreement, the Secretary shall modify the agreement to allow the continuation of tolls in accordance with paragraph (3) without repayment of Federal funds.

(8) Loans. -

(A) In general. -

(i) Loans. - Using amounts made available under this title, a State may loan to a public or private entity constructing or proposing to construct under this section a toll facility or non-toll facility with a dedicated revenue source an amount equal to all or part of the Federal share of the cost of the project if the project has a revenue source specifically dedicated to the project.

(ii) Dedicated revenue sources. - Dedicated revenue sources for non-toll facilities include excise taxes, sales taxes, motor vehicle use fees, tax on real property, tax increment financing, and such other dedicated revenue sources as the Secretary determines appropriate.

(B) Compliance with federal laws. - As a condition of receiving a loan under this paragraph, the public or private entity that receives the loan shall ensure that the project will be carried out in accordance with this title and any other applicable Federal law, including any applicable provision of a Federal environmental law.

(C) Subordination of debt. - The amount of any loan received for a project under this paragraph may be subordinated to any other debt financing for the project.

(D) Obligation of funds loaned. - Funds loaned under this paragraph may only be obligated for projects under this paragraph.

(E) Repayment. - The repayment of a loan made under this paragraph shall commence not later than 5 years after date on which the facility that is the subject of the loan is open to traffic.

(F) Term of loan. - The term of a loan made under this paragraph shall not exceed 30 years from the date on which the loan funds are obligated.

(G) Interest. - A loan made under this paragraph shall bear interest at or below market interest rates, as determined by the State, to make the project that is the subject of the loan feasible.

(H) Reuse of funds. - Amounts repaid to a State from a loan made under this paragraph may be obligated -

(i) for any purpose for which the loan funds were available under this title; and

(ii) for the purchase of insurance or for use as a capital reserve for other forms of credit enhancement for project debt in order to improve credit market access or to lower interest rates for projects eligible for assistance under this title.

(I) Guidelines. - The Secretary shall establish procedures and guidelines for making loans under this paragraph.

(9) State law permitting tolling. - If a State does not have a highway, bridge, or tunnel toll facility as of the date of enactment of the MAP-21, before commencing any activity authorized under this section, the State shall have in effect a law that permits tolling on a highway, bridge, or tunnel.

(10) Definitions. - In this subsection, the following definitions apply:

(A) High occupancy vehicle; hov. - The term "high occupancy vehicle" or "HOV" means a vehicle with not fewer than 2 occupants.

(B) Initial construction. -

(i) In general. - The term "initial construction" means the construction of a highway, bridge, tunnel, or other facility at any time before it is open to traffic.

(ii) Exclusions. - The term "initial construction" does not include any improvement to a highway, bridge, tunnel, or other facility after it is open to traffic.

(C) Public authority. - The term "public authority" means a State, interstate compact of States, or public entity designated by a State.

(D) Toll facility. - The term "toll facility" means a toll highway, bridge, or tunnel or approach to the highway, bridge, or tunnel constructed under this subsection.

(b) Notwithstanding the provisions of section 301 of this title, the Secretary may permit Federal participation under this title in the construction of a project constituting an approach to a ferry, whether toll or free, the route of which is a public road and has not been designated as a route on the Interstate System. Such ferry may be either publicly or privately owned and operated, but the operating authority and the amount of fares charged for passage shall be under the control of a State agency or official, and all revenues derived from publicly owned or operated ferries shall be applied to payment of the cost of construction or acquisition thereof, including debt service, and to actual and necessary costs of operation, maintenance, repair, and replacement.

(c) Notwithstanding section 301 of this title, the Secretary may permit Federal participation under this title in the construction of ferry boats and ferry terminal facilities, whether toll or free, subject to the following conditions:

(1) It is not feasible to build a bridge, tunnel, combination thereof, or other normal highway structure in lieu of the use of such ferry.

(2) The operation of the ferry shall be on a route classified as a public road within the State and which has not been designated as a route on the Interstate System. Projects under this subsection may be eligible for both ferry boats carrying cars and passengers and ferry boats carrying passengers only.

(3) Such ferry boat or ferry terminal facility shall be publicly owned or operated or majority publicly owned if the Secretary determines with respect to a majority publicly owned ferry or ferry terminal facility that such ferry boat or ferry terminal facility provides substantial public benefits.

(4) The operating authority and the amount of fares charged for passage on such ferry shall be under the control of the State or other public entity, and all revenues derived therefrom shall be applied to actual and necessary costs of operation, maintenance, and<sup>8</sup> repair, debt service, negotiated management fees, and, in the case of a privately operated toll ferry, for a reasonable rate of return.

(5) Such ferry may be operated only within the State (including the islands which comprise the State of Hawaii and the islands which comprise any territory of the United States) or between adjoining States or between a point in a State and a point in the Dominion of Canada. Except with respect to operations between the islands which comprise the State of Hawaii, operations between the islands which comprise any territory of the United States, operations between a point in a State and a point in the Dominion of Canada, and operations between any two points in Alaska and between Alaska and Washington, including stops at appropriate points in the Dominion of Canada, no part of such ferry operation shall be in any foreign or international waters.

(6) No such ferry shall be sold, leased, or otherwise disposed of without the approval of the Secretary. The Federal share of any proceeds from such a disposition shall be credited to the unprogrammed balance of Federal-aid highway funds of the same class last apportioned to such State. Any amount so credited shall be in addition to all other funds then apportioned to such State and available for expenditure in accordance with the provisions of this title.

### Sec. 130. Railway-highway crossings

(a) Subject to section 120 and subsection (b) of this section, the entire cost of construction of projects for the elimination of hazards of railway-highway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings, may be paid from sums apportioned in accordance with section 104 of this title. In any case when the elimination of the hazards of a railway-highway crossing can be effected by the relocation of a portion of a railway at a cost estimated by the Secretary to be less than the cost of such elimination by one of the methods mentioned in the first sentence of this section, then the entire cost of such relocation project, subject to section 120 and subsection (b) of this section, may be paid from sums apportioned in accordance with section 104 of this title.

(b) The Secretary may classify the various types of projects involved in the elimination of hazards of railway-highway crossings, and may set for each such classification a percentage of the costs of construction which shall be deemed to represent the net benefit to the railroad or railroads for the purpose of determining the railroad's share of the cost of construction. The percentage so determined shall in no case exceed 10 per centum. The Secretary shall determine the appropriate classification of each project.

(c) Any railroad involved in a project for the elimination of hazards of railway-highway crossings paid for in whole or in part from sums made available for expenditure under this title, or prior Acts, shall be liable to the United States for the net benefit to the railroad determined under the classification of such project made pursuant to subsection (b) of this section. Such liability to the United States may be discharged by direct payment to the State transportation department of the State in which the project is located, in which case such payment shall be credited to the cost of the project. Such

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<sup>8</sup> So in original. The word "and" probably should not appear.

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payment may consist in whole or in part of materials and labor furnished by the railroad in connection with the construction of such project. If any such railroad fails to discharge such liability within a six-month period after completion of the project, it shall be liable to the United States for its share of the cost, and the Secretary shall request the Attorney General to institute proceedings against such railroad for the recovery of the amount for which it is liable under this subsection. The Attorney General is authorized to bring such proceedings on behalf of the United States, in the appropriate district court of the United States, and the United States shall be entitled in such proceedings to recover such sums as it is considered and adjudged by the court that such railroad is liable for in the premises. Any amounts recovered by the United States under this subsection shall be credited to miscellaneous receipts.

(d) Survey and Schedule of Projects. - Each State shall conduct and systematically maintain a survey of all highways to identify those railroad crossings which may require separation, relocation, or protective devices, and establish and implement a schedule of projects for this purpose. At a minimum, such a schedule shall provide signs for all railway-highway crossings.

(e) Funds for Protective Devices. -

(1) In general. - Before making an apportionment under section 104(b)(3) for a fiscal year, the Secretary shall set aside, from amounts made available to carry out the highway safety improvement program under section 148 for such fiscal year, at least \$220,000,000 for the elimination of hazards and the installation of protective devices at railway-highway crossings. At least 1/2 of the funds authorized for and expended under this section shall be available for the installation of protective devices at railway-highway crossings. Sums authorized to be appropriated to carry out this section shall be available for obligation in the same manner as funds apportioned under section 104(b)(1) of this title.

(2) Special rule. - If a State demonstrates to the satisfaction of the Secretary that the State has met all its needs for installation of protective devices at railway-highway crossings, the State may use funds made available by this section for other highway safety improvement program purposes.

(f) Apportionment. -

(1) Formula. - Fifty percent of the funds set aside to carry out this section pursuant to subsection (e)(1) shall be apportioned to the States in accordance with the formula set forth in section 104(b)(3)(A) as in effect on the day before the date of enactment of the MAP-21, and 50 percent of such funds shall be apportioned to the States in the ratio that total public railway-highway crossings in each State bears to the total of such crossings in all States.

(2) Minimum apportionment. - Notwithstanding paragraph (1), each State shall receive a minimum of one-half of 1 percent of the funds apportioned under paragraph (1).

(3) Federal share. - The Federal share payable on account of any project financed with funds set aside to carry out this section shall be 90 percent of the cost thereof.

(g) Annual Report. - Each State shall report to the Secretary not later than December 30 of each year on the progress being made to implement the railway-highway crossings program authorized by this section and the effectiveness of such improvements. Each State report shall contain an assessment of the costs of the various treatments employed and subsequent accident experience at improved locations. The Secretary shall submit a report to the Committee on Environment and Public Works and the Committee on Commerce, Science, and Transportation,<sup>9</sup> of the Senate and the Committee on Transportation and

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<sup>9</sup> So in original.

Infrastructure of the House of Representatives, not later than April 1, 2006, and every 2 years thereafter,<sup>10</sup> on the progress being made by the State in implementing projects to improve railway-highway crossings. The report shall include, but not be limited to, the number of projects undertaken, their distribution by cost range, road system, nature of treatment, and subsequent accident experience at improved locations. In addition, the Secretary's report shall analyze and evaluate each State program, identify any State found not to be in compliance with the schedule of improvements required by subsection (d) and include recommendations for future implementation of the railroad highway<sup>11</sup> crossings program.

(h) Use of Funds for Matching. - Funds authorized to be appropriated to carry out this section may be used to provide a local government with funds to be used on a matching basis when State funds are available which may only be spent when the local government produces matching funds for the improvement of railway- highway crossings.

(i) Incentive Payments for At-Grade Crossing Closures. -

(1) In general. - Notwithstanding any other provision of this section and subject to paragraphs (2) and (3), a State may, from sums available to the State under this section, make incentive payments to local governments in the State upon the permanent closure by such governments of public at-grade railway-highway crossings under the jurisdiction of such governments.

(2) Incentive payments by railroads. - A State may not make an incentive payment under paragraph (1) to a local government with respect to the closure of a crossing unless the railroad owning the tracks on which the crossing is located makes an incentive payment to the government with respect to the closure.

(3) Amount of state payment. - The amount of the incentive payment payable to a local government by a State under paragraph (1) with respect to a crossing may not exceed the lesser of

(A) the amount of the incentive payment paid to the government with respect to the crossing by the railroad concerned under paragraph (2); or

(B) \$7,500.

(4) Use of state payments. - A local government receiving an incentive payment from a State under paragraph (1) shall use the amount of the incentive payment for transportation safety improvements.

(j) Bicycle Safety. - In carrying out projects under this section, a State shall take into account bicycle safety.

(k) Expenditure of Funds. - Not more than 2 percent of funds apportioned to a State to carry out this section may be used by the State for compilation and analysis of data in support of activities carried out under subsection (g).

(l) National Crossing Inventory. -

(1) Initial reporting of crossing information. - Not later than 1 year after the date of enactment of the Rail Safety Improvement Act of 2008 or within 6 months of a new crossing becoming operational, whichever occurs later, each State shall report to the Secretary of

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<sup>10</sup> So in original.

<sup>11</sup> So in original. Probably should be "railroad-highway".

Transportation current information, including information about warning devices and signage, as specified by the Secretary, concerning each previously unreported public crossing located within its borders.

(2) Periodic updating of crossing information. - On a periodic basis beginning not later than 2 years after the date of enactment of the Rail Safety Improvement Act of 2008 and on or before September 30 of every year thereafter, or as otherwise specified by the Secretary, each State shall report to the Secretary current information, including information about warning devices and signage, as specified by the Secretary, concerning each public crossing located within its borders.

### **Sec. 131. Control of outdoor advertising**

(a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, and Federal-aid highway funds apportioned on or after January 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of those additional outdoor advertising signs, displays, and devices which are more than six hundred and sixty feet off the nearest edge of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that such signs, displays, or devices after January 1, 1968, if located within six hundred and sixty feet of the right-of-way and, on or after July 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, if located beyond six hundred and sixty feet of the right-of-way located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall, pursuant to this section, be limited to (1) directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, (3) signs, displays, and devices, including those which may be changed at reasonable intervals by electronic process or by remote control, advertising activities conducted on the property on which they are located, (4) signs lawfully in existence on October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, or historic or artistic significance the preservation of which would be consistent with the purposes of this section, and (5) signs, displays, and devices advertising the

distribution by nonprofit organizations of free coffee to individuals traveling on the Interstate System or the primary system. For the purposes of this subsection, the term "free coffee" shall include coffee for which a donation may be made, but is not required.

(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

(e) Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

(f) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System, on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. The Secretary may also, in consultation with the States, provide within the rights-of-way of the primary system for areas in which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. Such signs shall conform to national standards to be promulgated by the Secretary.

(g) Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law and not permitted under subsection (c) of this section, whether or not removed pursuant to or because of this section. The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

(i) In order to provide information in the specific interest of the traveling public, the State transportation departments are authorized to maintain maps and to permit information directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas and other travel information systems within the rights-of-way for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable. The Federal share of the cost of establishing such an information center or travel information system shall be that which is provided in section 120 for a highway project on that Federal-aid system to be served by such center or system. A



State may permit the installation of signs that acknowledge the sponsorship of rest areas within such rest areas or along the main traveled way of the system, provided that such signs shall not affect the safe and efficient utilization of the Interstate System and the primary system. The Secretary shall establish criteria for the installation of such signs on the main traveled way, including criteria pertaining to the placement of rest area sponsorship acknowledgment signs in relation to the placement of advance guide signs for rest areas.

(j) Any State transportation department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State transportation department shall be entitled to such payments unless the State maintains the control required under such agreement: Provided, That permission by a State to erect and maintain information displays which may be changed at reasonable intervals by electronic process or remote control and which provide public service information or advertise activities conducted on the property on which they are located shall not be considered a breach of such agreement or the control required thereunder. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

(k) Subject to compliance with subsection (g) of this section for the payment of just compensation, nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

(l) Not less than sixty days before making a final determination to withhold funds from a State under subsection (b) of this section, or to do so under subsection (b) of section 136, or with respect to failing to agree as to the size, lighting, and spacing of signs, displays, and devices or as to unzoned commercial or industrial areas in which signs, displays, and devices may be erected and maintained under subsection (d) of this section, or with respect to failure to approve under subsection (g) of section 136, the Secretary shall give written notice to the State of his proposed determination and a statement of the reasons therefor, and during such period shall give the State an opportunity for a hearing on such determination. Following such hearing the Secretary shall issue a written order setting forth his final determination and shall furnish a copy of such order to the State. Within forty- five days of receipt of such order, the State may appeal such order to any United States district court for such State, and upon the filing of such appeal such order shall be stayed until final judgment has been entered on such appeal. Summons may be served at any place in the United States. The court shall have jurisdiction to affirm the determination of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the State is located and to the Supreme Court of the United States upon certiorari or certification as provided in title 28, United States Code, section 1254. If any part of an apportionment to a State is withheld by the Secretary under subsection (b) of this section or subsection (b) of section 136, the amount so withheld shall not be reapportioned to the other States as long as a suit brought by such State under this subsection is pending. Such amount shall remain available for apportionment in accordance with the final judgment and this subsection. Funds withheld from apportionment and subsequently apportioned or reapportioned under this section shall be available for expenditure for three full fiscal years after the date of such apportionment or reapportionment as the case may be.

(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed \$20,000,000 for the fiscal year ending June 30, 1966, not to exceed \$20,000,000 for the fiscal year ending June 30, 1967, not to exceed \$2,000,000 for the fiscal year ending June 30, 1970, not to exceed \$27,000,000 for the fiscal year ending June 30, 1971, not to exceed \$20,500,000 for the fiscal year ending June 30, 1972, and not to exceed \$50,000,000 for the fiscal year ending June 30, 1973. The provisions of this chapter relating to the

obligation, period of availability and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967. A State may use any funds apportioned to it under section 104 of this title for removal of any sign, display, or device lawfully erected which does not conform to this section.

(n) No sign, display, or device shall be required to be removed under this section if the Federal share of the just compensation to be paid upon removal of such sign, display, or device is not available to make such payment. Funds apportioned to a State under section 104 of this title shall not be treated for purposes of the preceding sentence as being available to the State for making such a payment except to the extent that the State, in its discretion, expends such funds for such a payment.

(o) The Secretary may approve the request of a State to permit retention in specific areas defined by such State of directional signs, displays, and devices lawfully erected under State law in force at the time of their erection which do not conform to the requirements of subsection (c), where such signs, displays, and devices are in existence on the date of enactment of this subsection and where the State demonstrates that such signs, displays, and devices (1) provide directional information about goods and services in the interest of the traveling public, and (2) are such that removal would work a substantial economic hardship in such defined area.

(p) In the case of any sign, display, or device required to be removed under this section prior to the date of enactment of the Federal-Aid Highway Act of 1974, which sign, display, or device was after its removal lawfully relocated and which as a result of the amendments made to this section by such Act is required to be removed, the United States shall pay 100 per centum of the just compensation for such removal (including all relocation costs).

(q)

(1) During the implementation of State laws enacted to comply with this section, the Secretary shall encourage and assist the States to develop sign controls and programs which will assure that necessary directional information about facilities providing goods and services in the interest of the traveling public will continue to be available to motorists. To this end the Secretary shall restudy and revise as appropriate existing standards for directional signs authorized under subsections 131(c)(1) and 131(f) to develop signs which are functional and esthetically compatible with their surroundings. He shall employ the resources of other Federal departments and agencies, including the National Endowment for the Arts, and employ maximum participation of private industry in the development of standards and systems of signs developed for those purposes.

(2) Among other things the Secretary shall encourage States to adopt programs to assure that removal of signs providing necessary directional information, which also were providing directional information on June 1, 1972, about facilities in the interest of the traveling public, be deferred until all other nonconforming signs are removed.

(r) Removal of Illegal Signs. -

(1) By owners. - Any sign, display, or device along the Interstate System or the Federal-aid primary system which was not lawfully erected, shall be removed by the owner of such sign, display, or device not later than the 90th day following the effective date of this subsection.

(2) By states. - If any owner does not remove a sign, display, or device in accordance with paragraph (1), the State within the borders of which the sign, display, or device is located shall remove the sign, display, or device. The owner of the removed sign, display, or device shall be liable to the State for the costs of such removal. Effective control under this section includes compliance with the first sentence of this paragraph.

(s) Scenic Byway Prohibition. - If a State has a scenic byway program, the State may not allow the erection along any highway on the Interstate System or Federal-aid primary system which before, on, or after the effective date of this subsection, is designated as a scenic byway under such program of any

sign, display, or device which is not in conformance with subsection (c) of this section. Control of any sign, display, or device on such a highway shall be in accordance with this section. In designating a scenic byway for purposes of this section and section 1047 of the Intermodal Surface Transportation Efficiency Act of 1991, a State may exclude from such designation any segment of a highway that is inconsistent with the State's criteria for designating State scenic byways. Nothing in the preceding sentence shall preclude a State from signing any such excluded segment, including such segment on a map, or carrying out similar activities, solely for purposes of system continuity.

(t) **Primary System Defined.** - For purposes of this section, the terms "primary system" and "Federal-aid primary system" mean the Federal-aid primary system in existence on June 1, 1991, and any highway which is not on such system but which is on the National Highway System.

### **Sec. 132. Payments on Federal-aid projects undertaken by a Federal agency**

(a) **In General.** - In a case in which a proposed Federal-aid project is to be undertaken by a Federal agency in accordance with an agreement between a State and the Federal agency, the State may -

(1) direct the Secretary to transfer the funds for the Federal share of the project directly to the Federal agency; or

(2) make such deposit with, or payment to, the Federal agency as is required to meet the obligation of the State under the agreement for the work undertaken or to be undertaken by the Federal agency.

(b) **Reimbursement.** - On execution with a State of a project agreement described in subsection (a), the Secretary may reimburse the State, using any available funds, for the estimated Federal share under this title of the obligation of the State deposited or paid under subsection (a)(2).

(c) **Recovery and Crediting of Funds.** - Any sums reimbursed to the State under this section which may be in excess of the Federal pro rata share under the provisions of this title of the State's share of the cost as set forth in the approved final voucher submitted by the State shall be recovered and credited to the same class of funds from which the Federal payment under this section was made.

### **Sec. 133. Surface transportation program**

(a) **Establishment.** - The Secretary shall establish a surface transportation program in accordance with this section.

(b) **Eligible Projects.** - A State may obligate funds apportioned to it under section 104(b)(2) for the surface transportation program only for the following:

(1) Construction, reconstruction, rehabilitation, resurfacing, restoration, preservation, or operational improvements for highways, including construction of designated routes of the Appalachian development highway system and local access roads under section 14501 of title 40.

(2) Replacement (including replacement with fill material), rehabilitation, preservation, protection (including painting, scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events) and application of calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions for bridges (and approaches to bridges and other elevated structures) and tunnels on public roads of all functional classifications, including any such construction or reconstruction necessary to accommodate other transportation modes.

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- (3) Construction of a new bridge or tunnel at 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 144), and inspection and evaluation of other highway assets (including signs, retaining walls, and drainage structures).
  - (5) Capital costs for transit projects eligible for assistance under chapter 53 of title 49, including vehicles and facilities, whether publicly or privately owned, that are used to provide intercity passenger service by bus.
  - (6) Carpool projects, fringe and corridor parking facilities and programs, including electric vehicle and natural gas vehicle infrastructure in accordance with section 137, bicycle transportation and pedestrian walkways in accordance with section 217, and the modifications of public sidewalks to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).
  - (7) Highway and transit safety infrastructure improvements and programs, installation of safety barriers and nets on bridges, hazard eliminations, projects to mitigate hazards caused by wildlife, and railway-highway grade crossings.
  - (8) Highway and transit research and development and technology transfer programs.
  - (9) Capital and operating costs for traffic monitoring, management, and control facilities and programs, including advanced truck stop electrification systems.
  - (10) Surface transportation planning programs.
  - (11) Transportation alternatives.
  - (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 establishment of management systems<sup>12</sup>
  - (14) Environmental mitigation efforts relating to projects funded under this title in the same manner and to the same extent as such activities are eligible under section 119(g).
  - (15) Projects relating to intersections that -
    - (A) have disproportionately high accident rates;
    - (B) have high levels of congestion, as evidenced by -
      - (i) interrupted traffic flow at the intersection; and
      - (ii) a level of service rating that is not better than "F" during peak travel hours, calculated in accordance with the Highway Capacity Manual issued by the Transportation Research Board; and
    - (C) are located on a Federal-aid highway.
  - (16) Infrastructure-based intelligent transportation systems capital improvements.
  - (17) Environmental restoration and pollution abatement in accordance with section 328.
  - (18) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329.
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<sup>12</sup> So in original. Probably should be followed by a period.

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- (19) Projects and strategies designed to support congestion pricing, including electric toll collection and travel demand management strategies and programs.
- (20) Recreational trails projects eligible for funding under section 206.
- (21) Construction of ferry boats and ferry terminal facilities eligible for funding under section 129(c).
- (22) Border infrastructure projects eligible for funding under section 1303 of the SAFETEA-LU (23 U.S.C. 101 note; Public Law 109-59).
- (23) Truck parking facilities eligible for funding under section 1401 of the MAP-21.
- (24) Development and implementation of a State asset management plan for the National Highway System in accordance with section 119, including data collection, maintenance, and integration and the costs associated with obtaining, updating, and licensing software and equipment required for risk based asset management and performance based management, and for similar activities related to the development and implementation of a performance based management program for other public roads.
- (25) A project that, if located within the boundaries of a port terminal, includes only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port.
- (26) Construction and operational improvements for any minor collector if -
- (A) the minor collector, and the project to be carried out with respect to the minor collector, are in the same corridor as, and in proximity to, a Federal-aid highway designated as part of the National Highway System;
- (B) the construction or improvements will enhance the level of service on the Federal-aid highway described in subparagraph (A) and improve regional traffic flow; and
- (C) the construction or improvements are more cost-effective, as determined by a benefit-cost analysis, than an improvement to the Federal-aid highway described in subparagraph (A).
- (c) Location of Projects. - Surface transportation 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, except -
- (1) as provided in subsection (g);
- (2) for projects described in paragraphs (2), (4), (6), (7), (11), (20), (25), and (26) of subsection (b); and
- (3) as approved by the Secretary.
- (d) Allocations of Apportioned Funds to Areas Based on Population. -
- (1) Calculation. - Of the funds apportioned to a State under section 104(b)(2) -
- (A) 50 percent for a fiscal year shall be obligated under this section, in proportion to their relative shares of the population of the State -
- (i) in urbanized areas of the State with an urbanized area population of over 200,000;
- (ii) in areas of the State other than urban areas with a population greater than 5,000; and
- (iii) in other areas of the State; and
- (B) 50 percent may be obligated in any area of the State.

(2) Metropolitan areas. - Funds attributed to an urbanized area under paragraph (1)(A)(i) may be obligated in the metropolitan area established under section 134 that encompasses the urbanized area.

(3) Consultation with regional transportation planning organizations. - For purposes of paragraph (1)(A)(ii), before obligating funding attributed to an area with a population greater than 5,000 and less than 200,000, a State shall consult with the regional transportation planning organizations that represent the area, if any.

(4) Distribution among urbanized areas of over 200,000 population. -

(A) In general. - Except as provided in subparagraph (B), the amount of funds that a State is required to obligate under paragraph (1)(A)(i) shall be obligated in urbanized areas described in paragraph (1)(A)(i) based on the relative population of the areas.

(B) Other factors. - The State may obligate the funds described in subparagraph (A) based on other factors if the State and the relevant metropolitan planning organizations jointly apply to the Secretary for the permission to base the obligation on other factors and the Secretary grants the request.

(5) Applicability of planning requirements. - Programming and expenditure of funds for projects under this section shall be consistent with sections 134 and 135.

(e) Administration. -

(1) Submission of project agreement. - For each fiscal year, each State shall submit a project agreement that -

(A) certifies that the State will meet all the requirements of this section; and

(B) notifies the Secretary of the amount of obligations needed to carry out the program under this section.

(2) Request for adjustments of amounts. - Each State shall request from the Secretary such adjustments to the amount of obligations referred to in paragraph (1)(B) as the State determines to be necessary.

(3) Effect of approval by the secretary. - Approval by the Secretary of a project agreement under paragraph (1) shall be deemed a contractual obligation of the United States to pay surface transportation program funds made available under this title.

(f) Obligation Authority. -

(1) In general. - A State that is required to obligate in an urbanized area with an urbanized area population of over 200,000 individuals under subsection (d) funds apportioned to the State under section 104(b)(3)<sup>13</sup> shall make available during the period of fiscal years 2011 through 2014 an amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction programs for use in the area that is equal to the amount obtained by multiplying -

(A) the aggregate amount of funds that the State is required to obligate in the area under subsection (d) during the period; and

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<sup>13</sup> Section 104, referred to in subsec. (f)(1), was amended generally by Pub. L. 112-141, div. A, title I, §1105(a), July 6, 2012, 126 Stat. 427.

(B) (B) the ratio that -

(i) the aggregate amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction programs during the period; bears to

(ii) the total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to an obligation limitation) during the period.

(2) Joint responsibility. - Each State, each affected metropolitan planning organization, and the Secretary shall jointly ensure compliance with paragraph (1).

(g) Bridges Not on Federal-aid Highways. -

(1) Definition of off-system bridge. - In this subsection, the term "off-system bridge" means a highway bridge located on a public road, other than a bridge on a Federal-aid highway.

(2) Special rule. -

(A) Set-aside. - Of the amounts apportioned to a State for fiscal year 2013 and each fiscal year thereafter under this section, the State shall obligate for activities described in subsection (b)(2) for off-system bridges an amount that is not less than 15 percent of the amount of funds apportioned to the State for the highway bridge program for fiscal year 2009, except that amounts allocated under subsection (d) shall not be obligated to carry out this subsection.

(B) Reduction of expenditures. - The Secretary, after consultation with State and local officials, may reduce the requirement for expenditures for off-system bridges under subparagraph (A) 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 that 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 -

(A) any amount expended after the date of enactment of this subsection from State and local sources for the project in excess of 20 percent of the cost of construction of the project may be credited to the non-Federal share of the cost of other bridge projects in the State that are eligible for Federal funds under this section; and

(B) that crediting shall be conducted in accordance with procedures established by the Secretary.

(h) Special Rule for Areas of Less Than 5,000 Population. -

(1) Special rule. - Notwithstanding subsection (c), and except as provided in paragraph (2), up to 15 percent of the amounts required to be obligated by a State under subsection (d)(1)(A)(iii) for each of fiscal years 2013 through 2014 may be obligated on roads functionally classified as minor collectors.

(2) Suspension. - The Secretary may suspend the application of paragraph (1) with respect to a State if the Secretary determines that the authority provided under paragraph (1) is being used excessively by the State

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**Sec. 134. Metropolitan transportation planning**

(a) Policy. - It is in the national interest -

(1) to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and between States and urbanized areas, while minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes identified in this chapter; and

(2) to encourage the continued improvement and evolution of the metropolitan and statewide transportation planning processes by metropolitan planning organizations, State departments of transportation, and public transit operators as guided by the planning factors identified in subsection (h) and section 135(d).

(b) Definitions. - In this section and section 135, the following definitions apply:

(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 established as a result of the designation process under subsection (d).

(3) Nonmetropolitan area. - The term "nonmetropolitan area" means a geographic area outside designated metropolitan planning areas.

(4) Nonmetropolitan local official. - The term "nonmetropolitan local official" means elected and appointed officials of general purpose local government in a nonmetropolitan area with responsibility for transportation.

(5) Regional transportation planning organization. - The term "regional transportation planning organization" means a policy board of an organization established as the result of a designation under section 135(m).

(6) TIP. - The term "TIP" means a transportation improvement program developed by a metropolitan planning organization under subsection (j).

(7) Urbanized area. - The term "urbanized area" means a geographic area with a population of 50,000 or more, as determined by the Bureau of the Census.

(c) General Requirements. -

(1) Development of long-range plans and tips. - To accomplish the objectives in subsection (a), metropolitan planning organizations designated under subsection (d), in cooperation with the State and public transportation operators, shall develop long-range transportation plans and transportation improvement programs through a performance-driven, outcome-based approach to planning for metropolitan areas of the State.

(2) Contents. - The 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 and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

(3) Process of development. - The process for developing the plans and TIPs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and



comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(d) Designation of Metropolitan Planning Organizations. -

(1) In general. - To carry out the transportation planning process required by this section, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 50,000 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 determined by the Bureau of the Census); or

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

(2) Structure. - Not later than 2 years after the date of enactment of MAP-21, each metropolitan planning organization that serves an area designated as a transportation management area shall consist of -

(A) local elected officials;

(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation; and (C) appropriate State officials.

(3) Limitation on statutory construction. - Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities -

(A) to develop the plans and TIPs for adoption by a metropolitan planning organization; and

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

(4) Continuing designation. - A designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (5).

(5) Redesignation procedures. -

(A) In general. - A metropolitan planning organization may be 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 determined by the Bureau of the Census) as appropriate to carry out this section.

(B) Restructuring. - A metropolitan planning organization may be restructured to meet the requirements of paragraph (2) without undertaking a redesignation.

(6) Designation of more than 1 metropolitan planning organization. - More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the existing metropolitan planning area make designation of more than 1 metropolitan planning organization for the area appropriate.

(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 or consolidated metropolitan statistical area, as defined by the Bureau of the Census.

(3) Identification of new urbanized areas within existing planning area boundaries. - The designation by the Bureau of the Census of new urbanized areas within an existing metropolitan planning area shall not require the redesignation of the existing metropolitan planning organization.

(4) Existing metropolitan planning areas in nonattainment. -

(A) In general. - Notwithstanding paragraph (2), except as provided in subparagraph (B), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) as of the date of enactment of the SAFETEA-LU, the boundaries of the metropolitan planning area in existence as of such date of enactment shall be retained.

(B) Exception. - The boundaries described in subparagraph (A) may be adjusted by agreement of the Governor and affected metropolitan planning organizations 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 SAFETEA-LU, as a nonattainment area for ozone or carbon monoxide, 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 area identified under the Clean Air Act (42 U.S.C. 7401 et seq.) for ozone or carbon monoxide.

(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 metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

(2) Interstate compacts. - The consent of Congress is granted to any 2 or more States -

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

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

(3) Reservation of rights. - The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

(g) MPO Consultation in Plan and TIP Coordination. -

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

(2) Transportation improvements located in multiple mpos. - If a transportation improvement, funded from the Highway Trust Fund or authorized under chapter 53 of title 49, is located within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organizations shall coordinate plans and TIPs regarding the transportation improvement.

(3) Relationship with other planning officials. -

(A) In general. - The Secretary shall encourage each metropolitan planning organization to consult with officials responsible for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, environmental protection, airport operations, and freight movements) or to coordinate its planning process, to the maximum extent practicable, with such planning activities.

(B) Requirements. - Under the metropolitan planning process, transportation plans and TIPs shall be developed with due consideration of 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 -

(i) recipients of assistance under chapter 53 of title 49;

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

(iii) recipients of assistance under section 204.

(h) Scope of Planning Process. -

(1) In general. - The metropolitan planning process for a metropolitan planning area under this section shall provide for consideration of projects and strategies that will -

(A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

(B) increase the safety of the transportation system for motorized and nonmotorized users;

(C) increase the security of the transportation system for motorized and nonmotorized users;

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

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

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

(G) promote efficient system management and operation; and

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

(2) Performance-based approach. -

(A) In general. - The metropolitan transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decisionmaking to support the national goals described in section 150(b) of this title and in section 5301(c) of title 49.

(B) Performance targets. -

(i) Surface transportation performance targets. -

(I) In general. - Each metropolitan planning organization shall establish performance targets that address the performance measures described in section 150(c), where applicable, to use in tracking progress towards attainment of critical outcomes for the region of the metropolitan planning organization.

(II) Coordination. - Selection of performance targets by a metropolitan planning organization shall be coordinated with the relevant State to ensure consistency, to the maximum extent practicable.

(ii) Public transportation performance targets. - Selection of performance targets by a metropolitan planning organization shall be coordinated, to the maximum extent practicable, with providers of public transportation to ensure consistency with sections 5326(c) and 5329(d) of title 49.

(C) Timing. - Each metropolitan planning organization shall establish the performance targets under subparagraph (B) not later than 180 days after the date on which the relevant State or provider of public transportation establishes the performance targets.

(D) Integration of other performance-based plans. - A metropolitan planning organization shall integrate in the metropolitan transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in other State transportation plans and transportation processes, as well as any plans developed under chapter 53 of title 49 by providers of public transportation, required as part of a performance-based program.

(3) Failure to consider factors. - The failure to consider any factor specified in paragraphs (1) and (2) shall not be reviewable by any court under this title or chapter 53 of title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a TIP, a project or strategy, or the certification of a planning process.

(i) Development of Transportation Plan. -

(1) Requirements. -

(A) In general. - Each metropolitan planning organization shall prepare and update a transportation plan for its metropolitan planning area in accordance with the requirements of this subsection.

(B) Frequency. -

(i) In general. - The metropolitan planning organization shall prepare and update such plan every 4 years (or more frequently, if the metropolitan planning organization elects to update more frequently) in the case of each of the following:

(I) Any area designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

(II) Any area that was nonattainment 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).

(ii) Other areas. - In the case of any other area required to have a transportation plan in accordance with the requirements of this subsection, the metropolitan planning organization shall prepare and update such plan every 5 years unless the metropolitan planning organization elects to update more frequently.

(2) Transportation plan. - A 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) Identification of transportation facilities. -

(i) In general. - An identification of transportation facilities (including major roadways, transit, multimodal and intermodal facilities, nonmotorized transportation facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions.

(ii) Factors. - In formulating the transportation plan, the metropolitan planning organization shall consider factors described in subsection (h) as the factors relate to a 20- year forecast period.

(B) Performance measures and targets. - A description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with subsection (h)(2).

(C) System performance report. - A system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in subsection (h)(2), including -

(i) progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports; and

(ii) for metropolitan planning organizations that voluntarily elect to develop multiple scenarios, an analysis of how the preferred scenario has improved the conditions and performance of the transportation system and how changes in local policies and investments have impacted the costs necessary to achieve the identified performance targets.

(D) Mitigation activities. -

(i) In general. - A long-range transportation plan shall include a discussion 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.

(ii) Consultation. - The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

(E) Financial plan. -

(i) In general. - A financial plan that -

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

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

(III) recommends any additional financing strategies for needed projects and programs.

(ii) Inclusions. - The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

(iii) Cooperative development. - For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

(F) Operational and management strategies. - Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods.

(G) Capital investment and other strategies. - Capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs.

(H) Transportation and transit enhancement activities. - Proposed transportation and transit enhancement activities.

(3) Coordination with clean air act agencies. - In metropolitan areas that are in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by that Act.

(4) Optional scenario development. -

(A) In general. - A metropolitan planning organization may, while fitting the needs and complexity of its community, voluntarily elect to develop multiple scenarios for consideration as part of the development of the metropolitan transportation plan, in accordance with subparagraph (B).

(B) Recommended components. - A metropolitan planning organization that chooses to develop multiple scenarios under subparagraph (A) shall be encouraged to consider -

(i) potential regional investment strategies for the planning horizon;

(ii) assumed distribution of population and employment;

(iii) a scenario that, to the maximum extent practicable, maintains baseline conditions for the performance measures identified in subsection (h)(2);

(iv) a scenario that improves the baseline conditions for as many of the performance measures identified in subsection (h)(2) as possible;

(v) revenue constrained scenarios based on the total revenues expected to be available over the forecast period of the plan; and

(vi) estimated costs and potential revenues available to support each scenario.

(C) Metrics. - In addition to the performance measures identified in section 150(c), metropolitan planning organizations may evaluate scenarios developed under this paragraph using locally-developed measures.

(5) Consultation. -

(A) In general. - In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

(B) Issues. - The consultation shall involve, as appropriate -

(i) comparison of transportation plans with State conservation plans or maps, if available; or

(ii) comparison of transportation plans to inventories of natural or historic resources, if available.

(6) Participation by interested parties. -

(A) In general. - Each metropolitan planning organization shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan.

(B) Contents of participation plan. - A participation plan -

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

(ii) shall provide that all interested parties have reasonable opportunities to comment on the contents of the transportation plan.

(C) Methods. - In carrying out subparagraph (A), the metropolitan planning organization shall, to the maximum extent practicable -

(i) hold any public meetings at convenient and accessible locations and times;

(ii) employ visualization techniques to describe plans; and

(iii) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

(7) Publication. - A transportation plan involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, approved by the metropolitan planning organization and submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

(8) Selection of projects from illustrative list. - Notwithstanding paragraph (2)(C), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(C).

(j) Metropolitan TIP. -

(1) Development. -

(A) In general. - In cooperation with the State and any affected public transportation operator, the metropolitan planning organization designated for a metropolitan area shall develop a TIP for the metropolitan planning area that -

- (i) contains projects consistent with the current metropolitan transportation plan;
- (ii) reflects the investment priorities established in the current metropolitan transportation plan; and
- (iii) once implemented, is designed to make progress toward achieving the performance targets established under subsection (h)(2).

(B) Opportunity for comment. - In developing the TIP, the metropolitan planning organization, 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)(5).

(C) Funding estimates. - For the purpose of developing the TIP, the metropolitan planning organization, public transportation agency, and State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

(D) Updating and approval. - The TIP shall be -

- (i) updated at least once every 4 years; and
- (ii) approved by the metropolitan planning organization and the Governor.

(2) Contents. -

(A) Priority list. - The TIP shall include a priority list of proposed Federally supported projects and strategies to be carried out within each 4-year period after the initial adoption of the TIP.

(B) Financial plan. - The TIP shall include a financial plan that -

- (i) demonstrates how the TIP can be implemented;
- (ii) indicates resources from public and private sources that are reasonably expected to be available to carry out the program;
- (iii) identifies innovative financing techniques to finance projects, programs, and strategies; and
- (iv) may include, for illustrative purposes, additional projects that would be included in the approved TIP if reasonable additional resources beyond those identified in the financial plan were available.

(C) 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.

(D) Performance target achievement. - The transportation improvement program shall include, to the maximum extent practicable, a description of the anticipated effect of the transportation improvement program toward achieving the performance targets established in the metropolitan transportation plan, linking investment priorities to those performance targets.

(3) 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. -

(i) Regionally significant projects. - Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

(ii) Other projects. - Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

(C) Consistency with long-range transportation plan. - Each project shall be consistent with the long-range transportation plan developed under subsection (i) for the area.

(D) Requirement of anticipated full funding. - The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

(4) Notice and comment. - Before approving a TIP, a metropolitan planning organization, 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)(5).

(5) Selection of projects. -

(A) In general. - Except as otherwise provided in subsection (k)(4) and in addition to the TIP development required under paragraph (1), the selection of Federally funded projects in metropolitan areas shall be carried out, from the approved TIP -

(i) by -

(I) in the case of projects under this title, the State; and

(II) in the case of projects under chapter 53 of title 49, the designated recipients of public transportation funding; and

(ii) in cooperation with the metropolitan planning organization.

(B) Modifications to project priority. - Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved TIP in place of another project in the program.

(6) Selection of projects from illustrative list. -

(A) No required selection. - Notwithstanding paragraph (2)(B)(iv), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv).

(B) Required action by the secretary. - Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv) for inclusion in an approved TIP.

(7) Publication. -

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- (A) Publication of tips. - A TIP involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review.
- (B) Publication of annual listings of projects. -
- (i) In general. - An annual listing of projects, including investments in pedestrian walkways and bicycle transportation facilities, 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 metropolitan planning organization for public review.
- (ii) Requirement. - The listing shall be consistent with the categories identified in the TIP.
- (k) Transportation Management Areas. -
- (1) Identification and designation. -
- (A) Required identification. - The Secretary shall identify as a transportation management area each urbanized area (as defined by the Bureau of the Census) with a population of over 200,000 individuals.
- (B) Designations on request. - The Secretary shall designate any additional area as a transportation management area on the request of the Governor and the metropolitan planning organization designated for the area.
- (2) Transportation plans. - In a transportation management area, transportation plans shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and public transportation operators.
- (3) Congestion management process. -
- (A) In general. - Within a metropolitan planning area serving a transportation management area, the transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under this title and chapter 53 of title 49 through the use of travel demand reduction and operational management strategies.
- (B) Schedule. - The Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section but no sooner than 1 year after the identification of a transportation management area.
- (4) Selection of projects. -
- (A) In general. - All Federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under this title (excluding projects carried out on the National Highway System) or under chapter 53 of title 49 shall be selected for implementation from the approved TIP by the metropolitan planning organization designated for the area in consultation 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 serving a transportation management area on the National Highway System shall be selected for implementation from the approved TIP by the State in cooperation with the metropolitan planning organization designated for the area.

(5) Certification. -

(A) In general. - The Secretary shall -

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

(ii) subject to subparagraph (B), certify, not less often than once every 4 years, that the requirements of this paragraph are met with respect to the metropolitan planning process.

(B) Requirements for certification. - The Secretary may make the certification under subparagraph (A) if -

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

(ii) there is a TIP for the metropolitan planning area that has been approved by the metropolitan planning organization and the Governor.

(C) Effect of failure to certify. -

(i) Withholding of project funds. - If a metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the metropolitan planning organization for projects funded under this title and chapter 53 of title 49.

(ii) Restoration of withheld funds. - The withheld funds shall be restored to the metropolitan planning area at such time as the metropolitan planning process is certified by the Secretary.

(D) Review of certification. - In making certification determinations under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

(1) Report on Performance-based Planning Processes. -

(1) In general. - The Secretary shall submit to Congress a report on the effectiveness of the performance-based planning processes of metropolitan planning organizations under this section, taking into consideration the requirements of this subsection

(2) Report. - Not later than 5 years after the date of enactment of the MAP-21, the Secretary shall submit to Congress a report evaluating -

(A) the overall effectiveness of performance-based planning as a tool for guiding transportation investments;

(B) the effectiveness of the performance-based planning process of each metropolitan planning organization under this section;

(C) the extent to which metropolitan planning organizations have achieved, or are currently making substantial progress toward achieving, the performance targets specified under this section and whether metropolitan planning organizations are developing meaningful performance targets; and

(D) the technical capacity of metropolitan planning organizations that operate within a metropolitan planning area of less than 200,000 and their ability to carry out the requirements of this section.

(3) Publication. - The report under paragraph (2) shall be published or otherwise made available in electronically accessible formats and means, including on the Internet.

(m) Abbreviated Plans for Certain Areas. -

(1) In general. - Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan and TIP for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems in the area.

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

(n) Additional Requirements for Certain Nonattainment Areas. -

(1) In general. - Notwithstanding any other provisions of this title or chapter 53 of title, for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), 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 is addressed through a congestion management process.

(2) Applicability. - This subsection applies to a nonattainment area within the metropolitan planning area boundaries determined under subsection (e).

(o) Limitation on Statutory Construction. - Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project not eligible under this title or chapter 53 of title 49.

(p) 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.

(q) Continuation of Current Review Practice. - Since plans and TIPs described in this section are subject to a reasonable opportunity for public comment, since individual projects included in 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 plans and TIPs described in this section have not been reviewed under that Act as of January 1, 1997, any decision by the Secretary concerning a plan or TIP described in this section shall not be considered to be a Federal action subject to review under that Act.

### **Sec. 135. Statewide and nonmetropolitan transportation planning**

(a) General Requirements. -

(1) Development of plans and programs. - Subject to section 134, to accomplish the objectives stated in section 134(a), each State shall develop a statewide transportation plan and a statewide transportation improvement program for all areas of the State.

(2) Contents. - The statewide transportation plan and the transportation improvement program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

(3) Process of development. - The process for developing the statewide plan and the transportation improvement program shall provide for consideration of all modes of transportation 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 problems to be addressed.

(b) Coordination With Metropolitan 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) Interstate Agreements. -

(1) In general. - 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 activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

(2) Reservation of rights. - The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

(d) 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 -

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

(B) increase the safety of the transportation system for motorized and nonmotorized users;

(C) increase the security of the transportation system for motorized and nonmotorized users;

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

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

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

(G) promote efficient system management and operation; and

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

(2) Performance-based approach. -

(A) In general. - The statewide transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decisionmaking to support the national goals described in section 150(b) of this title and in section 5301(c) of title 49.

(B) Performance targets. -

(i) Surface transportation performance targets. -

(I) In general. - Each State shall establish performance targets that address the performance measures described in section

150(c), where applicable, to use in tracking progress towards attainment of critical outcomes for the State.

(II) Coordination. - Selection of performance targets by a State shall be coordinated with the relevant metropolitan planning organizations to ensure consistency, to the maximum extent practicable.

(ii) Public transportation performance targets. - In urbanized areas not represented by a metropolitan planning organization, selection of performance targets by a State shall be coordinated, to the maximum extent practicable, with providers of public transportation to ensure consistency with sections 5326(c) and 5329(d) of title 49.

(C) Integration of other performance-based plans. - A State shall integrate into the statewide transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in this paragraph, in other State transportation plans and transportation processes, as well as any plans developed pursuant to chapter 53 of title 49 by providers of public transportation in urbanized areas not represented by a metropolitan planning organization required as part of a performance-based program.

(D) Use of performance measures and targets. - The performance measures and targets established under this paragraph shall be considered by a State when developing policies, programs, and investment priorities reflected in the statewide transportation plan and statewide transportation improvement program.

(3) Failure to consider factors. - The failure to take into consideration the factors specified in paragraphs (1) and (2) shall not be subject to review 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, a statewide transportation improvement program, a project or strategy, or the certification of a planning process.

(e) Additional Requirements. - In carrying out planning under this section, each State shall, at a minimum -

(1) with respect to nonmetropolitan areas, cooperate with affected local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (m);

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

(3) consider coordination of transportation plans, the transportation improvement program, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

(f) Long-range Statewide Transportation Plan. -

(1) Development. - Each State shall develop a long-range 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.

(2) Consultation with governments. -

(A) Metropolitan areas. - The statewide transportation plan shall be developed for each metropolitan area in the State in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134.

(B) Nonmetropolitan areas. -

(i) In general. - With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in cooperation with affected nonmetropolitan officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (m).

(ii) Role of secretary. - The Secretary shall not review or approve the consultation process in each State.

(C) Indian tribal areas. - With respect to each area of the State under the jurisdiction of an Indian tribal government, the statewide transportation plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

(D) Consultation, comparison, and consideration. -

(i) In general. - The long-range transportation plan shall be developed, as appropriate, in consultation with State, tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation.

(ii) Comparison and consideration. - Consultation under clause (i) shall involve comparison of transportation plans to State and tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.

(3) Participation by interested parties. -

(A) In general. - In developing the statewide transportation plan, the State shall provide to -

(i) nonmetropolitan local elected officials or, if applicable, through regional transportation planning organizations described in subsection (m), an opportunity to participate in accordance with subparagraph (B)(i); and

(ii) citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties a reasonable opportunity to comment on the proposed plan.

(B) Methods. - In carrying out subparagraph (A), the State shall, to the maximum extent practicable -

(i) develop and document a consultative process to carry out subparagraph (A)(i) that is separate and discrete from the public involvement process developed under clause (ii);

(ii) hold any public meetings at convenient and accessible locations and times;

(iii) employ visualization techniques to describe plans; and

(iv) 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).

(4) Mitigation activities. -

(A) In general. - A long-range transportation plan shall include a discussion 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.

(B) Consultation. - The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

(5) Financial plan. - The statewide transportation plan may include -

(A) a financial plan that -

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

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

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

(B) for illustrative purposes, additional projects that would be included in the adopted statewide transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

(6) Selection of projects from illustrative list. - A State shall not be required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (5).

(7) Performance-based approach. - The statewide transportation plan should include -

(A) a description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with subsection (d)(2); and

(B) a system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in subsection (d)(2), including progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports;

(8) Existing system. - The statewide transportation plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

(9) Publication of long-range transportation plans. - Each long-range transportation plan prepared by a State shall be published or otherwise made available, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

(g) Statewide Transportation Improvement Program. -

(1) Development. -

(A) In general. - Each State shall develop a statewide transportation improvement program for all areas of the State.

(B) Duration and updating of program. - Each program developed under subparagraph (A) shall cover a period of 4 years and shall be updated every 4 years or more frequently if the Governor of the State elects to update more frequently.

(2) Consultation with governments. -

(A) Metropolitan areas. - With respect to each metropolitan area in the State, the program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134.



(B) Nonmetropolitan areas. -

(i) In general. - With respect to each nonmetropolitan area in the State, the program shall be developed in consultation with affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (m).

(ii) Role of secretary. - The Secretary shall not review or approve the specific consultation process in the State.

(C) Indian tribal areas. - With respect to each area of the State under the jurisdiction of an Indian tribal government, the program shall be developed in consultation with the tribal government and the Secretary of the Interior.

(3) Participation by interested parties. - In developing the program, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, providers of freight transportation services, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the proposed program.

(4) Performance target achievement. - A statewide transportation improvement program shall include, to the maximum extent practicable, a discussion of the anticipated effect of the statewide transportation improvement program toward achieving the performance targets established in the statewide transportation plan, linking investment priorities to those performance targets.

(5) Included projects. -

(A) In general. - A transportation improvement program developed under this subsection for a State shall include Federally supported surface transportation expenditures within the boundaries of the State.

(B) Listing of projects. -

(i) In general. - An annual listing of projects for which funds have been obligated for the preceding year in each metropolitan planning area shall be published or otherwise made available by the cooperative effort of the State, transit operator, and the metropolitan planning organization for public review.

(ii) Funding categories. - The listing described in clause (i) shall be consistent with the funding categories identified in each metropolitan transportation improvement program.

(C) Projects under chapter 2. -

(i) Regionally significant projects. - Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

(ii) Other projects. - Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

(D) Consistency with statewide transportation plan. - Each project 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 transportation plan; and

(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act (42 U.S.C. 7401 et seq.), if the project is carried out in an area designated as a nonattainment area for ozone, particulate matter, or carbon monoxide under part D of title I of that Act (42 U.S.C. 7501 et seq.).

(E) Requirement of anticipated full funding. - The transportation improvement program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

(F) Financial plan. -

(i) In general. - The transportation improvement program may include a financial plan that demonstrates how the approved transportation improvement program can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the transportation improvement program, and recommends any additional financing strategies for needed projects and programs.

(ii) Additional projects. - The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

(G) Selection of projects from illustrative list. -

(i) No required selection. - Notwithstanding subparagraph (F), a State shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F).

(ii) Required action by the secretary. - Action by the Secretary shall be required for a State to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F) for inclusion in an approved transportation improvement program.

(H) Priorities. - The transportation improvement program shall reflect the priorities for programming and expenditures of funds, including transportation enhancement activities, required by this title and chapter 53 of title 49.

(6) Project selection for areas of less than 50,000 population. -

(A) In general. - Projects carried out in areas with populations of less than 50,000 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 under sections 5310 and 5311 of title 49), by the State in cooperation with the affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (m).

(B) Other projects. - Projects carried out in areas with populations of less than 50,000 individuals on the National Highway System or under the bridge program or

the Interstate maintenance program under this title or under sections 5310, 5311, 5316,<sup>14</sup> and 5317<sup>15</sup> 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) Transportation improvement program 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 4 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 transportation improvement program in place of another project in the program.

(h) Performance-based Planning Processes Evaluation. -

(1) In general. - The Secretary shall establish criteria to evaluate the effectiveness of the performance-based planning processes of States, taking into consideration the following:

(A) The extent to which the State is making progress toward achieving, the performance targets described in subsection (d)(2), taking into account whether the State developed appropriate performance targets.

(B) The extent to which the State has made transportation investments that are efficient and cost-effective.

(C) The extent to which the State -

(i) has developed an investment process that relies on public input and awareness to ensure that investments are transparent and accountable; and

(ii) provides reports allowing the public to access the information being collected in a format that allows the public to meaningfully assess the performance of the State.

(2) Report. -

(A) In general. - Not later than 5 years after the date of enactment of the MAP-21, the Secretary shall submit to Congress a report evaluating -

(i) the overall effectiveness of performance-based planning as a tool for guiding transportation investments; and

(ii) the effectiveness of the performance-based planning process of each State.

(B) Publication. - The report under subparagraph (A) shall be published or otherwise made available in electronically accessible formats and means, including on the Internet.

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<sup>14</sup> Sections 5316 and 5317 of title 49, referred to in subsec. (g)(6)(B), were repealed by Pub. L. 112-141, div. B, §20002(a), July 6, 2012, 126 Stat. 622.

<sup>15</sup> See prior footnote.

(i) Funding. - Funds apportioned under section 104(b)(5) of this title and set aside under section 5305(g) of title 49 shall be available to carry out this section.

(j) Treatment of Certain State Laws as Congestion Management Processes. - For purposes of this section and section 134, and sections 5303 and 5304 of title 49, State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management process under this section and section 134, and sections 5303 and 5304 of title 49, if the Secretary finds that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of this section and section 134 and sections 5303 and 5304 of title 49, as appropriate.

(k) Continuation of Current Review Practice. - Since the statewide transportation plan and the transportation improvement program described in this section are subject to a reasonable opportunity for public comment, since individual projects included in the statewide transportation plans and the transportation improvement program 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 transportation improvement program described in this section have not been reviewed under that Act as of January 1, 1997, any decision by the Secretary concerning a metropolitan or statewide transportation plan or the transportation improvement program described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(l) Schedule for Implementation. - The Secretary shall issue guidance on a schedule for implementation of the changes made by this section, taking into consideration the established planning update cycle for States. The Secretary shall not require a State to deviate from its established planning update cycle to implement changes made by this section. States shall reflect changes made to their transportation plan or transportation improvement program updates not later than 2 years after the date of issuance of guidance by the Secretary under this subsection.

(m) Designation of Regional Transportation Planning Organizations. -

(1) In general. - To carry out the transportation planning process required by this section, a State may establish and designate regional transportation planning organizations to enhance the planning, coordination, and implementation of statewide strategic long-range transportation plans and transportation improvement programs, with an emphasis on addressing the needs of nonmetropolitan areas of the State.

(2) Structure. - A regional transportation planning organization shall be established as a multijurisdictional organization of nonmetropolitan local officials or their designees who volunteer for such organization and representatives of local transportation systems who volunteer for such organization.

(3) Requirements. - A regional transportation planning organization shall establish, at a minimum -

(A) a policy committee, the majority of which shall consist of nonmetropolitan local officials, or their designees, and, as appropriate, additional representatives from the State, private business, transportation service providers, economic development practitioners, and the public in the region; and

(B) a fiscal and administrative agent, such as an existing regional planning and development organization, to provide professional planning, management, and administrative support.

(4) Duties. - The duties of a regional transportation planning organization shall include -

(A) developing and maintaining, in cooperation with the State, regional long-range multimodal transportation plans;

- (B) developing a regional transportation improvement program for consideration by the State;
- (C) fostering the coordination of local planning, land use, and economic development plans with State, regional, and local transportation plans and programs;
- (D) providing technical assistance to local officials;
- (E) participating in national, multistate, and State policy and planning development processes to ensure the regional and local input of nonmetropolitan areas;
- (F) providing a forum for public participation in the statewide and regional transportation planning processes;
- (G) considering and sharing plans and programs with neighboring regional transportation planning organizations, metropolitan planning organizations, and, where appropriate, tribal organizations; and
- (H) conducting other duties, as necessary, to support and enhance the statewide planning process under subsection (d).

(5) States without regional transportation planning organizations. - If a State chooses not to establish or designate a regional transportation planning organization, the State shall consult with affected nonmetropolitan local officials to determine projects that may be of regional significance.

### **Sec. 136. Control of junkyards**

(a) The Congress hereby finds and declares that the establishment and use and maintenance of junkyards in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the establishment and maintenance along the Interstate System and the primary system of outdoor junkyards, which are within one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 7 percent of the amounts which would otherwise be apportioned to such State under paragraphs (1) through (5) of section 104(b), until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that by January 1, 1968, such junkyards shall be screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the system, or shall be removed from sight.

(d) The term "junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(e) The term "automobile graveyard" shall mean any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

(f) The term "junkyard" shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

(g) Notwithstanding any provision of this section, junkyards, auto graveyards, and scrap metal processing facilities may be operated within areas adjacent to the Interstate System and the primary system which are within one thousand feet of the nearest edge of the right-of-way and which are zoned industrial under authority of State law, or which are not zoned under authority of State law, but are used for industrial activities, as determined by the several States subject to approval by the Secretary.

(h) Notwithstanding any provision of this section, any junkyard in existence on the date of enactment of this section which does not conform to the requirements of this section and which the Secretary finds as a practical matter cannot be screened, shall not be required to be removed until July 1, 1970.

(i) The Federal share of landscaping and screening costs under this section shall be 75 per centum.

(j) Just compensation shall be paid the owner for the relocation, removal, or disposal of junkyards lawfully established under State law. The Federal share of such compensation shall be 75 per centum.

(k) All public lands or reservations of the United States which are adjacent to any portion of the interstate and primary systems shall be effectively controlled in accordance with the provisions of this section.

(l) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to outdoor junkyards on the Federal-aid highway systems than those established under this section.

(m) There is authorized to be appropriated to carry out this section, out of any money in the Treasury not otherwise appropriated, not to exceed \$20,000,000 for the fiscal year ending June 30, 1966, not to exceed \$20,000,000 for the fiscal year ending June 30, 1967, not to exceed \$3,000,000 for the fiscal year ending June 30, 1970, not to exceed \$3,000,000 for the fiscal year ending June 30, 1971, not to exceed \$3,000,000 for the fiscal year ending June 30, 1972, and not to exceed \$5,000,000 for the fiscal year ending June 30, 1973. The provisions of this chapter relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967.

(n) Definitions. - For purposes of this section, the terms "primary system" and "Federal-aid primary system" mean any highway that is on the National Highway System, which includes the Interstate Highway System.

### **Sec. 137. Fringe and corridor parking facilities**

(a) The Secretary may approve as a project on a Federal-aid highway the acquisition of land adjacent to the right-of-way outside a central business district, as defined by the Secretary, and the construction of publicly owned parking facilities thereon or within such right-of-way, including the use of the air space above and below the established grade line of the highway pavement, to serve an urban area of fifty thousand population or more. Such parking facility shall be located and designed in conjunction with existing or planned public transportation facilities. In the event fees are charged for the use of any such facility, the rate thereof shall not be in excess of that required for maintenance and operation (including compensation to any person for operating such facility).

(b) The Secretary shall not approve any project under this section until -

(1) he has determined that the State, or the political subdivision thereof, where such project is to be located, or any agency or instrumentality of such State or political subdivision, has the authority and capability of constructing, maintaining, and operating the facility;

(2) he has entered into an agreement governing the financing, maintenance, and operation of the parking facility with such State, political subdivision, agency, or instrumentality, including necessary requirements to insure that adequate public transportation services will be available to persons using such facility; and

(3) he has approved design standards for constructing such facility developed in cooperation with the State transportation department.

(c) The term "parking facilities" for purposes of this section shall include access roads, buildings, structures, equipment, improvements, and interests in lands.

(d) Nothing in this section, or in any rule or regulation issued under this section, or in any agreement required by this section, shall prohibit (1) any State, political subdivision, or agency or instrumentality thereof, from contracting with any person to operate any parking facility constructed under this section, or (2) any such person from so operating such facility.

(e) The Secretary shall not approve any project under this section unless he determines that it is based on a continuing comprehensive transportation planning process carried on in accordance with section 134 of this title.

(f)

(1) The Secretary may approve for Federal financial assistance from funds apportioned under section 104(b)(1), projects for designating existing facilities, or for acquisition of rights of way or construction of new facilities, including the addition of electric vehicle charging stations or natural gas vehicle refueling stations, for use as preferential parking for carpools, provided that such facilities (A) are located outside of a central business district and within an interstate highway corridor, and (B) have as their primary purpose the reduction of vehicular traffic on the interstate highway.

(2) Nothing in this subsection, or in any rule or regulation issued under this subsection, or in any agreement required by this subsection, shall prohibit (A) any State, political subdivision, or agency or instrumentality thereof, from contracting with any person to operate any parking facility designated or constructed under this subsection, or (B) any such person from so operating such facility. Any fees charged for the use of any such facility in connection with the purpose of this subsection shall not be in excess of the amount required for operation and maintenance, including compensation to any person for operating the facility.

(3) For the purposes of this subsection, the terms "facilities" and "parking facilities" are synonymous and shall have the same meaning given "parking facilities" in subsection (c) of this section.

(g) Funding. - The addition of electric vehicle charging stations or natural gas vehicle refueling stations to new or previously funded parking facilities shall be eligible for funding under this section

### **Sec. 138. Preservation of parklands**

(a) Declaration of Policy. - It is declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project (other than any project for a Federal lands transportation facility) which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the

Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use. In carrying out the national policy declared in this section the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, is authorized to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas.

(b) De Minimis Impacts. -

(1) Requirements. -

(A) Requirements for historic sites. - The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

(B) Requirements for parks, recreation areas, and wildlife or waterfowl refuges. - The requirements of subsection (a)(1) shall be considered to be satisfied with respect to an area described in paragraph (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area. The requirements of subsection (a)(2) with respect to an area described in paragraph (3) shall not include an alternatives analysis.

(C) Criteria. - In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

(2) Historic sites. - With respect to historic sites, the Secretary may make a finding of de minimis impact only if -

(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that -

(i) the transportation program or project will have no adverse effect on the historic site; or

(ii) there will be no historic properties affected by the transportation program or project;

(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation if the Council is participating in the consultation process); and

(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

(3) Parks, recreation areas, and wildlife or waterfowl refuges. - With respect to parks, recreation areas, or wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if -

(A) the Secretary has determined, after public notice and opportunity for public review and comment, that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this section; and



(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.

**Sec. 139. Efficient environmental reviews for project decisionmaking**

(a) Definitions. - In this section, the following definitions apply:

(1) Agency. - The term "agency" means any agency, department, or other unit of Federal, State, local, or Indian tribal government.

(2) Environmental impact statement. - The term "environmental impact statement" means the detailed statement of environmental impacts required to be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) Environmental review process. -

(A) In general. - The term "environmental review process" means the process for preparing for a project an environmental impact statement, environmental assessment, categorical exclusion, or other document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) Inclusions. - The term "environmental review process" includes the process for and completion of any environmental permit, approval, review, or study required for a project under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(4) Lead agency. - The term "lead agency" means the Department of Transportation and, if applicable, any State or local governmental entity serving as a joint lead agency pursuant to this section.

(5) Multimodal project. - The term "multimodal project" means a project funded, in whole or in part, under this title or chapter 53 of title 49 and involving the participation of more than one Department of Transportation administration or agency.

(6) Project. - The term "project" means any highway project, public transportation capital project, or multimodal project that requires the approval of the Secretary.

(7) Project sponsor. - The term "project sponsor" means the agency or other entity, including any private or public-private entity, that seeks approval of the Secretary for a project.

(8) State transportation department. - The term "State transportation department" means any statewide agency of a State with responsibility for one or more modes of transportation.

(b) Applicability. -

(1) In general. - The project development procedures in this section are applicable to all projects for which an environmental impact statement is prepared under the National Environmental Policy Act of 1969 and may be applied, to the extent determined appropriate by the Secretary, to other projects for which an environmental document is prepared pursuant to such Act.

(2) Flexibility. - Any authorities granted in this section may be exercised, and any requirements established under this section may be satisfied, for a project, class of projects, or program of projects.

(3) Programmatic compliance. -

(A) In general. - The Secretary shall initiate a rulemaking to allow for the use of programmatic approaches to conduct environmental reviews that -

- 
- (i) eliminate repetitive discussions of the same issues;
  - (ii) focus on the actual issues ripe for analyses at each level of review; and
  - (iii) are consistent with -
    - (I) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
    - (II) other applicable laws.
- (B) Requirements. - In carrying out subparagraph (A), the Secretary shall -
- (i) before initiating the rulemaking under that subparagraph, consult with relevant Federal agencies and State resource agencies, State departments of transportation, Indian tribes, and the public on the appropriate use and scope of the programmatic approaches;
  - (ii) emphasize the importance of collaboration among relevant Federal agencies, State agencies, and Indian tribes in undertaking programmatic reviews, especially with respect to including reviews with a broad geographic scope;
  - (iii) ensure that the programmatic reviews -
    - (I) promote transparency, including of the analyses and data used in the environmental reviews, the treatment of any deferred issues raised by agencies or the public, and the temporal and special scales to be used to analyze such issues;
    - (II) use accurate and timely information in reviews, including -
      - (aa) criteria for determining the general duration of the usefulness of the review; and
      - (bb) the timeline for updating any out-of-date review;
    - (III) describe -
      - (aa) the relationship between programmatic analysis and future tiered analysis; and
      - (bb) the role of the public in the creation of future tiered analysis; and
    - (IV) are available to other relevant Federal and State agencies, Indian tribes, and the public;
  - (iv) allow not fewer than 60 days of public notice and comment on any proposed rule; and
  - (v) address any comments received under clause (iv).
- (c) Lead Agencies. -
- (1) Federal lead agency. -
    - (A) In general. - The Department of Transportation shall be the Federal lead agency in the environmental review process for a project.
    - (B) Modal administration. - If the project requires approval from more than 1 modal administration within the Department, the Secretary may designate a single modal administration to serve as the Federal lead agency for the Department in the environmental review process for the project.

(2) Joint lead agencies. - Nothing in this section precludes another agency from being a joint lead agency in accordance with regulations under the National Environmental Policy Act of 1969.

(3) Project sponsor as joint lead agency. - Any project sponsor that is a State or local governmental entity receiving funds under this title or chapter 53 of title 49 for the project shall serve as a joint lead agency with the Department for purposes of preparing any environmental document under the National Environmental Policy Act of 1969 and may prepare any such environmental document required in support of any action or approval by the Secretary if the Federal lead agency furnishes guidance in such preparation and independently evaluates such document and the document is approved and adopted by the Secretary prior to the Secretary taking any subsequent action or making any approval based on such document, whether or not the Secretary's action or approval results in Federal funding.

(4) Ensuring compliance. - The Secretary shall ensure that the project sponsor complies with all design and mitigation commitments made jointly by the Secretary and the project sponsor in any environmental document prepared by the project sponsor in accordance with this subsection and that such document is appropriately supplemented if project changes become necessary.

(5) Adoption and use of documents. - Any environmental document prepared in accordance with this subsection may be adopted or used by any Federal agency making any approval to the same extent that such Federal agency could adopt or use a document prepared by another Federal agency.

(6) Roles and responsibility of lead agency. - With respect to the environmental review process for any project, the lead agency shall have authority and responsibility -

(A) to take such actions as are necessary and proper, within the authority of the lead agency, to facilitate the expeditious resolution of the environmental review process for the project; and

(B) to prepare or ensure that any required environmental impact statement or other document required to be completed under the National Environmental Policy Act of 1969 is completed in accordance with this section and applicable Federal law.

(d) Participating Agencies. -

(1) In general. - The lead agency shall be responsible for inviting and designating participating agencies in accordance with this subsection.

(2) Invitation. - The lead agency shall identify, as early as practicable in the environmental review process for a project, any other Federal and non-Federal agencies that may have an interest in the project, and shall invite such agencies to become participating agencies in the environmental review process for the project. The invitation shall set a deadline for responses to be submitted. The deadline may be extended by the lead agency for good cause.

(3) Federal participating agencies. - Any Federal agency that is invited by the lead agency to participate in the environmental review process for a project shall be designated as a participating agency by the lead agency unless the invited agency informs the lead agency, in writing, by the deadline specified in the invitation that the invited agency -

(A) has no jurisdiction or authority with respect to the project;

(B) has no expertise or information relevant to the project; and

(C) (C) does not intend to submit comments on the project.

(4) Effect of designation. -

(A) Requirement. - A participating agency shall comply with the requirements of this section.

(B) Implication. - Designation as a participating agency under this subsection shall not imply that the participating agency -

(i) supports a proposed project; or

(ii) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

(5) Cooperating agency. - A participating agency may also be designated by a lead agency as a "cooperating agency" under the regulations contained in part 1500 of title 40, Code of Federal Regulations.

(6) Designations for categories of projects. - The Secretary may exercise the authorities granted under this subsection for a project, class of projects, or program of projects.

(7) Concurrent reviews. - Each participating agency and cooperating agency shall -

(A) carry out the obligations of that agency under other applicable law concurrently, and in conjunction, with the review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), unless doing so would impair the ability of the Federal agency to conduct needed analysis or otherwise carry out those obligations; and

(B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

(e) Project Initiation. -

(1) In general. - The project sponsor shall notify the Secretary of the type of work, termini, length and general location of the proposed project, together with a statement of any Federal approvals anticipated to be necessary for the proposed project, for the purpose of informing the Secretary that the environmental review process should be initiated.

(2) Submission of documents. - The project sponsor may satisfy the requirement under paragraph (1) by submitting to the Secretary any relevant documents containing the information described in that paragraph, including a draft notice for publication in the Federal Register announcing the preparation of an environmental review for the project.

(f) Purpose and Need. -

(1) Participation. - As early as practicable during the environmental review process, the lead agency shall provide an opportunity for involvement by participating agencies and the public in defining the purpose and need for a project.

(2) Definition. - Following participation under paragraph (1), the lead agency shall define the project's purpose and need for purposes of any document which the lead agency is responsible for preparing for the project.

(3) Objectives. - The statement of purpose and need shall include a clear statement of the objectives that the proposed action is intended to achieve, which may include -

(A) achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan;

(B) supporting land use, economic development, or growth objectives established in applicable Federal, State, local, or tribal plans; and

(C) serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies.

(4) Alternatives analysis. -

(A) Participation. - As early as practicable during the environmental review process, the lead agency shall provide an opportunity for involvement by participating agencies and the public in determining the range of alternatives to be considered for a project.

(B) Range of alternatives. - Following participation under paragraph (1), the lead agency shall determine the range of alternatives for consideration in any document which the lead agency is responsible for preparing for the project.

(C) Methodologies. - The lead agency also shall determine, in collaboration with participating agencies at appropriate times during the study process, the methodologies to be used and the level of detail required in the analysis of each alternative for a project.

(D) Preferred alternative. - At the discretion of the lead agency, the preferred alternative for a project, after being identified, may be developed to a higher level of detail than other alternatives in order to facilitate the development of mitigation measures or concurrent compliance with other applicable laws if the lead agency determines that the development of such higher level of detail will not prevent the lead agency from making an impartial decision as to whether to accept another alternative which is being considered in the environmental review process.

(g) Coordination and Scheduling. -

(1) Coordination plan. -

(A) In general. - The lead agency shall establish a plan for coordinating public and agency participation in and comment on the environmental review process for a project or category of projects. The coordination plan may be incorporated into a memorandum of understanding.

(B) Schedule. -

(i) In general. - The lead agency may establish as part of the coordination plan, after consultation with and the concurrence of each participating agency for the project and with the State in which the project is located (and, if the State is not the project sponsor, with the project sponsor), a schedule for completion of the environmental review process for the project.

(ii) Factors for consideration. - In establishing the schedule, the lead agency shall consider factors such as -

(I) the responsibilities of participating agencies under applicable laws;

(II) resources available to the cooperating agencies;

(III) overall size and complexity of the project;

(IV) the overall schedule for and cost of the project; and (V) the sensitivity of the natural and historic resources that could be affected by the project.

(C) Consistency with other time periods. - A schedule under subparagraph (B) shall be consistent with any other relevant time periods established under Federal law.

(D) Modification. - The lead agency may -

(i) lengthen a schedule established under subparagraph (B) for good cause; and

(ii) shorten a schedule only with the concurrence of the affected cooperating agencies.

(E) Dissemination. - A copy of a schedule under subparagraph (B), and of any modifications to the schedule, shall be -

(i) provided to all participating agencies and to the State transportation department of the State in which the project is located (and, if the State is not the project sponsor, to the project sponsor); and

(ii) made available to the public.

(2) Comment deadlines. - The lead agency shall establish the following deadlines for comment during the environmental review process for a project:

(A) For comments by agencies and the public on a draft environmental impact statement, a period of not more than 60 days after publication in the Federal Register of notice of the date of public availability of such document, unless -

(i) a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies; or

(ii) the deadline is extended by the lead agency for good cause.

(B) For all other comment periods established by the lead agency for agency or public comments in the environmental review process, a period of no more than 30 days from availability of the materials on which comment is requested, unless -

(i) a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies; or

(ii) the deadline is extended by the lead agency for good cause.

(3) Deadlines for decisions under other laws. - In any case in which a decision under any Federal law relating to a project (including the issuance or denial of a permit or license) is required to be made by the later of the date that is 180 days after the date on which the Secretary made all final decisions of the lead agency with respect to the project, or 180 days after the date on which an application was submitted for the permit or license, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives -

(A) as soon as practicable after the 180-day period, an initial notice of the failure of the Federal agency to make the decision; and

(B) every 60 days thereafter until such date as all decisions of the Federal agency relating to the project have been made by the Federal agency, an additional notice that describes the number of decisions of the Federal agency that remain outstanding as of the date of the additional notice.

(4) Involvement of the public. - Nothing in this subsection shall reduce any time period provided for public comment in the environmental review process under existing Federal law, including a regulation.

(h) Issue Identification and Resolution. -

(1) Cooperation. - The lead agency and the participating agencies shall work cooperatively in accordance with this section to identify and 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.

(2) Lead agency responsibilities. - The lead agency shall make information available to the participating agencies as early as practicable in the environmental review process regarding the environmental and socioeconomic resources located within the project area and the general locations of the alternatives under consideration. Such information may be based on existing data sources, including geographic information systems mapping.

(3) Participating agency responsibilities. - Based on information received from the lead agency, participating agencies shall identify, as early as practicable, any issues of concern regarding the project's potential environmental or socioeconomic impacts. In this paragraph, issues of concern include any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project.

(4) Interim decision on achieving accelerated decisionmaking. -

(A) In general. - Not later than 30 days after the close of the public comment period on a draft environmental impact statement, the Secretary may convene a meeting with the project sponsor, lead agency, resource agencies, and any relevant State agencies to ensure that all parties are on schedule to meet deadlines for decisions to be made regarding the project.

(B) Deadlines. - The deadlines referred to in subparagraph (A) shall be those established under subsection (g), or any other deadlines established by the lead agency, in consultation with the project sponsor and other relevant agencies.

(C) Failure to assure. - If the relevant agencies cannot provide reasonable assurances that the deadlines described in subparagraph (B) will be met, the Secretary may initiate the issue resolution and referral process described under paragraph (5) and before the completion of the record of decision.

(5) Accelerated issue resolution and referral. -

(A) Agency issue resolution meeting. -

(i) In general. - A Federal agency of jurisdiction, project sponsor, or the Governor of a State in which a project is located may request an issue resolution meeting to be conducted by the lead agency.

(ii) Action by lead agency. - The lead agency shall convene an issue resolution meeting under clause (i) with the relevant participating agencies and the project sponsor, including the Governor only if the meeting was requested by the Governor, to resolve issues that could -

(I) delay completion of the environmental review process;

or

(II) result in denial of any approvals required for the project under applicable laws.

(iii) Date. - A meeting requested under this subparagraph shall be held by not later than 21 days after the date of receipt of the request for the meeting, unless the lead agency determines that there is good cause to extend the time for the meeting.

(iv) Notification. - On receipt of a request for a meeting under this subparagraph, the lead agency shall notify all relevant participating agencies of the request, including the issue to be resolved, and the date for the meeting.

(v) Disputes. - If a relevant participating agency with jurisdiction over an approval required for a project under applicable law determines that the relevant information necessary to resolve the issue has not been obtained and

could not have been obtained within a reasonable time, but the lead agency disagrees, the resolution of the dispute shall be forwarded to the heads of the relevant agencies for resolution.

(vi) Convention by lead agency. - A lead agency may convene an issue resolution meeting under this subsection at any time without the request of the Federal agency of jurisdiction, project sponsor, or the Governor of a State.

(B) Elevation of issue resolution. -

(i) In general. - If issue resolution is not achieved by not later than 30 days after the date of a relevant meeting under subparagraph (A), the Secretary shall notify the lead agency, the heads of the relevant participating agencies, and the project sponsor (including the Governor only if the initial issue resolution meeting request came from the Governor) that an issue resolution meeting will be convened.

(ii) Requirements. - The Secretary shall identify the issues to be addressed at the meeting and convene the meeting not later than 30 days after the date of issuance of the notice.

(C) Referral of issue resolution. -

(i) Referral to council on environmental quality. -

(I) In general. - If resolution is not achieved by not later than 30 days after the date of an issue resolution meeting under subparagraph (B), the Secretary shall refer the matter to the Council on Environmental Quality.

(II) Meeting. - Not later than 30 days after the date of receipt of a referral from the Secretary under subclause (I), the Council on Environmental Quality shall hold an issue resolution meeting with the lead agency, the heads of relevant participating agencies, and the project sponsor (including the Governor only if an initial request for an issue resolution meeting came from the Governor).

(ii) Referral to the president. - If a resolution is not achieved by not later than 30 days after the date of the meeting convened by the Council on Environmental Quality under clause (i)(II), the Secretary shall refer the matter directly to the President.

(6) Financial penalty provisions. -

(A) In general. - A Federal agency of jurisdiction over an approval required for a project under applicable laws shall complete any required approval on an expeditious basis using the shortest existing applicable process.

(B) Failure to decide. -

(i) In general. - If an agency described in subparagraph (A) fails to render a decision under any Federal law relating to a project that requires the preparation of an environmental impact statement or environmental assessment, including the issuance or denial of a permit, license, or other approval by the date described in clause (ii), an amount of funding equal to the amounts specified in subclause (I) or (II) shall be rescinded from the applicable office of the head of the agency, or equivalent office to which the authority for rendering the decision has been delegated by law by not later than 1 day after the applicable date under clause (ii), and once each week thereafter until a final decision is rendered, subject to subparagraph (C) -



- 
- (I) \$20,000 for any project for which an annual financial plan under section 106(i) is required; or
- (II) \$10,000 for any other project requiring preparation of an environmental assessment or environmental impact statement.
- (ii) Description of date. - The date referred to in clause (i) is the later of -
- (I) the date that is 180 days after the date on which an application for the permit, license, or approval is complete; and
- (II) the date that is 180 days after the date on which the Federal lead agency issues a decision on the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
- (C) Limitations. -
- (i) In general. - No rescission of funds under subparagraph (B) relating to an individual project shall exceed, in any fiscal year, an amount equal to 2.5 percent of the funds made available for the applicable agency office.
- (ii) Failure to decide. - The total amount rescinded in a fiscal year as a result of a failure by an agency to make a decision by an applicable deadline shall not exceed an amount equal to 7 percent of the funds made available for the applicable agency office for that fiscal year.
- (D) No fault of agency. - A rescission of funds under this paragraph shall not be made if the lead agency for the project certifies that -
- (i) the agency has not received necessary information or approvals from another entity, such as the project sponsor, in a manner that affects the ability of the agency to meet any requirements under State, local, or Federal law; or
- (ii) significant new information or circumstances, including a major modification to an aspect of the project, requires additional analysis for the agency to make a decision on the project application.
- (E) Limitation. - The Federal agency with jurisdiction for the decision from which funds are rescinded pursuant to this paragraph shall not reprogram funds to the office of the head of the agency, or equivalent office, to reimburse that office for the loss of the funds.
- (F) Audits. - In any fiscal year in which any funds are rescinded from a Federal agency pursuant to this paragraph, the Inspector General of that agency shall -
- (i) conduct an audit to assess compliance with the requirements of this paragraph; and
- (ii) not later than 120 days after the end of the fiscal year during which the rescission occurred, submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report describing the reasons why the transfers were levied, including allocations of resources.
- (G) Effect of paragraph. - Nothing in this paragraph affects or limits the application of, or obligation to comply with, any Federal, State, local, or tribal law.
- (7) Expedient decisions and reviews. - To ensure that Federal environmental decisions and reviews are expeditiously made -

(A) adequate resources made available under this title shall be devoted to ensuring that applicable environmental reviews under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) are completed on an expeditious basis and that the shortest existing applicable process under that Act is implemented; and

(B) the President shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, not less frequently than once every 120 days after the date of enactment of the MAP-21, a report on the status and progress of the following projects and activities funded under this title with respect to compliance with applicable requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.):

(i) Projects and activities required to prepare an annual financial plan under section 106(i).

(ii) A sample of not less than 5 percent of the projects requiring preparation of an environmental impact statement or environmental assessment in each State.

(i) Performance Measurement. - The Secretary shall establish a program to measure and report on progress toward improving and expediting the planning and environmental review process.

(j) Assistance to Affected State and Federal Agencies. -

(1) In general. - For a project that is subject to the environmental review process established under this section and for which funds are made available to a State under this title or chapter 53 of title 49, the Secretary may approve a request by the State to provide funds so made available under this title or such chapter 53 to affected Federal agencies (including the Department of Transportation), State agencies, and Indian tribes participating in the environmental review process for the projects in that State or participating in a State process that has been approved by the Secretary for that State. Such funds may be provided only to support activities that directly and meaningfully contribute to expediting and improving transportation project planning and delivery for projects in that State.

(2) Activities eligible for funding. - Activities for which funds may be provided under paragraph (1) include transportation planning activities that precede the initiation of the environmental review process, dedicated staffing, training of agency personnel, information gathering and mapping, and development of programmatic agreements.

(3) Use of federal lands highway funds. - The Secretary may also use funds made available under section 204 for a project for the purposes specified in this subsection with respect to the environmental review process for the project.

(4) Amounts. - Requests under paragraph (1) may be approved only for the additional amounts that the Secretary determines are necessary for the Federal agencies, State agencies, or Indian tribes participating in the environmental review process to meet the time limits for environmental review.

(5) Condition. - A request under paragraph (1) to expedite time limits for environmental review may be approved only if such time limits are less than the customary time necessary for such review.

(6) Memorandum of understanding. - Prior to providing funds approved by the Secretary for dedicated staffing at an affected Federal agency under paragraphs (1) and (2), the affected Federal agency and the State agency shall enter into a memorandum of understanding that establishes the projects and priorities to be addressed by the use of the funds.

(k) Judicial Review and Savings Clause. -

(1) Judicial review. - Except as set forth under subsection (l), nothing in this section shall affect the reviewability of any final Federal agency action in a court of the United States or in the court of any State.

(2) 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.

(3) 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.

(l) 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 highway or public transportation capital project shall be barred unless it is filed within 150 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 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 771.130 of title 23, 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 150 days after the date of publication of a notice in the Federal Register announcing such action.

(m) Enhanced Technical Assistance and Accelerated Project Completion. -

(1) Definition of covered project. - In this subsection, the term "covered project" means a project -

(A) that has an ongoing environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) for which at least 2 years, beginning on the date on which a notice of intent is issued, have elapsed without the issuance of a record of decision.

(2) Technical assistance. - At the request of a project sponsor or the Governor of a State in which a project is located, the Secretary shall provide additional technical assistance to resolve for a covered project any outstanding issues and project delay, including by -

(A) providing additional staff, training, and expertise;

(B) facilitating interagency coordination;

(C) promoting more efficient collaboration; and

(D) supplying specialized onsite assistance.

(3) Scope of work. -

(A) In general. - In providing technical assistance for a covered project under this subsection, the Secretary shall establish a scope of work that describes the actions that the Secretary will take to resolve the outstanding issues and project delays, including establishing a schedule under subparagraph (B).

(B) Schedule. -

(i) In general. - The Secretary shall establish and meet a schedule for the completion of any permit, approval, review, or study, required for the covered project by the date that is not later than 4 years after the date on which a notice of intent for the covered project is issued.

(ii) Inclusions. - The schedule under clause (i) shall -

(I) comply with all applicable laws;

(II) require the concurrence of the Council on Environmental Quality and each participating agency for the project with the State in which the project is located or the project sponsor, as applicable; and

(III) reflect any new information that becomes available and any changes in circumstances that may result in new significant impacts that could affect the timeline for completion of any permit, approval, review, or study required for the covered project.

(4) Consultation. - In providing technical assistance for a covered project under this subsection, the Secretary shall consult, if appropriate, with resource and participating agencies on all methods available to resolve the outstanding issues and project delays for a covered project as expeditiously as possible.

(5) Enforcement. -

(A) In general. - All provisions of this section shall apply to this subsection, including the financial penalty provisions under subsection (h)(6).

(B) Restriction. - If the Secretary enforces this subsection under subsection (h)(6), the Secretary may use a date included in a schedule under paragraph (3)(B) that is created pursuant to and is in compliance with this subsection in lieu of the dates under subsection (h)(6)(B)(ii).

### Sec. 140. Nondiscrimination

(a) Prior to approving any programs for projects as provided for in section 135, the Secretary shall require assurances from any State desiring to avail itself of the benefits of this chapter that employment in connection with proposed projects will be provided without regard to race, color, creed, national origin, or sex. The Secretary shall require that each State shall include in the advertised specifications, notification of the specific equal employment opportunity responsibilities of the successful bidder. In approving programs for projects on any of the Federal-aid systems, the Secretary<sup>16</sup> if necessary to ensure equal employment opportunity, shall require certification by any State desiring to avail itself of the benefits of this chapter that there are in existence and available on a regional, statewide, or local basis, apprenticeship, skill improvement or other upgrading programs, registered with the Department of Labor

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<sup>16</sup> So in original. Probably should be followed by a comma.

or the appropriate State agency, if any, which provide equal opportunity for training and employment without regard to race, color, creed, national origin, or sex. In implementing such programs, a State may reserve training positions for persons who receive welfare assistance from such State; except that the implementation of any such program shall not cause current employees to be displaced or current positions to be supplanted or preclude workers that are participating in an apprenticeship, skill improvement, or other upgrading program registered with the Department of Labor or the appropriate State agency from being referred to, or hired on, projects funded under this title without regard to the length of time of their participation in such program. The Secretary shall periodically obtain from the Secretary of Labor and the respective State transportation departments information which will enable the Secretary to judge compliance with the requirements of this section and the Secretary of Labor shall render to the Secretary such assistance and information as the Secretary of Transportation shall deem necessary to carry out the equal employment opportunity program required hereunder.

(b) The Secretary, in cooperation with any other department or agency of the Government, State agency, authority, association, institution, Indian tribal government, corporation (profit or nonprofit), or any other organization or person, is authorized to develop, conduct, and administer surface transportation and technology training, including skill improvement programs, and to develop and fund summer transportation institutes. From administrative funds made available under section 104(a), 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. The provisions of section 6101(b) to (d) of title 41 shall not be applicable to contracts and agreements made under the authority herein granted to the Secretary. Notwithstanding any other provision of law, not to exceed 1/2 of 1 percent of funds apportioned to a State for the surface transportation program under section 104(b) may be available to carry out this subsection upon request of the State transportation department to the Secretary.

(c) The Secretary, in cooperation with any other department or agency of the Government, State agency, authority, association, institution, Indian tribal government, corporation (profit or nonprofit), or any other organization or person, is authorized to develop, conduct, and administer training programs and assistance programs in connection with any program under this title in order that minority businesses may achieve proficiency to compete, on an equal basis, for contracts and subcontracts. From administrative funds made available under section 104(a), the Secretary shall deduct such sums as necessary, not to exceed \$10,000,000 per fiscal year, for the administration of this subsection. The provisions of section 6101(b) to (d) of title 41 shall not be applicable to contracts and agreements made under the authority herein granted to the Secretary notwithstanding the provisions of section 3106 of title 41.

(d) Indian Employment. - Consistent with section 703(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(i)), nothing in this section shall preclude the preferential employment of Indians living on or near a reservation on projects and contracts on Indian reservation roads. States may implement a preference for employment of Indians on projects carried out under this title near Indian reservations. The Secretary shall cooperate with Indian tribal governments and the States to implement this subsection.

#### **Sec. 141. Enforcement of requirements**

(a) Each State shall certify to the Secretary before January 1 of each year that it is enforcing all State laws respecting maximum vehicle size and weights permitted on the Federal-aid primary system, the Federal-aid urban system, and the Federal-aid secondary system, including the Interstate System in accordance with section 127 of this title. Each State shall also certify that it is enforcing and complying with the provisions of section 127(d) of this title and section 31112 of title 49.

(b)

(1) Each State shall submit to the Secretary such information as the Secretary shall, by regulation, require as necessary, in his opinion, to verify the certification of such State under subsection (b) of this section.

(2) If a State fails to certify as required by subsection (b) of this section or if the Secretary determines that a State is not adequately enforcing all State laws respecting such maximum vehicle size and weights, notwithstanding such a certification, then Federal-aid highway funds apportioned to such State for such fiscal year shall be reduced by amounts equal to 7 percent of the amount which would otherwise be apportioned to such State under paragraphs (1) through (5) of section 104(b).

(3) If within one year from the date that the apportionment for any State is reduced in accordance with paragraph (2) of this subsection the Secretary determines that such State is enforcing all State laws respecting maximum size and weights, the apportionment of such State shall be increased by an amount equal to such reduction. If the Secretary does not make such a determination within such one-year period, the amounts so withheld shall be reapportioned to all other eligible States.

(c) The Secretary shall reduce the State's apportionment of Federal-aid highway funds under section 104(b)(1) in an amount up to 8 percent of the amount to be apportioned in any fiscal year beginning after September 30, 1984, during which heavy vehicles, subject to the use tax imposed by section 4481 of the Internal Revenue Code of 1986, may be lawfully registered in the State without having presented proof of payment, in such form as may be prescribed by the Secretary of the Treasury, of the use tax imposed by section 4481 of such Code. Amounts withheld from apportionment to a State under this subsection shall be apportioned to the other States pursuant to the formulas of section 104(b)(1) and shall be available in the same manner and to the same extent as other Interstate funds apportioned at the same time to other States.

#### **Sec. 142. Public transportation**

(a)

(1) To encourage the development, improvement, and use of public mass transportation systems operating buses on Federal-aid highways for the transportation of passengers, so as to increase the traffic capacity of the Federal-aid highways for the movement of persons, the Secretary may approve as a project on any Federal-aid highway the construction of exclusive or preferential high occupancy vehicle lanes, highway traffic control devices, bus passenger loading areas and facilities (including shelters), and fringe and transportation corridor parking facilities, which may include electric vehicle charging stations or natural gas vehicle refueling stations, to serve high occupancy vehicle and public mass transportation passengers, and sums apportioned under section 104(b) of this title shall be available to finance the cost of projects under this paragraph. If fees are charged for the use of any parking facility constructed under this section, the rate thereof shall not be in excess of that required for maintenance and operation of the facility and the cost of providing shuttle service to and from the facility (including compensation to any person for operating the facility and for providing such shuttle service).

(2) In addition to the projects under paragraph (1), the Secretary may approve payment from sums apportioned under section 104(b)(2) for carrying out any capital transit project eligible for assistance under chapter 53 of title 49, capital improvement to provide access and coordination between intercity and rural bus service, and construction of facilities to provide connections between highway transportation and other modes of transportation.

(b) Sums apportioned in accordance with section 104(b)(1) shall be available to finance the Federal share of projects for exclusive or preferential high occupancy vehicle, truck, and emergency

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vehicle routes or lanes. Routes constructed under this subsection shall not be subject to the third sentence of section 109(b) of this title.

(c) Accommodation of Other Modes of Transportation. - The Secretary may approve as a project on any Federal-aid highway for payment from sums apportioned under section 104(b) modifications to existing highways eligible under the program that is the source of the funds on such highway necessary to accommodate other modes of transportation if such modifications will not adversely affect automotive safety.

(d) Metropolitan Planning. - Any project carried out under this section in an urbanized area shall be subject to the metropolitan planning requirements of section 134.

(e)

(1) For all purposes of this title, a project authorized by subsection (a)(1) of this section shall be deemed to be a highway project.

(2) Projects authorized by subsection (a)(2) shall be subject to, and governed in accordance with, all provisions of this title applicable to projects on the surface transportation program, except to the extent determined inconsistent by the Secretary.

(3) The Federal share payable on account of projects authorized by subsection (a) of this section shall be that provided in section 120 of this title.

(f) Availability of Rights-of-Way. - In any case where sufficient land or air space exists within the publicly acquired rights-of-way of any highway, constructed in whole or in part with Federal-aid highway funds, to accommodate needed passenger, commuter, or high speed rail, magnetic levitation systems, and highway and nonhighway public mass transit facilities, the Secretary shall authorize a State to make such lands, air space, and rights-of-way available with or without charge to a publicly or privately owned authority or company or any other person for such purposes if such accommodation will not adversely affect automotive safety.

(g) The provision of assistance under subsection (a)(2) shall not be construed as bringing within the application of chapter 15 of title 5, United States Code, any non-supervisory employee of an urban mass transportation system (or of any other agency or entity performing related functions) to whom such chapter is otherwise inapplicable.

(h) Funds available for expenditure to carry out the purposes of subsection (a)(2) of this section shall be supplementary to and not in substitution for funds authorized and available for obligation pursuant to chapter 53 of title 49.

(i) The provisions of section 5323(a)(1)(D)<sup>17</sup> of title 49 shall apply in carrying out subsection (a)(2) of this section.

### **Sec. 143. Highway use tax evasion projects**

(a) State Defined. - In this section, the term "State" means the 50 States and the District of Columbia.

(b) Projects. -

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<sup>17</sup> Section 5323(a)(1)(D) of title 49, referred to in subsec. (i), was omitted in the general amendment of section 5323(a)(1) of Title 49, Transportation, by Pub. L. 109-59, Title III, §3023(a)(1), Aug. 10, 2005, 119 Stat. 1615.

(1) In general. - The Secretary shall carry out highway use tax evasion projects in accordance with this subsection.

(2) Funding. -

(A) In general. - From administrative funds made available under section 104(a), the Secretary shall deduct such sums as are necessary, not to exceed \$10,000,000 for each of fiscal years 2013 and 2014, to carry out this section.

(B) Allocation of funds. - Funds made available to carry out this section may be allocated to the Internal Revenue Service and the States at the discretion of the Secretary, except that of funds so made available for each fiscal year, \$2,000,000 shall be available only to carry out intergovernmental enforcement efforts, including research and training.

(3) Conditions on funds allocated to internal revenue service. - Except as otherwise provided in this section, the Secretary shall not impose any condition on the use of funds allocated to the Internal Revenue Service under this subsection.

(4) Limitation on use of funds. - Funds made available to carry out this section shall be used only -

(A) to expand efforts to enhance motor fuel tax enforcement;

(B) to fund additional Internal Revenue Service staff, but only to carry out functions described in this paragraph;

(C) to supplement motor fuel tax examinations and criminal investigations;

(D) to develop automated data processing tools to monitor motor fuel production and sales;

(E) to evaluate and implement registration and reporting requirements for motor fuel taxpayers;

(F) to reimburse State expenses that supplement existing fuel tax compliance efforts;

(G) to analyze and implement programs to reduce tax evasion associated with other highway use taxes;

(H) to support efforts between States and Indian tribes to address issues relating to State motor fuel taxes; and

(I) to analyze and implement programs to reduce tax evasion associated with foreign imported fuel.

(5) Maintenance of effort. - The Secretary may not make an allocation to a State under this subsection for a fiscal year unless the State certifies that the aggregate expenditure of funds of the State, exclusive of Federal funds, for motor fuel tax enforcement activities will be maintained at a level that does not fall below the average level of such expenditure for the preceding 2 fiscal years of the State.

(6) Federal share. - The Federal share of the cost of a project carried out under this subsection shall be 100 percent.

(7) Period of availability. - Funds authorized to carry out this section shall remain available for obligation for a period of 3 years after the last day of the fiscal year for which the funds are authorized.

(8) Use of surface transportation program funding. - In addition to funds made available to carry out this section, a State may expend up to 1/4 of 1 percent of the funds apportioned to



the State for a fiscal year under section 104(b)(2) on initiatives to halt the evasion of payment of motor fuel taxes.

(9) Reports. - The Commissioner of the Internal Revenue Service and each State shall submit to the Secretary an annual report that describes the projects, examinations, and criminal investigations funded by and carried out under this section. Such report shall specify the estimated annual yield from such projects, examinations, and criminal investigations.

(c) Excise Tax Fuel Reporting. -

(1) In general. - Not later than 90 days after the date of enactment of the SAFETEA-LU, the Secretary shall enter into a memorandum of understanding with the Commissioner of the Internal Revenue Service for the purposes of -

(A) the additional development of capabilities needed to support new reporting requirements and databases established under such Act and the American Jobs Creation Act of 2004 (Public Law 108-357), and such other reporting requirements and database development as may be determined by the Secretary, in consultation with the Commissioner of the Internal Revenue Service, to be useful in the enforcement of fuel excise taxes, including provisions recommended by the Fuel Tax Enforcement Advisory Committee,

(B) the completion of requirements needed for the electronic reporting of fuel transactions from carriers and terminal operators,

(C) the operation and maintenance of an excise summary terminal activity reporting system and other systems used to provide strategic analyses of domestic and foreign motor fuel distribution trends and patterns,

(D) the collection, analysis, and sharing of information on fuel distribution and compliance or noncompliance with fuel taxes, and

(E) the development, completion, operation, and maintenance of an electronic claims filing system and database and an electronic database of heavy vehicle highway use payments.

(2) Elements of memorandum of understanding. - The memorandum of understanding shall provide that -

(A) the Internal Revenue Service shall develop and maintain any system under paragraph (1) through contracts,

(B) any system under paragraph (1) shall be under the control of the Internal Revenue Service, and

(C) any system under paragraph (1) shall be made available for use by appropriate State and Federal revenue, tax, and law enforcement authorities, subject to section 6103 of the Internal Revenue Code of 1986.

(3) Funding. - Of the amounts made available to carry out this section for each fiscal year, the Secretary shall make available to the Internal Revenue Service such funds as may be necessary to complete, operate, and maintain the systems under paragraph (1) in accordance with this subsection.

(4) Reports. - Not later than September 30 of each year, the Commissioner of the Internal Revenue Service shall provide reports to the Secretary on the status of the Internal Revenue Service projects funded under this subsection.

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**Sec. 144. National bridge and tunnel inventory and inspection standards**

## (a) Findings and Declarations. -

## (1) Findings. - Congress finds that -

(A) the condition of the bridges of the United States has improved since the date of enactment of the Transportation Equity Act for the 21st Century (Public Law 105-178; 112 Stat. 107), yet continued improvement to bridge conditions is essential to protect the safety of the traveling public and allow for the efficient movement of people and goods on which the economy of the United States relies; and

(B) the systematic preventative maintenance of bridges, and replacement and rehabilitation of deficient bridges, should be undertaken through an overall asset management approach to transportation investment.

## (2) Declarations. - Congress declares that it is in the vital interest of the United States -

(A) to inventory, inspect, and improve the condition of the highway bridges and tunnels of the United States;

(B) to use a data-driven, risk-based approach and cost-effective strategy for systematic preventative maintenance, replacement, and rehabilitation of highway bridges and tunnels to ensure safety and extended service life;

(C) to use performance-based bridge management systems to assist States in making timely investments;

(D) to ensure accountability and link performance outcomes to investment decisions; and

(E) to ensure connectivity and access for residents of rural areas of the United States through strategic investments in National Highway System bridges and bridges on all public roads.

## (b) National Bridge and Tunnel Inventories. - The Secretary, in consultation with the States and Federal agencies with jurisdiction over highway bridges and tunnels, shall -

(1) inventory all highway bridges on public roads, on and off Federal-aid highways, including tribally owned and Federally owned bridges, that are bridges over waterways, other topographical barriers, other highways, and railroads;

(2) inventory all tunnels on public roads, on and off Federal-aid highways, including tribally owned and Federally owned tunnels;

(3) classify the bridges according to serviceability, safety, and essentiality for public use, including the potential impacts to emergency evacuation routes and to regional and national freight and passenger mobility if the serviceability of the bridge is restricted or diminished;

(4) based on that classification, assign each a risk-based priority for systematic preventative maintenance, replacement, or rehabilitation; and

(5) determine the cost of replacing each structurally deficient bridge identified under this subsection with a comparable facility or the cost of rehabilitating the bridge.

## (c) General Bridge Authority. -

(1) In general. - Except as provided in paragraph (2) and notwithstanding any other provision of law, the General Bridge Act of 1946 (33 U.S.C. 525 et seq.) shall apply to bridges authorized to be replaced, in whole or in part, by this title.

(2) Exception. - Section 502(b) of the General Bridge Act of 1946 (33 U.S.C. 525(b)) and section 9 of the Act of March 3, 1899 (33 U.S.C. 401), shall not apply to any bridge constructed, reconstructed, rehabilitated, or replaced with assistance under this title, if the bridge is over waters that -

(A) are not used and are not susceptible to use in the natural condition of the bridge or by reasonable improvement as a means to transport interstate or foreign commerce; and

(B) are -

(i) not tidal; or

(ii) if tidal, used only by recreational boating, fishing, and other small vessels that are less than 21 feet in length.

(d) Inventory Updates and Reports. -

(1) In general. - The Secretary shall -

(A) annually revise the inventories authorized by subsection (b); and

(B) submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the inventories.

(2) Inspection report. - Not later than 2 years after the date of enactment of the MAP-21, each State and appropriate Federal agency shall report element level data to the Secretary, as each bridge is inspected pursuant to this section, for all highway bridges on the National Highway System.

(3) Guidance. - The Secretary shall provide guidance to States and Federal agencies for implementation of this subsection, while respecting the existing inspection schedule of each State.

(4) Bridges not on national highway system. - The Secretary shall -

(A) conduct a study on the benefits, cost-effectiveness, and feasibility of requiring element-level data collection for bridges not on the National Highway System; and

(B) submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the study.

(e) Bridges Without Taxing Powers. -

(1) In general. - Notwithstanding any other provision of law, any bridge that is owned and operated by an agency that does not have taxing powers and whose functions include operating a federally assisted public transit system subsidized by toll revenues shall be eligible for assistance under this title, but the amount of such assistance shall in no event exceed the cumulative amount which such agency has expended for capital and operating costs to subsidize such transit system.

(2) Insufficient assets. - Before authorizing an expenditure of funds under this subsection, the Secretary shall determine that the applicant agency has insufficient reserves, surpluses, and projected revenues (over and above those required for bridge and transit capital and operating costs) to fund the bridge project or activity eligible for assistance under this title.

(3) Crediting of non-federal funds. - Any non-Federal funds expended for the seismic retrofit of the bridge may be credited toward the non-Federal share required as a condition of receipt of any Federal funds for seismic retrofit of the bridge made available after the date of the expenditure.

(f) Replacement of Destroyed Bridges and Ferry Boat Service. -

(1) In general. - Notwithstanding any other provision of law, a State may use the funds apportioned under section 104(b)(2) to construct any bridge that replaces -

- (A) any low water crossing (regardless of the length of the low water crossing);
- (B) any bridge that was destroyed prior to January 1, 1965;
- (C) any ferry that was in existence on January 1, 1984; or
- (D) any road bridge that is rendered obsolete as a result of a Corps of Engineers flood control or channelization project and is not rebuilt with funds from the Corps of Engineers.

(2) Federal share. - The Federal share payable on any bridge construction carried out under paragraph (1) shall be 80 percent of the cost of the construction.

(g) Historic Bridges. -

(1) Definition of historic bridge. - In this subsection, the term "historic bridge" means any bridge that is listed on, or eligible for listing on, the National Register of Historic Places.

(2) Coordination. - The Secretary shall, in cooperation with the States, encourage the retention, rehabilitation, adaptive reuse, and future study of historic bridges.

(3) State inventory. - The Secretary shall require each State to complete an inventory of all bridges on and off Federal-aid highways to determine the historic significance of the bridges.

(4) Eligibility. -

(A) In general. - Subject to subparagraph (B), reasonable costs associated with actions to preserve, or reduce the impact of a project under this chapter on, the historic integrity of a historic bridge shall be eligible as reimbursable project costs under section 133 if the load capacity and safety features of the historic bridge are adequate to serve the intended use for the life of the historic bridge.

(B) Bridges not used for vehicle traffic. - In the case of a historic bridge that is no longer used for motorized vehicular traffic, the costs eligible as reimbursable project costs pursuant to this chapter shall not exceed the estimated cost of demolition of the historic bridge.

(5) Preservation. - Any State that proposes to demolish a historic bridge for a replacement project with funds made available to carry out this section shall first make the historic bridge available for donation to a State, locality, or responsible private entity if the State, locality, or responsible entity enters into an agreement -

(A) to maintain the bridge and the features that give the historic bridge its historic significance; and

(B) to assume all future legal and financial responsibility for the historic bridge, which may include an agreement to hold the State transportation department harmless in any liability action.

(6) Costs incurred. -

(A) In general. - Costs incurred by the State to preserve a historic bridge (including funds made available to the State, locality, or private entity to enable it to accept the bridge) shall be eligible as reimbursable project costs under this chapter in an amount not to exceed the cost of demolition.

(B) Additional funding. - Any bridge preserved pursuant to this paragraph shall not be eligible for any other funds authorized pursuant to this title.

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(h) National Bridge and Tunnel Inspection Standards. -

(1) Requirement. -

(A) In general. - The Secretary shall establish and maintain inspection standards for the proper inspection and evaluation of all highway bridges and tunnels for safety and serviceability.

(B) Uniformity. - The standards under this subsection shall be designed to ensure uniformity of the inspections and evaluations.

(2) Minimum requirements of inspection standards. - The standards established under paragraph (1) shall, at a minimum -

(A) specify, in detail, the method by which the inspections shall be carried out by the States, Federal agencies, and tribal governments;

(B) establish the maximum time period between inspections;

(C) establish the qualifications for those charged with carrying out the inspections;

(D) require each State, Federal agency, and tribal government to maintain and make available to the Secretary on request -

(i) written reports on the results of highway bridge and tunnel inspections and notations of any action taken pursuant to the findings of the inspections; and

(ii) current inventory data for all highway bridges and tunnels reflecting the findings of the most recent highway bridge and tunnel inspections conducted; and

(E) establish a procedure for national certification of highway bridge inspectors and tunnel inspectors.

(3) State compliance with inspection standards. - The Secretary shall, at a minimum -

(A) establish, in consultation with the States, Federal agencies, and interested and knowledgeable private organizations and individuals, procedures to conduct reviews of State compliance with -

(i) the standards established under this subsection; and

(ii) the calculation or reevaluation of bridge load ratings; and

(B) establish, in consultation with the States, Federal agencies, and interested and knowledgeable private organizations and individuals, procedures for States to follow in reporting to the Secretary -

(i) critical findings relating to structural or safety- related deficiencies of highway bridges and tunnels; and

(ii) monitoring activities and corrective actions taken in response to a critical finding described in clause (i).

(4) Reviews of state compliance. -

(A) In general. - The Secretary shall annually review State compliance with the standards established under this section.

(B) Noncompliance. - If an annual review in accordance with subparagraph (A) identifies noncompliance by a State, the Secretary shall -

(i) issue a report detailing the issues of the noncompliance by December 31 of the calendar year in which the review was made; and

- 
- (ii) 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 not later than 45 days after the date of notification.
- (5) Penalty for noncompliance. -
- (A) In general. - If a State fails to satisfy the requirements of paragraph (4)(B) by August 1 of the calendar year following the year of a finding of noncompliance, the Secretary shall, on October 1 of that year, and each year thereafter as may be necessary, require the State to dedicate funds apportioned to the State under sections 119 and 133 after the date of enactment of the MAP-21 to correct the noncompliance with the minimum inspection standards established under this subsection.
  - (B) Amount. - The amount of the funds to be 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.
- (6) Update of standards. - Not later than 3 years after the date of enactment of the MAP-21, the Secretary shall update inspection standards to cover -
- (A) the methodology, training, and qualifications for inspectors; and
  - (B) the frequency of inspection.
- (7) Risk-based approach. - In carrying out the revisions required by paragraph (6), the Secretary shall consider a risk- based approach to determining the frequency of bridge inspections.
- (i) Training Program for Bridge and Tunnel Inspectors. -
- (1) In general. - The Secretary, in cooperation with the State transportation departments, shall maintain a program designed to train appropriate personnel to carry out highway bridge and tunnel inspections.
  - (2) Revisions. - The training program shall be revised from time to time to take into account new and improved techniques.
- (j) Availability of Funds. - In carrying out this section -
- (1) the Secretary may use funds made available to the Secretary under sections 104(a) and 503;
  - (2) a State may use amounts apportioned to the State under section 104(b)(1) and 104(b)(3);
  - (3) an Indian tribe may use funds made available to the Indian tribe under section 202; and
  - (4) a Federal agency may use funds made available to the agency under section 503.

**Sec. 145. Federal-State relationship**

(a) Protection of State Sovereignty. - The authorization of the appropriation of Federal funds or their availability for expenditure under this chapter shall in no way infringe on the sovereign rights of the States to determine which projects shall be federally financed. The provisions of this chapter provide for a federally assisted State program.

(b) Purpose of Projects. - The projects described in section 1702 of the SAFETEA-LU, section 1602 of the Transportation Equity Act for the 21st Century, sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2027 et seq.), and section 149(a) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (101 Stat. 181 et seq.) are intended to establish eligibility for Federal-aid highway funds made available for such projects by section 1101(a)(16) of the SAFETEA-LU, section 1101(a)(13) of the Transportation Equity Act for the 21st Century, sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991, and subsections (b), (c), and (d) of section 149 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, respectively, and are not intended to define the scope or limits of Federal action in a manner inconsistent with subsection (a).

**Sec. 146. Carpool and vanpool projects**

(a) In order to conserve fuel, decrease traffic congestion during rush hours, improve air quality, and enhance the use of existing highways and parking facilities, the Secretary may approve for Federal financial assistance from funds apportioned under section 104(b)(2) of this title, projects designed to encourage the use of carpools and vanpools. (As used hereafter in this section, the term "carpool" includes a vanpool.) Such a project may include, but is not limited to, such measures as providing carpooling opportunities to the elderly and handicapped, systems for locating potential riders and informing them of convenient carpool opportunities, acquiring vehicles appropriate for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use as preferential parking for carpools.

(b) A project authorized by this section shall be subject to and carried out in accordance with all provisions of this title, except those provisions which the Secretary determines are inconsistent with this section.

**Sec. 147. Construction of ferry boats and ferry terminal facilities**

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

(b) Federal Share. - The Federal share of the cost of construction of ferry boats, ferry terminals, and ferry maintenance facilities under this section shall be 80 percent.

(c) Distribution of Funds. - Of the amounts made available to ferry systems and public entities responsible for developing ferries under this section for a fiscal year, 100 percent shall be allocated in accordance with the formula set forth in subsection (d).

(d) Formula. - Of the amounts allocated pursuant to subsection (c) -

(1) 20 percent shall be allocated among eligible entities in the proportion that -

(A) the number of ferry passengers carried by each ferry system in the most recent fiscal year; bears to

(B) the number of ferry passengers carried by all ferry systems in the most recent fiscal year;

(2) 45 percent shall be allocated among eligible entities in the proportion that -

(A) the number of vehicles carried by each ferry system in the most recent fiscal year; bears to

(B) the number of vehicles carried by all ferry systems in the most recent fiscal year; and

(3) 35 percent shall be allocated among eligible entities in the proportion that -

(A) the total route miles serviced by each ferry system; bears to

(B) the total route miles serviced by all ferry systems.

(e) Authorization of Appropriations. - There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$67,000,000 for each of fiscal years 2013 and 2014.

(f) Period of Availability. - Notwithstanding section 118(b), funds made available to carry out this section shall remain available until expended.

(g) Applicability. - All provisions of this chapter that are applicable to the National Highway System, other than provisions relating to apportionment formula and Federal share, shall apply to funds made available to carry out this section, except as determined by the Secretary to be inconsistent with this section.

#### **Sec. 148. Highway safety improvement program**

(a) Definitions. - In this section, the following definitions apply:

(1) High risk rural road. - The term "high risk rural road" means any roadway functionally classified as a rural major or minor collector or a rural local road with significant safety risks, as defined by a State in accordance with an updated State strategic highway safety plan.

(2) Highway basemap. - The term "highway basemap" means a representation of all public roads that can be used to geolocate attribute data on a roadway.

(3) Highway safety improvement program. - The term "highway safety improvement program" means projects, activities, plans, and reports carried out under this section.

(4) Highway safety improvement project. -

(A) In general. - The term "highway safety improvement project" means strategies, activities, and projects on a public road that are consistent with a State strategic highway safety plan and -

(i) correct or improve a hazardous road location or feature; or

(ii) address a highway safety problem.

(B) Inclusions. - The term "highway safety improvement project" includes, but is not limited to, a project for 1 or more of the following:

(i) An intersection safety improvement.



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- (ii) Pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition).
  - (iii) Installation of rumble strips or another warning device, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists and pedestrians, 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 or safety of persons with disabilities.
  - (vi) Construction and improvement 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 crossing.
  - (viii) Construction of a traffic calming feature.
  - (ix) Elimination of a roadside hazard.
  - (x) Installation, replacement, and other improvement of highway signage and pavement markings, or a project to maintain minimum levels of retroreflectivity, that addresses a highway safety problem consistent with a State strategic highway safety plan.
  - (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, analysis, and improvement of safety data.
  - (xv) Planning integrated interoperable emergency communications equipment, operational activities, or traffic enforcement activities (including police assistance) relating to work zone safety.
  - (xvi) Installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of road users and workers), and crash attenuators.
  - (xvii) The addition or retrofitting of structures or other measures to eliminate or reduce crashes involving vehicles and wildlife.
  - (xviii) Installation of yellow-green signs and signals at pedestrian and bicycle crossings and in school zones.
  - (xix) Construction and operational improvements on high risk rural roads.
  - (xx) Geometric improvements to a road for safety purposes that improve safety.
  - (xxi) A road safety audit.
  - (xxii) Roadway safety infrastructure improvements consistent with the recommendations included in the publication of the Federal Highway Administration entitled 'Highway Design Handbook for Older Drivers and

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Pedestrians' (FHWA-RD-01-103), dated May 2001 or as subsequently revised and updated.

(xxiii) Truck parking facilities eligible for funding under section 1401 of the MAP-21.

(xxiv) Systemic safety improvements.

(5) Model inventory of roadway elements. - The term "model inventory of roadway elements" means the listing and standardized coding by the Federal Highway Administration of roadway and traffic data elements critical to safety management, analysis, and decisionmaking.

(6) Project to maintain minimum levels of retroreflectivity. - The term "project to maintain minimum levels of retroreflectivity" means a project that is designed to maintain a highway sign or pavement marking retroreflectivity at or above the minimum levels prescribed in Federal or State regulations.

(7) 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.

(8) Road users. - The term "road user" means a motorist, passenger, public transportation operator or user, truck driver, bicyclist, motorcyclist, or pedestrian, including a person with disabilities.

(9) Safety data. -

(A) In general. - The term "safety data" means crash, roadway, and traffic data on a public road.

(B) Inclusion. - The term "safety data" includes, in the case of a railway-highway grade crossing, the characteristics of highway and train traffic, licensing, and vehicle data.

(10) 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 -

(i) a project consistent with the State strategic highway safety plan that promotes the awareness of the public and educates the public concerning highway safety matters (including motorcycle safety);

(ii) a project to enforce highway safety laws; and

(iii) a project to provide infrastructure and infrastructure-related equipment to support emergency services.

(11) 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 Statewide transportation improvement program under section 135(g).

(12) State strategic highway safety plan. - The term "State strategic highway safety plan" means a comprehensive plan, based on safety data, developed by a State transportation department that -

(A) is developed after consultation with -

(i) a highway safety representative of the Governor of the State;

- (ii) regional transportation planning organizations and metropolitan planning organizations, if any;
  - (iii) representatives of major modes of transportation;
  - (iv) State and local traffic enforcement officials;
  - (v) a highway-rail grade crossing safety representative of the Governor of the State;
  - (vi) representatives conducting a motor carrier safety program under section 31102, 31106, or 31309 of title 49;
  - (vii) motor vehicle administration agencies;
  - (viii) county transportation officials;
  - (ix) State representatives of nonmotorized users; and
  - (x) other major Federal, State, tribal, and local safety stakeholders;
- (B) analyzes and makes effective use of State, regional, local, or tribal safety data;
- (C) addresses engineering, management, operation, education, enforcement, and emergency services elements (including integrated, interoperable emergency communications) of highway safety as key factors in evaluating highway projects;
- (D) considers safety needs of, and high-fatality segments of, all public roads, including non-State-owned public roads and roads on tribal land;
- (E) considers the results of State, regional, or local transportation and highway safety planning processes;
- (F) describes a program of strategies to reduce or eliminate safety hazards;
- (G) is approved by the Governor of the State or a responsible State agency;
- (H) is consistent with section 135(g); and
- (I) is updated and submitted to the Secretary for approval as required under subsection (d)(2).

(13) 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) Program. -

(1) In general. - The Secretary shall carry out a highway safety improvement program.

(2) Purpose. - The purpose of the highway safety improvement program shall be to achieve a significant reduction in traffic fatalities and serious injuries on all public roads, including non-State-owned public roads and roads on tribal land.

(c) Eligibility. -

(1) In general. - To obligate funds apportioned under section 104(b)(3) to carry out this section, a State shall have in effect a State highway safety improvement program under which the State -

(A) develops, implements, and updates a State strategic highway safety plan that identifies and analyzes highway safety problems and opportunities as provided in subsections (a)(12) and (d);

(B) produces a program of projects or strategies to reduce identified safety problems; and

(C) evaluates the strategic highway safety plan on a regularly recurring basis in accordance with subsection (d)(1) to ensure the accuracy of the data and priority of proposed strategies.

(2) Identification and analysis of highway safety problems and opportunities. - As part of the State highway safety improvement program, a State shall -

(A) have in place a safety data system with the ability to perform safety problem identification and countermeasure analysis -

(i) to improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of the safety data on all public roads, including non-State-owned public roads and roads on tribal land in the State;

(ii) to evaluate the effectiveness of data improvement efforts;

(iii) to link State data systems, including traffic records, with other data systems within the State;

(iv) to improve the compatibility and interoperability of safety data with other State transportation-related data systems and the compatibility and interoperability of State safety data systems with data systems of other States and national data systems;

(v) to enhance the ability of the Secretary to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances; and

(vi) to improve the collection of data on nonmotorized crashes;

(B) based on the analysis required by subparagraph (A) -

(i) identify hazardous locations, sections, and elements (including roadside obstacles, railway-highway crossing needs, and unmarked or poorly marked roads) that constitute a danger to motorists (including motorcyclists), bicyclists, pedestrians, and other highway users;

(ii) using such criteria as the State determines to be appropriate, establish the relative severity of those locations, in terms of crashes (including crash rates), fatalities, serious injuries, traffic volume levels, and other relevant data;

(iii) identify the number of fatalities and serious injuries on all public roads by location in the State;

(iv) identify highway safety improvement projects on the basis of crash experience, crash potential, crash rate, or other data-supported means; and

(v) consider which projects maximize opportunities to advance safety;

(C) adopt strategic and performance-based goals that -

(i) address traffic safety, including behavioral and infrastructure problems and opportunities on all public roads;

(ii) focus resources on areas of greatest need; and

(iii) are coordinated with other State highway safety programs;

(D) advance the capabilities of the State for safety data collection, analysis, and integration in a manner that -

(i) complements the State highway safety program under chapter 4 and the commercial vehicle safety plan under section 31102 of title 49;

- (ii) includes all public roads, including public non-State- owned roads and roads on tribal land;
- (iii) identifies hazardous locations, sections, and elements on all public roads that constitute a danger to motorists (including motorcyclists), bicyclists, pedestrians, persons with disabilities, and other highway users;
- (iv) includes a means of identifying the relative severity of hazardous locations described in clause (iii) in terms of crashes (including crash rate), serious injuries, fatalities, and traffic volume levels; and
- (v) improves the ability of the State to identify the number of fatalities and serious injuries on all public roads in the State with a breakdown by functional classification and ownership in the State;

(E)

- (i) determine priorities for the correction of hazardous road locations, sections, and elements (including railway- highway crossing improvements), as identified through safety data analysis;
- (ii) identify opportunities for preventing the development of such hazardous conditions; and
- (iii) establish and implement a schedule of highway safety improvement projects for hazard correction and hazard prevention; and

(F)

- (i) establish an evaluation process to analyze and assess results achieved by highway safety improvement projects carried out in accordance with procedures and criteria established by this section; and
- (ii) use the information obtained under clause (i) in setting priorities for highway safety improvement projects.

(d) Updates to Strategic Highway Safety Plans. -

(1) Establishment of requirements. -

(A) In general. - Not later than 1 year after the date of enactment of the MAP-21, the Secretary shall establish requirements for regularly recurring State updates of strategic highway safety plans.

(B) Contents of updated strategic highway safety plans. - In establishing requirements under this subsection, the Secretary shall ensure that States take into consideration, with respect to updated strategic highway safety plans -

- (i) the findings of road safety audits;
- (ii) the locations of fatalities and serious injuries;
- (iii) the locations that do not have an empirical history of fatalities and serious injuries, but possess risk factors for potential crashes;
- (iv) rural roads, including all public roads, commensurate with fatality data;
- (v) motor vehicle crashes that include fatalities or serious injuries to pedestrians and bicyclists;
- (vi) the cost-effectiveness of improvements;
- (vii) improvements to rail-highway grade crossings; and

(viii) safety on all public roads, including non-State- owned public roads and roads on tribal land.

(2) Approval of updated strategic highway safety plans. -

(A) In general. - Each State shall -

(i) update the strategic highway safety plans of the State in accordance with the requirements established by the Secretary under this subsection; and

(ii) submit the updated plans to the Secretary, along with a detailed description of the process used to update the plan.

(B) Requirements for approval. - The Secretary shall not approve the process for an updated strategic highway safety plan unless -

(i) the updated strategic highway safety plan is consistent with the requirements of this subsection and subsection (a)(12); and

(ii) the process used is consistent with the requirements of this subsection.

(3) Penalty for failure to have an approved updated strategic highway safety plan. - If a State does not have an updated strategic highway safety plan with a process approved by the Secretary by August 1 of the fiscal year beginning after the date of establishment of the requirements under paragraph (1), the State shall not be eligible to receive any additional limitation pursuant to the redistribution of the limitation on obligations for Federal-aid highway and highway safety construction programs that occurs after August 1 for each succeeding fiscal year until the fiscal year during which the plan is approved.

(e) Eligible Projects. -

(1) In general. - Funds apportioned to the State under section 104(b)(3) may be obligated to carry out -

(A) any highway safety improvement project on any public road or publicly owned bicycle or pedestrian pathway or trail;

(B) as provided in subsection (g); or

(C) any project to maintain minimum levels of retroreflectivity with respect to a public road, without regard to whether the project is included in an applicable State strategic highway safety plan.

(2) Use of other funding for safety. -

(A) Effect of section. - Nothing in this section prohibits the use of funds made available under other provisions of this title for highway safety improvement projects.

(B) Use of other funds. - States are encouraged to address the full scope of the safety needs and opportunities of the States by using funds made available under other provisions of this title (except a provision that specifically prohibits that use).

(f) Data Improvement. -

(1) Definition of data improvement activities. - In this subsection, the following definitions apply:

(A) In general. - The term "data improvement activities" means a project or activity to further the capacity of a State to make more informed and effective safety infrastructure investment decisions.

(B) Inclusions. - The term "data improvement activities" includes a project or activity -

- (i) to create, update, or enhance a highway basemap of all public roads in a State;
- (ii) to collect safety data, including data identified as part of the model inventory for roadway elements, for creation of or use on a highway basemap of all public roads in a State;
- (iii) to store and maintain safety data in an electronic manner;
- (iv) to develop analytical processes for safety data elements;
- (v) to acquire and implement roadway safety analysis tools; and
- (vi) to support the collection, maintenance, and sharing of safety data on all public roads and related systems associated with the analytical usage of that data.

(2) Model inventory of roadway elements. - The Secretary shall -

- (A) establish a subset of the model inventory of roadway elements that are useful for the inventory of roadway safety; and
- (B) ensure that States adopt and use the subset to improve data collection.

(g) Special Rules. -

(1) High-risk rural road safety. - If the fatality rate on rural roads in a State increases over the most recent 2-year period for which data are available, that State shall be required to obligate in the next fiscal year for projects on high risk rural roads an amount equal to at least 200 percent of the amount of funds the State received for fiscal year 2009 for high risk rural roads under subsection (f) of this section, as in effect on the day before the date of enactment of the MAP-21.

(2) Older drivers. - If traffic fatalities and serious injuries per capita for drivers and pedestrians over the age of 65 in a State increases during the most recent 2-year period for which data are available, that State shall be required to include, in the subsequent Strategic Highway Safety Plan of the State, strategies to address the increases in those rates, taking into account the recommendations included in the publication of the Federal Highway Administration entitled 'Highway Design Handbook for Older Drivers and Pedestrians' (FHWA-RD-01-103), and dated May 2001, or as subsequently revised and updated.

(h) Reports. -

(1) In general. - A State shall submit to the Secretary a report that -

- (A) describes progress being made to implement highway safety improvement projects under this section;
- (B) assesses the effectiveness of those improvements; and
- (C) describes the extent to which the improvements funded under this section have contributed to reducing -
  - (i) the number and rate of fatalities on all public roads with, to the maximum extent practicable, a breakdown by functional classification and ownership in the State;
  - (ii) the number and rate of serious injuries on all public roads with, to the maximum extent practicable, a breakdown by functional classification and ownership in the State; and

(iii) the occurrences of fatalities and serious injuries at railway-highway crossings.

(2) Contents; schedule. - The Secretary shall establish the content and schedule for the submission of the report under paragraph (1).

(3) Transparency. - The Secretary shall make strategic highway safety plans submitted under subsection (d) and reports submitted under this subsection available to the public through -

(A) the website of the Department; and

(B) such other means as the Secretary determines to be appropriate.

(4) 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 relating to this section, 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 the reports, surveys, schedules, lists, or other data.

(i) State Performance Targets. - If the Secretary determines that a State has not met or made significant progress toward meeting the performance targets of the State established under section 150(d) by the date that is 2 years after the date of the establishment of the performance targets, the State shall -

(1) use obligation authority equal to the apportionment of the State for the prior year under section 104(b)(3) only for highway safety improvement projects under this section until the Secretary determines that the State has met or made significant progress toward meeting the performance targets of the State; and

(2) submit annually to the Secretary, until the Secretary determines that the State has met or made significant progress toward meeting the performance targets of the State, an implementation plan that -

(A) identifies roadway features that constitute a hazard to road users;

(B) identifies highway safety improvement projects on the basis of crash experience, crash potential, or other data-supported means;

(C) describes how highway safety improvement program funds will be allocated, including projects, activities, and strategies to be implemented;

(D) 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 the safety performance targets of the State; and

(E) describes the actions the State will undertake to meet the performance targets of the State.

(j) Federal Share of Highway Safety Improvement Projects. - Except as provided in sections 120 and 130, the Federal share of the cost of a highway safety improvement project carried out with funds apportioned to a State under section 104(b)(3) shall be 90 percent.

### **Sec. 149. Congestion mitigation and air quality improvement program**

(a) Establishment. - The Secretary shall establish and implement a congestion mitigation and air quality improvement program in accordance with this section.

(b) Eligible Projects. - Except as provided in subsection (d), a State may obligate funds apportioned to it under section 104(b)(4) for the congestion mitigation and air quality improvement program only for a transportation project or program if the project or program is for an area in the State



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that is or was designated as a nonattainment area for ozone, carbon monoxide, or particulate matter under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) and classified pursuant to section 181(a), 186(a), 188(a), or 188(b) of the Clean Air Act (42 U.S.C. 7511(a), 7512(a), 7513(a), or 7513(b)) or is or was designated as a nonattainment area under such section 107(d) after December 31, 1997, 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.) and -

(1)

(A)

(i) if the Secretary, after consultation with the Administrator 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

(ii) a high level of effectiveness in reducing air pollution, in cases of projects or programs where sufficient information is available in the database established pursuant to subsection (h) to determine the relative effectiveness of such projects or programs; or,

(B) in any case in which such information is not available, if the Secretary, after such consultation, determines that the project or program is part of a program, method, or strategy described in such section 108(f)(1)(A);

(2) if the project or program is included in a State implementation plan that has been approved pursuant to the Clean Air Act and the project will have air quality benefits;

(3) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the project or program is likely to contribute to the attainment of a national ambient air quality standard, whether through reductions in vehicle miles traveled, fuel consumption, or through other factors;

(4) to establish or operate a traffic monitoring, management, and control facility or program, including advanced truck stop electrification systems, if the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the facility or program is likely to contribute to the attainment of a national ambient air quality standard;

(5) if the program or project improves traffic flow, including projects to improve signalization, construct high occupancy vehicle lanes, improve intersections, add turning lanes, improve transportation systems management and operations that mitigate congestion and improve air quality, and implement intelligent transportation system strategies and such other projects that are eligible for assistance under this section on the day before the date of enactment of this paragraph, including programs or projects to improve incident and emergency response or improve mobility, such as through real-time traffic, transit, and multimodal traveler information;

(6) if the project or program involves the purchase of integrated, interoperable emergency communications equipment;

(7) if the project or program shifts traffic demand to nonpeak hours or other transportation modes, increases vehicle occupancy rates, or otherwise reduces demand for roads through such means as telecommuting, ridesharing, carsharing, alternative work hours, and pricing; or

(8) if the project or program is for -

(A) the purchase of diesel retrofits that are -

(i) for motor vehicles (as defined in section 216 of the Clean Air Act (42 U.S.C. 7550)); or

(ii) verified technologies (as defined in section 791 of the Energy Policy Act of 2005 (42 U.S.C. 16131)) for non-road vehicles and non-road engines (as defined in section 216 of the Clean Air Act (42 U.S.C. 7550)) that are used in construction projects that are -

(I) located in nonattainment or maintenance areas for ozone, PM10, or PM2.5 (as defined under the Clean Air Act (42 U.S.C. 7401 et seq.)); and

(II) funded, in whole or in part, under this title; or

(B) the conduct of outreach activities that are designed to provide information and technical assistance to the owners and operators of diesel equipment and vehicles regarding the purchase and installation of diesel retrofits.

(c) Special Rules. -

(1) Projects for pm-10 nonattainment areas. - A State may obligate funds apportioned to the State under section 104(b)(4) for a project or program for an area that is nonattainment for ozone or carbon monoxide, or both, and for PM-10 resulting from transportation activities, without regard to any limitation of the Department of Transportation relating to the type of ambient air quality standard such project or program addresses.

(2) Electric vehicle and natural gas vehicle infrastructure. - A State may obligate funds apportioned under section 104(b)(4) for a project or program to establish electric vehicle charging stations or natural gas vehicle refueling stations for the use of battery powered or natural gas fueled trucks or other motor vehicles at any location in the State except that such stations may not be established or supported where commercial establishments serving motor vehicle users are prohibited by section 111 of title 23, United States Code.

(3) HOV facilities. - No funds may be provided under this section for a project which will result in the construction of new capacity available to single occupant vehicles unless the project consists of a high occupancy vehicle facility available to single occupant vehicles only at other than peak travel times.

(d) States Flexibility. -

(1) States without a nonattainment area. - If a State does not have, and never has had, a nonattainment area designated under the Clean Air Act (42 U.S.C. 7401 et seq.), the State may use funds apportioned to the State under section 104(b)(4) for any project in the State that -

(A) would otherwise be eligible under subsection (b) as if the project were carried out in a nonattainment or maintenance area; or

(B) is eligible under the surface transportation program under section 133.

(2) States with a nonattainment area. -

(A) In general. - If a State has a nonattainment area or maintenance area and received funds in fiscal year 2009 under section 104(b)(2)(D), as in effect on the day before the date of enactment of the MAP-21, above the amount of funds that the State would have received based on the nonattainment and maintenance area population of the State under subparagraphs (B) and (C) of section 104(b)(2), as in effect on the day before the date of enactment of the MAP-21, the State may use for any project that is eligible under the surface transportation program under section 133 an amount of funds

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apportioned to such State under section 104(b)(4) that is equal to the product obtained by multiplying -

- (i) the amount apportioned to such State under section 104(b)(4) (excluding the amount of funds reserved under paragraph (I)); by
- (ii) the ratio calculated under subparagraph (B).

(B) Ratio. - For purposes of this paragraph, the ratio shall be calculated as the proportion that -

- (i) the amount for fiscal year 2009 such State was permitted by section 149(c)(2), as in effect on the day before the date of enactment of the MAP-21, to obligate in any area of the State for projects eligible under section 133, as in effect on the day before the date of enactment of the MAP-21;<sup>18</sup> bears to
- (ii) the total apportionment to such State for fiscal year 2009 under section 104(b)(2), as in effect on the day before the date of enactment of the MAP-21.

(3) Changes in designation. - If a new nonattainment area is designated or a previously designated nonattainment area is redesignated as an attainment area in a State under the Clean Air Act (42 U.S.C. 7401 et seq.), the Secretary shall modify the amount such State is permitted to obligate in any area of the State for projects eligible under section 133.

(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) Partnerships With Nongovernmental Entities. -

(1) In general. - Notwithstanding any other provision of this title and in accordance with this subsection, a metropolitan planning organization, State transportation department, or other project sponsor may enter into an agreement with any public, private, or nonprofit entity to cooperatively implement any project carried out under this section.

(2) Forms of participation by entities. - Participation by an entity under paragraph (1) may consist of -

- (A) ownership or operation of any land, facility, vehicle, or other physical asset associated with the project;
- (B) cost sharing of any project expense;
- (C) carrying out of administration, construction management, project management, project operation, or any other management or operational duty associated with the project; and
- (D) any other form of participation approved by the Secretary.

(3) Allocation to entities. - A State may allocate funds apportioned under section 104(b)(4) to an entity described in paragraph (1).

(4) Alternative fuel projects. - In the case of a project that will provide for the use of alternative fuels by privately owned vehicles or vehicle fleets, activities eligible for funding under this subsection -

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<sup>18</sup> So in original. Probably should be "MAP-21;"

(A) may include the costs of vehicle refueling infrastructure, including infrastructure that would support the development, production, and use of emerging technologies that reduce emissions of air pollutants from motor vehicles, and other capital investments associated with the project;

(B) shall include only the incremental cost of an alternative fueled vehicle, as compared to a conventionally fueled vehicle, that would otherwise be borne by a private party; and

(C) shall apply other governmental financial purchase contributions in the calculation of net incremental cost.

(5) Prohibition on federal participation with respect to required activities. - A Federal participation payment under this subsection may not be made to an entity to fund an obligation imposed under the Clean Air Act (42 U.S.C. 7401 et seq.) or any other Federal law.

(g) Cost-Effective Emission Reduction Guidance. -

(1) Definitions. - In this subsection, the following definitions apply:

(A) Administrator. - The term "Administrator" means the Administrator of the Environmental Protection Agency.

(B) Diesel retrofit. - The term "diesel retrofit" means a replacement, repowering, rebuilding, after treatment, or other technology, as determined by the Administrator.

(2) Emission reduction guidance. - The Administrator, in consultation with the Secretary, shall publish a list of diesel retrofit technologies and supporting technical information for -

(A) diesel emission reduction technologies certified or verified by the Administrator, the California Air Resources Board, or any other entity recognized by the Administrator for the same purpose;

(B) diesel emission reduction technologies identified by the Administrator as having an application and approvable test plan for verification by the Administrator or the California Air Resources Board that is submitted not later than 18 months of the date of enactment of this subsection;

(C) available information regarding the emission reduction effectiveness and cost effectiveness of technologies identified in this paragraph, taking into consideration air quality and health effects.

(3) Priority consideration. - States and metropolitan planning organizations shall give priority in areas designated as nonattainment or maintenance for PM<sub>2.5</sub> under the Clean Air Act (42 U.S.C. 7401 et seq.) in distributing funds received for congestion mitigation and air quality projects and programs from apportionments under section 104(b)(4) to projects that are proven to reduce PM<sub>2.5</sub>, including diesel retrofits.

(4) No effect on authority or restrictions. - Nothing in this subsection modifies or otherwise affects any authority or restriction established under the Clean Air Act (42 U.S.C. 7401 et seq.) or any other law (other than provisions of this title relating to congestion mitigation and air quality).

(h) Interagency Consultation. - The Secretary shall encourage States and metropolitan planning organizations to consult with State and local air quality agencies in nonattainment and maintenance areas on the estimated emission reductions from proposed congestion mitigation and air quality improvement programs and projects.

(i) Evaluation and Assessment of Projects. -

(1) Database. -

(A) In general. - Using appropriate assessments of projects funded under the congestion mitigation and air quality program and results from other research, the Secretary shall maintain and disseminate a cumulative database describing the impacts of the projects, including specific information about each project, such as the project name, location, sponsor, cost, and, to the extent already measured by the project sponsor, cost-effectiveness, based on reductions in congestion and emissions.

(B) Availability. - The database shall be published or otherwise made readily available by the Secretary in electronically accessible format and means, such as the Internet, for public review.

(2) Cost effectiveness. -

(A) In general. - The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall evaluate projects on a periodic basis and develop a table or other similar medium that illustrates the cost-effectiveness of a range of project types eligible for funding under this section as to how the projects mitigate congestion and improve air quality.

(B) Contents. - The table described in subparagraph (A) shall show measures of cost-effectiveness, such as dollars per ton of emissions reduced, and assess those measures over a variety of timeframes to capture impacts on the planning timeframes outlined in section 134.

(C) Use of table. - States and metropolitan planning organizations shall consider the information in the table when selecting projects or developing performance plans under subsection (l).

(j) Optional Programmatic Eligibility. -

(1) In general. - At the discretion of a metropolitan planning organization, a technical assessment of a selected program of projects may be conducted through modeling or other means to demonstrate the emissions reduction projection required under this section.

(2) Applicability. - If an assessment described in paragraph (1) successfully demonstrates an emissions reduction, all projects included in such assessment shall be eligible for obligation under this section without further demonstration of emissions reduction of individual projects included in such assessment.

(k) Priority for Use of Funds in PM2.5 Areas. -

(1) In general. - For any State that has a nonattainment or maintenance area for fine particulate matter, an amount equal to 25 percent of the funds apportioned to each State under section 104(b)(4) for a nonattainment or maintenance area that are based all or in part on the weighted population of such area in fine particulate matter nonattainment shall be obligated to projects that reduce such fine particulate matter emissions in such area, including diesel retrofits.

(2) Construction equipment and vehicles. - In order to meet the requirements of paragraph (1), a State or metropolitan planning organization may elect to obligate funds to install diesel emission control technology on nonroad diesel equipment or on-road diesel equipment that is operated on a highway construction project within a PM2.5 nonattainment or maintenance area.

(l) Performance Plan. -

(1) In general. - Each metropolitan planning organization serving a transportation management area (as defined in section 134) with a population over 1,000,000 people representing a nonattainment or maintenance area shall develop a performance plan that -

(A) includes an area baseline level for traffic congestion and on-road mobile source emissions for which the area is in nonattainment or maintenance;

(B) describes progress made in achieving the performance targets described in section 150(d); and

(C) includes a description of projects identified for funding under this section and how such projects will contribute to achieving emission and traffic congestion reduction targets.

(2) Updated plans. - Performance plans shall be updated biennially and include a separate report that assesses the progress of the program of projects under the previous plan in achieving the air quality and traffic congestion targets of the previous plan.

(m) Operating Assistance. - A State may obligate funds apportioned under section 104(b)(2) in an area of such State that is otherwise eligible for obligations of such funds for operating costs under chapter 53 of title 49 or on a system that was previously eligible under this section.

### **Sec. 150. National goals and performance management measures**

(a) Declaration of Policy. - Performance management will transform the Federal-aid highway program and provide a means to the most efficient investment of Federal transportation funds by refocusing on national transportation goals, increasing the accountability and transparency of the Federal-aid highway program, and improving project decisionmaking through performance-based planning and programming.

(b) National Goals. - It is in the interest of the United States to focus the Federal-aid highway program on the following national goals:

(1) Safety. - To achieve a significant reduction in traffic fatalities and serious injuries on all public roads.

(2) Infrastructure condition. - To maintain the highway infrastructure asset system in a state of good repair.

(3) Congestion reduction. - To achieve a significant reduction in congestion on the National Highway System.

(4) System reliability. - To improve the efficiency of the surface transportation system.

(5) Freight movement and economic vitality. - To improve the national freight network, strengthen the ability of rural communities to access national and international trade markets, and support regional economic development.

(6) Environmental sustainability. - To enhance the performance of the transportation system while protecting and enhancing the natural environment.

(7) Reduced project delivery delays. - To reduce project costs, promote jobs and the economy, and expedite the movement of people and goods by accelerating project completion through eliminating delays in the project development and delivery process, including reducing regulatory burdens and improving agencies' work practices.

(c) Establishment of Performance Measures. -

(1) In general. - Not later than 18 months after the date of enactment of the MAP-21, the Secretary, in consultation with State departments of transportation, metropolitan planning organizations, and other stakeholders, shall promulgate a rulemaking that establishes performance measures and standards.

(2) Administration. - In carrying out paragraph (1), the Secretary shall -

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- (A) provide States, metropolitan planning organizations, and other stakeholders not less than 90 days to comment on any regulation proposed by the Secretary under that paragraph;
- (B) take into consideration any comments relating to a proposed regulation received during that comment period; and
- (C) limit performance measures only to those described in this subsection.
- (3) National highway performance program. -
- (A) In general. - Subject to subparagraph (B), for the purpose of carrying out section 119, the Secretary shall establish -
- (i) minimum standards for States to use in developing and operating bridge and pavement management systems;
- (ii) measures for States to use to assess -
- (I) the condition of pavements on the Interstate system;
- (II) the condition of pavements on the National Highway System (excluding the Interstate);
- (III) the condition of bridges on the National Highway System;
- (IV) the performance of the Interstate System; and
- (V) the performance of the National Highway System (excluding the Interstate System);
- (iii) minimum levels for the condition of pavement on the Interstate System, only for the purposes of carrying out section 119(f)(1); and
- (iv) the data elements that are necessary to collect and maintain standardized data to carry out a performance-based approach.
- (B) Regions. - In establishing minimum condition levels under subparagraph (A)(iii), if the Secretary determines that various geographic regions of the United States experience disparate factors contributing to the condition of pavement on the Interstate System in those regions, the Secretary may establish different minimum levels for each region;
- (4) Highway safety improvement program. - For the purpose of carrying out section 148, the Secretary shall establish measures for States to use to assess -
- (A) serious injuries and fatalities per vehicle mile traveled; and
- (B) the number of serious injuries and fatalities.
- (5) Congestion mitigation and air quality program. - For the purpose of carrying out section 149, the Secretary shall establish measures for States to use to assess -
- (A) traffic congestion; and
- (B) on-road mobile source emissions.
- (6) National freight movement. - The Secretary shall establish measures for States to use to assess freight movement on the Interstate System.
- (d) Establishment of Performance Targets. -
- (1) In general. - Not later than 1 year after the Secretary has promulgated the final rulemaking under subsection (c), each State shall set performance targets that reflect the measures identified in paragraphs (3), (4), (5), and (6) of subsection (c).

(2) Different approaches for urban and rural areas. - In the development and implementation of any performance target, a State may, as appropriate, provide for different performance targets for urbanized and rural areas.

(e) Reporting on Performance Targets. - Not later than 4 years after the date of enactment of the MAP-21 and biennially thereafter, a State shall submit to the Secretary a report that describes -

- (1) the condition and performance of the National Highway System in the State;
- (2) the effectiveness of the investment strategy document in the State asset management plan for the National Highway System;
- (3) progress in achieving performance targets identified under subsection (d); and
- (4) the ways in which the State is addressing congestion at freight bottlenecks, including those identified in the National Freight Strategic Plan, within the State.

### **Sec. 151. [Repealed]**

### **Sec. 152. Hazard elimination program**

(a) In General. -

(1) Program. - Each State shall conduct and systematically maintain an engineering survey of all public roads to identify hazardous locations, sections, and elements, including roadside obstacles and unmarked or poorly marked roads, which may constitute a danger to motorists, bicyclists, and pedestrians, assign priorities for the correction of such locations, sections, and elements, and establish and implement a schedule of projects for their improvement.

(2) Hazards. - In carrying out paragraph (1), a State may, at its discretion -

- (A) identify, through a survey, hazards to motorists, bicyclists, pedestrians, and users of highway facilities; and
- (B) develop and implement projects and programs to address the hazards.

(b) The Secretary may approve as a project under this section any safety improvement project, including a project described in subsection (a).

(c) Funds authorized to carry out this section shall be available for expenditure on -

- (1) any public road;
- (2) any public surface transportation facility or any publicly owned bicycle or pedestrian pathway or trail; or
- (3) any traffic calming measure.

(d) The Federal share payable on account of any project under this section shall be 90 percent of the cost thereof.

(e) Funds authorized to be appropriated to carry out this section shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under section 104(b), except that the Secretary is authorized to waive provisions he deems inconsistent with the purposes of this section.

(f) Each State shall establish an evaluation process approved by the Secretary, to analyze and assess results achieved by safety improvement projects carried out in accordance with procedures and criteria established by this section. Such evaluation process shall develop cost-benefit data for various



types of corrections and treatments which shall be used in setting priorities for safety improvement projects.

(g) Each State shall report to the Secretary of Transportation not later than December 30 of each year, on the progress being made to implement safety improvement projects for hazard elimination and the effectiveness of such improvements. Each State report shall contain an assessment of the cost of, and safety benefits derived from, the various means and methods used to mitigate or eliminate hazards and the previous and subsequent accident experience at these locations. The Secretary of Transportation shall submit a report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives not later than April 1 of each year on the progress being made by the States in implementing the hazard elimination program (including but not limited to any projects for pavement marking). The report shall include, but not be limited to, the number of projects undertaken, their distribution by cost range, road system, means and methods used, and the previous and subsequent accident experience at improved locations. In addition, the Secretary's report shall analyze and evaluate each State program, identify any State found not to be in compliance with the schedule of improvements required by subsection (a) and include recommendations for future implementation of the hazard elimination program.

(h) For the purposes of this section the term "State" shall have the meaning given it in section 401 of this title.

### **Sec. 153. Use of safety belts and motorcycle helmets**

(a) Authority To Make Grants. - The Secretary may make grants to a State in a fiscal year in accordance with this section if the State has in effect in such fiscal year -

(1) a law which makes unlawful throughout the State the operation of a motorcycle if any individual on the motorcycle is not wearing a motorcycle helmet; and

(2) a law which makes unlawful throughout the State the operation of a passenger vehicle whenever an individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly fastened about the individual's body.

(b) Use of Grants. - A grant made to a State under this section shall be used to adopt and implement a traffic safety program to carry out the following purposes:

(1) Education. - To educate the public about motorcycle and passenger vehicle safety and motorcycle helmet, safety belt, and child restraint system use and to involve public health education agencies and other related agencies in these efforts.

(2) Training. - To train law enforcement officers in the enforcement of State laws described in subsection (a).

(3) Monitoring. - To monitor the rate of compliance with State laws described in subsection (a).

(4) Enforcement. - To enforce State laws described in subsection (a).

(c) Maintenance of Effort. - A grant may not be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all other sources for any traffic safety program described in subsection (b) at or above the average level of such expenditures in the State's 2 fiscal years preceding the date of the enactment of this section.

(d) Federal Share. - A State may not receive a grant under this section in more than 3 fiscal years. The Federal share payable for a grant under this section shall not exceed -

(1) in the first fiscal year the State receives a grant, 75 percent of the cost of implementing in such fiscal year a traffic safety program described in subsection (b);

(2) in the second fiscal year the State receives a grant, 50 percent of the cost of implementing in such fiscal year such traffic safety program; and

(3) in the third fiscal year the State receives a grant, 25 percent of the cost of implementing in such fiscal year such traffic safety program.

(e) Maximum Aggregate Amount of Grants. - The aggregate amount of grants made to a State under this section shall not exceed 90 percent of the amount apportioned to such State for fiscal year 1990 under section 402.

(f) Eligibility for Grants. -

(1) General rule. - A State is eligible in a fiscal year for a grant under this section only if the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State implements in such fiscal year a traffic safety program described in subsection (b).

(2) Second-year grants. - A State is eligible for a grant under this section in a fiscal year succeeding the first fiscal year in which a State receives a grant under this section only if the State in the preceding fiscal year -

(A) had in effect at all times a State law described in subsection (a)(1) and achieved a rate of compliance with such law of not less than 75 percent; and

(B) had in effect at all times a State law described in subsection (a)(2) and achieved a rate of compliance with such law of not less than 50 percent.

(3) Third-year grants. - A State is eligible for a grant under this section in a fiscal year succeeding the second fiscal year in which a State receives a grant under this section only if the State in the preceding fiscal year -

(A) had in effect at all times a State law described in subsection (a)(1) and achieved a rate of compliance with such law of not less than 85 percent; and

(B) had in effect at all times a State law described in subsection (a)(2) and achieved a rate of compliance with such law of not less than 70 percent.

(g) Measurements of Rates of Compliance. - For the purposes of subsections (f)(2) and (f)(3), a State shall measure compliance with State laws described in subsection (a) using methods which conform to guidelines issued by the Secretary ensuring that such measurements are accurate and representative.

(h) Penalty. -

(1) Prior to fiscal year 2012. - If, at any time in a fiscal year beginning after September 30, 1994, and before October 1, 2011, a State does not have in effect a law described in subsection (a)(2), the Secretary shall transfer 3 percent of the funds apportioned to the State for the succeeding fiscal year under each of subsections (b)(1), (b)(2), and (b)(3) of section 104<sup>19</sup> of this title to the apportionment of the State under section 402 of this title.

(2) Fiscal year 2012 and 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 an amount equal to 2 percent of the funds apportioned to the State for the

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<sup>19</sup> Section 104 of this title, referred to in subsec. (h)(1), was amended generally by Pub. L. 112-141, div. A, title I, §1105(a), July 6, 2012, 126 Stat. 427.

succeeding fiscal year under each of paragraphs (1) through (3) of section 104(b) to the apportionment of the State under section 402.

(3) Federal share. - The Federal share of the cost of any project carried out under section 402 with funds transferred to the apportionment of section 402 shall be 100 percent.

(4) Transfer of obligation authority. - If the Secretary transfers under this subsection any funds to the apportionment of a State under section 402 for a fiscal year, the Secretary shall allocate an amount of obligation authority distributed for such fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out only projects under section 402 which is determined by multiplying -

(A) the amount of funds transferred to the apportionment of section 402 of the State under section 402 for such fiscal year; by

(B) the ratio of the amount of obligation authority distributed for such fiscal year to the State for Federal-aid highways and highway safety construction programs to the total of the sums apportioned to the State for Federal-aid highways and highway safety construction (excluding sums not subject to any obligation limitation) for such fiscal year.

(5) Limitation on applicability of highway safety obligations. - Notwithstanding any other provision of law, no limitation on the total of obligations for highway safety programs carried out by the Federal Highway Administration under section 402 shall apply to funds transferred under this subsection to the apportionment of section 402.

(i) Definitions. - For the purposes of this section, the following definitions apply:

(1) Motorcycle. - The term "motorcycle" means a motor vehicle which is designed to travel on not more than 3 wheels in contact with the surface.

(2) Motor vehicle. - The term "motor vehicle" has the meaning such term has under section 154<sup>20</sup> of this title.

(3) Passenger vehicle. - The term "passenger vehicle" means a motor vehicle which is designed for transporting 10 individuals or less, including the driver, except that such term does not include a vehicle which is constructed on a truck chassis, a motorcycle, a trailer, or any motor vehicle which is not required on the date of the enactment of this section under a Federal motor vehicle safety standard to be equipped with a belt system.

(4) Safety belt. - The term "safety belt" means -

(A) with respect to open-body passenger vehicles, including convertibles, an occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt; and

(B) with respect to other passenger vehicles, an occupant restraint system consisting of integrated lap shoulder belts.

(j) Authorization of Appropriations. - There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$17,000,000 for fiscal year

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<sup>20</sup> Section 154 of this title, referred to in subsec. (i)(2), was repealed by Pub. L. 104-59, title II, §205(d)(1)(B), Nov. 28, 1995, 109 Stat. 577. A new section 154, containing a similar definition of "motor vehicle", was enacted by Pub. L. 105-178, title I, §1405(a), as added Pub. L. 105-206, title IX, §9005(a), July 22, 1998, 112 Stat. 843.

1992. From sums made available to carry out section 402 of this title, the Secretary shall make available \$17,000,000 for fiscal year 1992 and \$24,000,000 for each of fiscal years 1993 and 1994 to carry out this section.

(k) Applicability of Chapter 1 Provisions. - All provisions of this chapter that are applicable to National Highway System funds, other than provisions relating to the apportionment formula and provisions limiting the expenditures of such funds to Federal-aid systems, shall apply to funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section and except that sums authorized by this section shall remain available until expended.

#### Sec. 154. Open container requirements

(a) Definitions. - In this section, the following definitions apply:

(1) Alcoholic beverage. - The term "alcoholic beverage" has the meaning given the term in section 158(c).

(2) Motor vehicle. - The term "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated exclusively on a rail or rails.

(3) Open alcoholic beverage container. - The term "open alcoholic beverage container" means any bottle, can, or other receptacle -

(A) that contains any amount of alcoholic beverage; and

(B)

(i) that is open or has a broken seal; or

(ii) the contents of which are partially removed.

(4) Passenger area. - The term "passenger area" shall have the meaning given the term by the Secretary by regulation.

(b) Open Container Laws. -

(1) In general. - For the purposes of this section, each State shall have in effect a law that prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.

(2) Motor vehicles designed to transport many passengers. - For the purposes of this section, if a State has in effect a law that makes unlawful the possession of any open alcoholic beverage container by the driver (but not by a passenger) -

(A) in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; or

(B) in the living quarters of a house coach or house trailer, the State shall be deemed to have in effect a law described in this subsection with respect to such a motor vehicle for each fiscal year during which the law is in effect.

(c) Transfer of Funds. -

(1) Fiscal years 2001 and 2002. - On October 1, 2000, and October 1, 2001, if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall transfer an amount equal to 1 ½ percent of the funds apportioned to the State on that date

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under each of paragraphs (1), (3), and (4) of section 104(b)<sup>21</sup> to the apportionment of the State under section 402 -

(A) to be used for alcohol-impaired driving countermeasures; or

(B) to be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

(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 an open container law described in subsection (b), the Secretary shall reserve an amount equal to 2.5 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 certifies to the Secretary the means by which the State will use those reserved funds in accordance with subparagraphs (A) and (B) of paragraph (1) and paragraph (3).

(B) Transfer of funds. - As soon as practicable after the date of receipt of a certification from a State under subparagraph (A), the Secretary shall -

(i) transfer the reserved funds identified by the State for use as described in subparagraphs (A) and (B) of paragraph (1) to the apportionment of the State under section 402; and

(ii) release the reserved funds identified by the State as described in paragraph (3).

(3) Use for highway safety improvement program. -

(A) In general. - A State may elect to use all or a portion of the funds transferred under paragraph (2) for activities eligible under section 148.

(B) State departments of transportation. - If the State makes an election under subparagraph (A), the funds shall be transferred to the department of transportation of the State, which shall be responsible for the administration of the funds.

(4) Federal share. - The Federal share of the cost of a project carried out with funds transferred under paragraph (1) or (2), or used under paragraph (3), shall be 100 percent.

(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).

(6) Transfer of obligation authority. -

(A) In general. - If the Secretary transfers under this subsection any funds to the apportionment of a State under section 402 for a fiscal year, the Secretary shall

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<sup>21</sup> Section 104, referred to in subsec. (c)(1), was amended generally by Pub. L. 112-141, div. A, title I, §1105(a), July 6, 2012, 126 Stat. 427.

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transfer an amount, determined under subparagraph (B), of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under section 402.

(B) Amount. - The amount of obligation authority referred to in subparagraph (A) shall be determined by multiplying -

(i) the amount of funds transferred under subparagraph (A) to the apportionment of the State under section 402 for the fiscal year, by

(ii) the ratio that -

(I) the amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs, bears to

(II) the total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

(7) Limitation on applicability of obligation limitation. - Notwithstanding any other provision of law, no limitation on the total of obligations for highway safety programs under section 402 shall apply to funds transferred under this subsection to the apportionment of a State under such section.

#### **Sec. 155. [Repealed]**

#### **Sec. 156. Proceeds from the sale or lease of real property**

(a) Minimum Charge. - Subject to section 142(f), a State shall charge, at a minimum, fair market value for the sale, use, lease, or lease renewal (other than for utility use and occupancy or for a transportation project eligible for assistance under this title) of real property acquired with Federal assistance made available from the Highway Trust Fund (other than the Mass Transit Account).

(b) Exceptions. - The Secretary may grant an exception to the requirement of subsection (a) for a social, environmental, or economic purpose.

(c) Use of Federal Share of Income. - The Federal share of net income from the revenues obtained by a State under subsection (a) shall be used by the State for projects eligible under this title.

#### **Sec. 157. [Repealed]**

#### **Sec. 158. National minimum drinking age**

(a) Withholding of Funds for Noncompliance. -

(1) In general. -

(A) Fiscal years before 2012. - The Secretary shall withhold 10 per centum of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(4)<sup>22</sup> of this title on the first day of each fiscal year after the second fiscal year beginning after September 30, 1985, in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

(B) Fiscal year 2012 and thereafter. - For fiscal year 2012 and each fiscal year thereafter, the amount to be withheld under this section shall be an amount equal to 8 percent of the amount apportioned to the noncompliant State, as described in subparagraph (A), under paragraphs (1) and (2) of section 104(b).

(2) State grandfather law as complying. - If, before the later of (A) October 1, 1986, or (B) the tenth day following the last day of the first session the legislature of a State convenes after the date of the enactment of this paragraph, such State has in effect a law which makes unlawful the purchase and public possession in such State of any alcoholic beverage by a person who is less than 21 years of age (other than any person who is 18 years of age or older on the day preceding the effective date of such law and at such time could lawfully purchase or publicly possess any alcoholic beverage in such State), such State shall be deemed to be in compliance with paragraph (1) in each fiscal year in which such law is in effect.

(b) Effect of Withholding of Funds. - No funds withheld under this section from apportionment to any State after September 30, 1988, shall be available for apportionment to that State.

(c) Alcoholic Beverage Defined. - As used in this section, the term "alcoholic beverage" means -

- (1) beer as defined in section 5052(a) of the Internal Revenue Code of 1986,
- (2) wine of not less than one-half of 1 per centum of alcohol by volume, or
- (3) distilled spirits as defined in section 5002(a)(8) of such Code.

### **Sec. 159. Revocation or suspension of drivers' licenses of individuals convicted of drug offenses**

(a) Withholding of Apportionments for Noncompliance. -

(1) Beginning in fiscal year 1996. - The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (5) (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century) of section 104(b) on the first day of each fiscal year which begins after the fourth calendar year following the effective date of this section if the State does not meet the requirements of paragraph (3) on the first day of such fiscal year.

(2) Fiscal year 2012 and thereafter. - The Secretary shall withhold an amount equal to 8 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 beginning after September 30, 2011, if the State fails to meet the requirements of paragraph (3) on the first day of the fiscal year.

(3) Requirements. - A State meets the requirements of this paragraph if -

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<sup>22</sup> Section 104 of this title, referred to in subsec. (a)(1)(A), was amended generally by Pub. L. 112-141, div. A, title I, §1105(a), July 6, 2012, 126 Stat. 427.

(A) the State has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception -

(i) the revocation, or suspension for at least 6 months, of the driver's license of any individual who is convicted, after the enactment of such law, of -

(I) any violation of the Controlled Substances Act, or

(II) any drug offense; and

(ii) a delay in the issuance or reinstatement of a driver's license to such an individual for at least 6 months after the individual applies for the issuance or reinstatement of a driver's license if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted; or

(B) the Governor of the State -

(i) submits to the Secretary no earlier than the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after the effective date of this section a written certification stating that the Governor is opposed to the enactment or enforcement in the State of a law described in subparagraph (A), relating to the revocation, suspension, issuance, or reinstatement of drivers' licenses to convicted drug offenders; and

(ii) submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to a law described in clause (i).

(b) Effect of Noncompliance. - No funds withheld under this section from apportionments to any State shall be available for apportionment to that State.

(c) Definitions. - For purposes of this section -

(1) Driver's license. - The term "driver's license" means a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways.

(2) Drug offense. - The term "drug offense" means any criminal offense which proscribes -

(A) the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act; or

(B) the operation of a motor vehicle under the influence of such a substance.

(3) Convicted. - The term "convicted" includes adjudicated under juvenile proceedings.

**Sec. 160. [Repealed]**



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**Sec. 161. Operation of motor vehicles by intoxicated minors**

## (a) Withholding of Apportionments for Noncompliance. -

(1) Prior to fiscal year 2012. - The Secretary shall withhold 10 percent (including any amounts withheld under paragraph (1)) of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (4) of section 104(b)<sup>23</sup> on October 1, 1999, and on October 1 of each fiscal year thereafter through fiscal year 2011, if the State does not meet the requirement of paragraph (3) on that date.

(2) Fiscal year 2012 and thereafter. - The Secretary shall withhold an amount equal to 8 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.

(3) Requirement. - A State meets the requirement of this paragraph if the State has enacted and is enforcing a law that considers an individual under the age of 21 who has a blood alcohol concentration of 0.02 percent or greater while operating a motor vehicle in the State to be driving while intoxicated or driving under the influence of alcohol.

## (b) Period of Availability; Effect of Compliance and Noncompliance. -

## (1) Period of availability of withheld funds. -

(A) Funds withheld on or before september 30, 2000. - Any funds withheld under subsection (a) from apportionment to any State on or before September 30, 2000, shall remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(B) Funds withheld after september 30, 2000. - No funds withheld under this section from apportionment to any State after September 30, 2000, shall be available for apportionment to the State.

(2) Apportionment of withheld funds after compliance. - If, before the last day of the period for which funds withheld under subsection (a) from apportionment are to remain available for apportionment to a State under paragraph (1), the State meets the requirement of subsection (a)(3), the Secretary shall, on the first day on which the State meets the requirement, apportion to the State the funds withheld under subsection (a) that remain available for apportionment to the State.

(3) Period of availability of subsequently apportioned funds. - Any funds apportioned pursuant to paragraph (2) shall remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are so apportioned. Sums not obligated at the end of that period shall lapse.

(4) Effect of noncompliance. - If, at the end of the period for which funds withheld under subsection (a) from apportionment are available for apportionment to a State under paragraph (1), the State does not meet the requirement of subsection (a)(3), the funds shall lapse.

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<sup>23</sup> Section 104, referred to in subsec. (a)(1), was amended generally by Pub. L. 112-141, div. A, title I, §1105(a), July 6, 2012, 126 Stat. 427.

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**Sec. 162. National scenic byways program****(a) Designation of Roads. -**

(1) In general. - The Secretary shall carry out a national scenic byways program that recognizes roads having outstanding scenic, historic, cultural, natural, recreational, and archaeological qualities by designating the roads as -

- (A) National Scenic Byways;
- (B) All-American Roads; or
- (C) America's Byways.

(2) Criteria. - The Secretary shall designate roads to be recognized under the national scenic byways program in accordance with criteria developed by the Secretary.

**(3) Nomination. -**

(A) In general. - To be considered for a designation, a road must be nominated by a State, an Indian tribe, or a Federal land management agency and must first be designated as a State scenic byway, an Indian tribe scenic byway, or, in the case of a road on Federal land, as a Federal land management agency byway.

(B) Nomination by Indian tribes. - An Indian tribe may nominate a road as a National Scenic Byway, an All-American Road, or one of America's Byways under paragraph (1) only if a Federal land management agency (other than the Bureau of Indian Affairs), a State, or a political subdivision of a State does not have -

- (i) jurisdiction over the road; or
- (ii) responsibility for managing the road.

(C) Safety. - An Indian tribe shall maintain the safety and quality of roads nominated by the Indian tribe under subparagraph (A).

(4) Reciprocal notification. - States, Indian tribes, and Federal land management agencies shall notify each other regarding nominations made under this subsection for roads that -

- (A) are within the jurisdictional boundary of the State, Federal land management agency, or Indian tribe; or
- (B) directly connect to roads for which the State, Federal land management agency, or Indian tribe is responsible.

**(b) Grants and Technical Assistance. -**

(1) In general. - The Secretary shall make grants and provide technical assistance to States and Indian tribes to -

- (A) implement projects on highways designated as -
  - (i) National Scenic Byways;
  - (ii) All-American Roads;
  - (iii) America's Byways;
  - (iv) State scenic byways; or
  - (v) Indian tribe scenic byways; and
- (B) plan, design, and develop a State or Indian tribe scenic byway program.

(2) Priorities. - In making grants, the Secretary shall give priority to -

(A) each eligible project that is associated with a highway that has been designated as a National Scenic Byway, All-American Road, or 1 of America's Byways and that is consistent with the corridor management plan for the byway;

(B) each eligible project along a State or Indian tribe scenic byway that is consistent with the corridor management plan for the byway, or is intended to foster the development of such a plan, and is carried out to make the byway eligible for designation as -

- (i) a National Scenic Byway;
- (ii) an All-American Road; or
- (iii) 1 of America's Byways; and

(C) each eligible project that is associated with the development of a State or Indian tribe scenic byway program.

(c) Eligible Projects. - The following are projects that are eligible for Federal assistance under this section:

(1) An activity related to the planning, design, or development of a State or Indian tribe scenic byway program.

(2) Development and implementation of a corridor management plan to maintain the scenic, historical, recreational, cultural, natural, and archaeological characteristics of a byway corridor while providing for accommodation of increased tourism and development of related amenities.

(3) Safety improvements to a State scenic byway, Indian tribe scenic byway, National Scenic Byway, All-American Road, or one of America's Byways to the extent that the improvements are necessary to accommodate increased traffic and changes in the types of vehicles using the highway as a result of the designation as a State scenic byway, Indian tribe scenic byway, National Scenic Byway, All-American Road, or one of America's Byways.

(4) Construction along a scenic byway of a facility for pedestrians and bicyclists, rest area, turnout, highway shoulder improvement, overlook, or interpretive facility.

(5) An improvement to a scenic byway that will enhance access to an area for the purpose of recreation, including water-related recreation.

(6) Protection of scenic, historical, recreational, cultural, natural, and archaeological resources in an area adjacent to a scenic byway.

(7) Development and provision of tourist information to the public, including interpretive information about a scenic byway.

(8) Development and implementation of a scenic byway marketing program.

(d) Limitation. - The Secretary shall not make a grant under this section for any project that would not protect the scenic, historical, recreational, cultural, natural, and archaeological integrity of a highway and adjacent areas.

(e) Savings Clause. - The Secretary shall not withhold any grant or impose any requirement on a State or Indian tribe as a condition of providing a grant or technical assistance for any scenic byway unless the requirement is consistent with the authority provided in this chapter.

(f) Federal Share. - The Federal share of the cost of carrying out a project under this section shall be 80 percent, except that, in the case of any scenic byway project along a public road that provides access to or within Federal or Indian land, a Federal land management agency may use funds authorized for use by the agency as the non-Federal share.

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**Sec. 163. Safety incentives to prevent operation of motor vehicles by intoxicated persons**

(a) General Authority. - The Secretary shall make a grant, in accordance with this section, to any State that has enacted and is enforcing a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a per se offense of driving while intoxicated (or an equivalent per se offense).

(b) Grants. - For each fiscal year, funds authorized to carry out this section shall be apportioned to each State that has enacted and is enforcing a law meeting the requirements of subsection (a) in an amount determined by multiplying -

(1) the amount authorized to carry out this section for the fiscal year; by

(2) the ratio that the amount of funds apportioned to each such State under section 402 for such fiscal year bears to the total amount of funds apportioned to all such States under section 402 for such fiscal year.

(c) Use of Grants. - A State may obligate funds apportioned under subsection (b) for any project eligible for assistance under this title.

(d) Federal Share. - The Federal share of the cost of a project funded under this section shall be 100 percent.

(e) Penalty. -

(1) Fiscal years 2007 through 2011. - On October 1, 2006, and October 1 of each fiscal year thereafter through fiscal year 2011, if a State has not enacted or is not enforcing a law described in subsection (a), the Secretary shall withhold an amount equal to 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).<sup>24</sup>

(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 an amount equal to 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).

(3) Failure to comply. - If, within 4 years from the date that an apportionment for a State is withheld in accordance with this subsection, the Secretary determines that the State has enacted and is enforcing a law described in subsection (a), the apportionment of the State shall be increased by an amount equal to the amount withheld. If, at the end of such 4-year period, any State has not enacted or is not enforcing a law described in subsection (a) any amounts so withheld from such State shall lapse.

(f) Authorization of Appropriations. -

(1) In general. - There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$55,000,000 for fiscal year 1998, \$65,000,000 for fiscal year 1999, \$80,000,000 for fiscal year 2000, \$90,000,000 for fiscal year 2001, \$100,000,000 for fiscal year 2002, \$110,000,000 for fiscal year 2003, \$110,000,000 for

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<sup>24</sup> Section 104, referred to in subsec. (e)(1), was amended generally by Pub. L. 112-141, div. A, title I, §1105(a), July 6, 2012, 126 Stat. 427.

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fiscal year 2004, and \$110,000,000 for fiscal year 2005 \$91,315,068 for the period of October 1, 2004, through July 30, 2005.<sup>25</sup>

(2) Availability of funds. - Notwithstanding section 118(b)(2),<sup>26</sup> the funds authorized by this subsection shall remain available until expended.

**Sec. 164. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence**

(a) Definitions. - In this section, the following definitions apply:

(1) Alcohol concentration. - The term "alcohol concentration" means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(2) Driving while intoxicated; driving under the influence. - The terms "driving while intoxicated" and "driving under the influence" mean driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State.

(3) Motor vehicle. - The term "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.

(4) Repeat intoxicated driver law. - The term "repeat intoxicated driver law" means a State law that provides, as a minimum penalty, that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence after a previous conviction for that offense shall -

(A) receive -

(i) a suspension of all driving privileges for not less than 1 year; or

(ii) a suspension of unlimited driving privileges for 1 year, allowing for the reinstatement of limited driving privileges subject to restrictions and limited exemptions as established by State law, if an ignition interlock device is installed for not less than 1 year on each of the motor vehicles owned or operated, or both, by the individual;

(B) be subject to the impoundment or immobilization of, or the installation of an ignition interlock system on, each motor vehicle owned or operated, or both, by the individual;

(C) receive an assessment of the individual's degree of abuse of alcohol and treatment as appropriate; and

(D) receive -

(i) in the case of the second offense -

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<sup>25</sup> So in original. The words "\$91,315,068 for the period of October 1, 2004, through July 30, 2005" probably should not appear.

<sup>26</sup> Section 118(b) of this title, referred to in subsec. (f)(2), was amended by section 1519(c)(5) of Pub. L. 112-141 and no longer contains a par. (2).

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- (I) an assignment of not less than 30 days of community service; or
  - (II) not less than 5 days of imprisonment; and
  - (ii) in the case of the third or subsequent offense -
    - (I) an assignment of not less than 60 days of community service; or
  - (5) not less than 10 days of imprisonment.
- (b) Transfer of Funds. -
- (1) Fiscal years 2001 and 2002. - On October 1, 2000, and October 1, 2001, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer an amount equal to 1 ½ percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b)<sup>27</sup> to the apportionment of the State under section 402 -
- (A) to be used for alcohol-impaired driving countermeasures; or
  - (B) to be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).
- (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 2.5 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 certifies to the Secretary the means by which the States will use those reserved funds among the uses authorized under subparagraphs (A) and (B) of paragraph (1), and paragraph (3).
- (B) Transfer of funds. - As soon as practicable after the date of receipt of a certification from a State under subparagraph (A), the Secretary shall -
- (i) transfer the reserved funds identified by the State for use as described in subparagraphs (A) and (B) of paragraph (1) to the apportionment of the State under section 402; and
  - (ii) release the reserved funds identified by the State as described in paragraph (3).
- (3) Use for highway safety improvement program. -
- (A) In general. - A State may elect to use all or a portion of the funds transferred under paragraph (2) for activities eligible under section 148.

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<sup>27</sup> Section 104, referred to in subsec. (b)(1), was amended generally by Pub. L. 112–141, div. A, title I, §1105(a), July 6, 2012, 126 Stat. 427.

(B) State departments of transportation. - If the State makes an election under subparagraph (A), the funds shall be transferred to the department of transportation of the State, which shall be responsible for the administration of the funds.

(4) Federal share. - The Federal share of the cost of a project carried out with funds transferred under paragraph (1) or (2), or used under paragraph (3), shall be 100 percent.

(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).

(6) Transfer of obligation authority. -

(A) In general. - If the Secretary transfers under this subsection any funds to the apportionment of a State under section 402 for a fiscal year, the Secretary shall transfer an amount, determined under subparagraph (B), of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under section 402.

(B) Amount. - The amount of obligation authority referred to in subparagraph (A) shall be determined by multiplying -

(i) the amount of funds transferred under subparagraph (A) to the apportionment of the State under section 402 for the fiscal year, by

(ii) the ratio that -

(I) the amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs, bears to

(II) the total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

(7) Limitation on applicability of obligation limitation. - Notwithstanding any other provision of law, no limitation on the total of obligations for highway safety programs under section 402 shall apply to funds transferred under this subsection to the apportionment of a State under such section.

### **Sec. 165. Territorial and Puerto Rico highway program**

(a) Division of Funds. - Of funds made available in a fiscal year for the territorial and Puerto Rico highway program -

(1) \$150,000,000 shall be for the Puerto Rico highway program under subsection (b); and

(2) \$40,000,000 shall be for the territorial highway program under subsection (c).

(b) Puerto Rico Highway Program. -

(1) In general. - The Secretary shall allocate funds made available to carry out this subsection to the Commonwealth of Puerto Rico to carry out a highway program in the Commonwealth.

(2) Treatment of funds. - Amounts made available to carry out this subsection for a fiscal year shall be administered as follows:

(A) Apportionment. -

(i) In general. - For the purpose of imposing any penalty under this title or title 49, the amounts shall be treated as being apportioned to Puerto Rico under sections 104(b) and 144 (as in effect for fiscal year 1997) for each program funded under those sections in an amount determined by multiplying -

(I) the aggregate of the amounts for the fiscal year; by

(II) the proportion that -

(aa) the amount of funds apportioned to Puerto Rico for each such program for fiscal year 1997; bears to

(bb) the total amount of funds apportioned to Puerto Rico for all such programs for fiscal year 1997.

(ii) Exception. - Funds identified under clause (i) as having been apportioned for the national highway system, the surface transportation program, and the Interstate maintenance program shall be deemed to have been apportioned 50 percent for the national highway performance program and 50 percent for the surface transportation program for purposes of imposing such penalties.

(B) Penalty. - The amounts treated as being apportioned to Puerto Rico under each section referred to in subparagraph (A) shall be deemed to be required to be apportioned to Puerto Rico under that section for purposes of the imposition of any penalty under this title or title 49.

(C) Eligible uses of funds. - Of amounts allocated to Puerto Rico for the Puerto Rico Highway Program for a fiscal year -

(i) at least 50 percent shall be available only for purposes eligible under section 119;

(ii) at least 25 percent shall be available only for purposes eligible under section 148; and

(iii) any remaining funds may be obligated for activities eligible under chapter 1.

(3) Effect on apportionments. - Except as otherwise specifically provided, Puerto Rico shall not be eligible to receive funds apportioned to States under this title.

(c) Territorial Highway Program. -

(1) Territory defined. - In this subsection, the term "territory" means any of the following territories of the United States:

(A) American Samoa.

(B) The Commonwealth of the Northern Mariana Islands.

(C) Guam.

(D) The United States Virgin Islands.

(2) Program. -

(A) In general. - Recognizing the mutual benefits that will accrue to the territories and the United States from the improvement of highways in the territories, the Secretary may carry out a program to assist each government of a territory in the construction and improvement of a system of arterial and collector highways, and necessary inter-island connectors, that is -



- (i) designated by the Governor or chief executive officer of each territory; and
- (ii) approved by the Secretary.

(B) Federal share. - The Federal share of Federal financial assistance provided to territories under this subsection shall be in accordance with section 120(g).

(3) Technical assistance. -

(A) In general. - To continue a long-range highway development program, the Secretary may provide technical assistance to the governments of the territories to enable the territories, on a continuing basis -

- (i) to engage in highway planning;
- (ii) to conduct environmental evaluations;
- (iii) to administer right-of-way acquisition and relocation assistance programs; and
- (iv) to design, construct, operate, and maintain a system of arterial and collector highways, including necessary inter- island connectors.

(B) Form and terms of assistance. - Technical assistance provided under subparagraph (A), and the terms for the sharing of information among territories receiving the technical assistance, shall be included in the agreement required by paragraph (5).

(4) Nonapplicability of certain provisions. -

(A) In general. - Except to the extent that provisions of this chapter are determined by the Secretary to be inconsistent with the needs of the territories and the intent of this subsection, this chapter (other than provisions of this chapter relating to the apportionment and allocation of funds) shall apply to funds made available under this subsection.

(B) Applicable provisions. - The agreement required by paragraph (5) for each territory shall identify the sections of this chapter that are applicable to that territory and the extent of the applicability of those sections.

(5) Agreement. -

(A) In general. - Except as provided in subparagraph (D), none of the funds made available under this subsection shall be available for obligation or expenditure with respect to any territory until the chief executive officer of the territory has entered into an agreement (including an agreement entered into under section 215 as in effect on the day before the enactment of this section) with the Secretary providing that the government of the territory shall -

- (i) implement the program in accordance with applicable provisions of this chapter and paragraph (4);
- (ii) design and construct a system of arterial and collector highways, including necessary inter-island connectors, in accordance with standards that are
  - (I) appropriate for each territory; and
  - (II) approved by the Secretary;
- (iii) provide for the maintenance of facilities constructed or operated under this subsection in a condition to adequately serve the needs of present and future traffic; and

(iv) implement standards for traffic operations and uniform traffic control devices that are approved by the Secretary.

(B) Technical assistance. - The agreement required by subparagraph (A) shall -

(i) specify the kind of technical assistance to be provided under the program;

(ii) include appropriate provisions regarding information sharing among the territories; and

(iii) delineate the oversight role and responsibilities of the territories and the Secretary.

(C) Review and revision of agreement. - The agreement entered into under subparagraph (A) shall be reevaluated and, as necessary, revised, at least every 2 years.

(D) Existing agreements. - With respect to an agreement under this subsection or an agreement entered into under section 215 of this title as in effect on the day before the date of enactment of this subsection -

(i) the agreement shall continue in force until replaced by an agreement entered into in accordance with subparagraph (A); and

(ii) amounts made available under this subsection under the existing agreement shall be available for obligation or expenditure so long as the agreement, or the existing agreement entered into under subparagraph (A), is in effect.

(6) Eligible uses of funds. -

(A) In general. - Funds made available under this subsection may be used only for the following projects and activities carried out in a territory:

(i) Eligible surface transportation program projects described in section 133(b).

(ii) Cost-effective, preventive maintenance consistent with section 116(e).

(iii) Ferry boats, terminal facilities, and approaches, in accordance with subsections (b) and (c) of section 129.

(iv) Engineering and economic surveys and investigations for the planning, and the financing, of future highway programs.

(v) Studies of the economy, safety, and convenience of highway use.

(vi) The regulation and equitable taxation of highway use.

(vii) Such research and development as are necessary in connection with the planning, design, and maintenance of the highway system.

(B) Prohibition on use of funds for routine maintenance. - None of the funds made available under this subsection shall be obligated or expended for routine maintenance.

(7) Location of projects. - Territorial highway program projects (other than those described in paragraphs (2), (4), (7), (8), (14), and (19) of section 133(b)) may not be undertaken on roads functionally classified as local.

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**Sec. 166. HOV facilities****(a) In General. -**

(1) Authority of state agencies. - A State agency that has jurisdiction over the operation of a HOV facility shall establish the occupancy requirements of vehicles operating on the facility.

(2) Occupancy requirement. - Except as otherwise provided by this section, no fewer than two occupants per vehicle may be required for use of a HOV facility.

**(b) Exceptions. -**

(1) In general. - Notwithstanding the occupancy requirement of subsection (a)(2), the exceptions in paragraphs (2) through (5) shall apply with respect to a State agency operating a HOV facility.

**(2) Motorcycles and bicycles. -**

(A) In general. - Subject to subparagraph (B), the State agency shall allow motorcycles and bicycles to use the HOV facility.

**(B) Safety exception. -**

(i) In general. - A State agency may restrict use of the HOV facility by motorcycles or bicycles (or both) if the agency certifies to the Secretary that such use would create a safety hazard and the Secretary accepts the certification.

(ii) Acceptance of certification. - The Secretary may accept a certification under this subparagraph only after the Secretary publishes notice of the certification in the Federal Register and provides an opportunity for public comment.

(3) Public transportation vehicles. - The State agency may allow public transportation vehicles to use the HOV facility if the agency -

(A) establishes requirements for clearly identifying the vehicles; and

(B) establishes procedures for enforcing the restrictions on the use of the facility by the vehicles.

(4) High occupancy toll vehicles. - The State agency may allow vehicles not otherwise exempt pursuant to this subsection to use the HOV facility if the operators of the vehicles pay a toll charged by the agency for use of the facility and the agency -

(A) establishes a program that addresses how motorists can enroll and participate in the toll program;

(B) develops, manages, and maintains a system that will automatically collect the toll; and

(C) establishes policies and procedures to -

(i) manage the demand to use the facility by varying the toll amount that is charged; and

(ii) enforce violations of use of the facility.

**(5) Low emission and energy-efficient vehicles. -**

(A) Inherently low emission vehicle. - Before September 30, 2017, the State agency may allow vehicles that are certified as inherently low-emission vehicles pursuant to section 88.311-93 of title 40, Code of Federal Regulations (or successor regulations),

and are labeled in accordance with section 88.312- 93 of such title (or successor regulations), to use the HOV facility if the agency establishes procedures for enforcing the restrictions on the use of the facility by the vehicles.

(B) Other low emission and energy-efficient vehicles. - Before September 30, 2017, the State agency may allow vehicles certified as low emission and energy-efficient vehicles under subsection (e), and labeled in accordance with subsection (e), to use the HOV facility if the operators of the vehicles pay a toll charged by the agency for use of the facility and the agency -

(i) establishes a program that addresses the selection of vehicles under this paragraph; and

(ii) establishes procedures for enforcing the restrictions on the use of the facility by the vehicles.

(C) Amount of tolls. - Under this paragraph, a State agency may charge no toll or may charge a toll that is less than or equal to tolls charged under paragraph (4).

(c) Requirements Applicable to Tolls. -

(1) In general. - Tolls may be charged under paragraphs (4) and (5) of subsection (b) notwithstanding section 301 and, except as provided in paragraphs (2) and (3), subject to the requirements of section 129.

(2) HOV facilities on the interstate system. - Notwithstanding section 129, tolls may be charged under paragraphs (4) and (5) of subsection (b) on a HOV facility on the Interstate System.

(3) Toll revenue. - Toll revenue collected under this section is subject to the requirements of section 129(a)(3).

(d) HOV Facility Management, Operation, Monitoring, and Enforcement. -

(1) In general. - A State agency that allows vehicles to use a HOV facility under paragraph (4) or (5) of subsection (b) shall submit to the Secretary a report demonstrating that the facility is not already degraded, and that the presence of the vehicles will not cause the facility to become degraded, and certify to the Secretary that the agency will carry out the following responsibilities with respect to the facility:

(A) Establishing, managing, and supporting a performance monitoring, evaluation, and reporting program for the facility that provides for continuous monitoring, assessment, and reporting on the impacts that the vehicles may have on the operation of the facility and adjacent highways and submitting to the Secretary annual reports of those impacts.

(B) Establishing, managing, and supporting an enforcement program that ensures that the facility is being operated in accordance with the requirements of this section.

(C) Limiting or discontinuing the use of the facility by the vehicles whenever the operation of the facility is degraded.

(D) Maintenance of operating performance. - Not later than 180 days after the date on which a facility is degraded pursuant to the standard specified in paragraph (2), the State agency with jurisdiction over the facility shall bring the facility into compliance with the minimum average operating speed performance standard through changes to operation of the facility, including -

(i) increasing the occupancy requirement for HOV lanes;

- (ii) varying the toll charged to vehicles allowed under subsection (b) to reduce demand;
- (iii) discontinuing allowing non-HOV vehicles to use HOV lanes under subsection (b); or
- (iv) increasing the available capacity of the HOV facility.

(E) Compliance. - If the State fails to bring a facility into compliance under subparagraph (D), the Secretary shall subject the State to appropriate program sanctions under section 1.36 of title 23, Code of Federal Regulations (or successor regulations), until the performance is no longer degraded.

(2) Degraded facility. -

(A) Definition of minimum average operating speed. - In this paragraph, the term "minimum average operating speed" means -

- (i) 45 miles per hour, in the case of a HOV facility with a speed limit of 50 miles per hour or greater; and
- (ii) not more than 10 miles per hour below the speed limit, in the case of a HOV facility with a speed limit of less than 50 miles per hour.

(B) Standard for determining degraded facility. - For purposes of paragraph (1), the operation of a HOV facility shall be considered to be degraded if vehicles operating on the facility are failing to maintain a minimum average operating speed 90 percent of the time over a consecutive 180-day period during morning or evening weekday peak hour periods (or both).

(C) Management of low emission and energy-efficient vehicles. - In managing the use of HOV lanes by low emission and energy-efficient vehicles that do not meet applicable occupancy requirements, a State agency may increase the percentages described in subsection (f)(3)(B)(i).

(e) Certification of Low Emission and Energy-Efficient Vehicles. - Not later than 180 days after the date of enactment of this section, the Administrator of the Environmental Protection Agency shall -

(1) issue a final rule establishing requirements for certification of vehicles as low emission and energy-efficient vehicles for purposes of this section and requirements for the labeling of the vehicles; and

(2) establish guidelines and procedures for making the vehicle comparisons and performance calculations described in subsection (f)(3)(B), in accordance with section 32908(b) of title 49.

(f) Definitions. - In this section, the following definitions apply:

(1) Alternative fuel vehicle. - The term "alternative fuel vehicle" means a vehicle that is operating on -

- (A) methanol, denatured ethanol, or other alcohols;
- (B) a mixture containing at least 85 percent of methanol, denatured ethanol, and other alcohols by volume with gasoline or other fuels;
- (C) natural gas;
- (D) liquefied petroleum gas;
- (E) hydrogen;
- (F) coal derived liquid fuels;
- (G) fuels (except alcohol) derived from biological materials;

- 
- (H) electricity (including electricity from solar energy); or
  - (I) any other fuel that the Secretary prescribes by regulation that is not substantially petroleum and that would yield substantial energy security and environmental benefits, including fuels regulated under section 490 of title 10, Code of Federal Regulations (or successor regulations).
- (2) HOV facility. - The term "HOV facility" means a high occupancy vehicle facility.
- (3) Low emission and energy-efficient vehicle. - The term "low emission and energy-efficient vehicle" means a vehicle that -
- (A) has been certified by the Administrator as meeting the Tier II emission level established in regulations prescribed by the Administrator under section 202(i) of the Clean Air Act (42 U.S.C. 7521(i)) for that make and model year vehicle; and
  - (B)
    - (i) is certified by the Administrator of the Environmental Protection Agency, in consultation with the manufacturer, to have achieved not less than a 50-percent increase in city fuel economy or not less than a 25-percent increase in combined city- highway fuel economy (or such greater percentage of city or city-highway fuel economy as may be determined by a State under subsection (d)(2)(C)) relative to a comparable vehicle that is an internal combustion gasoline fueled vehicle (other than a vehicle that has propulsion energy from onboard hybrid sources); or
    - (ii) is an alternative fuel vehicle.
- (4) 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.
- (5) 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.

### Sec. 167. National freight policy

(a) In General. - It is the policy of the United States to improve the condition and performance of the national freight network to ensure that the national freight network provides the foundation for the United States to compete in the global economy and achieve each goal described in subsection (b).

- 
- (b) Goals. - The goals of the national freight policy are -
- (1) to invest in infrastructure improvements and to implement operational improvements that -
    - (A) strengthen the contribution of the national freight network to the economic competitiveness of the United States;
    - (B) reduce congestion; and
    - (C) increase productivity, particularly for domestic industries and businesses that create high-value jobs;
  - (2) to improve the safety, security, and resilience of freight transportation;
  - (3) to improve the state of good repair of the national freight network;
  - (4) to use advanced technology to improve the safety and efficiency of the national freight network;
  - (5) to incorporate concepts of performance, innovation, competition, and accountability into the operation and maintenance of the national freight network; and
  - (6) to improve the economic efficiency of the national freight network.
  - (7) to reduce the environmental impacts of freight movement on the national freight network;
- (c) Establishment of a National Freight Network. -
- (1) In general. - The Secretary shall establish a national freight network in accordance with this section to assist States in strategically directing resources toward improved system performance for efficient movement of freight on highways, including national highway system, freight intermodal connectors and aerotropolis transportation systems.
  - (2) Network components. - The national freight network shall consist of -
    - (A) the primary freight network, as designated by the Secretary under subsection (d) (referred to in this section as the "primary freight network") as most critical to the movement of freight;
    - (B) the portions of the Interstate System not designated as part of the primary freight network; and
    - (C) critical rural freight corridors established under subsection (e).
- (d) Designation of Primary Freight Network. -
- (1) Initial designation of primary freight network. -
    - (A) Designation. - Not later than 1 year after the date of enactment of this section, the Secretary shall designate a primary freight network -
      - (i) based on an inventory of national freight volume conducted by the Administrator of the Federal Highway Administration, in consultation with stakeholders, including system users, transport providers, and States; and
      - (ii) that shall be comprised of not more than 27,000 centerline miles of existing roadways that are most critical to the movement of freight.
    - (B) Factors for designation. - In designating the primary freight network, the Secretary shall consider -
      - (i) the origins and destinations of freight movement in the United States;

- (ii) the total freight tonnage and value of freight moved by highways;
- (iii) the percentage of annual average daily truck traffic in the annual average daily traffic on principal arterials;
- (iv) the annual average daily truck traffic on principal arterials;
- (v) land and maritime ports of entry;
- (vi) access to energy exploration, development, installation, or production areas;
- (vii) population centers; and
- (viii) network connectivity.

(2) Additional miles on primary freight network. - In addition to the miles initially designated under paragraph (1), the Secretary may increase the number of miles designated as part of the primary freight network by not more than 3,000 additional centerline miles of roadways (which may include existing or planned roads) critical to future efficient movement of goods on the primary freight network.

(3) Redesignation of primary freight network. - Effective beginning 10 years after the designation of the primary freight network and every 10 years thereafter, using the designation factors described in paragraph (1), the Secretary shall redesignate the primary freight network (including additional mileage described in paragraph (2)).

(e) Critical Rural Freight Corridors. - A State may designate a road within the borders of the State as a critical rural freight corridor if the road -

(1) is a rural principal arterial roadway and has a minimum of 25 percent of the annual average daily traffic of the road measured in passenger vehicle equivalent units from trucks (FHWA vehicle class 8 to 13);

(2) provides access to energy exploration, development, installation, or production areas;

(3) connects the primary freight network, a roadway described in paragraph (1) or (2), or Interstate System to facilities that handle more than -

(A) 50,000 20-foot equivalent units per year; or

(B) 500,000 tons per year of bulk commodities.

(f) National Freight Strategic Plan. -

(1) Initial development of national freight strategic plan. - Not later than 3 years after the date of enactment of this section, the Secretary shall, in consultation with State departments of transportation and other appropriate public and private transportation stakeholders, develop and post on the Department of Transportation public website a national freight strategic plan that shall include -

(A) an assessment of the condition and performance of the national freight network;

(B) an identification of highway bottlenecks on the national freight network that create significant freight congestion problems, based on a quantitative methodology developed by the Secretary, which shall, at a minimum, include -

(i) information from the Freight Analysis Network of the Federal Highway Administration; and



(ii) to the maximum extent practicable, an estimate of the cost of addressing each bottleneck and any operational improvements that could be implemented;

(C) forecasts of freight volumes for the 20-year period beginning in the year during which the plan is issued;

(D) an identification of major trade gateways and national freight corridors that connect major population centers, trade gateways, and other major freight generators for current and forecasted traffic and freight volumes, the identification of which shall be revised, as appropriate, in subsequent plans;

(E) an assessment of statutory, regulatory, technological, institutional, financial, and other barriers to improved freight transportation performance (including opportunities for overcoming the barriers);

(F) an identification of routes providing access to energy exploration, development, installation, or production areas;

(G) best practices for improving the performance of the national freight network;

(H) best practices to mitigate the impacts of freight movement on communities;

(I) a process for addressing multistate projects and encouraging jurisdictions to collaborate; and

(J) strategies to improve freight intermodal connectivity.

(2) Updates to national freight strategic plan. - Not later than 5 years after the date of completion of the first national freight strategic plan under paragraph (1), and every 5 years thereafter, the Secretary shall update and repost on the Department of Transportation public website a revised national freight strategic plan.

(g) Freight Transportation Conditions and Performance Reports. - Not later than 2 years after the date of enactment of this section, and biennially thereafter, the Secretary shall prepare a report that contains a description of the conditions and performance of the national freight network in the United States.

(h) Transportation Investment Data and Planning Tools. -

(1) In general. - Not later than 1 year after the date of enactment of this section, the Secretary shall -

(A) begin development of new tools and improvement of existing 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 could consider safety, economic competitiveness, environmental sustainability, and system condition in the project selection process; and

(iii) other elements to assist in effective transportation planning;

(B) identify transportation-related model data elements to support a broad range of evaluation methods and techniques 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. - The Secretary shall consult with Federal, State, and other stakeholders to develop, improve, and implement the tools and collect the data in paragraph (1).

(i) Definition of Aerotropolis Transportation System. - In this section, the term "aerotropolis transportation system" means a planned and coordinated multimodal freight and passenger transportation network that, as determined by the Secretary, provides efficient, cost-effective, sustainable, and intermodal connectivity to a defined region of economic significance centered around a major airport.

### **Sec. 168. Integration of planning and environmental review**

(a) Definitions. - In this section, the following definitions apply:

(1) Environmental review process. - The term "environmental review process" means the process for preparing for a project an environmental impact statement, environmental assessment, categorical exclusion, or other document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) Planning product. - The term "planning product" means a detailed and timely decision, analysis, study, or other documented information that -

(A) is the result of an evaluation or decisionmaking process carried out during transportation planning, including a detailed corridor plan or a transportation plan developed under section 134 that fully analyzes impacts on mobility, adjacent communities, and the environment;

(B) is intended to be carried into the transportation project development process; and

(C) has been approved by the State, all local and tribal governments where the project is located, and by any relevant metropolitan planning organization.

(3) Project. - The term "project" has the meaning given the term in section 139(a).

(4) Project sponsor. - The term "project sponsor" has the meaning given the term in section 139(a).

(b) Adoption of Planning Products for Use in NEPA Proceedings. -

(1) In general. - Subject to the conditions set forth in subsection (d), the Federal lead agency for a project may adopt and use a planning product in proceedings relating to any class of action in the environmental review process of the project.

(2) Identification. - When the Federal lead agency makes a determination to adopt and use a planning product, the Federal lead agency shall identify those agencies that participated in the development of the planning products.

(3) Partial adoption of planning products. - The Federal lead agency may adopt a planning product under paragraph (1) in its entirety or may select portions for adoption.

(4) Timing. - A determination under paragraph (1) with respect to the adoption of a planning product may be made at the time the lead agencies decide the appropriate scope of environmental review for the project but may also occur later in the environmental review process, as appropriate.

(c) Applicability. -

(1) Planning decisions. - Planning decisions that may be adopted pursuant to this section include -

- (A) whether tolling, private financial assistance, or other special financial measures are necessary to implement the project;
- (B) a decision with respect to modal choice, including a decision to implement corridor or subarea study recommendations to advance different modal solutions as separate projects with independent utility;
- (C) a basic description of the environmental setting;
- (D) a decision with respect to methodologies for analysis; and
- (E) an identification of programmatic level mitigation for potential impacts that the Federal lead agency, in consultation with Federal, State, local, and tribal resource agencies, determines are most effectively addressed at a regional or national program level, including -
  - (i) system-level measures to avoid, minimize, or mitigate impacts of proposed transportation investments on environmental resources, including regional ecosystem and water resources; and
  - (ii) potential mitigation activities, locations, and investments.

(2) Planning analyses. - Planning analyses that may be adopted pursuant to this section include studies with respect to -

- (A) travel demands;
- (B) regional development and growth;
- (C) local land use, growth management, and development;
- (D) population and employment;
- (E) natural and built environmental conditions;
- (F) environmental resources and environmentally sensitive areas;
- (G) potential environmental effects, including the identification of resources of concern and potential cumulative effects on those resources, identified as a result of a statewide or regional cumulative effects assessment; and
- (H) mitigation needs for a proposed action, or for programmatic level mitigation, for potential effects that the Federal lead agency determines are most effectively addressed at a regional or national program level.

(d) Conditions. - Adoption and use of a planning product under this section is subject to a determination by the Federal lead agency, with the concurrence of other participating agencies with relevant expertise and project sponsors as appropriate, and with an opportunity for public notice and comment and consideration of those comments by the Federal lead agency, that the following conditions have been met:

- (1) The planning product was developed through a planning process conducted pursuant to applicable Federal law.
- (2) The planning product was developed by engaging in active consultation with appropriate Federal and State resource agencies and Indian tribes.
- (3) The planning process included broad multidisciplinary consideration of systems-level or corridor-wide transportation needs and potential effects, including effects on the human and natural environment.

(4) During the planning process, notice was provided through publication or other means to Federal, State, local, and tribal governments that might have an interest in the proposed project, and to members of the general public, of the planning products that the planning process might produce and that might be relied on during any subsequent environmental review process, and such entities have been provided an appropriate opportunity to participate in the planning process leading to such planning product.

(5) After initiation of the environmental review process, but prior to determining whether to rely on and use the planning product, the lead Federal agency has made documentation relating to the planning product available to Federal, State, local, and tribal governments that may have an interest in the proposed action, and to members of the general public, and has considered any resulting comments.

(6) There is no significant new information or new circumstance that has a reasonable likelihood of affecting the continued validity or appropriateness of the planning product.

(7) The planning product has a rational basis and is based on reliable and reasonably current data and reasonable and scientifically acceptable methodologies.

(8) 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.

(9) The planning product is appropriate for adoption and use in the environmental review process for the project.

(10) The planning product was approved not later than 5 years prior to date on which the information is adopted pursuant to this section.

(e) Effect of Adoption. - Any planning product adopted by the Federal lead agency in accordance with this section may be incorporated directly into an environmental review process document or other environmental document and may be relied upon and used by other Federal agencies in carrying out reviews of the project.

(f) Rules of Construction. -

(1) In general. - This section shall not be construed to make the environmental review process applicable to the transportation planning process conducted under this title and chapter 53 of title 49.

(2) Transportation planning activities. - Initiation of the environmental review process as a part of, or concurrently with, transportation planning activities does not subject transportation plans and programs to the environmental review process.

(3) Planning products. - This section shall not be construed to affect the use of planning products in the environmental review process pursuant to other authorities under any other provision of law or to restrict the initiation of the environmental review process during planning.

### **Sec. 169. Development of programmatic mitigation plans**

(a) In General. - As part of the statewide or metropolitan transportation planning process, a State or metropolitan planning organization may develop 1 or more programmatic mitigation plans to address the potential environmental impacts of future transportation projects.

(b) Scope. -

(1) Scale. - A programmatic mitigation plan may be developed on a regional, ecosystem, watershed, or statewide scale.

(2) Resources. - The plan may encompass multiple environmental resources within a defined geographic area or may focus on a specific resource, such as aquatic resources, parkland, or wildlife habitat.

(3) Project impacts. - The plan may address impacts from all projects in a defined geographic area or may focus on a specific type of project.

(4) Consultation. - The scope of the plan shall be determined by the State or metropolitan planning organization, as appropriate, in consultation with the agency or agencies with jurisdiction over the resources being addressed in the mitigation plan.

(c) Contents. - A programmatic mitigation plan may include -

(1) an assessment of the condition of environmental resources in the geographic area covered by the plan, including an assessment of recent trends and any potential threats to those resources;

(2) an assessment of potential opportunities to improve the overall quality of environmental resources in the geographic area covered by the plan, through strategic mitigation for impacts of transportation projects;

(3) standard measures for mitigating certain types of impacts;

(4) parameters for determining appropriate mitigation for certain types of impacts, such as mitigation ratios or criteria for determining appropriate mitigation sites;

(5) adaptive management procedures, such as protocols that involve monitoring predicted impacts over time and adjusting mitigation measures in response to information gathered through the monitoring; and

(6) acknowledgment of specific statutory or regulatory requirements that must be satisfied when determining appropriate mitigation for certain types of resources.

(d) Process. - Before adopting a programmatic mitigation plan, a State or metropolitan planning organization shall -

(1) consult with each agency with jurisdiction over the environmental resources considered in the programmatic mitigation plan;

(2) make a draft of the plan available for review and comment by applicable environmental resource agencies and the public;

(3) consider any comments received from such agencies and the public on the draft plan; and

(4) address such comments in the final plan.

(e) Integration With Other Plans. - A programmatic mitigation plan may be integrated with other plans, including watershed plans, ecosystem plans, species recovery plans, growth management plans, and land use plans.

(f) Consideration in Project Development and Permitting. - If a programmatic mitigation plan has been developed pursuant to this section, any Federal agency responsible for environmental reviews, permits, or approvals for a transportation project may use the recommendations in a programmatic mitigation plan when carrying out the responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(g) Preservation of Existing Authorities. - Nothing in this section limits the use of programmatic approaches to reviews under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

**Sec. 170. Funding flexibility for transportation emergencies**

(a) In General. - Notwithstanding any other provision of law, a State may use up to 100 percent of any covered funds of the State to repair or replace a transportation facility that has suffered serious damage as a result of a natural disaster or catastrophic failure from an external cause.

(b) Declaration of Emergency. - Funds may be used under this section only for a disaster or emergency declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(c) Repayment. - Funds used under subsection (a) shall be repaid to the program from which the funds were taken in the event that such repairs or replacement are subsequently covered by a supplemental appropriation of funds.

(d) Definitions. - In this section, the following definitions apply:

(1) Covered funds. - The term "covered funds" means any amounts apportioned to a State under section 104(b), other than amounts suballocated to metropolitan areas and other areas of the State under section 133(d), but including any such amounts required to be set aside for a purpose other than the repair or replacement of a transportation facility under this section.

(2) Transportation facility. - The term "transportation facility" means any facility eligible for assistance under section 125.

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**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, in collaboration with the Secretaries of the appropriate Federal land management agencies, 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 the funds were authorized if no apportionment is required.

(2) Amount remaining.—Any amount remaining unexpended for a period of 3 years after the close of the fiscal year for which the funds were authorized shall lapse.

(3) Obligations.—The Secretary of the department responsible for the administration of funds under this subsection may incur obligations, approve projects, and enter into contracts under such authorizations, which shall be considered to be contractual obligations of the United States for the payment of the cost thereof, the funds of which shall be considered to have been expended when obligated.

(4) Expenditure.—

(A) In general.—Any funds authorized for any fiscal year after the date of enactment of this section under the Federal lands transportation program, the Federal lands access program, and the tribal transportation program shall be considered to have been expended if a sum equal to the total of the sums authorized for the fiscal year and previous fiscal years have been obligated.

(B) Credited funds.—Any funds described in subparagraph (A) that are released by payment of final voucher or modification of project authorizations shall be—

- (i) credited to the balance of unobligated authorizations; and
- (ii) immediately available for expenditure.

(5) Applicability.—This section shall not apply to funds authorized before the date of enactment of this paragraph.

(6) Contractual obligation.—

(A) In general.—Notwithstanding any other provision of law (including regulations), the authorization by the Secretary, or the Secretary of the appropriate Federal land management agency if the agency is the contracting office, 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 considered to constitute a contractual obligation of the Federal Government to pay the total eligible cost of—

- (i) any project funded under this title; and
- (ii) any project funded pursuant to agreements authorized by this title or any other title.

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- (B) Effect.—Nothing in this paragraph—
- (i) affects the application of the Federal share associated with the project being undertaken under this section; or
  - (ii) modifies the point of obligation associated with Federal salaries and expenses.
- (7) Federal share.—
- (A) Tribal and federal lands transportation program.—The Federal share of the cost of a project carried out under the Federal lands transportation program or the tribal transportation program shall be 100 percent.
  - (B) Federal lands access program.—The Federal share of the cost of a project carried out under the Federal lands access program shall be determined in accordance with section 120.
- (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.
  - (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.—Each regionally significant tribal transportation program, Federal lands transportation program, and Federal lands access program project shall be—
    - (A) developed in cooperation with State and metropolitan planning organizations; and
    - (B) included in appropriate tribal transportation program plans, Federal lands transportation program plans, Federal lands access program plans, 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, implement 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 in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), including—
      - (i) inventory and condition information on Federal lands transportation facilities and tribal transportation facilities; and
      - (ii) bridge inspection and inventory information on any Federal bridge open to the public.



(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.—To implement the activities described in this subsection, including direct support of transportation planning activities among Federal land management agencies, the Secretary may use not more than 5 percent for each fiscal year of the funds authorized for programs under sections 203 and 204.

(d) Reimbursable Agreements.—In carrying out work under reimbursable agreements with any State, local, or tribal government under this title, the Secretary—

(1) may, without regard to any other provision of law (including regulations), record obligations against accounts receivable from the entity; and

(2) shall credit amounts received from the entity to the appropriate account, which shall occur not later than 90 days after the date of the original request by the Secretary for payment.

(e) Transfers.—

(1) In general.—To enable the efficient use of funds made available for the Federal lands transportation program and the Federal lands access program, the funds may be transferred by the Secretary within and between each program with the concurrence of, as appropriate—

(A) the Secretary;

(B) the affected Secretaries of the respective Federal land management agencies;

(C) State departments of transportation; and

(D) local government agencies.

(2) Credit.—The funds described in paragraph (1) 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)

(i) transportation planning, research, maintenance, engineering, rehabilitation, restoration, construction, and reconstruction of tribal transportation facilities;

(ii) adjacent vehicular parking areas;

(iii) interpretive signage;

(iv) acquisition of necessary scenic easements and scenic or historic sites;

(v) provisions for pedestrians and bicycles;

(vi) environmental mitigation in or adjacent to tribal land—

(I) to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and

- 
- (II) to 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;
  - (vii) construction and reconstruction of roadside rest areas, including sanitary and water facilities; and
  - (viii) other appropriate public road facilities as determined by the Secretary;
  - (B) operation and maintenance of transit programs and facilities that are located on, or provide access to, tribal land, or are administered by a tribal government; and
  - (C) any transportation project eligible for assistance under this title that is located within, or that provides access to, tribal land, or is associated with a tribal government.

(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 the 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 the 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.-Of the funds authorized to be appropriated for the tribal transportation program, not more than 6 percent may be used by the Secretary or the Secretary of the Interior for program management and oversight and project-related administrative expenses.

(7) Tribal technical assistance centers.-The Secretary of the Interior may reserve amounts 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).

(8) 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 an amount more than the greater of-

- (i) an amount equal to 25 percent; or
- (ii) \$500,000.

(B) Responsibility of bureau of indian affairs and secretary of the interior.-

(i) Bureau of indian affairs.-The Bureau of Indian Affairs shall retain primary responsibility, including annual funding request responsibility, for Bureau of Indian Affairs road maintenance programs on Indian reservations.

(ii) Secretary of the interior.-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) In general.-An Indian tribe and a State may enter into a road maintenance agreement under which an Indian tribe shall assume the responsibility of the State for-

- (I) tribal transportation facilities; and
- (II) roads providing access to tribal transportation facilities.

(ii) Requirements.-Agreements entered into under clause (i) shall-

- (I) be negotiated between the State and the Indian tribe; and
- (II) not require the approval of the Secretary.

(9) Cooperation.-

(A) In general.-The cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement.

(B) Funds received.-Any funds received from a State, county, or local subdivision shall be credited to appropriations available for the tribal transportation program.

(10) Competitive bidding.-

(A) Construction.-

(i) In general.-Subject to clause (ii) and subparagraph (B), construction of each project shall be performed by contract awarded by competitive bidding.

(ii) Exception.-Clause (i) shall not apply if the Secretary or the Secretary of the Interior affirmatively finds that, under the circumstances relating to the project, a different method is in the public interest.

(B) Applicability.-Notwithstanding subparagraph (A), section 23 of the Act of June 25, 1910 (25 U.S.C. 47) and section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) 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) 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 an Indian 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 Trust Fund under the Indian reservation roads program since 1983;
- (v) are public roads or bridges within the exterior boundary of Indian reservations, Alaska Native villages, and other recognized Indian communities (including communities in former Indian reservations in the State of Oklahoma) in which the majority of residents are American Indians or Alaska Natives;
- (vi) are public roads within or providing access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government, or Indian or Alaska Native villages, groups, or communities in which Indians and Alaska Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians; or
- (vii) 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 2 points of the proposed route.

(D) Additional facilities.-Nothing in this paragraph precludes 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 144.

(2) Regulations.-Notwithstanding sections 563(a) and 565(a) of title 5, the Secretary of the Interior shall maintain any regulations governing the tribal transportation program.

(3) Basis for funding formula.-

(A) Basis.-

(i) In general.-After making the set asides authorized under subparagraph (C) and subsections (c), (d), and (e) on October 1 of each fiscal year, the Secretary shall distribute the remainder authorized to be appropriated for the tribal transportation program under this section among Indian tribes as follows:

(I) For fiscal year 2013-

(aa) for each Indian tribe, 80 percent of the total relative need distribution factor and population adjustment factor

for the fiscal year 2011 funding amount made available to that Indian tribe; and

(bb) the remainder using tribal shares as described in subparagraphs (B) and (C).

(II) For fiscal year 2014-

(aa) for each Indian tribe, 60 percent of the total relative need distribution factor and population adjustment factor for the fiscal year 2011 funding amount made available to that Indian tribe; and

(bb) the remainder using tribal shares as described in subparagraphs (B) and (C).

(III) For fiscal year 2015-

(aa) for each Indian tribe, 40 percent of the total relative need distribution factor and population adjustment factor for the fiscal year 2011 funding amount made available to that Indian tribe; and

(bb) the remainder using tribal shares as described in subparagraphs (B) and (C).

(IV) For fiscal year 2016 and thereafter-

(aa) for each Indian tribe, 20 percent of the total relative need distribution factor and population adjustment factor for the fiscal year 2011 funding amount made available to that Indian tribe; and

(bb) the remainder using tribal shares as described in subparagraphs (B) and (C).

(ii) Tribal high priority projects.-The High Priority Projects program as included in the Tribal Transportation Allocation Methodology of part 170 of title 25, Code of Federal Regulations (as in effect on the date of enactment of the MAP-21), shall not continue in effect.

(B) Tribal shares.-Tribal shares under this program shall be determined using the national tribal transportation facility inventory as calculated for fiscal year 2012, and the most recent data on American Indian and Alaska Native population within each Indian tribe's American Indian/Alaska Native Reservation or Statistical Area, as computed under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*), in the following manner:

(i) 27 percent in the ratio that the total eligible road mileage in each tribe bears to the total eligible road mileage of all American Indians and Alaskan Natives. For the purposes of this calculation, eligible road mileage shall be computed based on the inventory described in paragraph (1), using only facilities included in the inventory described in clause (i), (ii), or (iii) of paragraph (1)(B).

(ii) 39 percent in the ratio that the total population in each tribe bears to the total population of all American Indians and Alaskan Natives.

(iii) 34 percent shall be divided equally among each Bureau of Indian Affairs region. Within each region, such share of funds shall be distributed to each Indian tribe in the ratio that the average total relative need distribution factors and population adjustment factors from fiscal years 2005 through 2011

for a tribe bears to the average total of relative need distribution factors and population adjustment factors for fiscal years 2005 through 2011 in that region.

(C) Tribal supplemental funding.-

(i) Tribal supplemental funding amount.-Of funds made available for each fiscal year for the tribal transportation program, the Secretary shall set aside the following amount for a tribal supplemental program:

(I) If the amount made available for the tribal transportation program is less than or equal to \$275,000,000, 30 percent of such amount.

(II) If the amount made available for the tribal transportation program exceeds \$275,000,000-

(aa) \$82,500,000; plus

(bb) 12.5 percent of the amount made available for the tribal transportation program in excess of \$275,000,000.

(ii) Tribal supplemental allocation.-The Secretary shall distribute tribal supplemental funds as follows:

(I) Distribution among regions.-Of the amounts set aside under clause (i), the Secretary shall distribute to each region of the Bureau of Indian Affairs a share of tribal supplemental funds in proportion to the regional total of tribal shares based on the cumulative tribal shares of all Indian tribes within such region under subparagraph (B).

(II) Distribution within a region.-Of the amount that a region receives under subclause (I), the Secretary shall distribute tribal supplemental funding among Indian tribes within such region as follows:

(aa) Tribal supplemental amounts.-The Secretary shall determine-

(AA) which such Indian tribes would be entitled under subparagraph (A) to receive in a fiscal year less funding than they would receive in fiscal year 2011 pursuant to the relative need distribution factor and population adjustment factor, as described in subpart C of part 170 of title 25, Code of Federal Regulations (as in effect on the date of enactment of the MAP-21); and

(BB) the combined amount that such Indian tribes would be entitled to receive in fiscal year 2011 pursuant to such relative need distribution factor and population adjustment factor in excess of the amount that they would be entitled to receive in the fiscal year under subparagraph (B).

(bb) Combined amount.-Subject to subclause (III), the Secretary shall distribute to each Indian tribe that meets the criteria described in item (aa)(AA) a share of funding under this

subparagraph in proportion to the share of the combined amount determined under item (aa)(BB) attributable to such Indian tribe.

(III) Ceiling.-An Indian tribe may not receive under subclause (II) and based on its tribal share under subparagraph (A) a combined amount that exceeds the amount that such Indian tribe would be entitled to receive in fiscal year 2011 pursuant to the relative need distribution factor and population adjustment factor, as described in subpart C of part 170 of title 25, Code of Federal Regulations (as in effect on the date of enactment of the MAP-21).

(IV) Other amounts.-If the amount made available for a region under subclause (I) exceeds the amount distributed among Indian tribes within that region under subclause (II), the Secretary shall distribute the remainder of such region's funding under such subclause among all Indian tribes in that region in proportion to the combined amount that each such Indian tribe received under subparagraph (A) and subclauses (I), (II), and (III).<sup>1</sup>

(4) 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 made 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 made available to Indian tribes for tribal transportation facilities shall be expended on projects identified in a transportation improvement program approved by the Secretary.

(5) 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 Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 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.

(6) 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 through the Secretary of the Interior under this chapter and section 125(e) for tribal transportation facilities to pay for the costs of programs, services, functions, and activities, or portions of programs, services, functions, or activities, that are specifically or functionally related to the cost of planning, research, engineering, and construction of any tribal transportation facility shall be made available, upon request of the Indian tribal

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government, to the Indian tribal government for contracts and agreements for such planning, research, engineering, and construction in accordance with Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(B) Exclusion of agency participation.-All funds, including contract support costs, for programs, functions, services, or activities, or portions of programs, services, functions, or activities, 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.

(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 to an Indian tribal government under this chapter for a tribal transportation facility program or project 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, including contract support costs, 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) In general.-Subject to clause (ii) and the approval of the Secretary, 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) Considerations.-An Indian tribal government that had no uncorrected significant and material audit exceptions in the required annual audit of the contracts or self-governance funding agreements made by the Indian tribe with any Federal agency under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) during the 3-fiscal year period referred in clause (i) shall be conclusive evidence of the financial stability and financial management capability of the Indian tribe 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. 450 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. 450 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 to the Indian tribe under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Indian tribe shall have the right to pursue all alternative dispute resolution and appeal procedures authorized by that 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.-

(1) In general.-For each fiscal year, not more than 2 percent of the funds made available for the tribal transportation program shall be allocated among Indian tribal governments that apply for transportation planning pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(2) Requirement.-An 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).

(3) Selection and approval of projects.-A project funded under this section shall be-

(A) selected by the Indian tribal government from the transportation improvement program; and

(B) 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 any distribution under subsection (b), the Secretary shall set aside not more than 2 percent of the funds made available under the tribal transportation program for each fiscal year to be allocated-

(A) to carry out any planning, design, engineering, preconstruction, construction, and inspection of a project to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing composition; or

(B) to implement any countermeasure 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) shall-

(A) have an opening of not less than 20 feet;

(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 any distribution under subsection (b), the Secretary shall set aside not more than 2 percent of the funds made available under the tribal transportation program for each fiscal year to be allocated based on an identification and analysis of highway safety issues and opportunities on tribal land, as determined by the Secretary, on application of the Indian tribal governments for eligible projects described in section 148(a)(4).

(2) Project selection.-An 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 in a State, the Secretary shall, for projects on tribal transportation facilities, determine that the obligation of funds for the project is supplementary to and not in lieu of the obligation of a fair and equitable share of funds apportioned to the State under section 104.

### **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) program administration, transportation planning, research, preventive maintenance, engineering, rehabilitation, restoration, construction, and reconstruction of Federal lands transportation facilities, and-

(i) adjacent vehicular parking areas;

(ii) acquisition of necessary scenic easements and scenic or historic sites;

- (iii) provision for pedestrians and bicycles;
- (iv) environmental mitigation in or adjacent to Federal land open to the public-
  - (I) to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and
  - (II) to 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;
- (v) construction and reconstruction of roadside rest areas, including sanitary and water facilities;
- (vi) congestion mitigation; and
- (vii) other appropriate public road facilities, as determined by the Secretary;

(B) operation and maintenance of transit facilities;

(C) any transportation project eligible for assistance under this title that is on a public road within or adjacent to, or that provides access to, Federal lands open to the public; and

(D) not more \$10,000,000 of the amounts made available per fiscal year to carry out this section for activities eligible under subparagraph (A)(iv).

(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 the 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.-

(A) In general.-The cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement.

(B) Funds received.-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 the funds were contributed.

(5) Competitive bidding.-

(A) In general.-Subject to subparagraph (B), construction of each project shall be performed by contract awarded by competitive bidding.

(B) Exception.-Subparagraph (A) shall not apply if the Secretary or the Secretary of the appropriate Federal land management agency affirmatively finds that, under the circumstances relating to the project, a different method is in the public interest.

(b) Agency Program Distributions.-

(1) In general.-On October 1, 2011, and on October 1 of each fiscal year thereafter, the Secretary shall allocate the sums authorized to be appropriated for the fiscal year for the Federal lands transportation program on the basis of applications of need, as determined by the Secretary-

(A) in consultation with the Secretaries of the applicable Federal land management agencies; and

(B) in coordination with the transportation plans required under section 201 of the respective transportation systems of-

- (i) the National Park Service;
- (ii) the Forest Service;
- (iii) the United States Fish and Wildlife Service;
- (iv) the Corps of Engineers; and
- (v) the Bureau of Land Management.

(2) Applications.-

(A) Requirements.-Each application submitted by a Federal land management agency shall include proposed programs at various potential funding levels, as defined by the Secretary following collaborative discussions with applicable Federal land management agencies.

(B) Consideration by secretary.-In evaluating an application submitted under subparagraph (A), the Secretary shall consider the extent to which the programs support-

- (i) the transportation goals of-
  - (I) a state of good repair of transportation facilities;
  - (II) a reduction of bridge deficiencies, and
  - (III) an improvement of safety;

(ii) high-use Federal recreational sites or Federal economic generators; and

(iii) the resource and asset management goals of the Secretary of the respective Federal land management agency.

(C) Permissive contents.-Applications may include proposed programs the duration of which extend over a multiple-year period to support long-term transportation planning and resource management initiatives.

(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.-To identify the Federal lands transportation system and determine 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 1 of the following agencies:

- (i) The National Park Service.
- (ii) The Forest Service.

- (iii) The United States Fish and Wildlife Service.
- (iv) The Bureau of Land Management.
- (v) The 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 the inventories of the appropriate Federal land management agencies, as determined by the Secretary after collaborative discussions with the Secretaries of the appropriate Federal land management agencies.

(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 Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) Bicycle Safety.-The Secretary of the appropriate Federal land management agency shall prohibit the use of bicycles on each federally owned road that has a speed limit of 30 miles per hour or greater and an adjacent paved path for use by bicycles within 100 yards of the road unless the Secretary determines that the bicycle level of service on that roadway is rated B or higher

#### **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 or adjacent to, or that provide access to, Federal land, and-

- (i) adjacent vehicular parking areas;
- (ii) acquisition of necessary scenic easements and scenic or historic sites;
- (iii) provisions for pedestrians and bicycles;
- (iv) environmental mitigation in or adjacent to Federal land to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity;
- (v) construction and reconstruction of roadside rest areas, including sanitary and water facilities; and
- (vi) other appropriate public road facilities, as determined by the Secretary;

(B) operation and maintenance of transit facilities; and

(C) any transportation project eligible for assistance under this title that is within or adjacent to, or that provides access to, Federal land.

(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 the 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.-

(A) In general.-The cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement.

(B) Funds received.-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.-

(A) In general.-Subject to subparagraph (B), construction of each project shall be performed by contract awarded by competitive bidding.

(B) Exception.-Subparagraph (A) shall not apply if the Secretary or the Secretary of the appropriate Federal land management agency affirmatively finds that, under the circumstances relating to the project, a different 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 that have Federal land, in accordance with the following formula:

(A) 80 percent of the available funding for use in those States that contain at least 1 ½ percent of the total public land in the United States managed by the agencies described in paragraph (2), to be distributed as follows:

(i) 30 percent in the ratio that-

(I) recreational visitation within each such State; bears to

(II) the recreational visitation within all such States.

(ii) 5 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) 55 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.

(iv) 10 percent in the ratio that-

(I) the number of Federal public bridges within each such  
State; bears to

(II) the number of Federal public bridges in all such States.

(B) 20 percent of the available funding for use in those States that do not contain at least 1 ½ percent of the total public land in the United States managed by the agencies described in paragraph (2), to be distributed as follows:

(i) 30 percent in the ratio that-

(I) recreational visitation within each such State; bears to

(II) the recreational visitation within all such States.

- (ii) 5 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) 55 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.
- (iv) 10 percent in the ratio that-
  - (I) the number of Federal public bridges within each such State; bears to
  - (II) the number of 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 Forest Service.
- (C) The United States Fish and Wildlife Service.
- (D) The Bureau of Land Management.
- (E) The Corps of Engineers.

(c) Programming Decisions Committee.-

(1) In general.-Programming decisions shall be made within each State by a committee comprised of-

- (A) a representative of the Federal Highway Administration;
- (B) a representative of the State Department of Transportation; and
- (C) a representative of any appropriate political subdivision of the State.

(2) Consultation requirement.-The committee described in paragraph (1) shall cooperate with each applicable Federal agency in each State before any joint discussion or final programming decision.

(3) Project preference.-In making a programming decision under paragraph (1), the committee shall give preference to projects that provide access to, are adjacent to, or are located within high-use Federal recreation sites or Federal economic generators, as identified by the Secretaries of the appropriate Federal land management agencies.

### **Sec. 205. Forest development roads and trails**

(a) Funds available for forest development roads and trails shall be used by the Secretary of Agriculture to pay for the costs of construction and maintenance thereof, including roads and trails on experimental and other areas under Forest Service administration. In connection therewith, the Secretary of Agriculture may enter into contracts with a State or civil subdivision thereof, and issue such regulations as he deems advisable.

(b) Cooperation of States, counties, or other local subdivisions may be accepted but shall not be required by the Secretary of Agriculture.

(c) Construction estimated to cost \$50,000 or more per mile or \$50,000 or more per project for projects with a length of less than one mile, exclusive of bridges and engineering, shall be advertised and let to contract. If such estimated cost is less than \$50,000 per mile or \$50,000 per project for projects with a length of less than one mile or if, after proper advertising, no acceptable bid is received or the bids are deemed excessive, the work may be done by the Secretary of Agriculture on his own account.

(d) Funds available for forest development roads and trails shall be available for adjacent vehicular parking areas, which may include electric vehicle charging stations or natural gas vehicle refueling stations, and for sanitary, water, and fire control facilities.

### **Sec. 206. Recreational trails program**

(a) Definitions. - In this section, the following definitions apply:

(1) Motorized recreation. - The term "motorized recreation" means off-road recreation using any motor-powered vehicle, except for a motorized wheelchair.

(2) Recreational trail. - The term "recreational trail" means a thoroughfare or track across land or snow, used for recreational purposes such as -

- (A) pedestrian activities, including wheelchair use;
- (B) skating or skateboarding;
- (C) equestrian activities, including carriage driving;
- (D) nonmotorized snow trail activities, including skiing;
- (E) bicycling or use of other human-powered vehicles;
- (F) aquatic or water activities; and
- (G) motorized vehicular activities, including all-terrain vehicle riding, motorcycling, snowmobiling, use of off-road light trucks, or use of other off-road motorized vehicles.

(b) Program. - In accordance with this section, the Secretary, in consultation with the Secretary of the Interior and the Secretary of Agriculture, shall carry out a program to provide and maintain recreational trails.

(c) State Responsibilities. - To be eligible for apportionments under this section -

(1) the Governor of the State shall designate the State agency or agencies that will be responsible for administering apportionments made to the State under this section; and

(2) the State shall establish a State recreational trail advisory committee that represents both motorized and nonmotorized recreational trail users, which shall meet not less often than once per fiscal year.

(d) Use of Apportioned Funds. -

(1) In general. - Funds apportioned to a State to carry out this section shall be obligated for recreational trails and related projects that -

(A) have been planned and developed under the laws, policies, and administrative procedures of the State; and

(B) are identified in, or further a specific goal of, a recreational trail plan, or a statewide comprehensive outdoor recreation plan required by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.), that is in effect.



(2) Permissible uses. - Permissible uses of funds apportioned to a State for a fiscal year to carry out this section include -

- (A) maintenance and restoration of existing recreational trails;
- (B) development and rehabilitation of trailside and trailhead facilities and trail linkages for recreational trails;
- (C) purchase and lease of recreational trail construction and maintenance equipment;
- (D) construction of new recreational trails, except that, in the case of new recreational trails crossing Federal lands, construction of the trails shall be -
  - (i) permissible under other law;
  - (ii) necessary and recommended by a statewide comprehensive outdoor recreation plan that is required by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.) and that is in effect;
  - (iii) approved by the administering agency of the State designated under subsection (c)(1); and
  - (iv) approved by each Federal agency having jurisdiction over the affected lands under such terms and conditions as the head of the Federal agency determines to be appropriate, except that the approval shall be contingent on compliance by the Federal agency with all applicable laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);
- (E) acquisition of easements and fee simple title to property for recreational trails or recreational trail corridors;
- (F) assessment of trail conditions for accessibility and maintenance;
- (G) development and dissemination of publications and operation of educational programs to promote safety and environmental protection, (as those objectives relate to one or more of the use of recreational trails, supporting non-law enforcement trail safety and trail use monitoring patrol programs, and providing trail-related training), but in an amount not to exceed 5 percent of the apportionment made to the State for the fiscal year; and
- (H) payment of costs to the State incurred in administering the program, but in an amount not to exceed 7 percent of the apportionment made to the State for the fiscal year.

(3) Use of apportionments. -

- (A) In general. - Except as provided in subparagraphs (B) and (C), of the apportionments made to a State for a fiscal year to carry out this section -
  - (i) 40 percent shall be used for recreational trail or related projects that facilitate diverse recreational trail use within a recreational trail corridor, trailside, or trailhead, regardless of whether the project is for diverse motorized use, for diverse nonmotorized use, or to accommodate both motorized and nonmotorized recreational trail use;
  - (ii) 30 percent shall be used for uses relating to motorized recreation;and

(iii) 30 percent shall be used for uses relating to nonmotorized recreation.

(B) Small state exclusion. - Any State with a total land area of less than 3,500,000 acres shall be exempt from the requirements of clauses (ii) and (iii) of subparagraph (A).

(C) State administrative costs. - State administrative costs eligible for funding under paragraph (2)(H) shall be exempt from the requirements of subparagraph (A).

(4) Grants. -

(A) In general. - A State may use funds apportioned to the State to carry out this section to make grants to private organizations, municipal, county, State, and Federal Government entities, and other government entities as approved by the State after considering guidance from the State recreational trail advisory committee established under subsection (c)(2), for uses consistent with this section.

(B) Compliance. - A State that makes grants under subparagraph (A) shall establish measures to verify that recipients of the grants comply with the conditions of the program for the use of grant funds.

(e) Environmental Benefit or Mitigation. - To the extent practicable and consistent with the other requirements of this section, a State should give consideration to project proposals that provide for the redesign, reconstruction, nonroutine maintenance, or relocation of recreational trails to benefit the natural environment or to mitigate and minimize the impact to the natural environment.

(f) Federal Share. -

(1) In general. - Subject to the other provisions of this subsection, the Federal share of the cost of a project and the Federal share of the administrative costs of a State under this section shall be determined in accordance with section 120(b).

(2) Federal agency project sponsor. - Notwithstanding any other provision of law, a Federal agency that sponsors a project under this section may contribute additional Federal funds toward the cost of a project, except that -

(A) the share attributable to the Secretary of Transportation may not exceed the amount determined in accordance with section 120(b) for the cost of a project under this section; and

(B) the share attributable to the Secretary and the Federal agency sponsoring the project may not exceed 95 percent of the cost of a project under this section.

(3) Use of funds from federal programs to provide non-federal share. - Notwithstanding any other provision of law, the non-Federal share of the cost of the project may include amounts made available by the Federal Government under any Federal program that are -

(A) expended in accordance with the requirements of the Federal program relating to activities funded and populations served; and

(B) expended on a project that is eligible for assistance under this section.

(4) Use of recreational trails program funds to match other federal program funds. - Notwithstanding any other provision of law, funds made available under this section may be used toward the non-Federal matching share for other Federal program funds that are -

(A) expended in accordance with the requirements of the Federal program relating to activities funded and populations served; and

(B) expended on a project that is eligible for assistance under this section.

(5) Programmatic non-federal share. - A State may allow adjustments to the non-Federal share of an individual project for a fiscal year under this section if the Federal share of the cost of all projects carried out by the State under the program (excluding projects funded under paragraph (2) or (3)) using funds apportioned to the State for the fiscal year does not exceed the Federal share as determined in accordance with section 120(b).

(g) Uses Not Permitted. - A State may not obligate funds apportioned to carry out this section for

(1) condemnation of any kind of interest in property;

(2) construction of any recreational trail on National Forest System land for any motorized use unless -

(A) the land has been designated for uses other than wilderness by an approved forest land and resource management plan or has been released to uses other than wilderness by an Act of Congress; and

(B) the construction is otherwise consistent with the management direction in the approved forest land and resource management plan;

(3) construction of any recreational trail on Bureau of Land Management land for any motorized use unless the land -

(A) has been designated for uses other than wilderness by an approved Bureau of Land Management resource management plan or has been released to uses other than wilderness by an Act of Congress; and

(B) the construction is otherwise consistent with the management direction in the approved management plan; or

(4) upgrading, expanding, or otherwise facilitating motorized use or access to recreational trails predominantly used by nonmotorized recreational trail users and on which, as of May 1, 1991, motorized use was prohibited or had not occurred.

(h) Project Administration. -

(1) Credit for donations of funds, materials, services, or new right-of-way. -

(A) In general. - Nothing in this title or other law shall prevent a project sponsor from offering to donate funds, materials, services, or a new right-of-way for the purposes of a project eligible for assistance under this section. Any funds, or the fair market value of any materials, services, or new right-of-way, may be donated by any project sponsor and shall be credited to the non-Federal share in accordance with subsection (f).

(B) Federal project sponsors. - Any funds or the fair market value of any materials or services may be provided by a Federal project sponsor and shall be credited to the Federal agency's share in accordance with subsection (f).

(C) Planning and environmental assessment costs incurred prior to project approval. - The Secretary may allow preapproval planning and environmental compliance costs to be credited toward the non-Federal share of the cost of a project described in subsection (d)(2) (other than subparagraph (H)) in accordance with subsection (f), limited to costs incurred less than 18 months prior to project approval.

(2) Recreational purpose. - A project funded under this section is intended to enhance recreational opportunity and is not subject to section 138 of this title or section 303 of title 49.

(3) Continuing recreational use. - At the option of each State, funds apportioned to the State to carry out this section may be treated as Land and Water Conservation Fund

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apportionments for the purposes of section 6(f)(3) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l-8(f)(3)).

(4) Cooperation by private persons. -

(A) Written assurances. - As a condition of making available apportionments for work on recreational trails that would affect privately owned land, a State shall obtain written assurances that the owner of the land will cooperate with the State and participate as necessary in the activities to be conducted.

(B) Public access. - Any use of the apportionments to a State to carry out this section on privately owned land must be accompanied by an easement or other legally binding agreement that ensures public access to the recreational trail improvements funded by the apportionments.

(i) Contract Authority. - Funds authorized to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1, except that the Federal share of the cost of a project under this section shall be determined in accordance with this section.

**Sec. 207. [Repealed]**

**Sec. 208. [Repealed]**

**Sec. 209. [Repealed]**

**Sec. 210. Defense access roads**

(a)

(1) The Secretary is authorized, out of the funds appropriated for defense access roads, to provide for the construction and maintenance of defense access roads (including bridges, tubes, and tunnels thereon) to military reservations, to defense industries and defense industry sites, and to the sources of raw materials when such roads are certified to the Secretary as important to the national defense by the Secretary of Defense or such other official as the President may designate, and for replacing existing highways and highway connections that are shut off from the general public use by necessary closures or restrictions at military reservations and defense industry sites.

(2) If it is determined that an action of the Department of Defense will cause a significant transportation impact to access to a military reservation, the Secretary of Defense shall conduct a transportation needs assessment to assess the magnitude of the improvement required to address the impact. The Secretary of Defense, in consultation with the Secretary of Transportation, shall determine the magnitude of the required improvements without regard to the extent to which traffic generated by the reservation is greater than other traffic in the vicinity of the reservation.

(b) Funds appropriated for the purposes of this section shall be available, without regard to apportionment among the several States, for paying all or any part of the cost of the construction and maintenance of defense access roads.

(c) Funds appropriated for defense maneuvers and exercises, may be used by the Secretary in areas certified to him by the Secretary of Defense as maneuver areas for such construction, maintenance, and repair work as may be necessary to keep the highways therein, which have been or may be used for training of the Armed Forces, in suitable condition for such training purposes and for repairing the damage caused to such highways by the operations of men and equipment in such training.

(d) Whenever any project for the construction of a circumferential highway around a city or of a radial intracity route thereto submitted by any State is certified by the Secretary of Defense, or such other official as the President may designate, as being important for civilian or military defense, such project may be constructed out of the funds heretofore or hereafter authorized to be appropriated for defense access roads.

(e) If the Secretary shall determine that the State transportation department of any State is unable to obtain possession and the right to enter upon and use the required rights-of-way, lands, or interest in lands, improved or unimproved, required for any project authorized by this section with sufficient promptness, the Secretary is authorized to acquire, enter upon, take possession thereof, and expend funds for projects thereon, prior to approval of title by the Attorney General, in the name of the United States, such rights-of-way, lands, or interest in lands as may be required in such State for such projects by purchase, donation, condemnation, or otherwise in accordance with the laws of the United States (including sections 3114 to 3116 and 3118 of title 40). The cost incurred by the Secretary in acquiring any such rights-of-way, lands, or interest in lands may include the cost of examination and abstract of title, certificate of title, advertising, and any fees incidental to such acquisition; and shall be payable out of the funds available for paying the cost or the Federal share of the cost of the project for which such rights-of-way, lands, or interests in lands are acquired. The Secretary is further authorized and directed by proper deed executed in the name of the United States to convey any lands or interests in lands acquired in any State under the provisions of prior Acts or of this section to the State transportation department of such State or to such political subdivision thereof as its laws may provide, upon such terms and conditions as may be agreed upon by the Secretary and the State transportation department, or political subdivisions to which the conveyance is to be made.

(f) The provisions of section 112 of this title are applicable to defense access roads.

(g) If the Secretary shall determine that it is necessary for the expeditious completion of any defense access road project he may advance to any State out of funds appropriated for defense access roads transferred and available to the Department of Transportation the Federal share of the cost of construction thereof to enable the State transportation department to make prompt payments for acquisition of rights-of-way, and for the construction as it progresses. The sums so advanced shall be deposited in a special fund by the State official authorized by State law to receive such funds, to be disbursed solely upon vouchers approved by the State transportation department for rights-of-way which have been or are being acquired and for construction which has been actually performed under this section. Upon determination by the Secretary that funds advanced to any State under the provisions of this subsection are no longer required, the amount of the advance which is determined to be in excess of requirements for the project shall be repaid upon his demand, and such repayments shall be returned to the credit of the appropriation from which the funds were advanced.

(h) Funds appropriated for the purposes of this section shall be available to pay the cost of repairing damage caused to highways by the operation of vehicles and equipment in the construction of classified military installations and facilities for ballistic missiles if the Secretary shall determine that the State transportation department of any State is, or has been, unable to prevent such damage by restrictions upon the use of such highways without interference with, or delay in, the completion of a contract for the construction of such military reservations or installations. This subsection shall apply notwithstanding any provision of contract holding a party thereto responsible for such damage, if the Secretary of Defense or his designee shall determine, in fact, that construction estimates and the bid of such party did not include allowance for repairing such damage. This subsection shall apply to damage caused by construction work commenced prior to June 1, 1961, and still in progress on that date and construction work which is commenced or for which a contract is awarded on or after June 1, 1961.

**Sec. 211. [Repealed]**

**Sec. 212. [Repealed]****Sec. 213. Transportation alternatives****(a) Reservation of Funds. -**

(1) In general. - On October 1 of each of fiscal years 2013 and 2014, the Secretary shall proportionally reserve from the funds apportioned to a State under section 104(b) to carry out the requirements of this section an amount equal to the amount obtained by multiplying the amount determined under paragraph (2) by the ratio that -

(A) the amount apportioned to the State for the transportation enhancements program for fiscal year 2009 under section 133(d)(2), as in effect on the day before the date of enactment of the MAP-21; bears to

(B) the total amount of funds apportioned to all States for that fiscal year for the transportation enhancements program for fiscal year 2009.

(2) Calculation of national amount. - The Secretary shall determine an amount for each fiscal year that is equal to 2 percent of the amounts authorized to be appropriated for such fiscal year from the Highway Trust Fund (other than the Mass Transit Account) to carry out chapters 1, 2, 5, and 6 of this title.

**(b) Eligible Projects. -** A State may obligate the funds reserved under this section for any of the following projects or activities:

(1) Transportation alternatives, as defined in section 101.

(2) The recreational trails program under section 206.

(3) The safe routes to school program under section 1404 of the SAFETEA-LU (23 U.S.C. 402 note; Public Law 109-59).

(4) Planning, designing, or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways.

**(c) Allocations of Funds. -**

(1) Calculation. - Of the funds reserved in a State under this section -

(A) 50 percent for a fiscal year shall be obligated under this section to any eligible entity in proportion to their relative shares of the population of the State -

(i) in urbanized areas of the State with an urbanized area population of over 200,000;

(ii) in areas of the State other than urban areas with a population greater than 5,000; and

(iii) in other areas of the State; and

(B) 50 percent shall be obligated in any area of the State.

(2) Metropolitan areas. - Funds attributed to an urbanized area under paragraph (1)(A)(i) may be obligated in the metropolitan area established under section 134 that encompasses the urbanized area.

(3) Distribution among urbanized areas of over 200,000 population. -

(A) In general. - Except as provided in paragraph (1)(B), the amount of funds that a State is required to obligate under paragraph (1)(A)(i) shall be obligated in

urbanized areas described in paragraph (1)(A)(i) based on the relative population of the areas.

(B) Other factors. - A State may obligate the funds described in subparagraph (A) based on other factors if the State and the relevant metropolitan planning organizations jointly apply to the Secretary for the permission to base the obligation on other factors and the Secretary grants the request.

(4) Access to funds. -

(A) In general. - Each State or metropolitan planning organization required to obligate funds in accordance with paragraph (1) shall develop a competitive process to allow eligible entities to submit projects for funding that achieve the objectives of this subsection.

(B) Definition of eligible entity. - In this paragraph, the term "eligible entity" means -

- (i) a local government;
- (ii) a regional transportation authority;
- (iii) a transit agency;
- (iv) a natural resource or public land agency;
- (v) a school district, local education agency, or school;
- (vi) a tribal government; and
- (vii) any other local or regional governmental entity with responsibility for or oversight of transportation or recreational trails (other than a metropolitan planning organization or a State agency) that the State determines to be eligible, consistent with the goals of this subsection.

(5) Selection of projects. - For funds reserved in a State under this section and suballocated to a metropolitan planning area under paragraph (1)(A)(i), each such metropolitan planning organization shall select projects carried out within the boundaries of the applicable metropolitan planning area, in consultation with the relevant State.

(d) Flexibility of Excess Reserved Funding. - Beginning in the second fiscal year after the date of enactment of the MAP-21, if on August 1 of that fiscal year the unobligated balance of available funds reserved by a State under this section exceeds 100 percent of such reserved amount in such fiscal year, the State may thereafter obligate the amount of excess funds for any activity -

(1) that is eligible to receive funding under this section; or

(2) for which the Secretary has approved the obligation of funds for any State under section 149.

(e) Treatment of Projects. - Notwithstanding any other provision of law, projects funded under this section (excluding those carried out under subsection (f)) shall be treated as projects on a Federal-aid highway under this chapter.

(f) Continuation of Certain Recreational Trails Projects. - Each State shall -

(1) obligate an amount of funds reserved under this section equal to the amount of the funds apportioned to the State for fiscal year 2009 under section 104(h)(2) for projects relating to recreational trails under section 206;

(2) return 1 percent of those funds to the Secretary for the administration of that program; and

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(3) comply with the provisions of the administration of the recreational trails program under section 206, including the use of apportioned funds described under subsection (d)(3)(A) of that section.

(g) State Flexibility. - A State may opt out of the recreational trails program under subsection (f) if the Governor of the State notifies the Secretary not later than 30 days prior to apportionments being made for any fiscal year.

**Sec. 214. [Repealed]**

**Sec. 215. [Repealed]**

**Sec. 216. [Repealed]**

**Sec. 217. Bicycle transportation and pedestrian walkways**

(a) Use of STP and Congestion Mitigation Program Funds. - Subject to project approval by the Secretary, a State may obligate funds apportioned to it under sections 104(b)(2) and 104(b)(3)<sup>28</sup> of this title for construction of pedestrian walkways and bicycle transportation facilities and for carrying out nonconstruction projects related to safe bicycle use.

(b) Use of National Highway Performance Program Funds. - Subject to project approval by the Secretary, a State may obligate funds apportioned to it under section 104(b)(1)<sup>29</sup> of this title for construction of pedestrian walkways and bicycle transportation facilities on land adjacent to any highway on the National Highway System.

(c) Use of Federal Lands Highway Funds. - Funds authorized for forest highways, forest development roads and trails, public lands development roads and trails, park roads, parkways, Indian reservation roads, and public lands highways shall be available, at the discretion of the department charged with the administration of such funds, for the construction of pedestrian walkways and bicycle transportation facilities.

(d) State Bicycle and Pedestrian Coordinators. - Each State receiving an apportionment under sections 104(b)(2) and 104(b)(3)<sup>30</sup> of this title shall use such amount of the apportionment as may be necessary to fund in the State department of transportation a position of bicycle and pedestrian coordinator for promoting and facilitating the increased use of nonmotorized modes of transportation, including developing facilities for the use of pedestrians and bicyclists and public education, promotional, and safety programs for using such facilities.

(e) Bridges. - In any case where a highway bridge deck being replaced or rehabilitated with Federal financial participation is located on a highway on which bicycles are permitted to operate at each

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<sup>28</sup> Section 104 of this title, referred to in subsecs. (a), (b), and (d), was amended generally by Pub. L. 112–141, div. A, title I, §1105(a), July 6, 2012, 126 Stat. 427.

<sup>29</sup> See prior footnote.

<sup>30</sup> See prior footnote.



end of such bridge, and the Secretary determines that the safe accommodation of bicycles can be provided at reasonable cost as part of such replacement or rehabilitation, then such bridge shall be so replaced or rehabilitated as to provide such safe accommodations.

(f) Federal Share. - For all purposes of this title, construction of a pedestrian walkway and a bicycle transportation facility shall be deemed to be a highway project and the Federal share payable on account of such construction shall be determined in accordance with section 120(b).

(g) Planning and Design. -

(1) In general. - Bicyclists and pedestrians shall be given due consideration in the comprehensive transportation plans developed by each metropolitan planning organization and State in accordance with sections 134 and 135, respectively. Bicycle transportation facilities and pedestrian walkways shall be considered, where appropriate, in conjunction with all new construction and reconstruction of transportation facilities, except where bicycle and pedestrian use are not permitted.

(2) Safety considerations. - Transportation plans and projects shall provide due consideration for safety and contiguous routes for bicyclists and pedestrians. Safety considerations shall include the installation, where appropriate, and maintenance of audible traffic signals and audible signs at street crossings.

(h) Use of Motorized Vehicles. - Motorized vehicles may not be permitted on trails and pedestrian walkways under this section, except for -

(1) maintenance purposes;

(2) when snow conditions and State or local regulations permit, snowmobiles;

(3) motorized wheelchairs;

(4) when State or local regulations permit, electric bicycles; and (5) such other circumstances as the Secretary deems appropriate.

(i) Transportation Purpose. - No bicycle project may be carried out under this section unless the Secretary has determined that such bicycle project will be principally for transportation, rather than recreation, purposes.

(j) 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. 218. Alaska Highway**

(a) Notwithstanding any other provision of law upon agreement with the State of Alaska, the Secretary is authorized to expend on the Alaska Marine Highway System any Federal-aid highway funds apportioned to the State of Alaska under this title at a Federal share of 100 per centum.

(b) For purposes of this section, the term "Alaska Marine Highway System" includes all existing or planned transportation facilities and equipment in Alaska, including the lease, purchase, or construction of vessels, terminals, docks, floats, ramps, staging areas, parking lots, bridges and approaches thereto, and necessary roads.

**Sec. 301. Freedom from tolls**

Except as provided in section 129 of this title with respect to certain toll bridges and toll tunnels, all highways constructed under the provisions of this title shall be free from tolls of all kinds.

**Sec. 302. State transportation department**

(a) Any State desiring to avail itself of the provisions of this title shall have a State transportation department which shall have adequate powers, and be suitably equipped and organized to discharge to the satisfaction of the Secretary the duties required by this title. In meeting the provisions of this subsection, a State may engage, to the extent necessary or desirable, the services of private engineering firms.

(b) Effect of Compliance. - Compliance with subsection (a) shall have no effect on the eligibility of costs.

**Sec. 303. [Repealed]****Sec. 304. [Repealed]****Sec. 305. Archeological and paleontological salvage**

Funds authorized to be appropriated to carry out this title to the extent approved as necessary by the highway department of any State, may be used for archeological and paleontological salvage in that State in compliance with the Act entitled "An Act for the preservation of American antiquities", approved June 8, 1906 (34 Stat. 225), and State laws where applicable,

**Sec. 306. Mapping**

(a) In General. - In carrying out the provisions of this title, the Secretary shall, wherever practicable, authorize the use of photogrammetric methods in mapping, and the utilization of commercial enterprise for such services.

(b) Guidance. - The Secretary shall issue guidance to encourage States to utilize, to the maximum extent practicable, private sector sources for surveying and mapping services for projects under this title. In carrying out this subsection, the Secretary shall recommend appropriate roles for State government and private mapping and surveying activities, including -

- (1) preparation of standards and specifications;
- (2) research in surveying and mapping instrumentation and procedures and technology transfer to the private sector;
- (3) providing technical guidance, coordination, and administration of State surveying and mapping activities; and
- (4) recommending methods for increasing the use by the States of private sector sources for surveying and mapping activities.

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(c) Implementation. - The Secretary shall develop a process for the oversight and monitoring, on an annual basis, of the compliance of each State with the guidance issued under subsection (b).

**Sec. 307. [Repealed]**

**Sec. 308. Cooperation with Federal and State agencies and foreign countries**

(a) Authorized Activities. -

(1) In general. - The Secretary may perform, by contract or otherwise, authorized engineering or other services in connection with the survey, construction, maintenance, or improvement of highways for other Federal agencies, cooperating foreign countries, and State cooperating agencies.

(2) Inclusions. - Services authorized under paragraph (1) may include activities authorized under section 214 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(3) Reimbursement. - Reimbursement for services carried out under this subsection (including depreciation on engineering and road-building equipment) shall be credited to the applicable appropriation.

(b) Appropriations for the work of the Federal Highway Administration shall be available for expenses of warehouse maintenance and the procurement, care, and handling of supplies, materials, and equipment for distribution to projects under the supervision of the Federal Highway Administration, or for sale or distribution to other Government agencies, cooperating foreign countries, and State cooperating agencies, and the cost of such supplies and materials or the value of such equipment, including the cost of transportation and handling, may be reimbursed to current applicable appropriations.

**Sec. 309. [Repealed]**

**Sec. 310. Civil defense**

In order to assure that adequate consideration is given to civil defense aspects in the planning and construction of highways constructed or reconstructed with the aid of Federal funds, the Secretary of Transportation is authorized and directed to consult, from time to time, with the Federal Civil Defense Administrator relative to the civil defense aspects of highways so constructed or reconstructed.

**Sec. 311. Highway improvements strategically important to the national defense**

Funds made available under subsection (a) of section 104 of this title may be used to pay the entire engineering costs of the surveys, plans, specifications, estimates, and supervision of construction of projects for such urgent improvements of highways strategically important from the standpoint of the national defense as may be undertaken on the order of the Secretary and as the result of request of the Secretary of Defense or such other official as the President may designate. With the consent of a State, funds made available under subsection (b) of section 104 of this title may be used to the extent deemed necessary and advisable by the Secretary to carry out the provisions of this section.

**Sec. 312. Detail of Army, Navy, and Air Force officers**

The Secretary of Defense, upon request of the Secretary, is authorized to make temporary details to the Federal Highway Administration of officers of the Army, the Navy, and the Air Force, without additional compensation, for technical advice and for consultation regarding highway needs for the national defense. Travel and subsistence expenses of officers so detailed shall be paid from appropriations available to the Department of Transportation on the same basis as authorized by law and by regulations of the Department of Defense for such officers.

**Sec. 313. Buy America**

(a) Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or this title and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.

(b) The provisions of subsection (a) of this section shall not apply where the Secretary finds -

(1) that their application would be inconsistent with the public interest;

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

(3) that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

(c) For purposes of this section, in calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.

(d) The Secretary of Transportation shall not impose any limitation or condition on assistance provided under the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or this title that restricts any 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 such assistance or restricts any recipient of such assistance from complying with such State imposed requirements.

(e) Intentional Violations. - If it has been determined by a court or Federal agency that any person intentionally -

(1) affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any product used in projects to which this section applies, sold in or shipped to the United States that was not made in the United States; or

(2) represented that any product used in projects to which this section applies, sold in or shipped to the United States that was not produced in the United States, was produced in the United States;

that person shall be ineligible to receive any contract or subcontract made with funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991 pursuant to the debarment, suspension, and ineligibility procedures in subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations.

(f) Limitation on Applicability of Waivers to Products Produced in Certain Foreign Countries. - If the Secretary, in consultation with the United States Trade Representative, determines that -

(1) a foreign country is a party to an agreement with the United States and pursuant to that agreement the head of an agency of the United States has waived the requirements of this section, and

(2) the foreign country has violated the terms of the agreement by discriminating against products covered by this section that are produced in the United States and are covered by the agreement,

the provisions of subsection (b) shall not apply to products produced in that foreign country.

(g) Application to Highway Programs. - The requirements under this section shall apply to all contracts eligible for assistance under this chapter for a project carried out within the scope of the applicable finding, determination, or decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), regardless of the funding source of such contracts, if at least 1 contract for the project is funded with amounts made available to carry out this title.

#### **Sec. 314. Relief of employees in hazardous work**

The Secretary is authorized in an emergency to use appropriations to the Department of Transportation for carrying out the provisions of this title for medical supplies, services, and other assistance necessary for the immediate relief of employees of the Federal Highway Administration engaged in hazardous work.

#### **Sec. 315. Rules, regulations, and recommendations**

Except as provided in sections 202(a)(5), 203(a)(3), and 205(a) of this title, the Secretary is authorized to prescribe and promulgate all needful rules and regulations for the carrying out of the provisions of this title. The Secretary may make such recommendations to the Congress and State transportation departments as he deems necessary for preserving and protecting the highways and insuring the safety of traffic thereon.

#### **Sec. 316. Consent by United States to conveyance of property**

For the purposes of this title the consent of the United States is given to any railroad or canal company to convey to the State transportation department of any State, or its nominee, any part of its right-of-way or other property in that State acquired by grant from the United States.

#### **Sec. 317. Appropriation for highway purposes of lands or interests in lands owned by the United States**

(a) If the Secretary determines that any part of the lands or interests in lands owned by the United States is reasonably necessary for the right-of-way of any highway, or as a source of materials for the construction or maintenance of any such highway adjacent to such lands or interests in lands, the Secretary shall file with the Secretary of the Department supervising the administration of such lands or interests in lands a map showing the portion of such lands or interests in lands which it is desired to appropriate.

(b) If within a period of four months after such filing, the Secretary of such Department shall not have certified to the Secretary that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved, or

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shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such land and materials may be appropriated and transferred to the State transportation department, or its nominee, for such purposes and subject to the conditions so specified.

(c) If at any time the need for any such lands or materials for such purposes shall no longer exist, notice of the fact shall be given by the State transportation department to the Secretary and such lands or materials shall immediately revert to the control of the Secretary of the Department from which they had been appropriated.

(d) The provisions of this section shall apply only to projects constructed on a Federal-aid highway or under the provisions of chapter 2 of this title.

### **Sec. 318. Highway relocation due to airport**

Federal highway funds shall not be used for the reconstruction or relocation of any highway giving access to an airport constructed or extended after December 20, 1944, or for the reconstruction or relocation of any highway which has been or may be closed or the usefulness of which has been may be impaired by the location or construction of any airport constructed or extended after December 20, 1944, unless, prior to such construction or extension, as the case may be, the State transportation department and the Secretary have concurred with the officials in charge of the airport that the location of such airport or extension thereof and the consequent reconstruction or relocation of the highway are in the public interest.

### **Sec. 319. Landscaping and scenic enhancement**

(a) Landscape and Roadside Development. - The Secretary may approve as a part of the construction of Federal-aid highways the costs of landscape and roadside development, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities reasonably necessary to accommodate the traveling public, and for acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways.

(b) Planting of Wildflowers. -

(1) General rule. - The Secretary shall require the planting of native wildflower seeds or seedlings, or both, as part of any landscaping project under this section. At least 1/4 of 1 percent of the funds expended for such landscaping project shall be used for such plantings.

(2) Waiver. - The requirements of this subsection may be waived by the Secretary if a State certifies that native wildflowers or seedlings cannot be grown satisfactorily or planting areas are limited or otherwise used for agricultural purposes.

(3) Gifts. - Nothing in this subsection shall be construed to prohibit the acceptance of native wildflower seeds or seedlings donated by civic organizations or other organizations and individuals to be used in landscaping projects.

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**Sec. 320. Bridges on Federal dams**

(a) Each executive department, independent establishment, office, board, bureau, commission, authority, administration, corporation wholly owned or controlled by the United States, or other agency of the Government of the United States, hereinafter collectively and individually referred to as "agency", which on or after July 29, 1946, has jurisdiction over and custody of any dam constructed or to be constructed and owned by or for the United States, is authorized, with any funds available to it, to design and construct any such dam in such manner that it will constitute and serve as a suitable and adequate foundation to support a public highway bridge upon and across such dam, and to design and construct upon the foundation thus provided a public highway bridge upon and across such dam. The highway department of the State in which such dam shall be located, jointly with the Secretary, shall first determine and certify to such agency that such bridge is economically desirable and needed as a link in the State or Federal-aid highway systems, and shall request such agency to design and construct such dam so that it will serve as a suitable and adequate foundation for a public highway bridge and to design and construct such public highway bridge upon and across such dam, and shall agree to reimburse such agency pursuant to subsection (d) of this section for any additional costs which it may be required to incur because of the design and construction of such dam so that it will serve as a foundation for a public highway bridge and for expenditures which it may find it necessary to make in designing and constructing such public highway bridge upon and across such dam. In no case shall the design and construction of a bridge upon and across such dam be undertaken hereunder except by the agency having jurisdiction over and custody of the dam, acting directly or through contractors employed by it, and after such agency shall determine that it will be structurally feasible and will not interfere with the proper functioning and operation of the dam.

(b) Construction of any bridge upon and across any dam pursuant to this section shall not be commenced unless and until the State in which such bridge is to be located, or the appropriate subdivision of such State, shall enter into an agreement with such agency and with the Secretary to construct, or cause to be constructed, with or without the aid of Federal funds, the approach roads necessary to connect such bridge with existing public highways and to maintain, or cause to be maintained, such approach roads from and after their completion. Such agreement may also provide for the design and construction of such bridge upon and across the dam by such agency of the United States and for reimbursing such agency the costs incurred by it in the design and construction of the bridge as provided in subsection (d) of this section. Any such agency is hereby authorized to convey to the State, or to the appropriate subdivision thereof, without costs, such easements and rights-of-way in its custody or over lands of the United States in its custody and control as may be necessary, convenient, or proper for the location, construction, and maintenance of the approach roads referred to in this section including such roadside parks or recreational areas of limited size as may be deemed necessary for the accommodation of the traveling public. Any bridge constructed pursuant to this section upon and across a dam in the custody and jurisdiction of any agency of the United States, including such portion thereof, if any, as may extend beyond the physical limits of the dam, shall constitute and remain a part of said dam and be maintained by the agency. Any such agency may enter into any such contracts and agreements with the State or its subdivisions respecting public use of any bridge so located and constructed as may be deemed appropriate, but no such bridge shall be closed to public use by the agency except in cases of emergency or when deemed necessary in the interest of national security.

(c) All costs and expenses incurred and expenditures made by any agency in the exercise of the powers and authority conferred by this section (but not including any costs, expenses, or expenditures which would have been required in any event to satisfy a legal road or bridge relocation obligation or to meet operating or other agency needs) shall be recorded and kept separate and apart from the other costs, expenses, and expenditures of such agency, and no portion thereof shall be charged or allocated to flood



control, navigation, irrigation, fertilizer production, the national defense, the development of power, or other program, purpose, or function of such agency.

(d) Not to exceed \$65,000,000 of any money heretofore or hereafter appropriated for expenditure in accordance with the provisions of this title or prior Acts shall be available for expenditure by the Secretary in accordance with the provisions of this section, as an emergency fund, to reimburse any agency for any additional costs or expenditures which it may be required to incur because of the design and construction of any such dam so that it will constitute and serve as a foundation for a public highway bridge upon and across such dam and to reimburse any such agency for any costs, expenses, or expenditures which it may be required to make in designing and constructing any such bridge upon and across a dam in accordance with the provisions of this section, except such costs, expenses, or expenditures as would have been required of such agency in any event to satisfy a legal obligation to relocate a highway or bridge or to meet operating or other agency needs, and there is authorized to be appropriated any sum or sums necessary to reimburse the funds so expended by the Secretary from time to time under the authority of this section. Of each bridge constructed upon and across a dam under the provisions of this section, there may be financed wholly with Federal funds that portion thereof which is located within the physical limits of the masonry structure, or structures, of the dam, and the Secretary shall in his sole discretion determine what additional portion of the bridge, if any, may be so financed, such determination to be final and conclusive. The remainder of the bridge, and any necessary related approach roads, shall be financed by the State or its appropriate subdivision with or without the aid of Federal funds; but said portion of the bridge so financed by the State or its subdivisions, including such portion thereof, if any, as may extend beyond the physical limits of the dam, shall nevertheless be designed and constructed solely by the agency having custody and jurisdiction of the dam as provided in subsection (a) of this section.

(e) In making, reviewing, or approving the design of any bridge or approach structure to be constructed under this section, the agency shall, in matters relating to roadway design, loadings, clearances and widths, and traffic safeguards, give full consideration to and be guided by the standards and advice of the Secretary.

(f) The authority conferred by this section shall be in addition to and not in limitation of authority conferred upon any agency by any other law, and nothing in this section contained shall affect or be deemed to relate to any bridge, approach structure, or highway constructed or to be constructed by any such agency in furtherance of its lawful purposes and requirements or to satisfy a legal obligation incurred independently of this section.

### **Sec. 321. Signs identifying funding sources**

If a State has a practice of erecting on projects under actual construction without Federal-aid highway assistance signs which indicate the source or sources of any funds used to carry out such projects, such State shall erect on all projects under actual construction with any funds made available out of the Highway Trust Fund (other than the Mass Transit Account) signs which are visible to highway users and which indicate each governmental source of funds being used to carry out such federally assisted projects and the amount of funds being made available by each such source.

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**Sec. 322. Magnetic levitation transportation technology deployment program**

(a) Definitions. - In this section, the following definitions apply:

(1) Eligible project costs. - The term "eligible project costs" -

(A) means the capital cost of the fixed guideway infrastructure of a MAGLEV project, including land, piers, guideways, propulsion equipment and other components attached to guideways, power distribution facilities (including substations), control and communications facilities, access roads, and storage, repair, and maintenance facilities, but not including costs incurred for a new station; and

(B) includes the costs of preconstruction planning activities.

(2) Full project costs. - The term "full project costs" means the total capital costs of a MAGLEV project, including eligible project costs and the costs of stations, vehicles, and equipment.

(3) MAGLEV. - The term "MAGLEV" means transportation systems employing magnetic levitation that would be capable of safe use by the public at a speed in excess of 240 miles per hour.

(4) Partnership potential. - The term "partnership potential" has the meaning given the term in the commercial feasibility study of high-speed ground transportation conducted under section 1036 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1978).

(b) Financial Assistance. -

(1) In general. - The Secretary shall make available financial assistance to pay the Federal share of full project costs of eligible projects selected under this section. Financial assistance made available under this section and projects assisted with the assistance shall be subject to section 5333(a) of title 49, United States Code.

(2) Federal share. - The Federal share of full project costs under paragraph (1) shall be not more than  $\frac{2}{3}$ .

(3) Use of assistance. - Financial assistance provided under paragraph (1) shall be used only to pay eligible project costs of projects selected under this section.

(c) Solicitation of Applications for Assistance. - Not later than 180 days after the date of enactment of this subsection, the Secretary shall solicit applications from States, or authorities designated by 1 or more States, for financial assistance authorized by subsection (b) for planning, design, and construction of eligible MAGLEV projects.

(d) Project Eligibility. - To be eligible to receive financial assistance under subsection (b), a project shall -

(1) involve a segment or segments of a high-speed ground transportation corridor that exhibit partnership potential;

(2) require an amount of Federal funds for project financing that will not exceed the sum of -

(A) the amounts made available under subsection (h)(1); and

(B) the amounts made available by States under subsection (h)(3);

(3) result in an operating transportation facility that provides a revenue producing service;

(4) be undertaken through a public and private partnership, with at least 1/3 of full project costs paid using non-Federal funds;

(5) satisfy applicable statewide and metropolitan planning requirements;

(6) be approved by the Secretary based on an application submitted to the Secretary by a State or authority designated by 1 or more States;

(7) to the extent that non-United States MAGLEV technology is used within the United States, be carried out as a technology transfer project; and

(8) be carried out using materials at least 70 percent of which are manufactured in the United States.

(e) Project Selection Criteria. - Prior to soliciting applications, the Secretary shall establish criteria for selecting which eligible projects under subsection (d) will receive financial assistance under subsection (b). The criteria shall include the extent to which -

(1) a project is nationally significant, including the extent to which the project will demonstrate the feasibility of deployment of MAGLEV technology throughout the United States;

(2) timely implementation of the project will reduce congestion in other modes of transportation and reduce the need for additional highway or airport construction;

(3) States, regions, and localities financially contribute to the project;

(4) implementation of the project will create new jobs in traditional and emerging industries;

(5) the project will augment MAGLEV networks identified as having partnership potential;

(6) financial assistance would foster public and private partnerships for infrastructure development and attract private debt or equity investment;

(7) financial assistance would foster the timely implementation of a project; and

(8) life-cycle costs in design and engineering are considered and enhanced.

(f) Project Selection. -

(1) Preconstruction planning activities. - Not later than 90 days after a deadline established by the Secretary for the receipt of applications, the Secretary shall evaluate the eligible projects in accordance with the selection criteria and select 1 or more eligible projects to receive financial assistance for preconstruction planning activities, including -

(A) preparation of such feasibility studies, major investment studies, and environmental impact statements and assessments as are required under State law;

(B) pricing of the final design, engineering, and construction activities proposed to be assisted under paragraph (2); and

(C) such other activities as are necessary to provide the Secretary with sufficient information to evaluate whether a project should receive financial assistance for final design, engineering, and construction activities under paragraph (2).

(2) Final design, engineering, and construction activities. - After completion of preconstruction planning activities for all projects assisted under paragraph (1), the Secretary shall select 1 of the projects to receive financial assistance for final design, engineering, and construction activities.

(g) Joint Ventures. - A project undertaken by a joint venture of United States and non-United States persons (including a project involving the deployment of non-United States MAGLEV technology

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in the United States) shall be eligible for financial assistance under this section if the project is eligible under subsection (d) and selected under subsection (f).

(h) Funding. -

(1) In general. -

(A) Contract authority; authorization of appropriations. -

(i) In general. - There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$15,000,000 for fiscal year 1999, \$20,000,000 for fiscal year 2000, and \$25,000,000 for fiscal year 2001.

(ii) Contract authority. - Funds authorized by this subparagraph shall be available for obligation in the same manner as if the funds were apportioned under chapter 1, except that -

(I) the Federal share of the cost of a project carried out under this section shall be determined in accordance with subsection (b); and

(II) the availability of the funds shall be determined in accordance with paragraph (2).

(B) Noncontract authority authorization of appropriations. -

(i) In general. - There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section (other than subsection (i)) \$200,000,000 for each of fiscal years 2000 and 2001, \$250,000,000 for fiscal year 2002, and \$300,000,000 for fiscal year 2003.

(ii) Availability. - Notwithstanding section 118(a), funds made available under clause (i) shall not be available in advance of an annual appropriation.

(2) Availability of funds. - Funds made available under paragraph (1) shall remain available until expended.

(3) Other federal funds. - Notwithstanding any other provision of law, funds made available to a State to carry out the surface transportation program under section 133 and the congestion mitigation and air quality improvement program under section 149 may be used by the State to pay a portion of the full project costs of an eligible project selected under this section, without requirement for non-Federal funds.

(4) Other assistance. - Notwithstanding any other provision of law, an eligible project selected under this section shall be eligible for other forms of financial assistance provided under this title and the Transportation Equity Act for the 21st Century, including loans, loan guarantees, and lines of credit.

(i) Low-Speed Project. -

(1) In general. - Notwithstanding any other provision of this section, of the funds made available by subsection (h)(1)(A) to carry out this section, \$5,000,000 shall be made available to the Secretary to make grants for the research and development of low-speed superconductivity magnetic levitation technology for public transportation purposes in urban areas to demonstrate energy efficiency, congestion mitigation, and safety benefits.

(2) Noncontract authority authorization of appropriations. -

(A) In general. - There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection such sums as are necessary for each of fiscal years 2000 through 2003.

(B) Availability. - Notwithstanding section 118(a), funds made available under subparagraph (A) -

- (i) shall not be available in advance of an annual appropriation; and
- (ii) shall remain available until expended.

### Sec. 323. Donations and credits

(a) Donations of Property Being Acquired. - Nothing in this title, or in any other provision of law, shall be construed to prevent a person whose real property is being acquired in connection with a project under this title, after he has been fully informed of his right to receive just compensation for the acquisition of his property, from making a gift or donation of such property, or any part thereof, or of any of the compensation paid therefor, to a Federal agency, a State or a State agency, or a political subdivision of a State, as said person shall determine.

(b) Credit for Acquired Lands. -

(1) In general. - Notwithstanding any other provision of this title, the State share of the cost of a project with respect to which Federal assistance is provided from the Highway Trust Fund (other than the Mass Transit Account) may be credited in an amount equal to the fair market value of any land that -

- (A) is lawfully obtained by the State or a unit of local government in the State;
- (B) is incorporated into the project;
- (C) is not land described in section 138; and
- (D) the Secretary determines will not influence the environmental assessment of the project, including -
  - (i) the decision as to the need to construct the project;
  - (ii) the consideration of alternatives; and
  - (iii) the selection of a specific location.

(2) Establishment of fair market value. - The fair market value of land incorporated into a project and credited under paragraph (1) shall be established in the manner determined by the Secretary, except that -

- (A) the fair market value shall not include any increase or decrease in the value of donated property caused by the project; and
- (B) the fair market value of donated land shall be established as of the earlier of -
  - (i) the date on which the donation becomes effective; or
  - (ii) the date on which equitable title to the land vests in the State.

(3) Limitation on applicability. - This subsection shall not apply to donations made by an agency of the Federal Government.

(4) Limitation on amount of credit. - The credit received by a State pursuant to this subsection may not exceed the State's matching share for the project.

(c) Credit for Donations of Funds, Materials, or Services. - Nothing in this title or any other law shall prevent a person from offering to donate funds, materials, or services, or a local government from offering to donate funds, materials, or services performed by local government employees, in connection with a project eligible for assistance under this title. In the case of such a project with respect to which the Federal Government and the State share in paying the cost, any donated funds, or the fair market value of any donated materials or services, that are accepted and incorporated into the project by the State transportation department shall be credited against the State share.

(d) Procedures. - A gift or donation in accordance with subsection (a) may be made at any time during the development of a project. Any document executed as part of such donation prior to the approval of an environmental document prepared pursuant to the National Environmental Policy Act of 1969 shall clearly indicate that -

(1) all alternatives to a proposed alignment will be studied and considered pursuant to such Act;

(2) acquisition of property under this section shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location; and

(3) any property acquired by gift or donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after public hearings, if required, and completion of the environmental document.

#### **Sec. 324. Prohibition of discrimination on the basis of sex**

No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this title or carried on under this title. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.

#### **Sec. 325. State assumption of responsibilities for certain programs and projects**

(a) Assumption of Secretary's Responsibilities Under Applicable Federal Laws. -

(1) Pilot program. -

(A) Establishment. - The Secretary may establish a pilot program under which States may assume the responsibilities of the Secretary under any Federal laws subject to the requirements of this section.

(B) First 3 fiscal years. - In the first 3 fiscal years following the date of enactment of the SAFETEA-LU, the Secretary may allow up to 5 States to participate in the pilot program.

(2) Scope of program. - Under the pilot program, the Secretary may assign, and a State may assume, any of the Secretary's responsibilities (other than responsibilities relating to federally recognized Indian tribes) for environmental reviews, consultation, or decisionmaking or

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other actions required under any Federal law as such requirements apply to the following projects:

(A) Projects funded under section 104(h).<sup>31</sup>

(B) Transportation enhancement activities under section 133, as such term is defined in section 101(a)(35).<sup>32</sup>

(b) Agreements. -

(1) In general. - The Secretary shall enter into a memorandum of understanding with a State participating in the pilot program setting forth the responsibilities to be assigned under subsection (a)(2) and the terms and conditions under which the assignment is being made.

(2) Certification. - Before the Secretary enters into a memorandum of understanding with a State under paragraph (1), the State shall certify that the State has in effect laws (including regulations) applicable to projects carried out and funded under this title and chapter 53 of title 49 that authorize the State to carry out the responsibilities being assumed.

(3) Maximum duration. - A memorandum of understanding with a State under this section shall be established for an initial period of no more than 3 years and may be renewed by mutual agreement on a periodic basis for periods of not more than 3 years.

(4) Compliance. -

(A) In general. - After entering into a memorandum of understanding under paragraph (1), the Secretary shall review and determine compliance by the State with the memorandum of understanding.

(B) Renewals. - The Secretary shall take into account the performance of a State under the pilot program when considering renewal of a memorandum of understanding with the State under the program.

(5) Sole responsibility. - A State that assumes responsibility under subsection (a)(2) with respect to a Federal law shall be solely responsible and solely liable for complying with and carrying out that law, and the Secretary shall have no such responsibility or liability.

(6) Acceptance of jurisdiction. - In a memorandum of understanding, the State shall consent to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

(c) Selection of States for Pilot Program. -

(1) Application. - To be eligible to participate in the pilot program, a State shall submit to the Secretary an application that contains such information as the Secretary may require. At a minimum, an application shall include -

(A) a description of the projects or classes of projects for which the State seeks to assume responsibilities under subsection (a)(2); and

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<sup>31</sup> Section 104, referred to in subsec. (a)(2)(A), was amended generally by Pub. L. 112-141 and, as so amended, no longer contains a subsec. (h).

<sup>32</sup> Section 101(a)(35), referred to in subsec. (a)(2)(B), was redesignated section 101(a)(29) and subsequently amended by Pub. L. 112-141 and no longer defines transportation enhancement activities.

(B) a certification that the State has the capability to assume such responsibilities.

(2) Public notice. - Before entering into a memorandum of understanding allowing a State to participate in the pilot program, the Secretary shall -

(A) publish notice in the Federal Register of the Secretary's intent to allow the State to participate in the program, including a copy of the State's application to the Secretary and the terms of the proposed agreement with the State; and

(B) provide an opportunity for public comment.

(3) Selection criteria. - The Secretary may approve the application of a State to assume responsibilities under the program only if -

(A) the requirements under paragraph (2) have been met; and

(B) the Secretary determines that the State has the capability to assume the responsibilities.

(4) Other federal agency views. - Before assigning to a State a responsibility of the Secretary that requires the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency.

(d) State Defined. - With respect to the recreational trails program, the term "State" means the State agency designated by the Governor of the State in accordance with section 206(c)(1).

(e) Preservation of Public Interest Consideration. - Nothing in this section shall be construed to limit the requirements under any applicable law providing for the consideration and preservation of the public interest, including public participation and community values in transportation decisionmaking.

### **Sec. 326. State assumption of responsibility for categorical exclusions**

(a) Categorical Exclusion Determinations. -

(1) In general. - The Secretary may assign, and a State may assume, responsibility for determining whether certain designated activities are included within classes of action identified in regulation by the Secretary that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations promulgated by the Council on Environmental Quality under part 1500 of title 40, Code of Federal Regulations (as in effect on October 1, 2003).

(2) Scope of authority. - A determination described in paragraph (1) shall be made by a State in accordance with criteria established by the Secretary and only for types of activities specifically designated by the Secretary.

(3) Criteria. - The criteria under paragraph (2) shall include provisions for public availability of information consistent with section 552 of title 5 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(4) Preservation of flexibility. - The Secretary shall not require a State, as a condition of assuming responsibility under this section, to forego project delivery methods that are otherwise permissible for highway projects.

(b) Other Applicable Federal Laws. -

(1) In general. - If a State assumes responsibility under subsection (a), the Secretary may also assign and the State may assume all or part of the responsibilities of the Secretary for environmental review, consultation, or other related actions required under any Federal law applicable to activities that are classified by the Secretary as categorical exclusions, with the



exception of government-to-government consultation with Indian tribes, subject to the same procedural and substantive requirements as would be required if that responsibility were carried out by the Secretary.

(2) Sole responsibility. - A State that assumes responsibility under paragraph (1) with respect to a Federal law shall be solely responsible and solely liable for complying with and carrying out that law, and the Secretary shall have no such responsibility or liability.

(c) Memoranda of Understanding. -

(1) In general. - The Secretary and the State, after providing public notice and opportunity for comment, shall enter into a memorandum of understanding setting forth the responsibilities to be assigned under this section and the terms and conditions under which the assignments are made, including establishment of the circumstances under which the Secretary would reassume responsibility for categorical exclusion determinations.

(2) Term. - A memorandum of understanding -

(A) shall have a term of not more than 3 years; and

(B) shall be renewable.

(3) Acceptance of jurisdiction. - In a memorandum of understanding, the State shall consent to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

(4) Monitoring. - The Secretary shall -

(A) monitor compliance by the State with the memorandum of understanding and the provision by the State of financial resources to carry out the memorandum of understanding; and

(B) take into account the performance by the State when considering renewal of the memorandum of understanding.

(d) Termination. -

(1) Termination by the secretary. - The Secretary may terminate any assumption of responsibility under a memorandum of understanding on a determination that the State is not adequately carrying out the responsibilities assigned to the State.

(2) Termination by the state. - The State may terminate the participation of the State in the program at any time by providing to the Secretary a notice not later than the date that is 90 days before the date of termination, and subject to such terms and conditions as the Secretary may provide.

(e) State Agency Deemed to Be Federal Agency. - A State agency that is assigned a responsibility under a memorandum of understanding shall be deemed to be a Federal agency for the purposes of the Federal law under which the responsibility is exercised.

(f) Legal Fees. - A State assuming the responsibilities of the Secretary under this section for a specific project may use funds apportioned to the State under section 104(b)(2) for attorney's fees directly attributable to eligible activities associated with the project.

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**Sec. 327. Surface transportation project delivery program**

## (a) Establishment. -

(1) In general. - The Secretary shall carry out a surface transportation project delivery program (referred to in this section as the "program").

## (2) Assumption of responsibility. -

(A) In general. - Subject to the other provisions of this section, with the written agreement of the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign, and the State may assume, the responsibilities of the Secretary with respect to one or more highway projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) Additional responsibility. - If a State assumes responsibility under subparagraph (A) -

(i) the Secretary may assign to the State, and the State may assume, all or part of the responsibilities of the Secretary for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of a specific project;

(ii) at the request of the State, the Secretary may also assign to the State, and the State may assume, the responsibilities of the Secretary with respect to 1 or more railroad, public transportation, or multimodal projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(iii) in a State that has assumed the responsibilities of the Secretary under clause (ii), a recipient of assistance under chapter 53 of title 49 may request that the Secretary maintain the responsibilities of the Secretary with respect to 1 or more public transportation projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 13<sup>33</sup> 4321 et seq.); but

(iv) the Secretary may not assign -

(I) any responsibility imposed on the Secretary by section 134 or 135 or section 5303 or 5304 of title 49; or

(II) responsibility for any conformity determination required under section 176 of the Clean Air Act (42 U.S.C. 7506).

(C) Procedural and substantive requirements. - A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary.

(D) Federal responsibility. - Any responsibility of the Secretary not explicitly assumed by the State by written agreement under this section shall remain the responsibility of the Secretary.

(E) No effect on authority. - Nothing in this section preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency, other than the

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<sup>33</sup> So in original.

Department of Transportation, under applicable law (including regulations) with respect to a project.

(F) Preservation of flexibility. - The Secretary may not require a State, as a condition of participation in the program, to forego project delivery methods that are otherwise permissible for projects.

(G) Legal fees. - A State assuming the responsibilities of the Secretary under this section for a specific project may use funds apportioned to the State under section 104(b)(2) for attorneys' fees directly attributable to eligible activities associated with the project.

(b) State Participation. -

(1) Participating states. - All States are eligible to participate in the program.

(2) Application. - Not later than 270 days after the date on which amendments to this section by the MAP-21 take effect, the Secretary shall amend, as appropriate, regulations that establish requirements relating to information required to be contained in any application of a State to participate in the program, including, at a minimum -

(A) the projects or classes of projects for which the State anticipates exercising the authority that may be granted under the program;

(B) verification of the financial resources necessary to carry out the authority that may be granted under the program; and

(C) evidence of the notice and solicitation of public comment by the State relating to participation of the State in the program, including copies of comments received from that solicitation.

(3) Public notice. -

(A) In general. - Each State that submits an application under this subsection shall give notice of the intent of the State to participate in the program not later than 30 days before the date of submission of the application.

(B) Method of notice and solicitation. - The State shall provide notice and solicit public comment under this paragraph by publishing the complete application of the State in accordance with the appropriate public notice law of the State.

(4) Selection criteria. - The Secretary may approve the application of a State under this section only if -

(A) the regulatory requirements under paragraph (2) have been met;

(B) the Secretary determines that the State has the capability, including financial and personnel, to assume the responsibility; and

(C) the head of the State agency having primary jurisdiction over highway matters enters into a written agreement with the Secretary described in subsection (c).

(5) Other federal agency views. - If a State applies to assume a responsibility of the Secretary that would have required the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency before approving the application.

(c) Written Agreement. - A written agreement under this section shall -

(1) be executed by the Governor or the top-ranking transportation official in the State who is charged with responsibility for highway construction;

(2) be in such form as the Secretary may prescribe;

(3) provide that the State -

(A) agrees to assume all or part of the responsibilities of the Secretary described in subsection (a);

(B) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary assumed by the State;

(C) certifies that State laws (including regulations) are in effect that -

(i) authorize the State to take the actions necessary to carry out the responsibilities being assumed; and

(ii) are comparable to section 552 of title 5, including providing that any decision regarding the public availability of a document under those State laws is reviewable by a court of competent jurisdiction; and

(D) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed;

(4) require the State to provide to the Secretary any information the Secretary considers necessary to ensure that the State is adequately carrying out the responsibilities assigned to the State;

(5) have a term of not more than 5 years; and

(6) be renewable.

(d) Jurisdiction. -

(1) In general. - The United States district courts shall have exclusive jurisdiction over any civil action against a State for failure to carry out any responsibility of the State under this section.

(2) Legal standards and requirements. - A civil action under paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the Secretary had the Secretary taken the actions in question.

(3) Intervention. - The Secretary shall have the right to intervene in any action described in paragraph (1).

(e) Effect of Assumption of Responsibility. - A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of the Secretary, the responsibilities assumed under subsection (a)(2), until the program is terminated as provided in subsection (j).

(f) Limitations on Agreements. - Nothing in this section permits a State to assume any rulemaking authority of the Secretary under any Federal law.

(g) Audits. -

(1) In general. - To ensure compliance by a State with any agreement of the State under subsection (c) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the program under this section, the Secretary shall conduct -

(A) semiannual audits during each of the first 2 years of State participation; and

(B) annual audits during each of the third and fourth years of State participation.

(2) Public availability and comment. -

(A) In general. - An audit conducted under paragraph (1) shall be provided to the public for comment.

(B) Response. - Not later than 60 days after the date on which the period for public comment ends, the Secretary shall respond to public comments received under subparagraph (A).

(h) Monitoring. - After the fourth year of the participation of a State in the program, the Secretary shall monitor compliance by the State with the written agreement, including the provision by the State of financial resources to carry out the written agreement.

(i) Report to Congress. - The Secretary shall submit to Congress an annual report that describes the administration of the program.

(j) Termination. -

(1) Termination by the secretary. - The Secretary may terminate the participation of any State in the program if -

(A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;

(B) the Secretary provides to the State -

(i) notification of the determination of noncompliance; and

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

(C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by the Secretary.

(2) Termination by the state. - The State may terminate the participation of the State in the program at any time by providing to the Secretary a notice by not later than the date that is 90 days before the date of termination, and subject to such terms and conditions as the Secretary may provide.

### **Sec. 328. Eligibility for environmental restoration and pollution abatement**

(a) In General. - Subject to subsection (b), environmental restoration and pollution abatement to minimize or mitigate the impacts of any transportation project funded under this title (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) may be carried out to address water pollution or environmental degradation caused wholly or partially by a transportation facility.

(b) Maximum Expenditure. - In a case in which a transportation facility is undergoing reconstruction, rehabilitation, resurfacing, or restoration, the expenditure of funds under this section for environmental restoration or pollution abatement described in subsection (a) shall not exceed 20 percent of the total cost of the reconstruction, rehabilitation, resurfacing, or restoration of the facility.

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**Sec. 329. Eligibility for control of noxious weeds and aquatic noxious weeds and establishment of native species**

(a) In General. - In accordance with all applicable Federal law (including regulations), funds made available to carry out this section may be used for the following activities if such activities are related to transportation projects funded under this title:

(1) Establishment of plants selected by State and local transportation authorities to perform one or more of the following functions: abatement of stormwater runoff, stabilization of soil, and aesthetic enhancement.

(2) Management of plants which impair or impede the establishment, maintenance, or safe use of a transportation system.

(b) Included Activities. - The establishment and management under subsection (a)(1) and (a)(2) may include -

(1) right-of-way surveys to determine management requirements to control Federal or State noxious weeds as defined in the Plant Protection Act (7 U.S.C. 7701 et seq.) or State law, and brush or tree species, whether native or nonnative, that may be considered by State or local transportation authorities to be a threat with respect to the safety or maintenance of transportation systems;

(2) establishment of plants, whether native or nonnative with a preference for native to the maximum extent possible, for the purposes defined in subsection (a)(1);

(3) control or elimination of plants as defined in subsection (a)(2);

(4) elimination of plants to create fuel breaks for the prevention and control of wildfires; and

(5) training.

(c) Contributions. -

(1) In general. - Subject to paragraph (2), an activity described in subsection (a) may be carried out concurrently with, in advance of, or following the construction of a project funded under this title.

(2) Condition for activities conducted in advance of project construction. - An activity described in subsection (a) may be carried out in advance of construction of a project only if the activity is carried out in accordance with all applicable requirements of Federal law (including regulations) and State transportation planning processes.

**Sec. 401. Authority of the Secretary**

The Secretary is authorized and directed to assist and cooperate with other Federal departments and agencies, State and local governments, private industry, and other interested parties, to increase highway safety. For the purposes of this chapter, the term "State" means any one of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**Sec. 402. Highway safety programs****(a) Program Required. -**

(1) In general. - Each State shall have a highway safety program, approved by the Secretary, that is designed to reduce traffic accidents and the resulting deaths, injuries, and property damage.

(2) Uniform guidelines. - Programs required under paragraph (1) shall comply with uniform guidelines, promulgated by the Secretary and expressed in terms of performance criteria, that -

**(A) include programs -**

(i) to reduce injuries and deaths resulting from motor vehicles being driven in excess of posted speed limits;

(ii) to encourage the proper use of occupant protection devices (including the use of safety belts and child restraint systems) by occupants of motor vehicles;

(iii) to reduce injuries and deaths resulting from persons driving motor vehicles while impaired by alcohol or a controlled substance;

(iv) to prevent accidents and reduce injuries and deaths resulting from accidents involving motor vehicles and motorcycles;

(v) to reduce injuries and deaths resulting from accidents involving school buses;

(vi) to reduce accidents resulting from unsafe driving behavior (including aggressive or fatigued driving and distracted driving arising from the use of electronic devices in vehicles); and

(vii) to improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures;

**(B) improve driver performance, including -**

(i) driver education;

(ii) driver testing to determine proficiency to operate motor vehicles;

and

(iii) driver examinations (physical, mental, and driver licensing);

**(C) improve pedestrian performance and bicycle safety;****(D) include provisions for -**

(I) an effective record system of accidents (including resulting injuries and deaths);

- (II) accident investigations to determine the probable causes of accidents, injuries, and deaths;
- (III) vehicle registration, operation, and inspection; and
- (IV) emergency services; and

(E) to the extent determined appropriate by the Secretary, are applicable to federally administered areas where a Federal department or agency controls the highways or supervises traffic operations.

(b) Administration of State Programs. -

(1) Administrative requirements. - The Secretary may not approve a State highway safety program under this section which does not -

(A) provide that the Governor of the State shall be responsible for the administration of the program through a State highway safety agency which shall have adequate powers and be suitably equipped and organized to carry out, to the satisfaction of the Secretary, such program;

(B) authorize political subdivisions of the State to carry out local highway safety programs within their jurisdictions as a part of the State highway safety program if such local highway safety programs are approved by the Governor and are in accordance with the minimum standards established by the Secretary under this section;

(C) except as provided in paragraph (3), provide that at least 40 percent of all Federal funds apportioned under this section to the State for any fiscal year will be expended by the political subdivisions of the State, including Indian tribal governments, in carrying out local highway safety programs authorized in accordance with subparagraph (B);

(D) provide adequate and reasonable access for the safe and convenient movement of individuals with disabilities, including those in wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks throughout the State;

(E) beginning on the first day of the first fiscal year after the date of enactment of the Motor Vehicle and Highway Safety Improvement Act of 2012 in which a State submits its highway safety plan under subsection (f), provide for a data-driven traffic safety enforcement program to prevent traffic violations, crashes, and crash fatalities and injuries in areas most at risk for such incidents, to the satisfaction of the Secretary;

(F) provide satisfactory assurances that the State will implement activities in support of national highway safety goals to reduce motor vehicle related fatalities that also reflect the primary data-related crash factors within a State as identified by the State highway safety planning process, including -

(i) national law enforcement mobilizations and high-visibility law enforcement mobilizations coordinated by the Secretary;

(ii) sustained enforcement of statutes addressing impaired driving, occupant protection, and driving in excess of posted speed limits;

(iii) an annual statewide safety belt use survey in accordance with criteria established by the Secretary for the measurement of State safety belt use rates to ensure that the measurements are accurate and representative;

(iv) development of statewide data systems to provide timely and effective data analysis to support allocation of highway safety resources; and



(v) ensuring that the State will coordinate its highway safety plan, data collection, and information systems with the State strategic highway safety plan (as defined in section 148(a)).

(2) Waiver. - The Secretary may waive the requirement of paragraph (1)(C), in whole or in part, for a fiscal year for any State whenever the Secretary determines that there is an insufficient number of local highway safety programs to justify the expenditure in the State of such percentage of Federal funds during the fiscal year.

(c) Use of Funds. -

(1) In general. - Funds authorized to be appropriated to carry out this section shall be used to aid the States to conduct the highway safety programs approved in accordance with subsection (a), including development and implementation of manpower training programs, and of demonstration programs that the Secretary determines will contribute directly to the reduction of accidents, and deaths and injuries resulting therefrom.

(2) Apportionment. - Except for amounts identified in section 403(f), funds described in paragraph (1) shall be apportioned 75 per centum in the ratio which the population of each State bears to the total population of all the States, as shown by the latest available Federal census, and 25 per centum in the ratio which the public road mileage in each State bears to the total public road mileage in all States. For the purposes of this subsection, a "public road" means any road under the jurisdiction of and maintained by a public authority and open to public travel. Public road mileage as used in this subsection shall be determined as of the end of the calendar year preceding the year in which the funds are apportioned and shall be certified to by the Governor of the State and subject to approval by the Secretary. The annual apportionment to each State shall not be less than three-quarters of 1 percent of the total apportionment, except that the apportionment to the Secretary of the Interior shall not be less than 2 percent of the total apportionment and the apportionments to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not be less than one-quarter of 1 per centum of the total apportionment. A highway safety program approved by the Secretary shall not include any requirement that a State implement such a program by adopting or enforcing any law, rule, or regulation based on a guideline promulgated by the Secretary under this section requiring any motorcycle operator eighteen years of age or older or passenger eighteen years of age or older to wear a safety helmet when operating or riding a motorcycle on the streets and highways of that State. Implementation of a highway safety program under this section shall not be construed to require the Secretary to require compliance with every uniform guideline, or with every element of every uniform guideline, in every State. A State may use the funds apportioned under this section, in cooperation with neighboring States, for highway safety programs or related projects that may confer benefits on such neighboring States. Funds apportioned under this section to any State, that does not have a highway safety program approved by the Secretary or that is not implementing an approved program, shall be reduced by amounts equal to not less than 20 percent of the amounts that would otherwise be apportioned to the State under this section, until such time as the Secretary approves such program or determines that the State is implementing an approved program, as appropriate. The Secretary shall consider the gravity of the State's failure to have or implement an approved program in determining the amount of the reduction.

(3) Reapportionment. - The Secretary shall promptly apportion the funds withheld from a State's apportionment to the State if the Secretary approves the State's highway safety program or determines that the State has begun implementing an approved program, as appropriate, not later than July 31st of the fiscal year for which the funds were withheld. If the Secretary determines that the State did not correct its failure within such period, the Secretary shall reapportion the withheld funds to the other States in accordance with the formula specified in paragraph (2) not later than the last day of the fiscal year.

(4) Automated traffic enforcement systems. -

(A) Prohibition. - A State may not expend funds apportioned to that State under this section to carry out a program to purchase, operate, or maintain an automated traffic enforcement system.

(B) Automated traffic enforcement system defined. - In this paragraph, the term "automated traffic enforcement system" means any camera which captures an image of a vehicle for the purposes only of red light and speed enforcement, and does not include hand held radar and other devices operated by law enforcement officers to make an on-the-scene traffic stop, issue a traffic citation, or other enforcement action at the time of the violation.

(d) All provisions of chapter 1 of this title that are applicable to National Highway System highway funds other than provisions relating to the apportionment formula and provisions limiting the expenditure of such funds to the Federal-aid systems, shall apply to the highway safety funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section, and except that the aggregate of all expenditures made during any fiscal year by a State and its political subdivisions (exclusive of Federal funds) for carrying out the State highway safety program (other than planning and administration) shall be available for the purpose of crediting such State during such fiscal year for the non-Federal share of the cost of any project under this section (other than one for planning or administration) without regard to whether such expenditures were actually made in connection with such project and except that, in the case of a local highway safety program carried out by an Indian tribe, if the Secretary is satisfied that an Indian tribe does not have sufficient funds available to meet the non-Federal share of the cost of such program, he may increase the Federal share of the cost thereof payable under this Act to the extent necessary. In applying such provisions of chapter 1 in carrying out this section the term "State transportation department" as used in such provisions shall mean the Governor of a State for the purposes of this section.

(e) Uniform guidelines promulgated by the Secretary to carry out this section shall be developed in cooperation with the States, their political subdivisions, appropriate Federal departments and agencies, and such other public and private organizations as the Secretary deems appropriate.

(f) The Secretary may make arrangements with other Federal departments and agencies for assistance in the preparation of uniform guidelines for the highway safety programs contemplated by subsection (a) and in the administration of such programs. Such departments and agencies are directed to cooperate in such preparation and administration, on a reimbursable basis.

(g) Savings Provision. -

(1) In general. - Except as provided under paragraph (2), nothing in this section may be construed to authorize the appropriation or expenditure of funds for -

(A) highway construction, maintenance, or design (other than design of safety features of highways to be incorporated into guidelines); or

(B) any purpose for which funds are authorized under section 403.

(2) Demonstration projects. - A State may use funds made available to carry out this section to assist in demonstration projects carried out by the Secretary under section 403.

(h) Application in Indian Country. -

(1) Use of terms. - For the purpose of application of this section in Indian country, the terms "State" and "Governor of a State" include the Secretary of the Interior and the term "political subdivision of a State" includes an Indian tribe.

(2) Expenditures for local highway programs. - Notwithstanding subsection (b)(1)(C), 95 percent of the funds apportioned to the Secretary of the Interior under this section shall be expended by Indian tribes to carry out highway safety programs within their jurisdictions.

(3) Access for individuals with disabilities. - The requirements of subsection (b)(1)(D) shall be applicable to Indian tribes, except to those tribes with respect to which the Secretary determines that application of such provisions would not be practicable.

(4) Indian country defined. - In this subsection, the term "Indian country" means -

(A) all land within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent and including rights-of-way running through the reservation;

(B) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof and whether within or without the limits of a State; and

(C) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

(i) Rulemaking Proceeding. - The Secretary may periodically conduct a rulemaking process to identify highway safety programs that are highly effective in reducing motor vehicle crashes, injuries, and deaths. Any such rulemaking shall take into account the major role of the States in implementing such programs. When a rule promulgated in accordance with this section takes effect, States shall consider these highly effective programs when developing their highway safety programs.

(j) Law Enforcement Vehicular Pursuit Training. - A State shall actively encourage all relevant law enforcement agencies in such State to follow the guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police that are in effect on the date of enactment of this subsection or as revised and in effect after such date as determined by the Secretary.

(k) Highway Safety Plan and Reporting Requirements. -

(1) In general. - With respect to fiscal year 2014, and each fiscal year thereafter, the Secretary shall require each State, as a condition of the approval of the State's highway safety program for that fiscal year, to develop and submit to the Secretary for approval a highway safety plan that complies with the requirements under this subsection.

(2) Timing. - Each State shall submit to the Secretary the highway safety plan not later than July 1st of the fiscal year preceding the fiscal year to which the plan applies.

(3) Contents. - State highway safety plans submitted under paragraph (1) shall include -

(A) performance measures required by the Secretary or otherwise necessary to support additional State safety goals, including -

(i) documentation of current safety levels for each performance measure;

(ii) quantifiable annual performance targets for each performance measure; and

(iii) a justification for each performance target, that explains why each target is appropriate and evidence-based;

(B) a strategy for programming funds apportioned to the State under this section on projects and activities that will allow the State to meet the performance targets described in subparagraph (A);

(C) data and data analysis supporting the effectiveness of proposed countermeasures;

(D) a description of any Federal, State, local, or private funds that the State plans to use, in addition to funds apportioned to the State under this section, to carry out the strategy described in subparagraph (B);

(E) for the fiscal year preceding the fiscal year to which the plan applies, a report on the State's success in meeting State safety goals and performance targets set forth in the previous year's highway safety plan; and

(F) an application for any additional grants available to the State under this chapter.

(4) Performance measures. - For the first highway safety plan submitted under this subsection, the performance measures required by the Secretary under paragraph (2)(A) shall be limited to those developed by the National Highway Traffic Safety Administration and the Governor's Highway Safety Association and described in the report, "Traffic Safety Performance Measures for States and Federal Agencies" (DOT HS 811 025). For subsequent highway safety plans, the Secretary shall coordinate with the Governor's Highway Safety Association in making revisions to the set of required performance measures.

(5) Review of highway safety plans. -

(A) In general. - Not later than 60 days after the date on which a State's highway safety plan is received by the Secretary, the Secretary shall review and approve or disapprove the plan.

(B) Approvals and disapprovals. -

(i) Approvals. - The Secretary shall approve a State's highway safety plan if the Secretary determines that -

(I) the plan and the performance targets contained in the plan are evidence-based and supported by data; and

(II) the plan, once implemented, will allow the State to meet the State's performance targets.

(ii) Disapprovals. - The Secretary shall disapprove a State's highway safety plan if the Secretary determines that -

(I) the plan and the performance targets contained in the plan are not evidence-based or supported by data; or

(II) the plan does not provide for programming of funding in a manner sufficient to allow the State to meet the State's performance targets.

(C) Actions upon disapproval. - If the Secretary disapproves a State's highway safety plan, the Secretary shall -

(i) inform the State of the reasons for such disapproval; and

(ii) require the State to resubmit the plan with any modifications that the Secretary determines to be necessary.

(D) Review of resubmitted plans. - If the Secretary requires a State to resubmit a highway safety plan, with modifications, the Secretary shall review and approve or disapprove the modified plan not later than 30 days after the date on which the Secretary receives such plan.

(E) Public notice. - A State shall make the State's highway safety plan, and decisions of the Secretary concerning approval or disapproval of a revised plan, available to the public.

[(I) redesignated (j).]

(m) Teen Traffic Safety. -

(1) In general. - Subject to the requirements of a State's highway safety plan, as approved by the Secretary under subsection (k), a State may use a portion of the amounts received under this section to implement statewide efforts to improve traffic safety for teen drivers.

(2) Use of funds. - Statewide efforts under paragraph (1) -

(A) shall include peer-to-peer education and prevention strategies in schools and communities designed to -

- (i) increase safety belt use;
- (ii) reduce speeding;
- (iii) reduce impaired and distracted driving;
- (iv) reduce underage drinking; and
- (v) reduce other behaviors by teen drivers that lead to injuries and fatalities; and

(B) may include -

- (i) working with student-led groups and school advisors to plan and implement teen traffic safety programs;
- (ii) providing subgrants to schools throughout the State to support the establishment and expansion of student groups focused on teen traffic safety;
- (iii) providing support, training, and technical assistance to establish and expand school and community safety programs for teen drivers;
- (iv) creating statewide or regional websites to publicize and circulate information on teen safety programs;
- (v) conducting outreach and providing educational resources for parents;
- (vi) establishing State or regional advisory councils comprised of teen drivers to provide input and recommendations to the governor and the governor's safety representative on issues related to the safety of teen drivers;
- (vii) collaborating with law enforcement; and
- (viii) establishing partnerships and promoting coordination among community stakeholders, including public, not-for-profit, and for profit entities.

(n) Biennial Report to Congress. - Not later than October 1, 2015, and biennially thereafter, the Secretary shall submit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that contains -

(1) an evaluation of each State's performance with respect to the State's highway safety plan under subsection (k) and performance targets set by the States in such plans; and

(2) such recommendations as the Secretary may have for improvements to activities carried out under subsection (k).

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**Sec. 403. Highway safety research and development**

(a) Defined Term. - In this section, the term "Federal laboratory" includes -

- (1) a government-owned, government-operated laboratory; and
- (2) a government-owned, contractor-operated laboratory.

(b) General Authority. -

(1) Research and development activities. - The Secretary may conduct research and development activities, including demonstration projects and the collection and analysis of highway and motor vehicle safety data and related information needed to carry out this section, with respect to -

(A) all aspects of highway and traffic safety systems and conditions relating to -

- (i) vehicle, highway, driver, passenger, motorcyclist, bicyclist, and pedestrian characteristics;
- (ii) accident causation and investigations;
- (iii) communications; and
- (iv) emergency medical services, including the transportation of the injured;

(B) human behavioral factors and their effect on highway and traffic safety, including -

- (i) driver education;
- (ii) impaired driving; and
- (iii) distracted driving;

(C) an evaluation of the effectiveness of countermeasures to increase highway and traffic safety, including occupant protection and alcohol- and drug-impaired driving technologies and initiatives;

(D) the development of technologies to detect drug impaired drivers;

(E) research on, evaluations of, and identification of best practices related to driver education programs (including driver education curricula, instructor training and certification, program administration, and delivery mechanisms) and make recommendations for harmonizing driver education and multistage graduated licensing systems; and

(F) the effect of State laws on any aspects, activities, or programs described in subparagraphs (A) through (E).

(2) Cooperation, grants, and contracts. - The Secretary may carry out this section -

- (A) independently;
- (B) in cooperation with other Federal departments, agencies, and instrumentalities and Federal laboratories;
- (C) by entering into contracts, cooperative agreements, and other transactions with the National Academy of Sciences, any Federal laboratory, State or local agency, authority, association, institution, or person (as defined in chapter 1 of title 1); or

(D) by making grants to the National Academy of Sciences, any Federal laboratory, State or local agency, authority, association, institution, or person (as defined in chapter 1 of title 1).

(c) Collaborative Research and Development. -

(1) In general. - To encourage innovative solutions to highway safety problems, stimulate voluntary improvements in highway safety, and stimulate the marketing of new highway safety related technology by private industry, the Secretary is authorized to carry out, on a cost-shared basis, collaborative research and development with -

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

(B) Federal laboratories.

(2) Agreements. - In carrying out this subsection, the Secretary may enter into cooperative research and development agreements (as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)) in which the Secretary provides not more than 50 percent of the cost of any research or development project under this subsection.

(3) Use of technology. - The research, development, or use of any technology pursuant to an agreement under this subsection, including the terms under which technology may be licensed and the resulting royalties may be distributed, shall be subject to the provisions of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

(d) Title to Equipment. - In furtherance of the purposes set forth in section 402, the Secretary may vest title to equipment purchased for demonstration projects with funds authorized under this section to State or local agencies on such terms and conditions as the Secretary determines to be appropriate.

(e) Prohibition on Certain Disclosures. - Any report of the National Highway Traffic Safety Administration, or of any officer, employee, or contractor of the National Highway Traffic Safety Administration, relating to any highway traffic accident or the investigation of such accident conducted pursuant to this chapter or chapter 301 may only be made available to the public in a manner that does not identify individuals.

(f) Cooperative Research and Evaluation. -

(1) Establishment and funding. - Notwithstanding the apportionment formula set forth in section 402(c)(2), \$2,500,000 of the total amount available for apportionment to the States for highway safety programs under subsection 402(c) in each fiscal year shall be available for expenditure by the Secretary, acting through the Administrator of the National Highway Traffic Safety Administration, for a cooperative research and evaluation program to research and evaluate priority highway safety countermeasures.

(2) Administration. - The program established under paragraph (1) -

(A) shall be administered by the Administrator of the National Highway Traffic Safety Administration; and

(B) shall be jointly managed by the Governors Highway Safety Association and the National Highway Traffic Safety Administration.

(g) International Cooperation. - The Administrator of the National Highway Traffic Safety Administration may participate and cooperate in international activities to enhance highway safety.

(h) In-vehicle Alcohol Detection Device Research. -

(1) In general. - The Administrator of the National Highway Traffic Safety Administration may carry out a collaborative research effort under chapter 301 of title 49 on in-vehicle technology to prevent alcohol-impaired driving.

(2) Funding. - Funds provided under section 405 may be made to be used by the Secretary to conduct the research described in paragraph (1).

(3) Privacy protection. - If the Administrator utilizes the authority under paragraph (1), the Administrator shall not develop requirements for any device or means of technology to be installed in an automobile intended for retail sale that records a driver's blood alcohol concentration.

(4) Reports. - If the Administrator conducts the research authorized under paragraph (1), the Administrator shall submit an annual report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and Committee on Science, Space, and Technology of the House of Representatives that -

(A) describes the progress made in carrying out the collaborative research effort; and

(B) includes an accounting for the use of Federal funds obligated or expended in carrying out that effort.

(5) Definitions. - In this subsection:

(A) Alcohol-impaired driving. - The term "alcohol-impaired driving" means the operation of a motor vehicle (as defined in section 30102(a)(6) of title 49) by an individual whose blood alcohol content is at or above the legal limit.

(B) Legal limit. - The term "legal limit" means a blood alcohol concentration of 0.08 percent or greater (as set forth in section 163(a)) or such other percentage limitation as may be established by applicable Federal, State, or local law.

#### **Sec. 404. National Highway Safety Advisory Committee**

(a)

(1) There is established in the Department of Transportation a National Highway Safety Advisory Committee, composed of the Secretary or an officer of the Department appointed by him, the Federal Highway Administrator, the National Highway Traffic Safety Administrator, and thirty-five members appointed by the President, no more than four of whom shall be Federal officers or employees. The Secretary shall select the Chairman of the Committee from among the Committee members. The appointed members, having due regard for the purposes of this chapter, shall be selected from among representatives of various State and local governments, including State legislatures, of public and private interests contributing to, affected by, or concerned with highway safety, including the national organizations of passenger car, bus, and truck owners, and of other public and private agencies, organizations, or groups demonstrating an active interest in highway safety, as well as research scientists and other individuals who are expert in this field.

(2)

(A) Each member appointed by the President shall hold office for a term of three years, except that (i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of members first taking office after the date of enactment of this section shall expire as follows: Twelve at the end of one



year after the date such committee members are appointed by the President, twelve at the end of two years after the date such committee members are appointed by the President, and eleven at the end of three years after the date such committee members are appointed, as designated by the President at the time of appointment, and (iii) the term of any member shall be extended until the date on which the successor's appointment is effective. None of the members appointed by the President who has served a three-year term, other than Federal officers or employees, shall be eligible for reappointment within one year following the end of his preceding term.

(B) Members of the Committee who are not officers or employees of the United States shall, while attending meetings or conferences of such Committee or otherwise engaged in the business of such Committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding \$100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized in section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b-2) for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.

(b) The National Highway Safety Advisory Committee shall advise, consult with, and make recommendations to, the Secretary on matters relating to the activities and functions of the Department in the field of highway safety. The Committee is authorized (1) to review research projects or programs submitted to or recommended by it in the field of highway safety and recommend to the Secretary, for prosecution under this title, any such projects which it believes show promise of making valuable contributions to human knowledge with respect to the cause and prevention of highway accidents; and (2) to review, prior to issuance, standards proposed to be issued by order of the Secretary under the provisions of section 402(a) of this title and to make recommendations thereon. Such recommendations shall be published in connection with the Secretary's determination or order.

(c) The National Highway Safety Advisory Committee shall meet from time to time as the Secretary shall direct, but at least once each year.

(d) The Secretary shall provide to the National Highway Safety Committee from among the personnel and facilities of the Department of Transportation such staff and facilities as are necessary to carry out the functions of such Committee.

#### **Sec. 405. National priority safety programs**

(a) General Authority. - Subject to the requirements of this section, the Secretary of Transportation shall manage programs to address national priorities for reducing highway deaths and injuries. Funds shall be allocated according to the priorities set forth in paragraphs (1) and (2).

(1) Grants to states. -

(A) Occupant protection. - 16 percent of the funds provided under this section in each fiscal year shall be allocated among States that adopt and implement effective occupant protection programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles (as described in subsection (b)).

(B) State traffic safety information system improvements. - 14.5 percent of the funds provided under this section in each fiscal year shall be allocated among States that meet the requirements of the State traffic safety information system improvements (as described in subsection (c)).

(C) Impaired driving countermeasures. - 52.5 percent of the funds provided under this section in each fiscal year shall be allocated among States that meet the requirements of the impaired driving countermeasures (as described in subsection (d)).

(D) Distracted driving. - 8.5 percent of the funds provided under this section in each fiscal year shall be allocated among States that adopt and implement effective laws to reduce distracted driving (as described in subsection (e)).

(E) Motorcyclist safety. - 1.5 percent of the funds provided under this section in each fiscal year shall be allocated among States that implement motorcyclist safety programs (as described in subsection (f)).

(F) State graduated driver licensing laws. - 5 percent of the funds provided under this section in each fiscal year shall be allocated among States that adopt and implement graduated driver licensing laws (as described in subsection (g)).

(G) Transfers. - Notwithstanding subparagraphs (A) through (F), the Secretary may reallocate, before the last day of any fiscal year, any amounts remaining available to carry out any of the activities described in subsections (b) through (g) to increase the amount made available to carry out any of the other activities described in such subsections, or the amount made available under section 402, in order to ensure, to the maximum extent possible, that all such amounts are obligated during such fiscal year.

(H) Maintenance of effort. -

(i) Requirements. - No grant may be made to a State in any fiscal year under subsection (b), (c), or (d) unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all State and local sources for programs described in those sections at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of the Motor Vehicle and Highway Safety Improvement Act of 2012.

(ii) Waiver. - Upon the request of a State, the Secretary may waive or modify the requirements under clause (i) for not more than 1 fiscal year if the Secretary determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances.

(2) Other priority programs. - Funds provided under this section in each fiscal year may be used for research into technology to prevent alcohol-impaired driving (as described in subsection 403(h)).

(b) Occupant Protection Grants. -

(1) General authority. - Subject to the requirements under this subsection, the Secretary of Transportation shall award grants to States that adopt and implement effective occupant protection programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles.

(2) Federal share. - The Federal share of the costs of activities funded using amounts from grants awarded under this subsection may not exceed 80 percent for each fiscal year for which a State receives a grant.

(3) Eligibility. -

(A) High seat belt use rate. - A State with an observed seat belt use rate of 90 percent or higher, based on the most recent data from a survey that conforms with national criteria established by the National Highway Traffic Safety Administration, shall be eligible for a grant in a fiscal year if the State -

- (i) submits an occupant protection plan during the first fiscal year;
- (ii) participates in the Click It or Ticket national mobilization;
- (iii) has an active network of child restraint inspection stations; and
- (iv) has a plan to recruit, train, and maintain a sufficient number of child passenger safety technicians.

(B) Lower seat belt use rate. - A State with an observed seat belt use rate below 90 percent, based on the most recent data from a survey that conforms with national criteria established by the National Highway Traffic Safety Administration, shall be eligible for a grant in a fiscal year if -

(i) the State meets all of the requirements under clauses (i) through (iv) of subparagraph (A); and

(ii) the Secretary determines that the State meets at least 3 of the following criteria:

(I) The State conducts sustained (on-going and periodic) seat belt enforcement at a defined level of participation during the year.

(II) The State has enacted and enforces a primary enforcement seat belt use law.

(III) The State has implemented countermeasure programs for high-risk populations, such as drivers on rural roadways, unrestrained nighttime drivers, or teenage drivers.

(IV) The State has enacted and enforces occupant protection laws requiring front and rear occupant protection use by all occupants in an age-appropriate restraint.

(V) The State has implemented a comprehensive occupant protection program in which the State has -

(aa) conducted a program assessment;

(bb) developed a statewide strategic plan;

(cc) designated an occupant protection coordinator;

and

(dd) established a statewide occupant protection task force.

(VI) The State -

(aa) completed an assessment of its occupant protection program during the 3-year period preceding the grant year; or

(bb) will conduct such an assessment during the first year of the grant.

(4) Use of grant amounts. -

(A) In general. - Grant funds received pursuant to this subsection may be used to -

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

(ii) carry out a program to train occupant protection safety professionals, police officers, fire and emergency medical personnel, educators, and parents concerning all aspects of the use of child restraints and occupant protection;

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

(iv) carry out a program to provide community child passenger safety services, including programs about proper seating positions for children and how to reduce the improper use of child restraints;

(v) purchase and distribute child restraints to low-income families, provided that not more than 5 percent of the funds received in a fiscal year are used for such purpose; and

(vi) establish and maintain information systems containing data concerning occupant protection, including the collection and administration of child passenger safety and occupant protection surveys.

(B) High seat belt use rate. - A State that is eligible for funds under paragraph (3)(A) may use up to 75 percent of such funds for any project or activity eligible for funding under section 402.

(5) Grant amount. - The allocation of grant funds to a State under this subsection for a fiscal year shall be in proportion to the State's apportionment under section 402 for fiscal year 2009.

(6) Definitions. - In this subsection:

(A) Child restraint. - The term "child restraint" means any device (including child safety seat, booster seat, harness, and excepting seat belts) that is -

(i) designed for use in a motor vehicle to restrain, seat, or position children who weigh 65 pounds (30 kilograms) or less; and

(ii) certified to the Federal motor vehicle safety standard prescribed by the National Highway Traffic Safety Administration for child restraints.

(B) Seat belt. - The term "seat belt" means -

(i) with respect to open-body motor vehicles, including convertibles, an occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt; and

(ii) with respect to other motor vehicles, an occupant restraint system consisting of integrated lap and shoulder belts.

(c) State Traffic Safety Information System Improvements. -

(1) General authority. - Subject to the requirements under this subsection, the Secretary of Transportation shall award grants to States to support the development and implementation of effective State programs that -

(A) improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of the State safety data that is needed to identify priorities for Federal, State, and local highway and traffic safety programs;

(B) evaluate the effectiveness of efforts to make such improvements;

(C) link the State data systems, including traffic records, with other data systems within the State, such as systems that contain medical, roadway, and economic data;

(D) improve the compatibility and interoperability of the data systems of the State with national data systems and data systems of other States; and

(E) enhance the ability of the Secretary to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances.

(2) Federal share. - The Federal share of the cost of adopting and implementing in a fiscal year a State program described in this subsection may not exceed 80 percent.

(3) Eligibility. - A State is not eligible for a grant under this subsection in a fiscal year unless the State demonstrates, to the satisfaction of the Secretary, that the State -

(A) has a functioning traffic records coordinating committee (referred to in this paragraph as "TRCC") that meets at least 3 times each year;

(B) has designated a TRCC coordinator;

(C) has established a State traffic record strategic plan that has been approved by the TRCC and describes specific quantifiable and measurable improvements anticipated in the State's core safety databases, including crash, citation or adjudication, driver, emergency medical services or injury surveillance system, roadway, and vehicle databases;

(D) has demonstrated quantitative progress in relation to the significant data program attribute of -

(i) accuracy;

(ii) completeness;

(iii) timeliness;

(iv) uniformity;

(v) accessibility; or

(vi) integration of a core highway safety database; and

(E) has certified to the Secretary that an assessment of the State's highway safety data and traffic records system was conducted or updated during the preceding 5 years.

(4) Use of grant amounts. - Grant funds received by a State under this subsection shall be used for making data program improvements to core highway safety databases related to quantifiable, measurable progress in any of the 6 significant data program attributes set forth in paragraph (3)(D).

(5) Grant amount. - The allocation of grant funds to a State under this subsection for a fiscal year shall be in proportion to the State's apportionment under section 402 for fiscal year 2009.

(d) Impaired Driving Countermeasures. -

(1) In general. - Subject to the requirements under this subsection, the Secretary of Transportation shall award grants to States that adopt and implement -

(A) effective programs to reduce driving under the influence of alcohol, drugs, or the combination of alcohol and drugs; or

(B) alcohol-ignition interlock laws.

(2) Federal share. - The Federal share of the costs of activities funded using amounts from grants under this subsection may not exceed 80 percent in any fiscal year in which the State receives a grant.

(3) Eligibility. -

(A) Low-range states. - Low-range States shall be eligible for a grant under this subsection.

(B) Mid-range states. - A mid-range State shall be eligible for a grant under this subsection if -

(i) a statewide impaired driving task force in the State developed a statewide plan during the most recent 3 calendar years to address the problem of impaired driving; or

(ii) the State will convene a statewide impaired driving task force to develop such a plan during the first year of the grant.

(C) High-range states. - A high-range State shall be eligible for a grant under this subsection if the State -

(i)

(I) conducted an assessment of the State's impaired driving program during the most recent 3 calendar years; or

(II) will conduct such an assessment during the first year of the grant;

(ii) convenes, during the first year of the grant, a statewide impaired driving task force to develop a statewide plan that -

(I) addresses any recommendations from the assessment conducted under clause (i);

(II) includes a detailed plan for spending any grant funds provided under this subsection; and

(III) describes how such spending supports the statewide program; and

(iii)

(I) submits the statewide plan to the National Highway Traffic Safety Administration during the first year of the grant for the agency's review and approval;

(II) annually updates the statewide plan in each subsequent year of the grant; and

(III) submits each updated statewide plan for the agency's review and comment.

(4) Use of grant amounts. -

(A) Required programs. - High-range States shall use grant funds for -

(i) high visibility enforcement efforts; and

(ii) any of the activities described in subparagraph (B) if -

(I) the activity is described in the statewide plan; and

(II) the Secretary approves the use of funding for such activity.

(B) Authorized programs. - Medium-range and low-range States may use grant funds for -

- (i) any of the purposes described in subparagraph (A);
- (ii) hiring a full-time or part-time impaired driving coordinator of the State's activities to address the enforcement and adjudication of laws regarding driving while impaired by alcohol;
- (iii) court support of high visibility enforcement efforts, training and education of criminal justice professionals (including law enforcement, prosecutors, judges, and probation officers) to assist such professionals in handling impaired driving cases, hiring traffic safety resource prosecutors, hiring judicial outreach liaisons, and establishing driving while intoxicated courts;
- (iv) alcohol ignition interlock programs;
- (v) improving blood-alcohol concentration testing and reporting;
- (vi) paid and earned media in support of high visibility enforcement efforts, and conducting standardized field sobriety training, advanced roadside impaired driving evaluation training, and drug recognition expert training for law enforcement, and equipment and related expenditures used in connection with impaired driving enforcement in accordance with criteria established by the National Highway Traffic Safety Administration;
- (vii) training on the use of alcohol screening and brief intervention;
- (viii) developing impaired driving information systems; and
- (ix) costs associated with a 24-7 sobriety program.

(C) Other programs. - Low-range States may use grant funds for any expenditure designed to reduce impaired driving based on problem identification. Medium and high-range States may use funds for such expenditures upon approval by the Secretary.

(5) Grant amount. - Subject to paragraph (6), the allocation of grant funds to a State under this section for a fiscal year shall be in proportion to the State's apportionment under section 402(c) for fiscal year 2009.

(6) Grants to states that adopt and enforce mandatory alcohol- ignition interlock laws. -

(A) In general. - The Secretary shall make a separate grant under this subsection to each State that adopts and is enforcing a mandatory alcohol-ignition interlock law for all individuals convicted of driving under the influence of alcohol or of driving while intoxicated.

(B) Use of funds. - Grants authorized under subparagraph (A) may be used by recipient States for any eligible activities under this subsection or section 402.

(C) Allocation. - Amounts made available under this paragraph shall be allocated among States described in subparagraph (A) on the basis of the apportionment formula set forth in section 402(c).

(D) Funding. - Not more than 15 percent of the amounts made available to carry out this subsection in a fiscal year shall be made available by the Secretary for making grants under this paragraph.

(7) Definitions. - In this subsection:

(A) 24-7 sobriety program. - The term "24-7 sobriety program" means a State law or program that authorizes a State court or a State agency, as a condition of sentence, probation, parole, or work permit, to -

- (i) require an individual who plead guilty or was convicted of driving under the influence of alcohol or drugs to totally abstain from alcohol or drugs for a period of time; and
- (ii) require the individual to be subject to testing for alcohol or drugs -
  - (I) at least twice per day;
  - (II) by continuous transdermal alcohol monitoring via an electronic monitoring device; or
  - (III) by an alternate method with the concurrence of the Secretary.

(B) Average impaired driving fatality rate. - The term "average impaired driving fatality rate" means the number of fatalities in motor vehicle crashes involving a driver with a blood alcohol concentration of at least 0.08 percent for every 100,000,000 vehicle miles traveled, based on the most recently reported 3 calendar years of final data from the Fatality Analysis Reporting System, as calculated in accordance with regulations prescribed by the Administrator of the National Highway Traffic Safety Administration.

(C) High-range state. - The term "high-range State" means a State that has an average impaired driving fatality rate of 0.60 or higher.

(D) Low-range state. - The term "low-range State" means a State that has an average impaired driving fatality rate of 0.30 or lower..

(E) Mid-range state. - The term "mid-range State" means a State that has an average impaired driving fatality rate that is higher than 0.30 and lower than 0.60.

(e) Distracted Driving Grants. -

(1) In general. - The Secretary shall award a grant under this subsection to any State that enacts and enforces a statute that meets the requirements set forth in paragraphs (2) and (3).

(2) Prohibition on texting while driving. - A State statute meets the requirements set forth in this paragraph if the statute -

- (A) prohibits drivers from texting through a personal wireless communications device while driving;
- (B) makes violation of the statute a primary offense; and
- (C) establishes -
  - (i) a minimum fine for a first violation of the statute; and
  - (ii) increased fines for repeat violations.

(3) Prohibition on youth cell phone use while driving. - A State statute meets the requirements set forth in this paragraph if the statute -

- (A) prohibits a driver who is younger than 18 years of age from using a personal wireless communications device while driving;
- (B) makes violation of the statute a primary offense;
- (C) requires distracted driving issues to be tested as part of the State driver's license examination; and



- 
- (D) establishes -
- (i) a minimum fine for a first violation of the statute; and
  - (ii) increased fines for repeat violations.
- (4) Permitted exceptions. - A statute that meets the requirements set forth in paragraphs (2) and (3) may provide exceptions for -
- (A) a driver who uses a personal wireless communications device to contact emergency services;
  - (B) emergency services personnel who use a personal wireless communications device while -
    - (i) operating an emergency services vehicle; and
    - (ii) engaged in the performance of their duties as emergency services personnel; and
  - (C) an individual employed as a commercial motor vehicle driver or a school bus driver who uses a personal wireless communications device within the scope of such individual's employment if such use is permitted under the regulations promulgated pursuant to section 31152 of title 49.
- (5) Use of grant funds. - Of the amounts received by a State under this subsection -
- (A) at least 50 percent shall be used -
    - (i) to educate the public through advertising containing information about the dangers of texting or using a cell phone while driving;
    - (ii) for traffic signs that notify drivers about the distracted driving law of the State; or
    - (iii) for law enforcement costs related to the enforcement of the distracted driving law; and
  - (B) up to 50 percent may be used for any eligible project or activity under section 402.
- (6) Additional grants. - In the first fiscal year that grants are awarded under this subsection, the Secretary may use up to 25 percent of the amounts available for grants under this subsection to award grants to States that -
- (A) enacted statutes before the date of enactment of the Motor Vehicle and Highway Safety Improvement Act of 2012, which meet the requirements set forth in subparagraphs (A) and (B) of paragraph (2); and
  - (B) are otherwise ineligible for a grant under this subsection.
- (7) Allocation to support state distracted driving laws. - Of the amounts available under this subsection in a fiscal year for distracted driving grants, the Secretary may expend up to \$5,000,000 for the development and placement of broadcast media to support the enforcement of State distracted driving laws.
- (8) Distracted driving study. -
- (A) In general. - The Secretary shall conduct a study of all forms of distracted driving.
  - (B) Components. - The study conducted under subparagraph (A) shall -
    - (i) examine the effect of distractions other than the use of personal wireless communications on motor vehicle safety;

- (ii) identify metrics to determine the nature and scope of the distracted driving problem;
- (iii) identify the most effective methods to enhance education and awareness; and
- (iv) identify the most effective method of reducing deaths and injuries caused by all forms of distracted driving.

(C) Report. - Not later than 1 year after the date of enactment of the Motor Vehicle and Highway Safety Improvement Act of 2012, the Secretary shall submit a report containing the results of the study conducted under this paragraph to -

- (i) the Committee on Commerce, Science, and Transportation of the Senate; and
- (ii) the Committee on Transportation and Infrastructure of the House of Representatives.

(9) Definitions. - In this subsection:

(A) Driving. - The term "driving" -

(i) means operating a motor vehicle on a public road, including operation while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise; and

(ii) does not include operating a motor vehicle when the vehicle has pulled over to the side of, or off, an active roadway and has stopped in a location where it can safely remain stationary.

(B) Personal wireless communications device. - The term "personal wireless communications device" -

(i) means a device through which personal wireless services (as defined in section 332(c)(7)(C)(i) of the Communications Act of 1934 (47 U.S.C. 332(c)(7)(C)(i))) are transmitted; and

(ii) does not include a global navigation satellite system receiver used for positioning, emergency notification, or navigation purposes.

(C) Primary offense. - The term "primary offense" means an offense for which a law enforcement officer may stop a vehicle solely for the purpose of issuing a citation in the absence of evidence of another offense.

(D) Public road. - The term "public road" has the meaning given such term in section 402(c).

(E) Texting. - The term "texting" means reading from or manually entering data into a personal wireless communications device, including doing so for the purpose of SMS texting, e-mailing, instant messaging, or engaging in any other form of electronic data retrieval or electronic data communication.

(f) Motorcyclist Safety. -

(1) Grants authorized. - Subject to the requirements under this subsection, the Secretary shall award grants to States that adopt and implement effective programs to reduce the number of single- and multi-vehicle crashes involving motorcyclists.

(2) Allocation. - The amount of a grant awarded to a State for a fiscal year under this subsection may not exceed 25 percent of the amount apportioned to the State for fiscal year 2003 under section 402.

(3) Grant eligibility. - A State becomes eligible for a grant under this subsection by adopting or demonstrating to the satisfaction of the Secretary, at least 2 of the following criteria:

(A) Motorcycle rider training courses. - An effective motorcycle rider training course that is offered throughout the State, which -

(i) provides a formal program of instruction in accident avoidance and other safety-oriented operational skills to motorcyclists; and

(ii) may include innovative training opportunities to meet unique regional needs.

(B) Motorcyclists awareness program. - An effective statewide program to enhance motorist awareness of the presence of motorcyclists on or near roadways and safe driving practices that avoid injuries to motorcyclists.

(C) Reduction of fatalities and crashes involving motorcycles. - A reduction for the preceding calendar year in the number of motorcycle fatalities and the rate of motor vehicle crashes involving motorcycles in the State (expressed as a function of 10,000 motorcycle registrations).

(D) Impaired driving program. - Implementation of a statewide program to reduce impaired driving, including specific measures to reduce impaired motorcycle operation.

(E) Reduction of fatalities and accidents involving impaired motorcyclists. - A reduction for the preceding calendar year in the number of fatalities and the rate of reported crashes involving alcohol- or drug-impaired motorcycle operators (expressed as a function of 10,000 motorcycle registrations).

(F) Fees collected from motorcyclists. - All fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs will be used for motorcycle training and safety purposes.

(4) Eligible uses. -

(A) In general. - A State may use funds from a grant under this subsection only for motorcyclist safety training and motorcyclist awareness programs, including -

(i) improvements to motorcyclist safety training curricula;

(ii) improvements in program delivery of motorcycle training to both urban and rural areas, including -

(I) procurement or repair of practice motorcycles;

(II) instructional materials;

(III) mobile training units; and

(IV) leasing or purchasing facilities for closed-course motorcycle skill training;

(iii) measures designed to increase the recruitment or retention of motorcyclist safety training instructors; and

(iv) public awareness, public service announcements, and other outreach programs to enhance driver awareness of motorcyclists, such as the "share-the-road" safety messages developed under subsection (g).

(B) Suballocations of funds. - An agency of a State that receives a grant under this subsection may suballocate funds from the grant to a nonprofit organization incorporated in that State to carry out this subsection.

(5) Definitions. - In this subsection:

(A) Motorcyclist awareness. - The term "motorcyclist awareness" means individual or collective awareness of -

- (i) the presence of motorcycles on or near roadways; and
- (ii) safe driving practices that avoid injury to motorcyclists.

(B) Motorcyclist awareness program. - The term "motorcyclist awareness program" means an informational or public awareness program designed to enhance motorcyclist awareness that is developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or a motorcycle advisory council appointed by the governor of the State.

(C) Motorcyclist safety training. - The term "motorcyclist safety training" means a formal program of instruction that is approved for use in a State by the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or a motorcycle advisory council appointed by the governor of the State.

(D) State. - The term "State" has the meaning given such term in section 101(a) of title 23, United States Code.

(g) State Graduated Driver Licensing Incentive Grant. -

(1) Grants authorized. - Subject to the requirements under this subsection, the Secretary shall award grants to States that adopt and implement graduated driver licensing laws in accordance with the requirements set forth in paragraph (2).

(2) Minimum requirements. -

(A) In general. - A State meets the requirements set forth in this paragraph if the State has a graduated driver licensing law that requires novice drivers younger than 21 years of age to comply with the 2-stage licensing process described in subparagraph (B) before receiving an unrestricted driver's license.

(B) Licensing process. - A State is in compliance with the 2- stage licensing process described in this subparagraph if the State's driver's license laws include -

- (i) a learner's permit stage that -
  - (I) is at least 6 months in duration;
  - (II) prohibits the driver from using a cellular telephone or any communications device in a nonemergency situation; and
  - (III) remains in effect until the driver -
    - (aa) reaches 16 years of age and enters the intermediate stage; or
    - (bb) reaches 18 years of age;
- (ii) an intermediate stage that -
  - (I) commences immediately after the expiration of the learner's permit stage;
  - (II) is at least 6 months in duration;
  - (III) prohibits the driver from using a cellular telephone or any communications device in a nonemergency situation;
  - (IV) restricts driving at night;

(V) prohibits the driver from operating a motor vehicle with more than 1 nonfamilial passenger younger than 21 years of age unless a licensed driver who is at least 21 years of age is in the motor vehicle; and

(VI) remains in effect until the driver reaches 18 years of age; and

(iii) any other requirement prescribed by the Secretary of Transportation, including -

(I) in the learner's permit stage -

(aa) at least 40 hours of behind-the-wheel training with a licensed driver who is at least 21 years of age;

(bb) a driver training course; and

(cc) a requirement that the driver be accompanied and supervised by a licensed driver, who is at least 21 years of age, at all times while such driver is operating a motor vehicle; and

(II) in the learner's permit or intermediate stage, a requirement, in addition to any other penalties imposed by State law, that the grant of an unrestricted driver's license be automatically delayed for any individual who, during the learner's permit or intermediate stage, is convicted of a driving-related offense, including -

(aa) driving while intoxicated;

(bb) misrepresentation of his or her true age;

(cc) reckless driving;

(dd) driving without wearing a seat belt;

(ee) speeding; or

(ff) any other driving-related offense, as determined by the Secretary.

(3) Rulemaking. -

(A) In general. - The Secretary shall promulgate regulations necessary to implement the requirements set forth in paragraph (2), in accordance with the notice and comment provisions under section 553 of title 5.

(B) Exception. - A State that otherwise meets the minimum requirements set forth in paragraph (2) shall be deemed by the Secretary to be in compliance with the requirement set forth in paragraph (2) if the State enacted a law before January 1, 2011, establishing a class of license that permits licensees or applicants younger than 18 years of age to drive a motor vehicle -

(i) in connection with work performed on, or for the operation of, a farm owned by family members who are directly related to the applicant or licensee; or

(ii) if demonstrable hardship would result from the denial of a license to the licensees or applicants.

(4) Allocation. - Grant funds allocated to a State under this subsection for a fiscal year shall be in proportion to a State's apportionment under section 402 for such fiscal year.

(5) Use of funds. - Of the grant funds received by a State under this subsection -

- 
- (A) at least 25 percent shall be used for -
- (i) enforcing a 2-stage licensing process that complies with paragraph (2);
  - (ii) training for law enforcement personnel and other relevant State agency personnel relating to the enforcement described in clause (i);
  - (iii) publishing relevant educational materials that pertain directly or indirectly to the State graduated driver licensing law;
  - (iv) carrying out other administrative activities that the Secretary considers relevant to the State's 2-stage licensing process; and
  - (v) carrying out a teen traffic safety program described in section 402(m); and
- (B) up to 75 percent may be used for any eligible project or activity under section 402.

**Sec. 406. [Repealed]**

**Sec. 407. [Repealed]**

**Sec. 408. [Repealed]**

**Sec. 409. Discovery and admission as evidence of certain reports and surveys**

Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway- highway crossings, pursuant to sections 130, 144, and 148 of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data.

**Sec. 410. [Repealed]**

**Sec. 411. [Repealed]**

**Sec. 412. Agency accountability**

(a) Triennial State Management Reviews. -

(1) In general. - Except as provided under paragraph (2), the Secretary shall conduct a review of each State highway safety program at least once every 3 years.

(2) Exceptions. - The Secretary may conduct reviews of the highway safety programs of the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands as often as the Secretary determines to be appropriate.

(3) Components. - Reviews under this subsection shall include -

- (A) a management evaluation of all grant programs funded under this chapter;
- (B) an assessment of State data collection and evaluation relating to performance measures established by the Secretary;
- (C) a comparison of State efforts under subparagraphs (A) and (B) to best practices and programs that have been evaluated for effectiveness; and
- (D) the development of recommendations on how each State could -
  - (i) improve the management and oversight of its grant activities; and
  - (ii) provide a management and oversight plan for such grant programs.

(b) Recommendations Before Submission. - In order to provide guidance to State highway safety agencies on matters that should be addressed in the goals and initiatives of the State highway safety program before the program is submitted for review, the Secretary shall provide data-based recommendations to each State at least 90 days before the date on which the program is to be submitted for approval.

(c) State Program Review. - The Secretary shall -

(1) conduct a program improvement review of a highway safety program under this chapter of a State that does not make substantial progress over a 3-year period in meeting its priority program goals; and

(2) provide technical assistance and safety program requirements to be incorporated in the State highway safety program for any goal not achieved.

(d) Regional Harmonization. - The Secretary and the Inspector General of the Department of Transportation shall undertake an administrative review of the practices and procedures of the management reviews and program reviews of State highway safety programs under this chapter conducted by the regional offices of the National Highway Traffic Safety Administration and prepare a written report of best practices and procedures for use by the regional offices in conducting such reviews. The report shall be completed within 180 days after the date of enactment of this section.

(e) Best Practices Guidelines. -

(1) Uniform guidelines. - The Secretary shall issue uniform management review guidelines and program review guidelines based on the report under subsection (d). Each regional office shall use the guidelines in executing its State administrative review duties under this section.

(2) Publication. - The Secretary shall make publicly available on the Web site (or successor electronic facility) of the Administration the following documents upon their completion:

(A) The Secretary's management review guidelines and program review guidelines.

(B) All State highway safety programs submitted under this chapter.

(C) State annual accomplishment reports.

(D) The Administration's Summary Report of findings from Management Reviews and Improvement Plans.

(3) Reports to state highway safety agencies. - The Secretary may not make publicly available a program, report, or review under paragraph (2) that is directed to a State highway

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safety agency until after the date on which the program, report, or review is submitted to that agency under this chapter.



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**Sec. 501. Definitions**

In this chapter, the following definitions apply:

(1) Federal laboratory. - The term "Federal laboratory" includes a Government-owned, Government-operated laboratory and a Government-owned, contractor-operated laboratory.

(2) Incident. - The term "incident" means a crash, natural disaster, workzone activity, special event, or other emergency road user occurrence that adversely affects or impedes the normal flow of traffic.

(3) Innovation lifecycle. - The term "innovation lifecycle" means the process of innovating through -

(A) the identification of a need;

(B) the establishment of the scope of research to address that need;

(C) setting an agenda;

(D) carrying out research, development, deployment, and testing of the resulting technology or innovation; and

(E) carrying out an evaluation of the costs and benefits of the resulting technology or innovation.

(4) Intelligent transportation infrastructure. - The term "intelligent transportation infrastructure" means fully integrated public sector intelligent transportation system components, as defined by the Secretary.

(5) Intelligent transportation system. - The terms "intelligent transportation system" and "ITS" mean electronics, photonics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.

(6) National architecture. - For purposes of this chapter, the term "national architecture" means the common framework for interoperability that defines -

(A) the functions associated with intelligent transportation system user services;

(B) the physical entities or subsystems within which the functions reside;

(C) the data interfaces and information flows between physical subsystems;  
and

(D) the communications requirements associated with the information flows.

(7) Project. - The term "project" means an undertaking to research, develop, or operationally test intelligent transportation systems or any other undertaking eligible for assistance under this chapter.

(8) Safety. - The term "safety" includes highway and traffic safety systems, research, and development relating to vehicle, highway, driver, passenger, bicyclist, and pedestrian characteristics, accident investigations, communications, emergency medical care, and transportation of the injured.

(9) Standard. - The term "standard" means a document that -

(A) contains technical specifications or other precise criteria for intelligent transportation systems that are to be used consistently as rules, guidelines, or definitions of characteristics so as to ensure that materials, products, processes, and services are fit for the intended purposes of the materials, products, processes, and services; and

- (B) may support the national architecture and promote -
  - (i) the widespread use and adoption of intelligent transportation system technology as a component of the surface transportation systems of the United States; and
  - (ii) interoperability among intelligent transportation system technologies implemented throughout the States.

### **Sec. 502. Surface transportation research, development, and technology**

#### (a) Basic Principles Governing Research and Technology Investments. -

(1) Applicability. - The research, development, and technology provisions of this section shall apply throughout this chapter.

(2) Coverage. - Surface transportation research and technology development shall include all activities within the innovation lifecycle leading to technology development and transfer, as well as the introduction of new and innovative ideas, practices, and approaches, through such mechanisms as field applications, education and training, communications, impact analysis, and technical support.

(3) Federal responsibility. - Funding and conducting surface transportation research and technology transfer activities shall be considered a basic responsibility of the Federal Government when the work -

- (A) is of national significance;
- (B) delivers a clear public benefit and occurs where private sector investment is less than optimal;
- (C) supports a Federal stewardship role in assuring that State and local governments use national resources efficiently;
- (D) meets and addresses current or emerging needs;
- (E) addresses current gaps in research;
- (F) presents the best means to align resources with multiyear plans and priorities;
- (G) ensures the coordination of highway research and technology transfer activities, including through activities performed by university transportation centers;
- (H) educates transportation professionals; or
- (I) presents the best means to support Federal policy goals compared to other policy alternatives.

(4) Role. - Consistent with these Federal responsibilities, the Secretary shall -

- (A) conduct research;
- (B) partner with State highway agencies and other stakeholders as appropriate to facilitate research and technology transfer activities;
- (C) communicate the results of ongoing and completed research;
- (D) lead efforts to coordinate national emphasis areas of highway research, technology, and innovation deployment;
- (E) leverage partnerships with industry, academia, international entities, and State departments of transportation;

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- (F) lead efforts to reduce unnecessary duplication of effort; and
  - (G) lead efforts to accelerate innovation delivery.
- (5) Program content. - A surface transportation research program shall include -
- (A) fundamental, long-term highway research;
  - (B) research aimed at significant highway research gaps and emerging issues with national implications; and
  - (C) research related to all highway objectives seeking to improve the performance of the transportation system.
- (6) Stakeholder input. - Federal surface transportation research and development activities shall address the needs of stakeholders. Stakeholders include States, metropolitan planning organizations, local governments, tribal governments, the private sector, researchers, research sponsors, and other affected parties, including public interest groups.
- (7) Competition and peer review. - Except as otherwise provided in this chapter, the Secretary shall award, to the maximum extent practicable, all grants, contracts, and cooperative agreements for research and development under this chapter based on open competition and peer review of proposals.
- (8) Performance review and evaluation. -
- (A) In general. - To the maximum extent practicable, all surface transportation research and development projects shall include a component of performance measurement and evaluation.
  - (B) Performance measures. - Performance measures shall be established during the proposal stage of a research and development project and shall, to the maximum extent possible, be outcome-based.
  - (C) Program plan. - To the maximum extent practicable, each program pursued under this chapter shall be part of a data-driven, outcome-oriented program plan.
  - (D) Availability of evaluations. - All evaluations under this paragraph shall be made readily available to the public.
- (9) Technological innovation. - The programs and activities carried out under this section shall be consistent with the transportation research and technology development strategic plan developed under section 508.
- (b) General Authority. -
- (1) Research, development, and technology transfer activities. - The Secretary may carry out research, development, and technology transfer activities with respect to -
    - (A) motor carrier transportation;
    - (B) all phases of transportation planning and development (including construction, operation, transportation system management and operations, modernization, development, design, maintenance, safety, financing, and traffic conditions); and
    - (C) the effect of State laws on the activities described in subparagraphs (A) and (B).
  - (2) Tests and development. - The Secretary may test, develop, or assist in testing and developing any material, invention, patented article, or process.
  - (3) Cooperation, grants, and contracts. - The Secretary may carry out research, development, and technology transfer activities related to transportation -

(A) independently;

(B) in cooperation with other Federal departments, agencies, and instrumentalities and Federal laboratories; or

(C) by making grants to, or entering into contracts and cooperative agreements with one or more of the following: the National Academy of Sciences, the American Association of State Highway and Transportation Officials, any Federal laboratory, Federal agency, State agency, authority, association, institution, for-profit or nonprofit corporation, organization, foreign country, or any other person.

(4) Technological innovation. - The programs and activities carried out under this section shall be consistent with the transportation research and development strategic plan of the Secretary developed under section 508.

(5) Funds. -

(A) Special account. - In addition to other funds made available to carry out this chapter, the Secretary shall use such funds as may be deposited by any cooperating organization or person in a special account of the Treasury established for this purpose.

(B) Use of funds. - The Secretary shall use funds made available to carry out this chapter to develop, administer, communicate, and promote the use of products of research, development, and technology transfer programs under this chapter.

(6) Pooled funding. -

(A) Cooperation. - To promote effective utilization of available resources, the Secretary may cooperate with a State and an appropriate agency in funding research, development, and technology transfer activities of mutual interest on a pooled funds basis.

(B) Secretary as agent. - The Secretary may enter into contracts, cooperative agreements, and grants as the agent for all participating parties in carrying out such research, development, or technology transfer activities.

(C) Transfer of amounts among states or to federal highway administration. - The Secretary may, at the request of a State, transfer amounts apportioned or allocated to that State under this chapter to another State or the Federal Highway Administration to fund research, development, and technology transfer activities of mutual interest on a pooled funds basis.

(D) Transfer of obligation authority. - Obligation authority for amounts transferred under this subsection shall be disbursed in the same manner and for the same amount as provided for the project being transferred.

(7) Prize competitions. -

(A) In general. - The Secretary may use up to 1 percent of the funds made available under section 51001 of the Transportation Research and Innovative Technology Act of 2012 to carry out a program to competitively award cash prizes to stimulate innovation in basic and applied research and technology development that has the potential for application to the national transportation system.

(B) Topics. - In selecting topics for prize competitions under this paragraph, the Secretary shall -

(i) consult with a wide variety of governmental and nongovernmental representatives; and

(ii) give consideration to prize goals that demonstrate innovative approaches and strategies to improve the safety, efficiency, and sustainability of the national transportation system.

(C) Advertising. - The Secretary shall encourage participation in the prize competitions through advertising efforts.

(D) Requirements and registration. - For each prize competition, the Secretary shall publish a notice on a public website that describes -

- (i) the subject of the competition;
- (ii) the eligibility rules for participation in the competition;
- (iii) the amount of the prize; and
- (iv) the basis on which a winner will be selected.

(E) Eligibility. - An individual or entity may not receive a prize under this paragraph unless the individual or entity -

(i) has registered to participate in the competition pursuant to any rules promulgated by the Secretary under this section;

(ii) has complied with all requirements under this paragraph;

(iii)

(I) in the case of a private entity, is incorporated in, and maintains a primary place of business in, the United States; or

(II) in the case of an individual, whether participating singly or in a group, is a citizen or permanent resident of the United States;

(iv) is not a Federal entity or Federal employee acting within the scope of his or her employment; and

(v) has not received a grant to perform research on the same issue for which the prize is awarded.

(F) Liability. -

(i) Assumption of risk. -

(I) In general. - A registered participant shall agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in a competition, whether such injury, death, damage, or loss arises through negligence or otherwise.

(II) Related entity. - In this subparagraph, the term "related entity" means a contractor, subcontractor (at any tier), supplier, user, customer, cooperating party, grantee, investigator, or detailee.

(ii) Financial responsibility. - A participant shall obtain liability insurance or demonstrate financial responsibility, in amounts determined by the Secretary, for claims by -

(I) a third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in a competition, with the Federal Government named as an additional insured under the registered participant's insurance policy and

registered participants agreeing to indemnify the Federal Government against third party claims for damages arising from or related to competition activities; and

(II) the Federal Government for damage or loss to Government property resulting from such an activity.

(G) Judges. -

(i) Selection. - Subject to clause (iii), for each prize competition, the Secretary, either directly or through an agreement under subparagraph (H), may appoint 1 or more qualified judges to select the winner or winners of the prize competition on the basis of the criteria described in subparagraph (D).

(ii) Selection. - Judges for each competition shall include individuals from outside the Federal Government, including the private sector.

(iii) Limitations. - A judge selected under this subparagraph may not

(I) have personal or financial interests in, or be an employee, officer, director, or agent of, any entity that is a registered participant in a prize competition under this paragraph; or

(II) have a familial or financial relationship with an individual who is a registered participant.

(H) Administering the competition. - The Secretary may enter into an agreement with a private, nonprofit entity to administer the prize competition, subject to the provisions of this paragraph.

(I) Funding. -

(i) In general. -

(I) Private sector funding. - A cash prize under this paragraph may consist of funds appropriated by the Federal Government and funds provided by the private sector.

(II) Government funding. - The Secretary may accept funds from other Federal agencies, State and local governments, and metropolitan planning organizations for a cash prize under this paragraph.

(III) No special consideration. - The Secretary may not give any special consideration to any private sector entity in return for a donation under this subparagraph.

(ii) Availability of funds. - Notwithstanding any other provision of law, amounts appropriated for prize awards under this paragraph -

(I) shall remain available until expended; and

(II) may not be transferred, reprogrammed, or expended for other purposes until after the expiration of the 10- year period beginning on the last day of the fiscal year for which the funds were originally appropriated.

(iii) Savings provision. - Nothing in this subparagraph may be construed to permit the obligation or payment of funds in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

(iv) Prize announcement. - A prize may not be announced under this paragraph until all the funds needed to pay out the announced amount of the prize have been appropriated by a governmental source or committed to in writing by a private source.

(v) Prize increases. - The Secretary may increase the amount of a prize after the initial announcement of the prize under this paragraph if -

(I) notice of the increase is provided in the same manner as the initial notice of the prize; and

(II) the funds needed to pay out the announced amount of the increase have been appropriated by a governmental source or committed to in writing by a private source.

(vi) Congressional notification. - A prize competition under this paragraph may offer a prize in an amount greater than \$1,000,000 only after 30 days have elapsed after written notice has been transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committees on Transportation and Infrastructure and Science, Space, and Technology of the House of Representatives.

(vii) Award limit. - A prize competition under this section may not result in the award of more than \$25,000 in cash prizes without the approval of the Secretary.

(J) Compliance with existing law. - The Federal Government shall not, by virtue of offering or providing a prize under this paragraph, be responsible for compliance by registered participants in a prize competition with Federal law, including licensing, export control, and non-proliferation laws, and related regulations.

(K) Notice and annual report. -

(i) In general. - Not later than 30 days prior to carrying out an activity under subparagraph (A), the Secretary shall notify the Committees on Transportation and Infrastructure and Science, Space, and Technology of the House of Representatives and the Committees on Environment and Public Works and Commerce, Science, and Transportation of the Senate of the intent to use such authority.

(ii) Reports. -

(I) In general. - The Secretary shall submit to the committees described in clause (i) on an annual basis a report on the activities carried out under subparagraph (A) in the preceding fiscal year if the Secretary exercised the authority under subparagraph (A) in that fiscal year.

(II) Information included. - A report under this subparagraph shall include, for each prize competition under subparagraph (A) -

(aa) a description of the proposed goals of the prize competition;

(bb) an analysis of why the use of the authority under subparagraph (A) was the preferable method of achieving the goals described in item (aa) as opposed to other authorities available to the Secretary, such as contracts, grants, and cooperative agreements;

(cc) the total amount of cash prizes awarded for each prize competition, including a description of the amount of private funds contributed to the program, the source of such funds, and the manner in which the amounts of cash prizes awarded and claimed were allocated among the accounts of the Department for recording as obligations and expenditures;

(dd) the methods used for the solicitation and evaluation of submissions under each prize competition, together with an assessment of the effectiveness of such methods and lessons learned for future prize competitions;

(ee) a description of the resources, including personnel and funding, used in the execution of each prize competition together with a detailed description of the activities for which such resources were used and an accounting of how funding for execution was allocated among the accounts of the agency for recording as obligations and expenditures; and

(ff) a description of how each prize competition advanced the mission of the Department.

(c) Collaborative Research and Development. -

(1) In general. - To encourage innovative solutions to surface transportation problems and stimulate the deployment of new technology, the Secretary may carry out, on a cost-shared basis, collaborative research and development with -

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

(B) Federal laboratories.

(2) Cooperation, grants, contracts, and agreements. - Notwithstanding any other provision of law, the Secretary may directly initiate contracts, cooperative research and development agreements (as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)) to fund, and accept funds from, the Transportation Research Board of the National Research Council of the National Academy of Sciences, State departments of transportation, cities, counties, and their agents to conduct joint transportation research and technology efforts.

(3) Federal share. -

(A) In general. - The Federal share of the cost of activities carried out under a cooperative research and development agreement entered into under this chapter shall not exceed 80 percent, except that if there is substantial public interest or benefit, the Secretary may approve a greater Federal share.

(B) Non-federal share. - All costs directly incurred by the non-Federal partners, including personnel, travel, and hardware development costs, shall be credited toward the non-Federal share of the cost of the activities described in subparagraph (A).

(4) Use of technology. - The research, development, or use of a technology under a cooperative research and development agreement entered into under this chapter, including the terms under which the technology may be licensed and the resulting royalties may be distributed, shall be subject to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).



(5) Waiver of advertising requirements. - Section 6101(b) to (d) of title 41 shall not apply to a contract or agreement entered into under this chapter.

**Sec. 503. Research and technology development and deployment**

(a) In General. - The Secretary shall -

(1) carry out research, development, and deployment activities that encompass the entire innovation lifecycle; and

(2) ensure that all research carried out under this section aligns with the transportation research and development strategic plan of the Secretary under section 508.

(b) Highway Research and Development Program. -

(1) Objectives. - In carrying out the highway research and development program, the Secretary, to address current and emerging highway transportation needs, shall -

(A) identify research topics;

(B) coordinate research and development activities;

(C) carry out research, testing, and evaluation activities; and (D) provide technology transfer and technical assistance.

(2) Improving highway safety. -

(A) In general. - The Secretary shall carry out research and development activities from an integrated perspective to establish and implement systematic measures to improve highway safety.

(B) Objectives. - In carrying out this paragraph, the Secretary shall carry out research and development activities -

(i) to achieve greater long-term safety gains;

(ii) to reduce the number of fatalities and serious injuries on public roads;

(iii) to fill knowledge gaps that limit the effectiveness of research;

(iv) to support the development and implementation of State strategic highway safety plans;

(v) to advance improvements in, and use of, performance prediction analysis for decisionmaking; and

(vi) to expand technology transfer to partners and stakeholders.

(C) Contents. - Research and technology activities carried out under this paragraph may include -

(i) safety assessments and decisionmaking tools;

(ii) data collection and analysis;

(iii) crash reduction projections;

(iv) low-cost safety countermeasures;

(v) innovative operational improvements and designs of roadway and roadside features;

(vi) evaluation of countermeasure costs and benefits;

- (vii) development of tools for projecting impacts of safety countermeasures;
- (viii) rural road safety measures;
- (ix) safety measures for vulnerable road users, including bicyclists and pedestrians;
- (x) safety policy studies;
- (xi) human factors studies and measures;
- (xii) safety technology deployment;
- (xiii) safety workforce professional capacity building initiatives;
- (xiv) safety program and process improvements; and
- (xv) tools and methods to enhance safety performance, including achievement of statewide safety performance targets.

(3) Improving infrastructure integrity. -

(A) In general. - The Secretary shall carry out and facilitate highway and bridge infrastructure research and development activities -

- (i) to maintain infrastructure integrity;
- (ii) to meet user needs; and
- (iii) to link Federal transportation investments to improvements in system performance.

(B) Objectives. - In carrying out this paragraph, the Secretary shall carry out research and development activities -

- (i) to reduce the number of fatalities attributable to infrastructure design characteristics and work zones;
- (ii) to improve the safety and security of highway infrastructure;
- (iii) to increase the reliability of lifecycle performance predictions used in infrastructure design, construction, and management;
- (iv) to improve the ability of transportation agencies to deliver projects that meet expectations for timeliness, quality, and cost;
- (v) to reduce user delay attributable to infrastructure system performance, maintenance, rehabilitation, and construction;
- (vi) to improve highway condition and performance through increased use of design, materials, construction, and maintenance innovations;
- (vii) to reduce the environmental impacts of highway infrastructure through innovations in design, construction, operation, preservation, and maintenance; and
- (viii) to study vulnerabilities of the transportation system to seismic activities and extreme events and methods to reduce those vulnerabilities.

(C) Contents. - Research and technology activities carried out under this paragraph may include -

- (i) long-term infrastructure performance programs addressing pavements, bridges, tunnels, and other structures;
- (ii) short-term and accelerated studies of infrastructure performance;

- (iii) research to develop more durable infrastructure materials and systems;
- (iv) advanced infrastructure design methods;
- (v) accelerated highway and bridge construction;
- (vi) performance-based specifications;
- (vii) construction and materials quality assurance;
- (viii) comprehensive and integrated infrastructure asset management;
- (ix) infrastructure safety assurance;
- (x) sustainable infrastructure design and construction;
- (xi) infrastructure rehabilitation and preservation techniques, including techniques to rehabilitate and preserve historic infrastructure;
- (xii) hydraulic, geotechnical, and aerodynamic aspects of infrastructure;
- (xiii) improved highway construction technologies and practices;
- (xiv) improved tools, technologies, and models for infrastructure management, including assessment and monitoring of infrastructure condition;
- (xv) studies to improve flexibility and resiliency of infrastructure systems to withstand climate variability;
- (xvi) studies on the effectiveness of fiber-based additives to improve the durability of surface transportation materials in various geographic regions;
- (xvii) studies of infrastructure resilience and other adaptation measures;
- (xviii) maintenance of seismic research activities, including research carried out in conjunction with other Federal agencies to study the vulnerability of the transportation system to seismic activity and methods to reduce that vulnerability; and
- (xix) technology transfer and adoption of permeable, pervious, or porous paving materials, practices, and systems that are designed to minimize environmental impacts, stormwater runoff, and flooding and to treat or remove pollutants by allowing stormwater to infiltrate through the pavement in a manner similar to predevelopment hydrologic conditions.

(D) Lifecycle costs analysis study. -

(i) In general. - In this subparagraph, the term 'lifecycle costs analysis' means a process for evaluating the total economic worth of a usable project segment by analyzing initial costs and discounted future costs, such as maintenance, user, reconstruction, rehabilitation, restoring, and resurfacing costs, over the life of the project segment.

(ii) Study. - The Comptroller General shall conduct a study of the best practices for calculating lifecycle costs and benefits for federally funded highway projects, which shall include, at a minimum, a thorough literature review and a survey of current lifecycle cost practices of State departments of transportation.

(iii) Consultation. - In carrying out the study, the Comptroller shall consult with, at a minimum -

- 
- (I) the American Association of State Highway and Transportation Officials;
  - (II) appropriate experts in the field of lifecycle cost analysis;
- and
- (III) appropriate industry experts and research centers.
- (E) Report. - Not later than 1 year after the date of enactment of the Transportation Research and Innovative Technology Act of 2012, the Comptroller General shall submit to the Committee on Environment and Public Works of the Senate and the Committees on Transportation and Infrastructure and Science, Space, and Technology of the House of Representatives a report on the results of the study which shall include -
- (i) a summary of the latest research on lifecycle cost analysis; and
  - (ii) recommendations on the appropriate -
    - (I) period of analysis;
    - (II) design period;
    - (III) discount rates; and
    - (IV) use of actual material life and maintenance cost data.
- (4) Strengthening transportation planning and environmental decisionmaking. -
- (A) In general. - The Secretary may carry out research -
- (i) to minimize the cost of transportation planning and environmental decisionmaking processes;
  - (ii) to improve transportation planning and environmental decisionmaking processes; and
  - (iii) to minimize the potential impact of surface transportation on the environment.
- (B) Objectives. - In carrying out this paragraph the Secretary may carry out research and development activities -
- (i) to minimize the cost of highway infrastructure and operations;
  - (ii) to reduce the potential impact of highway infrastructure and operations on the environment;
  - (iii) to advance improvements in environmental analyses and processes and context sensitive solutions for transportation decisionmaking;
  - (iv) to improve construction techniques;
  - (v) to accelerate construction to reduce congestion and related emissions;
  - (vi) to reduce the impact of highway runoff on the environment;
  - (vii) to improve understanding and modeling of the factors that contribute to the demand for transportation; and
  - (viii) to improve transportation planning decisionmaking and coordination.
- (C) Contents. - Research and technology activities carried out under this paragraph may include -

- 
- (i) creation of models and tools for evaluating transportation measures and transportation system designs, including the costs and benefits;
  - (ii) congestion reduction efforts;
  - (iii) transportation and economic development planning in rural areas and small communities;
  - (iv) improvement of State, local, and tribal government capabilities relating to surface transportation planning and the environment; and
  - (v) streamlining of project delivery processes.
- (5) Reducing congestion, improving highway operations, and enhancing freight productivity. -
- (A) In general. - The Secretary shall carry out research under this paragraph with the goals of -
    - (i) addressing congestion problems;
    - (ii) reducing the costs of congestion;
    - (iii) improving freight movement;
    - (iv) increasing productivity; and
    - (v) improving the economic competitiveness of the United States.
  - (B) Objectives. - In carrying out this paragraph, the Secretary shall carry out research and development activities to identify, develop, and assess innovations that have the potential -
    - (i) to reduce traffic congestion;
    - (ii) to improve freight movement; and
    - (iii) to reduce freight-related congestion throughout the transportation network.
  - (C) Contents. - Research and technology activities carried out under this paragraph may include -
    - (i) active traffic and demand management;
    - (ii) acceleration of the implementation of Intelligent Transportation Systems technology;
    - (iii) advanced transportation concepts and analysis;
    - (iv) arterial management and traffic signal operation;
    - (v) congestion pricing;
    - (vi) corridor management;
    - (vii) emergency operations;
    - (viii) research relating to enabling technologies and applications;
    - (ix) freeway management;
    - (x) evaluation of enabling technologies;
    - (xi) impacts of vehicle size and weight on congestion;
    - (xii) freight operations and technology;
    - (xiii) operations and freight performance measurement and management;

- (xiv) organization and planning for operations;
- (xv) planned special events management;
- (xvi) real-time transportation information;
- (xvii) road weather management;
- (xviii) traffic and freight data and analysis tools;
- (xix) traffic control devices;
- (xx) traffic incident management;
- (xxi) work zone management;
- (xxii) communication of travel, roadway, and emergency information to persons with disabilities;
- (xxiii) research on enhanced mode choice and intermodal connectivity;
- (xxiv) techniques for estimating and quantifying public benefits derived from freight transportation projects; and
- (xxv) other research areas to identify and address emerging needs related to freight transportation by all modes.

(6) Exploratory advanced research. - The Secretary shall carry out research and development activities relating to exploratory advanced research -

(A) to leverage the targeted capabilities of the Turner- Fairbank Highway Research Center to develop technologies and innovations of national importance; and

(B) to develop potentially transformational solutions to improve the durability, efficiency, environmental impact, productivity, and safety aspects of highway and intermodal transportation systems.

(7) Turner-fairbank highway research center. -

(A) In general. - The Secretary shall continue to operate in the Federal Highway Administration a Turner-Fairbank Highway Research Center.

(B) Uses of the center. - The Turner-Fairbank Highway Research Center shall support -

(i) the conduct of highway research and development relating to emerging highway technology;

(ii) the development of understandings, tools, and techniques that provide solutions to complex technical problems through the development of economical and environmentally sensitive designs, efficient and quality-controlled construction practices, and durable materials;

(iii) the development of innovative highway products and practices; and

(iv) the conduct of long-term, high-risk research to improve the materials used in highway infrastructure.

(8) Infrastructure investment needs report. -

(A) In general. - Not later than July 31, 2013, and July 31 of every second year thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that describes estimates of the future highway and bridge needs of the United States and the backlog of current highway and bridge needs.

(B) Comparisons. - Each report under subparagraph (A) shall include all information necessary to relate and compare the conditions and service measures used in the previous biennial reports to conditions and service measures used in the current report.

(C) Inclusions. - Each report under subparagraph (A) shall provide recommendations to Congress on changes to the highway performance monitoring system that address -

(i) improvements to the quality and standardization of data collection on all functional classifications of Federal-aid highways for accurate system length, lane length, and vehicle- mile of travel; and

(ii) changes to the reporting requirements authorized under section 315, to reflect recommendations under this paragraph for collection, storage, analysis, reporting, and display of data for Federal-aid highways and, to the maximum extent practical, all public roads.

(c) Technology and Innovation Deployment Program. -

(1) In general. - The Secretary shall carry out a technology and innovation deployment program relating to all aspects of highway transportation, including planning, financing, operation, structures, materials, pavements, environment, construction, and the duration of time between project planning and project delivery, with the goals of -

(A) significantly accelerating the adoption of innovative technologies by the surface transportation community;

(B) providing leadership and incentives to demonstrate and promote state-of-the-art technologies, elevated performance standards, and new business practices in highway construction processes that result in improved safety, faster construction, reduced congestion from construction, and improved quality and user satisfaction;

(C) constructing longer-lasting highways through the use of innovative technologies and practices that lead to faster construction of efficient and safe highways and bridges;

(D) improving highway efficiency, safety, mobility, reliability, service life, environmental protection, and sustainability; and

(E) developing and deploying new tools, techniques, and practices to accelerate the adoption of innovation in all aspects of highway transportation.

(2) Implementation. -

(A) In general. - The Secretary shall promote, facilitate, and carry out the program established under paragraph (1) to distribute the products, technologies, tools, methods, or other findings that result from highway research and development activities, including research and development activities carried out under this chapter.

(B) Accelerated innovation deployment. - In carrying out the program established under paragraph (1), the Secretary shall -

(i) establish and carry out demonstration programs;

(ii) provide technical assistance, and training to researchers and developers; and

(iii) develop improved tools and methods to accelerate the adoption of proven innovative practices and technologies as standard practices.

(C) Implementation of future strategic highway research program findings and results. -

(i) In general. - The Secretary, in consultation with the American Association of State Highway and Transportation Officials and the Transportation Research Board of the National Academy of Sciences, shall promote research results and products developed under the future strategic highway research program administered by the Transportation Research Board of the National Academy of Sciences.

(ii) Basis for findings. - The activities carried out under this subparagraph shall be based on the report submitted to Congress by the Transportation Research Board of the National Academy of Sciences under section 510(e).

(iii) Personnel. - The Secretary may use funds made available to carry out this subsection for administrative costs under this subparagraph.

(3) Accelerated implementation and deployment of pavement technologies. -

(A) In general. - The Secretary shall establish and implement a program under the technology and innovation deployment program to promote, implement, deploy, demonstrate, showcase, support, and document the application of innovative pavement technologies, practices, performance, and benefits.

(B) Goals. - The goals of the accelerated implementation and deployment of pavement technologies program shall include -

(i) the deployment of new, cost-effective designs, materials, recycled materials, and practices to extend the pavement life and performance and to improve user satisfaction;

(ii) the reduction of initial costs and lifecycle costs of pavements, including the costs of new construction, replacement, maintenance, and rehabilitation;

(iii) the deployment of accelerated construction techniques to increase safety and reduce construction time and traffic disruption and congestion;

(iv) the deployment of engineering design criteria and specifications for new and efficient practices, products, and materials for use in highway pavements;

(v) the deployment of new nondestructive and real-time pavement evaluation technologies and construction techniques; and

(vi) effective technology transfer and information dissemination to accelerate implementation of new technologies and to improve life, performance, cost effectiveness, safety, and user satisfaction.

(C) Funding. - The Secretary shall obligate for each of fiscal years 2013 through 2014 from funds made available to carry out this subsection \$12,000,000 to accelerate the deployment and implementation of pavement technology.



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**Sec. 504. Training and education**

(a) National Highway Institute. -

(1) In general. - The Secretary shall operate in the Federal Highway Administration a National Highway Institute (in this subsection referred to as the "Institute"). The Secretary shall administer, through the Institute, the authority vested in the Secretary by this title or by any other law for the development and conduct of education and training programs relating to highways.

(2) Duties of the institute. - In cooperation with State transportation departments, United States industry, and any national or international entity, the Institute shall develop and administer education and training programs of instruction for -

- (A) Federal Highway Administration, State, and local transportation agency employees and the employees of any other applicable Federal agency;
- (B) regional, State, and metropolitan planning organizations;
- (C) State and local police, public safety, and motor vehicle employees; and
- (D) United States citizens and foreign nationals engaged or to be engaged in surface transportation work of interest to the United States.

(3) Courses. -

(A) In general. - The Institute shall -

(i) develop or update existing courses in asset management, including courses that include such components as -

- (I) the determination of life-cycle costs;
- (II) the valuation of assets;
- (III) benefit-to-cost ratio calculations; and
- (IV) objective decisionmaking processes for project selection;

and

(ii) continually develop courses relating to the application of emerging technologies for -

- (I) transportation infrastructure applications and asset management;
- (II) intelligent transportation systems;
- (III) operations (including security operations);
- (IV) the collection and archiving of data;
- (V) reducing the amount of time required for the planning and development of transportation projects; and
- (VI) the intermodal movement of individuals and freight.

(B) Additional courses. - In addition to the courses developed under subparagraph (A), the Institute, in consultation with State transportation departments, metropolitan planning organizations, and the American Association of State Highway and Transportation Officials, may develop courses relating to technology, methods, techniques, engineering, construction, safety, maintenance, environmental mitigation and compliance, regulations, management, inspection, and finance.

(C) Revision of courses offered. - The Institute shall periodically -

- (i) review the course inventory of the Institute; and
- (ii) revise or cease to offer courses based on course content, applicability, and need.

(4) Set-aside; federal share. - Not to exceed ½ of 1 percent of the funds apportioned to a State under section 104(b)(3)<sup>34</sup> for the surface transportation program shall be available for expenditure by the State transportation department for the payment of not to exceed 80 percent of the cost of tuition and direct educational expenses (excluding salaries) in connection with the education and training of employees of State and local transportation agencies in accordance with this subsection.

(5) Federal responsibility. -

(A) In general. - Except as provided in subparagraph (B), education and training of employees of Federal, State, and local transportation (including highway) agencies authorized under this subsection may be provided -

- (i) by the Secretary at no cost to the States and local governments if the Secretary determines that provision at no cost is in the public interest; or
- (ii) by the State through grants, cooperative agreements, and contracts with public and private agencies, institutions, individuals, and the Institute.

(B) Payment of full cost by private persons. - Private agencies, international or foreign entities, and individuals shall pay the full cost of any education and training received by them unless the Secretary determines that a lower cost is of critical importance to the public interest.

(6) Training fellowships; cooperation. - The Institute may -

- (A) engage in training activities authorized under this subsection, including the granting of training fellowships; and
- (B) carry out its authority independently or in cooperation with any other branch of the Federal Government or any State agency, authority, association, institution, for-profit or nonprofit corporation, other national or international entity, or other person.

(7) Collection of fees. -

(A) General rule. - In accordance with this subsection, the Institute may assess and collect fees solely to defray the costs of the Institute in developing or administering education and training programs under this subsection.

(B) Limitation. - Fees may be assessed and collected under this subsection only in a manner that may reasonably be expected to result in the collection of fees during any fiscal year in an aggregate amount that does not exceed the aggregate amount of the costs referred to in subparagraph (A) for the fiscal year.

(C) Persons subject to fees. - Fees may be assessed and collected under this subsection only with respect to -

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<sup>34</sup> Section 104, referred to in subsec. (a)(4), was amended generally by Pub. L. 112-141, div. A, title I, §1105(a), July 6, 2012, 126 Stat. 427.

(i) persons and entities for whom education or training programs are developed or administered under this subsection; and

(ii) persons and entities to whom education or training is provided under this subsection.

(D) Amount of fees. - The fees assessed and collected under this subsection shall be established in a manner that ensures that the liability of any person or entity for a fee is reasonably based on the proportion of the costs referred to in subparagraph (A) that relate to the person or entity.

(E) Use. - All fees collected under this subsection shall be used to defray costs associated with the development or administration of education and training programs authorized under this subsection.

(8) Relation to fees. - The funds made available to carry out this subsection may be combined with or held separate from the fees collected under paragraph (7).

(b) Local Technical Assistance Program. -

(1) Authority. - The Secretary shall carry out a local technical assistance program that will provide access to surface transportation technology to -

(A) highway and transportation agencies in urbanized and rural areas;

(B) contractors that perform work for the agencies; and

(C) infrastructure security staff.

(2) Grants, cooperative agreements, and contracts. - The Secretary may make grants and enter into cooperative agreements and contracts to provide education and training, technical assistance, and related support services to -

(A) assist rural, local transportation agencies and tribal governments, and the consultants and construction personnel working for the agencies and governments, to -

(i) develop and expand expertise in road and transportation areas (including pavement, bridge, concrete structures, intermodal connections, safety management systems, intelligent transportation systems, incident response, operations, and traffic safety countermeasures);

(ii) improve roads and bridges;

(iii) enhance -

(I) programs for the movement of passengers and freight;

and

(II) intergovernmental transportation planning and project selection; and

(iv) deal effectively with special transportation-related problems by preparing and providing training packages, manuals, guidelines, and technical resource materials;

(B) develop technical assistance for tourism and recreational travel;

(C) identify, package, and deliver transportation technology and traffic safety information to local jurisdictions to assist urban transportation agencies in developing and expanding their ability to deal effectively with transportation-related problems (particularly the promotion of regional cooperation);

(D) operate, in cooperation with State transportation departments and universities -

(i) local technical assistance program centers designated to provide transportation technology transfer services to rural areas and to urbanized areas; and

(ii) local technical assistance program centers designated to provide transportation technical assistance to tribal governments; and

(E) allow local transportation agencies and tribal governments, in cooperation with the private sector, to enhance new technology implementation.

(3) Federal share. -

(A) Local technical assistance centers. -

(i) In general. - Subject to subparagraph (B), the Federal share of the cost of an activity carried out by a local technical assistance center under paragraphs (1) and (2) shall be 50 percent.

(ii) Non-federal share. - The non-Federal share of the cost of an activity described in clause (i) may consist of amounts provided to a recipient under subsection (e) or section 505, up to 100 percent of the non-Federal share.

(B) Tribal technical assistance centers. - The Federal share of the cost of an activity carried out by a tribal technical assistance center under paragraph (2)(D)(ii) shall be 100 percent.

(c) Research Fellowships. -

(1) General authority. - The Secretary, acting either independently or in cooperation with other Federal departments, agencies, and instrumentalities, may make grants for research fellowships for any purpose for which research is authorized by this chapter.

(2) Dwight david eisenhower transportation fellowship program. -

(A) In general. - The Secretary shall establish and implement a transportation research fellowship program for the purpose of attracting qualified students to the field of transportation, which program shall be known as the "Dwight David Eisenhower Transportation Fellowship Program".

(B) Use of amounts. - Amounts provided to institutions of higher education to carry out this paragraph shall be used to provide direct support of student expenses.

(d) Garrett A. Morgan Technology and Transportation Education Program. -

(1) In general. - The Secretary shall establish the Garrett A. Morgan Technology and Transportation Education Program to improve the preparation of students, particularly women and minorities, in science, technology, engineering, and mathematics through curriculum development and other activities related to transportation.

(2) Authorized activities. - The Secretary shall award grants under this subsection on the basis of competitive peer review. Grants awarded under this subsection may be used for enhancing science, technology, engineering, and mathematics at the elementary and secondary school level through such means as -

(A) internships that offer students experience in the transportation field;

(B) programs that allow students to spend time observing scientists and engineers in the transportation field; and

(C) developing relevant curriculum that uses examples and problems related to transportation.

(3) Application and review procedures. -

(A) In general. - An entity described in subparagraph (C) seeking funding under this subsection shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. Such application, at a minimum, shall include a description of how the funds will be used to serve the purposes described in paragraph (2).

(B) Priority. - In making awards under this subsection, the Secretary shall give priority to applicants that will encourage the participation of women and minorities.

(C) Eligibility. - Local educational agencies and State educational agencies, which may enter into a partnership agreement with institutions of higher education, businesses, or other entities, shall be eligible to apply for grants under this subsection.

(4) Definitions. - In this subsection, the following definitions apply:

(A) Institution of higher education. - The term "institution of higher education" has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(B) Local educational agency. - The term "local educational agency" has the meaning given that term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(C) State educational agency. - The term "State educational agency" has the meaning given that term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(e) Surface Transportation Workforce Development, Training, and Education. -

(1) Funding. - Subject to project approval by the Secretary, a State may obligate funds apportioned to the State under paragraphs (1) through (4) of section 104(b) for surface transportation workforce development, training, and education, including -

(A) tuition and direct educational expenses, excluding salaries, in connection with the education and training of employees of State and local transportation agencies;

(B) employee professional development;

(C) student internships;

(D) university or community college support;

(E) education activities, including outreach, to develop interest and promote participation in surface transportation careers;

(F) activities carried out by the National Highway Institute under subsection (a); and

(G) local technical assistance programs under subsection (b).

(2) Federal share. - The Federal share of the cost of activities carried out in accordance with this subsection shall be 100 percent, except for activities carried out under paragraph (1)(G), for which the Federal share shall be 50 percent.

(3) Surface transportation workforce development, training, and education defined. - In this subsection, the term "surface transportation workforce development, training, and education" means activities associated with surface transportation career awareness, student transportation career preparation, and training and professional development for surface transportation workers, including activities for women and minorities.

(f) Transportation Education Development Program. -

(1) Establishment. - The Secretary shall establish a program to make grants to institutions of higher education that, in partnership with industry or State departments of

transportation, will develop, test, and revise new curricula and education programs to train individuals at all levels of the transportation workforce.

(2) Selection of grant recipients. - In selecting applications for awards under this subsection, the Secretary shall consider -

- (A) the degree to which the new curricula or education program meets the specific needs of a segment of the transportation industry, States, or regions;
- (B) providing for practical experience and on-the-job training;
- (C) proposals oriented toward practitioners in the field rather than the support and growth of the research community;
- (D) the degree to which the new curricula or program will provide training in areas other than engineering, such as business administration, economics, information technology, environmental science, and law;
- (E) programs or curricula in nontraditional departments that train professionals for work in the transportation field, such as materials, information technology, environmental science, urban planning, and industrial technology; and
- (F) the commitment of industry or a State's department of transportation to the program.

(3) Limitations. - The amount of a grant under this subsection shall not exceed \$300,000 per year. After a recipient has received 3 years of Federal funding under this subsection, Federal funding may equal not more than 75 percent of a grantee's program costs.

(g) Freight Capacity Building Program. -

(1) Establishment. - The Secretary shall establish a freight planning capacity building initiative to support enhancements in freight transportation planning in order to -

- (A) better target investments in freight transportation systems to maintain efficiency and productivity; and
- (B) strengthen the decisionmaking capacity of State transportation departments and local transportation agencies with respect to freight transportation planning and systems.

(2) Agreements. - The Secretary shall enter into agreements to support and carry out administrative and management activities relating to the governance of the freight planning capacity initiative.

(3) Stakeholder involvement. - In carrying out this section, the Secretary shall consult with the Association of Metropolitan Planning Organizations, the American Association of State Highway and Transportation Officials, and other freight planning stakeholders, including the other Federal agencies, State transportation departments, local governments, nonprofit entities, academia, and the private sector.

(4) Eligible activities. - The freight planning capacity building initiative shall include research, training, and education in the following areas:

- (A) The identification and dissemination of best practices in freight transportation.
- (B) Providing opportunities for freight transportation staff to engage in peer exchange.
- (C) Refinement of data and analysis tools used in conjunction with assessing freight transportation needs.

(D) Technical assistance to State transportation departments and local transportation agencies reorganizing to address freight transportation issues.

(E) Facilitating relationship building between governmental and private entities involved in freight transportation.

(F) Identifying ways to target the capacity of State transportation departments and local transportation agencies to address freight considerations in operations, security, asset management, and environmental stewardship in connection with long-range multimodal transportation planning and project implementation.

(5) Federal share. - The Federal share of the cost of an activity carried out under this section shall be up to 100 percent, and such funds shall remain available until expended.

(6) Use of funds. - Funds made available for the program established under this subsection may be used for research, program development, information collection and dissemination, and technical assistance. The Secretary may use such funds independently or make grants or to<sup>35</sup> and enter into contracts and cooperative agreements with a Federal agency, State agency, local agency, federally recognized Indian tribal government or tribal consortium, authority, association, nonprofit or for-profit corporation, or institution of higher education, to carry out the purposes of this subsection.

(h) Centers for Surface Transportation Excellence. -

(1) In general. - The Secretary shall make grants under this section to establish and maintain centers for surface transportation excellence.

(2) Goals. - The goals of a center referred to in paragraph (1) shall be to promote and support strategic national surface transportation programs and activities relating to the work of State departments of transportation in the areas of environment, surface transportation safety, rural safety, and project finance.

(3) Role of the centers. - To achieve the goals set forth in paragraph (2), any centers established under paragraph (1) shall provide technical assistance, information sharing of best practices, and training in the use of tools and decisionmaking processes that can assist States in effectively implementing surface transportation programs, projects, and policies.

(4) Program administration. -

(A) Competition. - A party entering into a contract, cooperative agreement, or other transaction with the Secretary under this subsection, or receiving a grant to perform research or provide technical assistance under this subsection, shall be selected on a competitive basis.

(B) Strategic plan. - The Secretary shall require each center to develop a multiyear strategic plan, that -

(i) is submitted to the Secretary at such time as the Secretary requires; and

(ii) describes -

(I) the activities to be undertaken by the center; and

(II) how the work of the center will be coordinated with the activities of the Federal Highway Administration and the various other

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<sup>35</sup> So in original.

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research, development, and technology transfer activities authorized under this chapter.

### **Sec. 505. State planning and research**

(a) General Rule. - Two percent of the sums apportioned to a State for fiscal year 1998 and each fiscal year thereafter under paragraphs (1) through (4) of section 104(b) shall be available for expenditure by the State, in consultation with the Secretary, only for the following purposes:

(1) Engineering and economic surveys and investigations.

(2) The planning of future highway programs and local public transportation systems and the planning of the financing of such programs and systems, including metropolitan and statewide planning under sections 134 and 135.

(3) Development and implementation of management systems, plans, and processes under sections 119, 148, 149, and 167.

(4) Studies of the economy, safety, and convenience of surface transportation systems and the desirable regulation and equitable taxation of such systems.

(5) Research, development, and technology transfer activities necessary in connection with the planning, design, construction, management, and maintenance of highway, public transportation, and intermodal transportation systems.

(6) Study, research, and training on the engineering standards and construction materials for transportation systems described in paragraph (5), including the evaluation and accreditation of inspection and testing and the regulation and taxation of their use.

(7) The conduct of activities relating to the planning of real-time monitoring elements.

(b) Minimum Expenditures on Research, Development, and Technology Transfer Activities. -

(1) In general. - Subject to paragraph (2), not less than 25 percent of the funds subject to subsection (a) that are apportioned to a State for a fiscal year shall be expended by the State for research, development, and technology transfer activities described in subsection (a), relating to highway, public transportation, and intermodal transportation systems.

(2) Waivers. - The Secretary may waive the application of paragraph (1) with respect to a State for a fiscal year if the State certifies to the Secretary for the fiscal year that total expenditures by the State for transportation planning under sections 134 and 135 will exceed 75 percent of the funds described in paragraph (1) and the Secretary accepts such certification.

(3) Nonapplicability of assessment. - Funds expended under paragraph (1) shall not be considered to be part of the extramural budget of the agency for the purpose of section 9 of the Small Business Act (15 U.S.C. 638).

(c) Implementation of Future Strategic Highway Research Program Findings and Results. -

(1) Funds. - A State shall make available to the Secretary to carry out section 503(c)(2)(C) a percentage of funds subject to subsection (a) that are apportioned to that State, that is agreed to by 3/4 of States for each of fiscal years 2013 and 2014.

(2) Treatment of funds. - Funds expended under paragraph (1) shall not be considered to be part of the extramural budget of the agency for the purpose of section 9 of the Small Business Act (15 U.S.C. 638).

(d) Federal Share. - The Federal share of the cost of a project carried out using funds subject to subsection (a) shall be 80 percent unless the Secretary determines that the interests of the Federal-aid highway program would be best served by decreasing or eliminating the non-Federal share.



(e) Administration of Sums. - Funds subject to subsection (a) shall be combined and administered by the Secretary as a single fund and shall be available for obligation for the period described in section 118(b).

**Sec. 506. [Repealed]**

**Sec. 507. [Repealed]**

**Sec. 508. Transportation research and development strategic planning**

(a) In General. -

(1) Development. - Not later than 1 year after the date of enactment of the Transportation Research and Innovative Technology Act of 2012, the Secretary shall develop a 5-year transportation research and development strategic plan to guide Federal transportation research and development activities. This plan shall be consistent with section 306 of title 5, sections 1115 and 1116 of title 31, and any other research and development plan within the Department of Transportation.

(2) Contents. - The strategic plan developed under paragraph (1) shall -

(A) describe the primary purposes of the transportation research and development program, which shall include, at a minimum -

- (i) promoting safety;
- (ii) reducing congestion and improving mobility;
- (iii) preserving the environment;
- (iv) preserving the existing transportation system;
- (v) improving the durability and extending the life of transportation infrastructure; and
- (vi) improving goods movement.

(B) for each purpose, list the primary research and development topics that the Department intends to pursue to accomplish that purpose, which may include the fundamental research in the physical and natural sciences, applied research, technology development, and social science research intended for each topic; and

(C) for each research and development topic, describe -

- (i) the anticipated annual funding levels for the period covered by the strategic plan; and
- (ii) the additional information the Department expects to gain at the end of the period covered by the strategic plan as a result of the research and development in that topic area.

(3) Considerations. - In developing the strategic plan, the Secretary shall ensure that the plan -

- (A) reflects input from a wide range of stakeholders;
- (B) includes and integrates the research and development programs of all the Department's operating administrations, including aviation, transit, rail, and maritime; and

(C) takes into account how research and development by other Federal, State, private sector, and nonprofit institutions contributes to the achievement of the purposes identified under paragraph (2)(A), and avoids unnecessary duplication with these efforts.

(4) Performance plans and reports. - In reports submitted under sections 1115 and 1116 of title 31, the Secretary shall include -

(A) a summary of the Federal transportation research and development activities for the previous fiscal year in each topic area;

(B) the amount of funding spent in each topic area;

(C) a description of the extent to which the research and development is meeting the expectations set forth in paragraph (2)(C)(ii); and

(D) any amendments to the strategic plan.

(b) Annual Report. - The Secretary shall submit to appropriate committees of Congress an annual report, in conjunction with the President's annual budget request as set forth in section 1105 of title 31, describing the amount spent in the last completed fiscal year on transportation research and development and the amount proposed in the current budget for transportation research and development.

(c) National Research Council Review. - The Secretary shall enter into an agreement for the review by the National Research Council of the details of each -

(1) strategic plan under this section;

(2) performance plan required under section 1115 of title 31; and

(3) program performance report required under section 1116 of title 31, with respect to transportation research and development.

### **Sec. 509. [Repealed]**

### **Sec. 510. Future strategic highway research program**

(a) Establishment. - The Secretary, in consultation with the American Association of State Highway and Transportation Officials, shall establish and carry out, acting through the National Research Council of the National Academy of Sciences, the future strategic highway research program.

(b) Cooperative Agreements. - The Secretary may make grants to, and enter into cooperative agreements with, the American Association of State Highway and Transportation Officials and the National Academy of Sciences to carry out such activities under this section as the Secretary determines are appropriate.

(c) Program Priorities. -

(1) Program elements. - The program established under this section shall be based on the National Research Council Special Report 260, entitled "Strategic Highway Research: Saving Lives, Reducing Congestion, Improving Quality of Life" and the results of the detailed planning work subsequently carried out in 2002 and 2003 to identify the research areas through National Cooperative Research Program Project 20-58. The research program shall include an analysis of the following:

(A) Renewal of aging highway infrastructure with minimal impact to users of the facilities.

(B) Driving behavior and likely crash causal factors to support improved countermeasures.

(C) Reducing highway congestion due to nonrecurring congestion.

(D) Planning and designing new road capacity to meet mobility, economic, environmental, and community needs.

(2) Dissemination of results. - The research results of the program, expressed in terms of technologies, methodologies, and other appropriate categorizations, shall be disseminated to practicing engineers for their use, as soon as practicable.

(d) Program Administration. - In carrying out the program under this section, the National Research Council shall ensure, to the maximum extent practicable, that -

(1) projects and researchers are selected to conduct research for the program on the basis of merit and open solicitation of proposals and review by panels of appropriate experts;

(2) State department of transportation officials and other stakeholders, as appropriate, are involved in the governance of the program at the overall program level and technical level through the use of expert panels and committees;

(3) the Council acquires a qualified, permanent core staff with the ability and expertise to manage the program and multiyear budget; and

(4) there is no duplication of research effort between the program and any other research effort of the Department.

(e) Report on Implementation of Results. -

(1) Report. - The Transportation Research Board of the National Research Council shall complete a report on the strategies and administrative structure to be used for implementation of the results of the future strategic highway research program.

(2) Components. - The report under paragraph (1) shall include with respect to the program -

(A) an identification of the most promising results of research under the program (including the persons most likely to use the results);

(B) a discussion of potential incentives for, impediments to, and methods of, implementing those results;

(C) an estimate of costs of implementation of those results; and

(D) recommendations on methods by which implementation of those results should be conducted, coordinated, and supported in future years, including a discussion of the administrative structure and organization best suited to carry out those recommendations.

(3) Consultation. - In developing the report, the Transportation Research Board shall consult with a wide variety of stakeholders, including -

(A) the Federal Highway Administration;

(B) the National Highway Traffic Safety Administration; and

(C) the American Association of State Highway and Transportation Officials.

(4) Submission. - Not later than February 1, 2009, the report shall be submitted to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(f) Funding. -

(1) Federal share. - The Federal share of the cost of an activity carried out using amounts made available under a grant or cooperative agreement under this section shall be 100 percent, and such funds shall remain available until expended.

(2) Advance payments. - The Secretary may make advance payments as necessary to carry out the program under this section.

(g) Limitation of Remedies. -

(1) Same remedy as if united states. - The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for injury, loss of property, personal injury, or death shall apply to any claim against the National Academy of Sciences for money damages for injury, loss of property, personal injury, or death caused by any negligent or wrongful act or omission by employees and individuals described in paragraph (3) arising from activities conducted under or in connection with this section. Any such claim shall be subject to the limitations and exceptions which would be applicable to such claim if such claim were against the United States. With respect to any such claim, the Secretary shall be treated as the head of the appropriate Federal agency for purposes of sections 2672 and 2675 of title 28.

(2) Exclusiveness of remedy. - The remedy referred to in paragraph (1) shall be exclusive of any other civil action or proceeding for the purpose of determining liability arising from any such act or omission without regard to when the act or omission occurred.

(3) Treatment. - Employees of the National Academy of Sciences and other individuals appointed by the president of the National Academy of Sciences and acting on its behalf in connection with activities carried out under this section shall be treated as if they are employees of the Federal Government under section 2671 of title 28 for purposes of a civil action or proceeding with respect to a claim described in paragraph (1). The civil action or proceeding shall proceed in the same manner as any proceeding under chapter 171 of title 28 or action against the United States filed pursuant to section 1346(b) of title 28 and shall be subject to the limitations and exceptions applicable to such a proceeding or action.

(4) Sources of payments. - Payment of any award, compromise, or settlement of a civil action or proceeding with respect to a claim described in paragraph (1) shall be paid first out of insurance maintained by the National Academy of Sciences, second from funds made available to carry out this section, and then from sums made available under section 1304 of title 31. For purposes of such section, such an award, compromise, or settlement shall be deemed to be a judgment, award, or settlement payable under section 2414 or 2672 of title 28. The Secretary may establish a reserve of funds to carry out this section for making payments under this paragraph.

(h) Implementation. - Notwithstanding any other provision of this section, the Secretary may use funds made available to carry out this section for implementation of research products related to the future strategic highway research program, including development, demonstration, evaluation, and technology transfer activities.

### **Sec. 511. Multistate corridor operations and management**

(a) In General. - The Secretary shall encourage multistate cooperative agreements, coalitions, or other arrangements to promote regional cooperation, planning, and shared project implementation for programs and projects to improve transportation system management and operations.

(b) Interstate Route 95 Corridor Coalition Transportation Systems Management and Operations. - The Secretary shall make grants under this subsection to States to continue intelligent transportation system management and operations in the Interstate Route 95 corridor coalition region initiated under the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240).

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**Sec. 512. National ITS program plan**

(a) In General. -

(1) Updates. - Not later than 1 year after the date of enactment of the SAFETEA-LU, the Secretary, in consultation with interested stakeholders (including State transportation departments) shall develop a 5-year National Intelligent Transportation System (in this section referred to as "ITS") program plan.

(2) Scope. - The National ITS program plan shall -

(A) specify the goals, objectives, and milestones for the research and deployment of intelligent transportation systems in the contexts of -

- (i) major metropolitan areas;
- (ii) smaller metropolitan and rural areas; and
- (iii) commercial vehicle operations;

(B) specify the manner in which specific programs and projects will achieve the goals, objectives, and milestones referred to in subparagraph (A), including consideration of a 5- year timeframe for the goals and objectives;

(C) identify activities that provide for the dynamic development, testing, and necessary revision of standards and protocols to promote and ensure interoperability in the implementation of intelligent transportation system technologies, including actions taken to establish standards; and

(D) establish a cooperative process with State and local governments for -

- (i) determining desired surface transportation system performance levels; and
- (ii) developing plans for accelerating the incorporation of specific intelligent transportation system capabilities into surface transportation systems.

(b) Reporting. - The National ITS program plan shall be submitted and biennially updated as part of the transportation research and development strategic plan developed under section 508.

**Sec. 513. Use of funds for ITS activities**

(a) Definitions. - In this section, the following definitions apply:

(1) Eligible entity. - The term "eligible entity" means a State or local government, tribal government, transit agency, public toll authority, metropolitan planning organization, other political subdivision of a State or local government, or a multistate or multijurisdictional group applying through a single lead applicant.

(2) Multijurisdictional group. - The term "multijurisdictional group" means a combination of State governments, local governments, metropolitan planning agencies, transit agencies, or other political subdivisions of a State that -

(A) have signed a written agreement to implement an activity that meets the grant criteria under this section; and

(B) is comprised of at least 2 members, each of whom is an eligible entity.

(b) Purpose. - The purpose of this section is to develop, administer, communicate, and promote the use of products of research, technology, and technology transfer programs.

(c) ITS Adoption. -

(1) Innovative technologies and strategies. - The Secretary shall encourage the deployment of ITS technologies that will improve the performance of the National Highway System in such areas as traffic operations, emergency response, incident management, surface transportation network management, freight management, traffic flow information, and congestion management by accelerating the adoption of innovative technologies through the use of -

- (A) demonstration programs;
- (B) grant funding;
- (C) incentives to eligible entities; and
- (D) other tools, strategies, or methods that will result in the deployment of innovative ITS technologies.

(2) Comprehensive plan. - To carry out this section, the Secretary shall develop a detailed and comprehensive plan that addresses the manner in which incentives may be adopted, as appropriate, through the existing deployment activities carried out by surface transportation modal administrations.

**Sec. 514. Goals and purposes**

(a) Goals. - The goals of the intelligent transportation system program include -

(1) enhancement of surface transportation efficiency and facilitation of intermodalism and international trade to enable existing facilities to meet a significant portion of future transportation needs, including public access to employment, goods, and services and to reduce regulatory, financial, and other transaction costs to public agencies and system users;

(2) achievement of national transportation safety goals, including enhancement of safe operation of motor vehicles and nonmotorized vehicles and improved emergency response to collisions, with particular emphasis on decreasing the number and severity of collisions;

(3) protection and enhancement of the natural environment and communities affected by surface transportation, with particular emphasis on assisting State and local governments to achieve national environmental goals;

(4) accommodation of the needs of all users of surface transportation systems, including operators of commercial motor vehicles, passenger motor vehicles, motorcycles, bicycles, and pedestrians (including individuals with disabilities); and

(5) enhancement of national defense mobility and improvement of the ability of the United States to respond to security-related or other manmade emergencies and natural disasters.

(b) Purposes. - The Secretary shall implement activities under the intelligent transportation system program, at a minimum -

(1) to expedite, in both metropolitan and rural areas, deployment and integration of intelligent transportation systems for consumers of passenger and freight transportation;

(2) to ensure that Federal, State, and local transportation officials have adequate knowledge of intelligent transportation systems for consideration in the transportation planning process;

(3) to improve regional cooperation and operations planning for effective intelligent transportation system deployment;

- (4) to promote the innovative use of private resources in support of intelligent transportation system development;
- (5) to facilitate, in cooperation with the motor vehicle industry, the introduction of vehicle-based safety enhancing systems;
- (6) to support the application of intelligent transportation systems that increase the safety and efficiency of commercial motor vehicle operations;
- (7) to develop a workforce capable of developing, operating, and maintaining intelligent transportation systems;
- (8) to provide continuing support for operations and maintenance of intelligent transportation systems; and
- (9) to ensure a systems approach that includes cooperation among vehicles, infrastructure, and users.

### **Sec. 515. General authorities and requirements**

(a) Scope. - Subject to the provisions of this chapter, the Secretary shall conduct an ongoing intelligent transportation system program -

- (1) to research, develop, and operationally test intelligent transportation systems; and
- (2) to provide technical assistance in the nationwide application of those systems as a component of the surface transportation systems of the United States.

(b) Policy. - Intelligent transportation system research projects and operational tests funded pursuant to this chapter shall encourage and not displace public-private partnerships or private sector investment in those tests and projects.

(c) Cooperation With Governmental, Private, and Educational Entities. - The Secretary shall carry out the intelligent transportation system program in cooperation with State and local governments and other public entities, the private sector firms of the United States, the Federal laboratories, and institutions of higher education, including historically Black colleges and universities and other minority institutions of higher education.

(d) Consultation With Federal Officials. - In carrying out the intelligent transportation system program, the Secretary shall consult with the heads of other Federal agencies, as appropriate.

(e) Technical Assistance, Training, and Information. - The Secretary may provide technical assistance, training, and information to State and local governments seeking to implement, operate, maintain, or evaluate intelligent transportation system technologies and services.

(f) Transportation Planning. - The Secretary may provide funding to support adequate consideration of transportation systems management and operations, including intelligent transportation systems, within metropolitan and statewide transportation planning processes.

(g) Information Clearinghouse. -

(1) In general. - The Secretary shall -

(A) maintain a repository for technical and safety data collected as a result of federally sponsored projects carried out under this chapter; and

(B) make, on request, that information (except for proprietary information and data) readily available to all users of the repository at an appropriate cost.

(2) Agreement. -

(A) In general. - The Secretary may enter into an agreement with a third party for the maintenance of the repository for technical and safety data under paragraph (1)(A).

(B) Federal financial assistance. - If the Secretary enters into an agreement with an entity for the maintenance of the repository, the entity shall be eligible for Federal financial assistance under this section.

(3) Availability of information. - Information in the repository shall not be subject to sections 552 and 555 of title 5, United States Code.

(h) Advisory Committee. -

(1) In general. - The Secretary shall establish an Advisory Committee to advise the Secretary on carrying out this chapter.

(2) Membership. - The Advisory Committee shall have no more than 20 members, be balanced between metropolitan and rural interests, and include, at a minimum -

(A) a representative from a State highway department;

(B) a representative from a local highway department who is not from a metropolitan planning organization;

(C) a representative from a State, local, or regional transit agency;

(D) a representative from a metropolitan planning organization;

(E) a private sector user of intelligent transportation system technologies;

(F) an academic researcher with expertise in computer science or another information science field related to intelligent transportation systems, and who is not an expert on transportation issues;

(G) an academic researcher who is a civil engineer;

(H) an academic researcher who is a social scientist with expertise in transportation issues;

(I) a representative from a nonprofit group representing the intelligent transportation system industry;

(J) a representative from a public interest group concerned with safety;

(K) a representative from a public interest group concerned with the impact of the transportation system on land use and residential patterns; and

(L) members with expertise in planning, safety, telecommunications, utilities, and operations.

(3) Duties. - The Advisory Committee shall, at a minimum, perform the following duties:

(A) Provide input into the development of the intelligent transportation system aspects of the strategic plan under section 508.

(B) Review, at least annually, areas of intelligent transportation systems research being considered for funding by the Department, to determine -

(i) whether these activities are likely to advance either the state-of-the-practice or state-of-the-art in intelligent transportation systems;

(ii) whether the intelligent transportation system technologies are likely to be deployed by users, and if not, to determine the barriers to deployment; and



(iii) the appropriate roles for government and the private sector in investing in the research and technologies being considered.

(4) Report. - Not later than February 1 of each year after the date of enactment of the Transportation Research and Innovative Technology Act of 2012, the Secretary shall submit to Congress a report that includes -

(A) all recommendations made by the Advisory Committee during the preceding calendar year;

(B) an explanation of the manner in which the Secretary has implemented those recommendations; and

(C) for recommendations not implemented, the reasons for rejecting the recommendations.

(5) Applicability of federal advisory committee act. - The Advisory Committee shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(i) Reporting. -

(1) Guidelines and requirements. -

(A) In general. - The Secretary shall issue guidelines and requirements for the reporting and evaluation of operational tests and deployment projects carried out under this chapter.

(B) Objectivity and independence. - The guidelines and requirements issued under subparagraph (A) shall include provisions to ensure the objectivity and independence of the reporting entity so as to avoid any real or apparent conflict of interest or potential influence on the outcome by parties to any such test or deployment project or by any other formal evaluation carried out under this chapter.

(C) Funding. - The guidelines and requirements issued under subparagraph (A) shall establish reporting funding levels based on the size and scope of each test or project that ensure adequate reporting of the results of the test or project.

(2) Special rule. - Any survey, questionnaire, or interview that the Secretary considers necessary to carry out the reporting of any test, deployment project, or program assessment activity under this chapter shall not be subject to chapter 35 of title 44, United States Code.

### **Sec. 516. Research and development**

(a) In General. - The Secretary shall carry out a comprehensive program of intelligent transportation system research and development, and operational tests of intelligent vehicles, intelligent infrastructure systems, and other similar activities that are necessary to carry out this chapter.

(b) Priority Areas. - Under the program, the Secretary shall give higher priority to funding projects that -

(1) enhance mobility and productivity through improved traffic management, incident management, transit management, freight management, road weather management, toll collection, traveler information, or highway operations systems and remote sensing products;

(2) use interdisciplinary approaches to develop traffic management strategies and tools to address multiple impacts of congestion concurrently;

(3) address traffic management, incident management, transit management, toll collection traveler information, or highway operations systems;

(4) incorporate research on the potential impact of environmental, weather, and natural conditions on intelligent transportation systems, including the effects of cold climates;

(5) enhance intermodal use of intelligent transportation systems for diverse groups, including for emergency and health-related services;

(6) enhance safety through improved crash avoidance and protection, crash and other notification, commercial motor vehicle operations, and infrastructure-based or cooperative safety systems; or

(7) facilitate the integration of intelligent infrastructure, vehicle, and control technologies.

(c) Federal Share. - The Federal share payable on account of any project or activity carried out under subsection (a) shall not exceed 80 percent

### **Sec. 517. National architecture and standards**

(a) In General. -

(1) Development, implementation, and maintenance. - In accordance with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note; 110 Stat. 783; 115 Stat. 1241), the Secretary shall develop and maintain a national ITS architecture and supporting ITS standards and protocols to promote the use of systems engineering methods in the widespread deployment and evaluation of intelligent transportation systems as a component of the surface transportation systems of the United States.

(2) Interoperability and efficiency. - To the maximum extent practicable, the national ITS architecture and supporting ITS standards and protocols shall promote interoperability among, and efficiency of, intelligent transportation systems and technologies implemented throughout the United States.

(3) Use of standards development organizations. - In carrying out this section, the Secretary shall support the development and maintenance of standards and protocols using the services of such standards development organizations as the Secretary determines to be necessary and whose memberships are comprised of, and represent, the surface transportation and intelligent transportation systems industries.

(b) Standards for National Policy Implementation. - If the Secretary finds that a standard is necessary for implementation of a nationwide policy relating to user fee collection or other capability requiring nationwide uniformity, the Secretary, after consultation with stakeholders, may establish and require the use of that standard.

(c) Provisional Standards. -

(1) In general. - If the Secretary finds that the development or balloting of an intelligent transportation system standard jeopardizes the timely achievement of the objectives described in subsection (a), the Secretary may establish a provisional standard, after consultation with affected parties, using, to the maximum extent practicable, the work product of appropriate standards development organizations.

(2) Period of effectiveness. - A provisional standard established under paragraph (1) shall be published in the Federal Register and remain in effect until the appropriate standards development organization adopts and publishes a standard.

(d) Conformity With National Architecture. -

(1) In general. - Except as provided in paragraph (2), the Secretary shall ensure that intelligent transportation system projects carried out using amounts made available from the

Highway Trust Fund, including amounts made available to deploy intelligent transportation systems, conform to the appropriate regional ITS architecture, applicable standards, and protocols developed under subsection (a) or (c).

(2) Discretion of the secretary. - The Secretary, at the discretion of the Secretary, may offer an exemption from paragraph (1) for projects designed to achieve specific research objectives outlined in the national intelligent transportation system program plan or the surface transportation research and development strategic plan developed under section 508.

#### **Sec. 518. Vehicle-to-vehicle and vehicle-to-infrastructure communications systems deployment**

(a) In General. - Not later than 3 years after the date of enactment of this section, the Secretary shall submit to the Committees on Commerce, Science, and Transportation and Environment and Public Works of the Senate and the Committees on Transportation and Infrastructure, Energy and Commerce, and Science, Space, and Technology of the House of Representatives that -

(1) assesses the status of dedicated short-range communications technology and applications developed through research and development;

(2) analyzes the known and potential gaps in short-range communications technology and applications;

(3) defines a recommended implementation path for dedicated short-range communications technology and applications that -

(A) is based on the assessment described in paragraph (1); and

(B) takes into account the analysis described in paragraph (2);

(4) includes guidance on the relationship of the proposed deployment of dedicated short-range communications to the National ITS Architecture and ITS Standards; and

(5) ensures competition by not preferencing the use of any particular frequency for vehicle to infrastructure operations.

(b) Report Review. - The Secretary shall enter into agreements with the National Research Council and an independent third party with subject matter expertise for the review of the report described in subsection (a).



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**Sec. 601. Generally applicable provisions**

(a) Definitions. - In this chapter, the following definitions apply:

(1) Contingent commitment. - The term "contingent commitment" means a commitment to obligate an amount from future available budget authority that is -

(A) contingent on those funds being made available in law at a future date; and

(B) not an obligation of the Federal Government.

(2) Eligible project costs. - The term "eligible project costs" means amounts substantially all of which are paid by, or for the account of, an obligor in connection with a project, including the cost of -

(A) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;

(B) construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land relating to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and

(C) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

(3) Federal credit instrument. - The term "Federal credit instrument" means a secured loan, loan guarantee, or line of credit authorized to be made available under this chapter with respect to a project.

(4) Investment-grade rating. - The term "investment-grade rating" means a rating of BBB minus, Baa3, bbb minus, BBB (low), or higher assigned by a rating agency to project obligations.

(5) Lender. - The term "lender" means any non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.)), including -

(A) a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986) that is a qualified institutional buyer; and

(B) a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) that is a qualified institutional buyer.

(6) Letter of interest. - The term "letter of interest" means a letter submitted by a potential applicant prior to an application for credit assistance in a format prescribed by the Secretary on the website of the TIFIA program that -

(A) describes the project and the location, purpose, and cost of the project;

(B) outlines the proposed financial plan, including the requested credit assistance and the proposed obligor;

(C) provides a status of environmental review; and

(D) provides information regarding satisfaction of other eligibility requirements of the TIFIA program.

(7) Line of credit. - The term "line of credit" means an agreement entered into by the Secretary with an obligor under section 604 to provide a direct loan at a future date upon the occurrence of certain events.

(8) Limited buydown. - The term "limited buydown" means, subject to the conditions described in section 603(b)(4)(C), a buydown of the interest rate by the obligor if the interest rate has increased between -

(A)

(i) the date on which a project application acceptable to the Secretary is submitted; or

(ii) the date on which the Secretary entered into a master credit agreement; and

(B) the date on which the Secretary executes the Federal credit instrument.

(9) Loan guarantee. - The term "loan guarantee" means any guarantee or other pledge by the Secretary to pay all or part of the principal of and interest on a loan or other debt obligation issued by an obligor and funded by a lender.

(10) Master credit agreement. - The term "master credit agreement" means an agreement to extend credit assistance for a program of projects secured by a common security pledge (which shall receive an investment grade rating from a rating agency), or for a single project covered under section 602(b)(2) that would -

(A) make contingent commitments of 1 or more secured loans or other Federal credit instruments at future dates, subject to the availability of future funds being made available to carry out this chapter;

(B) establish the maximum amounts and general terms and conditions of the secured loans or other Federal credit instruments;

(C) identify the 1 or more dedicated non-Federal revenue sources that will secure the repayment of the secured loans or secured Federal credit instruments;

(D) provide for the obligation of funds for the secured loans or secured Federal credit instruments after all requirements have been met for the projects subject to the master credit agreement, including -

(i) completion of an environmental impact statement or similar analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(ii) compliance with such other requirements as are specified in section 602(c); and

(iii) the availability of funds to carry out this chapter; and

(E) require that contingent commitments result in a financial close and obligation of credit assistance not later than 3 years after the date of entry into the master credit agreement, or release of the commitment, unless otherwise extended by the Secretary.

(11) Obligor. - The term "obligor" means a party that -

(A) is primarily liable for payment of the principal of or interest on a Federal credit instrument; and

(B) may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

(12) Project. - The term "project" means -

- 
- (A) any surface transportation project eligible for Federal assistance under this title or chapter 53 of title 49;
- (B) a project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible;
- (C) a project for intercity passenger bus or rail facilities and vehicles, including facilities and vehicles owned by the National Railroad Passenger Corporation and components of magnetic levitation transportation systems; and
- (D) a project that -
- (i) is a project -
    - (I) for a public freight rail facility or a private facility providing public benefit for highway users by way of direct freight interchange between highway and rail carriers;
    - (II) for an intermodal freight transfer facility;
    - (III) for a means of access to a facility described in subclause (I) or (II);
    - (IV) for a service improvement for a facility described in subclause (I) or (II) (including a capital investment for an intelligent transportation system); or
    - (V) that comprises a series of projects described in subclauses (I) through (IV) with the common objective of improving the flow of goods;
  - (ii) may involve the combining of private and public sector funds, including investment of public funds in private sector facility improvements;
  - (iii) if located within the boundaries of a port terminal, includes only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port; and
  - (iv) is composed of related highway, surface transportation, transit, rail, or intermodal capital improvement projects eligible for assistance under this section in order to meet the eligible project cost threshold under section 602, by grouping related projects together for that purpose, subject to the condition that the credit assistance for the projects is secured by a common pledge.
- (13) Project obligation. - The term "project obligation" means any note, bond, debenture, or other debt obligation issued by an obligor in connection with the financing of a project, other than a Federal credit instrument.
- (14) Rating agency. - The term "rating agency" means a credit rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as that term is defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).
- (15) Rural infrastructure project. - The term "rural infrastructure project" means a surface transportation infrastructure project located in any area other than a city with a population of more than 250,000 inhabitants within the city limits.
- (16) Secured loan. - The term "secured loan" means a direct loan or other debt obligation issued by an obligor and funded by the Secretary in connection with the financing of a project under section 603.

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- (17) State. - The term "State" has the meaning given the term in section 101.
- (18) Subsidy amount. - The term "subsidy amount" means the amount of budget authority sufficient to cover the estimated long- term cost to the Federal Government of a Federal credit instrument -
- (A) calculated on a net present value basis; and
  - (B) excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).
- (19) Substantial completion. - The term "substantial completion" means -
- (A) the opening of a project to vehicular or passenger traffic; or
  - (B) a comparable event, as determined by the Secretary and specified in the credit agreement.
- (20) TIFIA program. - The term "TIFIA program" means the transportation infrastructure finance and innovation program of the Department.
- (b) Treatment of Chapter. - For purposes of this title, this chapter shall be treated as being part of chapter 1.

### **Sec. 602. Determination of eligibility and project selection**

- (a) Eligibility. -
- (1) In general. - A project shall be eligible to receive credit assistance under this chapter if -
- (A) the entity proposing to carry out the project submits a letter of interest prior to submission of a formal application for the project; and
  - (B) the project meets the criteria described in this subsection.
- (2) Creditworthiness. -
- (A) In general. - To be eligible for assistance under this chapter, a project shall satisfy applicable creditworthiness standards, which, at a minimum, shall include -
- (i) a rate covenant, if applicable;
  - (ii) adequate coverage requirements to ensure repayment;
  - (iii) an investment grade rating from at least 2 rating agencies on debt senior to the Federal credit instrument; and
  - (iv) a rating from at least 2 rating agencies on the Federal credit instrument, subject to the condition that, with respect to clause (iii), if the total amount of the senior debt and the Federal credit instrument is less than \$75,000,000, 1 rating agency opinion for each of the senior debt and Federal credit instrument shall be sufficient.
- (B) Senior debt. - Notwithstanding subparagraph (A), in a case in which the Federal credit instrument is the senior debt, the Federal credit instrument shall be required to receive an investment grade rating from at least 2 rating agencies, unless the credit instrument is for an amount less than \$75,000,000, in which case 1 rating agency opinion shall be sufficient.



(3) Inclusion in transportation plans and programs. - A project shall satisfy the applicable planning and programming requirements of sections 134 and 135 at such time as an agreement to make available a Federal credit instrument is entered into under this chapter.

(4) Application. - A State, local government, public authority, public-private partnership, or any other legal entity undertaking the project and authorized by the Secretary shall submit a project application that is acceptable to the Secretary.

(5) Eligible project costs. -

(A) In general. - Except as provided in subparagraph (B), to be eligible for assistance under this chapter, a project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of -

(i)

(I) \$50,000,000; or

(II) in the case of a rural infrastructure project, \$25,000,000;

and

(ii) 33 1/3 percent of the amount of Federal highway assistance funds apportioned for the most recently completed fiscal year to the State in which the project is located.

(B) Intelligent transportation system projects. - In the case of a project principally involving the installation of an intelligent transportation system, eligible project costs shall be reasonably anticipated to equal or exceed \$15,000,000.

(6) Dedicated revenue sources. - The applicable Federal credit instrument shall be repayable, in whole or in part, from -

(A) tolls;

(B) user fees;

(C) payments owing to the obligor under a public-private partnership; or

(D) other dedicated revenue sources that also secure or fund the project obligations.

(7) Public sponsorship of private entities. - In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking shall be publicly sponsored as provided in paragraph (3).

(8) Applications where obligor will be identified later. - A State, local government, agency or instrumentality of a State or local government, or public authority may submit to the Secretary an application under paragraph (4), under which a private party to a public-private partnership will be -

(A) the obligor; and

(B) identified later through completion of a procurement and selection of the private party.

(9) Beneficial effects. - The Secretary shall determine that financial assistance for the project under this chapter will -

(A) foster, if appropriate, partnerships that attract public and private investment for the project;

(B) enable the project to proceed at an earlier date than the project would otherwise be able to proceed or reduce the lifecycle costs (including debt service costs) of the project; and

(C) reduce the contribution of Federal grant assistance for the project.

(10) Project readiness. - To be eligible for assistance under this chapter, the applicant shall demonstrate a reasonable expectation that the contracting process for construction of the project can commence by not later than 90 days after the date on which a Federal credit instrument is obligated for the project under this chapter.

(b) Selection Among Eligible Projects. -

(1) Establishment. - The Secretary shall establish a rolling application process under which projects that are eligible to receive credit assistance under subsection (a) shall receive credit assistance on terms acceptable to the Secretary, if adequate funds are available to cover the subsidy costs associated with the Federal credit instrument.

(2) Adequate funding not available. - If the Secretary fully obligates funding to eligible projects in a fiscal year, and adequate funding is not available to fund a credit instrument, a project sponsor of an eligible project may elect to enter into a master credit agreement and wait until the earlier of -

(A) the following fiscal year; and

(B) the fiscal year during which additional funds are available to receive credit assistance.

(3) Preliminary rating opinion letter. - The Secretary shall require each project applicant to provide a preliminary rating opinion letter from at least 1 rating agency -

(A) indicating that the senior obligations of the project, which may be the Federal credit instrument, have the potential to achieve an investment-grade rating; and

(B) including a preliminary rating opinion on the Federal credit instrument.

(c) Federal Requirements. -

(1) In general. - In addition to the requirements of this title for highway projects, the requirements of chapter 53 of title 49 for transit projects, and the requirements of section 5333(a) of title 49 for rail projects, the following provisions of law shall apply to funds made available under this chapter and projects assisted with those funds:

(A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(B) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(C) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(2) NEPA. - No funding shall be obligated for a project that has not received an environmental categorical exclusion, a finding of no significant impact, or a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) Application Processing Procedures. -

(1) Notice of complete application. - Not later than 30 days after the date of receipt of an application under this section, the Secretary shall provide to the applicant a written notice to inform the applicant whether -

(A) the application is complete; or

(B) additional information or materials are needed to complete the application.

(2) Approval or denial of application. - Not later than 60 days after the date of issuance of the written notice under paragraph (1), the Secretary shall provide to the applicant a written notice informing the applicant whether the Secretary has approved or disapproved the application.

(e) Development Phase Activities. - Any credit instrument secured under this chapter may be used to finance up to 100 percent of the cost of development phase activities as described in section 601(a)(1)(A).

### Sec. 603. Secured loans

(a) In General. -

(1) Agreements. - Subject to paragraphs (2) and (3), the Secretary may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used -

(A) to finance eligible project costs of any project selected under section 602;

(B) to refinance interim construction financing of eligible project costs of any project selected under section 602;

(C) to refinance existing Federal credit instruments for rural infrastructure projects; or

(D) to refinance long-term project obligations or Federal credit instruments, if the refinancing provides additional funding capacity for the completion, enhancement, or expansion of any project that -

(i) is selected under section 602; or

(ii) otherwise meets the requirements of section 602.

(2) Limitation on refinancing of interim construction financing. - A loan under paragraph (1) shall not refinance interim construction financing under paragraph (1)(B) later than 1 year after the date of substantial completion of the project.

(3) Risk assessment. - Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget, shall determine an appropriate capital reserve subsidy amount for each secured loan, taking into account each rating letter provided by an agency under section 602(b)(3)(B).

(b) Terms and Limitations. -

(1) In general. - A secured loan under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines to be appropriate.

(2) Maximum amount. - The amount of a secured loan under this section shall not exceed the lesser of 49 percent of the reasonably anticipated eligible project costs or if the secured loan does not receive an investment grade rating, the amount of the senior project obligations.

(3) Payment. - A secured loan under this section -

(A) shall -

(i) be payable, in whole or in part, from -

(I) tolls;

(II) user fees;

(III) payments owing to the obligor under a public-private partnership; or

- 
- (IV) other dedicated revenue sources that also secure the senior project obligations; and
- (ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and
- (B) may have a lien on revenues described in subparagraph (A), subject to any lien securing project obligations.
- (4) Interest rate. -
- (A) In general. - Except as provided in subparagraphs (B) and (C), the interest rate on a secured loan under this section shall be not less than the yield on United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement.
- (B) Rural infrastructure projects. -
- (i) In general. - The interest rate of a loan offered to a rural infrastructure project under this chapter shall be at 1/2 of the Treasury Rate in effect on the date of execution of the loan agreement.
- (ii) Application. - The rate described in clause (i) shall only apply to any portion of a loan the subsidy cost of which is funded by amounts set aside for rural infrastructure projects under section 608(a)(3)(A).
- (C) Limited buydowns. - The interest rate of a secured loan under this section may not be lowered by more than the lower of -
- (i) 1 1/2 percentage points (150 basis points); or
- (ii) the amount of the increase in the interest rate.
- (5) Maturity date. - The final maturity date of the secured loan shall be the lesser of -
- (A) 35 years after the date of substantial completion of the project; and
- (B) if the useful life of the capital asset being financed is of a lesser period, the useful life of the asset.
- (6) Nonsubordination. -
- (A) In general. - Except as provided in subparagraph (B), the secured loan shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.
- (B) Preexisting indenture. -
- (i) In general. - The Secretary shall waive the requirement under subparagraph (A) for a public agency borrower that is financing ongoing capital programs and has outstanding senior bonds under a preexisting indenture, if -
- (I) the secured loan is rated in the A category or higher;
- (II) the secured loan is secured and payable from pledged revenues not affected by project performance, such as a tax-backed revenue pledge or a system-backed pledge of project revenues; and
- (III) the TIFIA program share of eligible project costs is 33 percent or less.
- (ii) Limitation. - If the Secretary waives the nonsubordination requirement under this subparagraph -

(I) the maximum credit subsidy to be paid by the Federal Government shall be not more than 10 percent of the principal amount of the secured loan; and

(II) the obligor shall be responsible for paying the remainder of the subsidy cost, if any.

(7) Fees. - The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of making a secured loan under this section.

(8) Non-federal share. - The proceeds of a secured loan under this chapter may be used for any non-Federal share of project costs required under this title or chapter 53 of title 49, if the loan is repayable from non-Federal funds.

(9) Maximum federal involvement. - The total Federal assistance provided on a project receiving a loan under this chapter shall not exceed 80 percent of the total project cost.

(c) Repayment. -

(1) Schedule. - The Secretary shall establish a repayment schedule for each secured loan under this section based on -

(A) the projected cash flow from project revenues and other repayment sources; and

(B) the useful life of the project.

(2) Commencement. - Scheduled loan repayments of principal or interest on a secured loan under this section shall commence not later than 5 years after the date of substantial completion of the project.

(3) Deferred payments. -

(A) In general. - If, at any time after the date of substantial completion of the project, the project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal and interest on the secured loan, the Secretary may, subject to subparagraph (C), allow the obligor to add unpaid principal and interest to the outstanding balance of the secured loan.

(B) Interest. - Any payment deferred under subparagraph (A) shall -

(i) continue to accrue interest in accordance with subsection (b)(4) until fully repaid; and

(ii) be scheduled to be amortized over the remaining term of the loan.

(C) Criteria. -

(i) In general. - Any payment deferral under subparagraph (A) shall be contingent on the project meeting criteria established by the Secretary.

(ii) Repayment standards. - The criteria established pursuant to clause (i) shall include standards for reasonable assurance of repayment.

(4) Prepayment. -

(A) Use of excess revenues. - Any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and secured loan and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations may be applied annually to prepay the secured loan without penalty.

(B) Use of proceeds of refinancing. - The secured loan may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

(d) Sale of Secured Loans. -

(1) In general. - Subject to paragraph (2), as soon as practicable after substantial completion of a project and after notifying the obligor, the Secretary may sell to another entity or reoffer into the capital markets a secured loan for the project if the Secretary determines that the sale or reoffering can be made on favorable terms.

(2) Consent of obligor. - In making a sale or reoffering under paragraph (1), the Secretary may not change the original terms and conditions of the secured loan without the written consent of the obligor.

(e) Loan Guarantees. -

(1) In general. - The Secretary may provide a loan guarantee to a lender in lieu of making a secured loan under this section if the Secretary determines that the budgetary cost of the loan guarantee is substantially the same as that of a secured loan.

(2) Terms. - The terms of a loan guarantee under paragraph (1) shall be consistent with the terms required under this section for a secured loan, except that the rate on the guaranteed loan and any prepayment features shall be negotiated between the obligor and the lender, with the consent of the Secretary.

#### **Sec. 604. Lines of credit**

(a) In General. -

(1) Agreements. - Subject to paragraphs (2) through (4), the Secretary may enter into agreements to make available to 1 or more obligors lines of credit in the form of direct loans to be made by the Secretary at future dates on the occurrence of certain events for any project selected under section 602.

(2) Use of proceeds. - The proceeds of a line of credit made available under this section shall be available to pay debt service on project obligations issued to finance eligible project costs, extraordinary repair and replacement costs, operation and maintenance expenses, and costs associated with unexpected Federal or State environmental restrictions.

(3) Risk assessment. - Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget and each rating agency providing a preliminary rating opinion letter under section 602(b)(3), shall determine an appropriate capital reserve subsidy amount for each line of credit, taking into account the rating opinion letter.

(4) Investment-grade rating requirement. - The funding of a line of credit under this section shall be contingent on the senior obligations of the project receiving an investment-grade rating from 2 rating agencies.

(b) Terms and Limitations. -

(1) In general. - A line of credit under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines to be appropriate.

(2) Maximum amounts. - The total amount of a line of credit under this section shall not exceed 33 percent of the reasonably anticipated eligible project costs.

(3) Draws. - Any draw on a line of credit under this section shall -

- 
- (A) represent a direct loan; and
- (B) be made only if net revenues from the project (including capitalized interest, but not including reasonably required financing reserves) are insufficient to pay the costs specified in subsection (a)(2).
- (4) Interest rate. - Except as provided in subparagraphs (B) and (C) of section 603(b)(4), the interest rate on a direct loan resulting from a draw on the line of credit shall be not less than the yield on 30-year United States Treasury securities, as of the date of execution of the line of credit agreement.
- (5) Security. - A line of credit issued under this section -
- (A) shall -
- (i) be payable, in whole or in part, from -
- (I) tolls;
- (II) user fees;
- (III) payments owing to the obligor under a public- private partnership; or
- (IV) other dedicated revenue sources that also secure the senior project obligations; and
- (ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and
- (B) may have a lien on revenues described in subparagraph (A), subject to any lien securing project obligations.
- (6) Period of availability. - The full amount of a line of credit under this section, to the extent not drawn upon, shall be available during the 10-year period beginning on the date of substantial completion of the project.
- (7) Rights of third-party creditors. -
- (A) Against federal government. - A third-party creditor of the obligor shall not have any right against the Federal Government with respect to any draw on a line of credit under this section.
- (B) Assignment. - An obligor may assign a line of credit under this section to -
- (i) 1 or more lenders; or
- (ii) a trustee on the behalf of such a lender.
- (8) Nonsubordination. -
- (A) In general. - Except as provided in subparagraph (B), a direct loan under this section shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.
- (B) Pre-existing indenture. -
- (i) In general. - The Secretary shall waive the requirement of subparagraph (A) for a public agency borrower that is financing ongoing capital programs and has outstanding senior bonds under a preexisting indenture, if -
- (I) the line of credit is rated in the A category or higher;
- (II) the TIFIA program loan resulting from a draw on the line of credit is payable from pledged revenues not affected by project

performance, such as a tax-backed revenue pledge or a system-backed pledge of project revenues; and

(III) the TIFIA program share of eligible project costs is 33 percent or less.

(ii) Limitation. - If the Secretary waives the nonsubordination requirement under this subparagraph -

(I) the maximum credit subsidy to be paid by the Federal Government shall be not more than 10 percent of the principal amount of the secured loan; and

(II) the obligor shall be responsible for paying the remainder of the subsidy cost.

(9) Fees. - The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of providing a line of credit under this section.

(10) Relationship to other credit instruments. - A project that receives a line of credit under this section also shall not receive a secured loan or loan guarantee under section 603 in an amount that, combined with the amount of the line of credit, exceeds 49 percent of eligible project costs.

(c) Repayment. -

(1) Terms and conditions. - The Secretary shall establish repayment terms and conditions for each direct loan under this section based on -

(A) the projected cash flow from project revenues and other repayment sources; and

(B) the useful life of the asset being financed.

(2) Timing. - All repayments of principal or interest on a direct loan under this section shall be scheduled -

(A) to commence not later than 5 years after the end of the period of availability specified in subsection (b)(6); and

(B) to conclude, with full repayment of principal and interest, by the date that is 25 years after the end of the period of availability specified in subsection (b)(6).

### **Sec. 605. Program administration**

(a) Requirement. - The Secretary shall establish a uniform system to service the Federal credit instruments made available under this chapter.

(b) Fees. - The Secretary may collect and spend fees, contingent on authority being provided in appropriations Acts, at a level that is sufficient to cover -

(1) the costs of services of expert firms retained pursuant to subsection (d); and

(2) all or a portion of the costs to the Federal Government of servicing the Federal credit instruments.

(c) Servicer. -

(1) In general. - The Secretary may appoint a financial entity to assist the Secretary in servicing the Federal credit instruments.

(2) Duties. - A servicer appointed under paragraph (1) shall act as the agent for the Secretary.



(3) Fee. - A servicer appointed under paragraph (1) shall receive a servicing fee, subject to approval by the Secretary.

(d) Assistance From Expert Firms. - The Secretary may retain the services of expert firms, including counsel, in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments.

(e) Expedited Processing. - The Secretary shall implement procedures and measures to economize the time and cost involved in obtaining approval and the issuance of credit assistance under this chapter.

### **Sec. 606. State and local permits**

The provision of credit assistance under this chapter with respect to a project shall not -

(1) relieve any recipient of the assistance of any obligation to obtain any required State or local permit or approval with respect to the project;

(2) limit the right of any unit of State or local government to approve or regulate any rate of return on private equity invested in the project; or

(3) otherwise supersede any State or local law (including any regulation) applicable to the construction or operation of the project.

### **Sec. 607. Regulations**

The Secretary may promulgate such regulations as the Secretary determines to be appropriate to carry out this chapter.

### **Sec. 608. Funding**

(a) Funding. -

(1) Spending and borrowing authority. - Spending and borrowing authority for a fiscal year to enter into Federal credit instruments shall be promptly apportioned to the Secretary on a fiscal-year basis.

(2) Reestimates. - If the subsidy cost of a Federal credit instrument is reestimated, the cost increase or decrease of the reestimate shall be borne by, or benefit, the general fund of the Treasury, consistent with section 504(f) the Congressional Budget Act of 1974 (2 U.S.C. 661c(f)).

(3) Rural set-aside. -

(A) In general. - Of the total amount of funds made available to carry out this chapter for each fiscal year, not more than 10 percent shall be set aside for rural infrastructure projects.

(B) Reobligation. - Any amounts set aside under subparagraph (A) that remain unobligated by June 1 of the fiscal year for which the amounts were set aside shall be available for obligation by the Secretary on projects other than rural infrastructure projects.

(4) Redistribution of authorized funding. -

(A) In general. - Beginning in fiscal year 2014, on April 1 of each fiscal year, if the cumulative unobligated and uncommitted balance of funding available exceeds 75 percent of the amount made available to carry out this chapter for that fiscal year, the Secretary shall distribute to the States the amount of funds and associated obligation authority in excess of that amount.

(B) Distribution. - The amounts and obligation authority distributed under this paragraph shall be distributed, in the same manner as obligation authority is distributed to the States for the fiscal year, based on the proportion that -

(i) the relative share of each State of obligation authority for the fiscal year; bears to

(ii) the total amount of obligation authority distributed to all States for the fiscal year.

(C) Purpose. - Funds distributed under subparagraph (B) shall be available for any purpose described in section 133(b).

(5) Availability. - Amounts made available to carry out this chapter shall remain available until expended.

(6) Administrative costs. - Of the amounts made available to carry out this chapter, the Secretary may use not more than 0.50 percent for each fiscal year for the administration of this chapter.

(b) Contract Authority. -

(1) In general. - Notwithstanding any other provision of law, execution of a term sheet by the Secretary of a Federal credit instrument that uses amounts made available under this chapter shall impose on the United States a contractual obligation to fund the Federal credit investment.

(2) Availability. - Amounts made available to carry out this chapter for a fiscal year shall be available for obligation on October 1 of the fiscal year.

### Sec. 609. Reports to Congress

(a) In General. - On June 1, 2012, and every 2 years thereafter, the Secretary shall submit to Congress a report summarizing the financial performance of the projects that are receiving, or have received, assistance under this chapter (other than section 610), including a recommendation as to whether the objectives of this chapter (other than section 610) are best served by -

(1) continuing the program under the authority of the Secretary;

(2) establishing a Federal corporation or federally sponsored enterprise to administer the program; or

(3) phasing out the program and relying on the capital markets to fund the types of infrastructure investments assisted by this chapter (other than section 610) without Federal participation.

(b) Application Process Report. -

(1) In general. - Not later than December 1, 2012, and annually thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that includes a list of all of the letters of interest and applications received from project sponsors for assistance under this chapter (other than section 610) during the preceding fiscal year.

(2) Inclusions. -

(A) In general. - Each report under paragraph (1) shall include, at a minimum, a description of, with respect to each letter of interest and application included in the report -

(i) the date on which the letter of interest or application was received;

(ii) the date on which a notification was provided to the project sponsor regarding whether the application was complete or incomplete;

(iii) the date on which a revised and completed application was submitted (if applicable);

(iv) the date on which a notification was provided to the project sponsor regarding whether the project was approved or disapproved; and

(v) if the project was not approved, the reason for the disapproval.

(B) Correspondence. - Each report under paragraph (1) shall include copies of any correspondence provided to the project sponsor in accordance with section 602(d).

**Sec. 610. State infrastructure bank program**

(a) Definitions. - In this section, the following definitions apply:

(1) Capital project. - The term "capital project" has the meaning such term has under section 5302 of title 49.

(2) Other forms of credit assistance. - The term "other forms of credit assistance" includes any use of funds in an infrastructure bank -

(A) to provide credit enhancements;

(B) to serve as a capital reserve for bond or debt instrument financing;

(C) to subsidize interest rates;

(D) to insure or guarantee letters of credit and credit instruments against credit risk of loss;

(E) to finance purchase and lease agreements with respect to transit projects;

(F) to provide bond or debt financing instrument security; and

(G) to provide other forms of debt financing and methods of leveraging funds that are approved by the Secretary and that relate to the project with respect to which such assistance is being provided.

(3) State. - The term "State" has the meaning such term has under section 401.

(4) Capitalization. - The term "capitalization" means the process used for depositing funds as initial capital into a State infrastructure bank to establish the infrastructure bank.

(5) Cooperative agreement. - The term "cooperative agreement" means written consent between a State and the Secretary which sets forth the manner in which the infrastructure bank established by the State in accordance with this section will be administered.

(6) Loan. - The term "loan" means any form of direct financial assistance from a State infrastructure bank that is required to be repaid over a period of time and that is provided to a project sponsor for all or part of the costs of the project.

(7) **Guarantee.** - The term "guarantee" means a contract entered into by a State infrastructure bank in which the bank agrees to take responsibility for all or a portion of a project sponsor's financial obligations for a project under specified conditions.

(8) **Initial assistance.** - The term "initial assistance" means the first round of funds that are loaned or used for credit enhancement by a State infrastructure bank for projects eligible for assistance under this section.

(9) **Leverage.** - The term "leverage" means a financial structure used to increase funds in a State infrastructure bank through the issuance of debt instruments.

(10) **Leveraged.** - The term "leveraged", as used with respect to a State infrastructure bank, means that the bank has total potential liabilities that exceed the capital of the bank.

(b) **Cooperative Agreements.** - Subject to the provisions of this section, the Secretary may enter into cooperative agreements with States for the establishment of State infrastructure banks for making loans and providing other forms of credit assistance to public and private entities carrying out or proposing to carry out projects eligible for assistance under this section.

(c) **Interstate Compacts.** -

(1) **In general.** - Congress grants consent to two or more of the States, entering into a cooperative agreement under subsection (a) with the Secretary for the establishment by such States of a multistate infrastructure bank in accordance with this section, to enter into an interstate compact establishing such bank in accordance with this section.

(2) **Reservation of rights.** - The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

(d) **Funding.** -

(1) **Highway account.** - Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank to deposit into the highway account of the bank not to exceed -

(A) 10 percent of the funds apportioned to the State for each of fiscal years 2005 through 2009 under each of sections 104(b)(1), 104(b)(3), 104(b)(4),<sup>36</sup> and 144;<sup>37</sup> and

(B) 10 percent of the funds allocated to the State for each of such fiscal years.

(2) **Transit account.** - Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank, and any other recipient of Federal assistance under section 5307, 5309, or 5311 of title 49, to deposit into the transit account of the bank not to exceed 10 percent of the funds made available to the State or other recipient in each of fiscal years 2005 through 2009 for capital projects under each of such sections.

(3) **Rail account.** - Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank, and any other recipient of Federal assistance under subtitle V of title 49, to deposit into the rail account of

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<sup>36</sup> Sections 104 and 144, referred to in subsec. (d)(1)(A), were amended generally by Pub. L. 112-141, div. A, title I, Secs. 1105(a), 1111(a), July 6, 2012, 126 Stat. 427, 445.

<sup>37</sup> See prior footnote.

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the bank funds made available to the State or other recipient in each of fiscal years 2005 through 2009 for capital projects under such subtitle.

(4) Capital grants. -

(A) Highway account. - Federal funds deposited into a highway account of a State infrastructure bank under paragraph (1) shall constitute for purposes of this section a capitalization grant for the highway account of the bank.

(B) Transit account. - Federal funds deposited into a transit account of a State infrastructure bank under paragraph (2) shall constitute for purposes of this section a capitalization grant for the transit account of the bank.

(C) Rail account. - Federal funds deposited into a rail account of a State infrastructure bank under paragraph 3 shall constitute for purposes of this section a capitalization grant for the rail account of the bank.

(5) Special rule for urbanized areas of over 200,000. - Funds in a State infrastructure bank that are attributed to urbanized areas of a State with urbanized populations of over 200,000 under section 133(d)(3)<sup>38</sup> may be used to provide assistance with respect to a project only if the metropolitan planning organization designated for such area concurs, in writing, with the provision of such assistance.

(6) Discontinuance of funding. - If the Secretary determines that a State is not implementing the State's infrastructure bank in accordance with a cooperative agreement entered into under subsection (b), the Secretary may prohibit the State from contributing additional Federal funds to the bank.

(e) Forms of Assistance From Infrastructure Banks. - An infrastructure bank established under this section may make loans or provide other forms of credit assistance to a public or private entity in an amount equal to all or a part of the cost of carrying out a project eligible for assistance under this section. The amount of any loan or other form of credit assistance provided for the project may be subordinated to any other debt financing for the project. Initial assistance provided with respect to a project from Federal funds deposited into an infrastructure bank under this section may not be made in the form of a grant.

(f) Eligible Projects. - Subject to subsection (e), funds in an infrastructure bank established under this section may be used only to provide assistance for projects eligible for assistance under this title and capital projects defined in section 5302 of title 49, and any other projects relating to surface transportation that the Secretary determines to be appropriate.

(g) Infrastructure Bank Requirements. - In order to establish an infrastructure bank under this section, the State establishing the bank shall -

(1) deposit in cash, at a minimum, into each account of the bank from non-Federal sources an amount equal to 25 percent of the amount of each capitalization grant made to the State and deposited into such account; except that, if the deposit is into the highway account of the bank and the State has a non-Federal share under section 120(b) that is less than 25 percent, the percentage to be deposited from non-Federal sources shall be the lower percentage of such grant;

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<sup>38</sup> Subsec. (d) of section 133, referred to in subsec. (d)(5), was struck out and a new subsec. (d) enacted by Pub. L. 112-141, div. A, title I, Sec. 1108(c), July 6, 2012, 126 Stat. 442.

(2) ensure that the bank maintains on a continuing basis an investment grade rating on its debt, or has a sufficient level of bond or debt financing instrument insurance, to maintain the viability of the bank;

(3) ensure that investment income derived from funds deposited to an account of the bank are -

(A) credited to the account;

(B) available for use in providing loans and other forms of credit assistance to projects eligible for assistance from the account; and

(C) invested in United States Treasury securities, bank deposits, or such other financing instruments as the Secretary may approve to earn interest to enhance the leveraging of projects assisted by the bank;

(4) ensure that any loan from the bank will bear interest at or below market interest rates, as determined by the State, to make the project that is the subject of the loan feasible;

(5) ensure that repayment of any loan from the bank will commence not later than 5 years after the project has been completed or, in the case of a highway project, the facility has opened to traffic, whichever is later;

(6) ensure that the term for repaying any loan will not exceed 30 years after the date of the first payment on the loan; and

(7) require the bank to make an annual report to the Secretary on its status no later than September 30 of each year and such other reports as the Secretary may require under guidelines issued to carry out this section.

(h) Applicability of Federal Law. -

(1) In general. - The requirements of this title and title 49 that would otherwise apply to funds made available under this title or such title and projects assisted with those funds shall apply to -

(A) funds made available under this title or such title and contributed to an infrastructure bank established under this section, including the non-Federal contribution required under subsection (g); and

(B) projects assisted by the bank through the use of the funds, except to the extent that the Secretary determines that any requirement of such title (other than sections 113 and 114 of this title and section 5333 of title 49) is not consistent with the objectives of this section.

(2) Repayments. - The requirements of this title and title 49 shall apply to repayments from non-Federal sources to an infrastructure bank from projects assisted by the bank. Such a repayment shall be considered to be Federal funds.

(i) United States not Obligated. - The deposit of Federal funds into an infrastructure bank established under this section shall not be construed as a commitment, guarantee, or obligation on the part of the United States to any third party, nor shall any third party have any right against the United States for payment solely by virtue of the contribution. Any security or debt-financing instrument issued by the infrastructure bank shall expressly state that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

(j) Management of Federal Funds. - Sections 3335 and 6503 of title 31 shall not apply to funds deposited into an infrastructure bank under this section.

(k) Program Administration. - For each of fiscal years 2005 through 2009, a State may expend not to exceed 2 percent of the Federal funds contributed to an infrastructure bank established by the State under this section to pay the reasonable costs of administering the bank.