THE "TRANSPORTATION OPPORTUNITIES ACT"

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

This section provides that the bill may be cited as the Transportation Opportunities Act, and provides a table of contents.

SEC. 2. DEFINITIONS.

This section defines terms that are used in the bill.

TITLE I – NATIONAL HIGH PERFORMANCE RAIL SYSTEM

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

This section provides that the bill may be cited as the Invest in America Act of 2011, and provides a table of contents.

SEC. 2. DEFINITIONS.

This section defines terms that are used in the bill.

TITLE I – NATIONAL HIGH PERFORMANCE RAIL SYSTEM

SEC. 1101. PURPOSE AND OBJECTIVES.

Section 1101 provides that the purpose of title 1 is to promote and facilitate the development of a comprehensive national network of integrated passenger and freight rail services, the National High Performance Rail System, and to authorize funds for the planning, development, construction, and implementation of rail corridors. This section also outlines the objectives of the National High Performance Rail System: mobility, environmental sustainability, energy efficiency, livable communities, maintenance and enhancement of the existing passenger rail network, and optimization of the freight rail network.

SEC. 1102. PASSENGER RAIL SYSTEM.

Section 1102 codifies Chapter 246—Passenger Rail System, which establishes a framework for a national high performance passenger rail system, consisting of the following provisions:

Section 24601 Definitions—defines key terms used in Chapter 246—Passenger Rail System.

Section 24602 Authorizations—authorizes funds to be appropriated from the Rail account of the Transportation Trust Fund for the Secretary's use in carrying out the activities in Chapter 246 in fiscal years 2012 through 2017.

Section 24603 National high performance passenger rail system—requires the Secretary to facilitate the establishment of the National High Performance Passenger Rail System consisting of a network development program (section 24604) and a system preservation and renewal program (section 24605).

Section 24604 Network development program— provides for the establishment of the network development program and details requirements for that program.

Subsection 24604(a) In General—requires the Secretary to establish the network development program, which will consist of four subprograms: High-Speed Corridor Development (subsection 24604(b)), Station Development (subsection 24604(c)), U.S. Rail Equipment Development (subsection 24604(d)), and Capacity-Building and Transition Assistance (subsection 24604(e)).

Subsection 24604(b) High-Speed Corridor Development—authorizes the Secretary to provide financial assistance for high-speed and intercity corridor development. The intent of this subsection is to provide financial assistance to plan and construct the infrastructure necessary to develop a three-tiered national passenger rail system consisting of Core Express, Regional, and Emerging Corridors. States, interstate compacts, public agencies, Amtrak, Regional Rail Development Authorities (section 24607), private entities, and others will be eligible to apply for and receive funding for a variety of projects related to planning, constructing, and improving high-speed and intercity passenger rail corridors. Projects will be prioritized for funding according to their inclusion in national, regional, and state planning documents, and the level of public benefits provided, among other factors. The Federal share of project costs will range from 80 to 90 percent based on the type of service proposed and the project's inclusion in planning documents.

Subsection 24604(c) Station Development—authorizes the Secretary to provide financial assistance to plan, construct, and rehabilitate stations on Core Express, Regional, and Emerging Corridors. The intent of this subsection is to strengthen community connectivity to the national passenger rail system by developing intermodal stations that integrate access to passenger rail service with other transportation options. To achieve this goal, projects that provide direct and convenient connections to multiple other modes of transportation and that promote livable communities objectives in the area proximate to the station will be given priority for financial assistance. The share of total project costs provided under this subsection may not exceed 80 percent, but the total Federal share may be up to 100 percent to encourage coordination with other Federal agencies' objectives.

Subsection 24604(d) U.S. Rail Equipment Development—authorizes the Secretary to establish a long-term strategy and to provide financial assistance for designing and procuring passenger rail rolling stock.

Paragraph 24604(d)(1) Objective—provides that the objective of the framework and the financial assistance is to promote interoperability of passenger rail rolling stock and to develop a domestic equipment manufacturing industry by creating economies of scale.

Paragraph 24604(d)(2) Establishment—authorizes the Secretary to develop and implement a long-term strategy to facilitate the standardization, procurement, and transfer of passenger rail rolling stock. This strategy may consist of an organizational and financial framework that will lower the costs of procuring and maintaining passenger rail rolling stock, encourage the development of the domestic rail manufacturing industry, and encourage design standardization to promote interoperability, among other objectives. *Note: the existing Next Generation Equipment Pool Committee, established pursuant to section 305 of the Passenger Rail Investment and Improvement Act of 2008, is amended with a sunset provision in Section 1106 of this Act, Miscellaneous Corrections, Revisions and Repeals.*

Paragraph 24604(d)(3) Functions—Identifies the functions that a corporation or other organizational and financial framework that the Secretary may establish (paragraph 24604(d)(2)) may undertake. These functions include the development of standardized and interoperation designs and specifications, acquisition and maintenance of passenger rail rolling stock, and selling or leasing rolling stock for use in passenger rail service.

Paragraph 24604(d)(4) Financial Assistance—authorizes the Secretary to provide financial assistance to develop, procure, and maintain passenger rail rolling stock. Financial assistance under this paragraph can be provided to States, Amtrak, Regional Rail Development Authorities (section 24607), or the organizational framework established pursuant to paragraph 24604(d)(2) to develop standardized designs, procure rolling stock, and maintain, overhaul and finance rolling stock, among other activities. The Federal share of total project costs provided under this subsection may be up to 100 percent of the total cost.

Subsection 24604(e) Capacity-Building and Transition Assistance—authorizes financial assistance to develop professional expertise and institutional capacity in rail transportation (paragraph 24604(e)(1)), authorizes financial assistance to support new and State-supported passenger rail services on a temporary basis, and requires a study investigating the best strategy for developing passenger rail services operating in shared-use corridors.

Paragraph 24604(e)(1) Capacity-Building—authorizes the Secretary to provide financial assistance for technical assistance and training activities that advance the development of professional expertise and institutional capacity in the field of rail transportation. To build institutional capacity across both the public and private sectors, States, Amtrak, Regional Rail Development Authorities (section 24607), universities, the Transportation

Research Board, and rail carriers, among others, are eligible to receive funding under this paragraph. The Federal share of costs under this paragraph may be up to 100 percent of the total cost.

Paragraph 24604(e)(2) Transition Assistance—supports the successful launch of new passenger rail services and improves the transparency and competitive structure of State-supported passenger rail services, by authorizing the Secretary to:

1. Provide financial assistance to enable the successful transition of fully-allocated operating costs to States during the implementation of section 209 of Division B of Public Law 110-432 for existing State-supported passenger rail operations.
2. Provide financial assistance to support the operating costs of States and passenger rail service operators during the start-up phase of new passenger rail operations, helping to reduce initial ridership demand risk on these corridors as additional corridors begin service in a national or regional system.
3. Develop a framework for the implementation of the two transition assistance activities described above within one year of enactment of the Act.

The expectation is that the need for financial assistance provided under this paragraph (items 1 and 2) will diminish and be phased out within a time frame specified in the transition assistance framework (item 3). *Note: this paragraph supports States in the transition to implementing the requirement for States to provide sufficient funding to pay for fully allocated operating costs for State-supported services in accordance with the methodology developed under Section 209 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), and provides for greater transparency in the provision of Federal funds for State-supported passenger rail operations. Section 1106 of this Act, Miscellaneous Corrections, Revisions and Repeals amends some of the provisions in Section 209 of PRIIA.*

Paragraph 24604(e)(3) Review of Framework for Passenger Rail on Shared-Use Corridors—requires the Secretary to conduct a study to evaluate operational, institutional, and legal structures that would best support high-speed and intercity passenger rail on shared-use corridors in the United States. The study must include an evaluation of the roles of Federal, State, and local governments, infrastructure owners, and service providers. The goal of the study is to consider how the United States can advance passenger rail goals while also preserving and enhancing the country's freight rail transportation networks. The Secretary must make the findings, conclusions, and recommendations of that study public no later than 3 years after the enactment of the Act.

Section 24605 System Preservation and Renewal Program—provides for the establishment of the system preservation and renewal program and details requirements for that program.

Subsection 24605(a) In General—requires the Secretary to establish the system preservation and renewal program, which will consist of three subprograms: Public-Asset Backlog Retirement (subsection 24605(b)), National Network Service (subsection 24605(c)), and State of Good Repair and Recapitalization (subsection 24605(d)).

Subsection 24605(b) Public-Asset Backlog Retirement—authorizes the Secretary to provide financial assistance for the purpose of eliminating the existing maintenance backlog on the Northeast Corridor and other publicly-owned passenger rail assets, eliminating Amtrak's legacy debt, and ensuring all passenger rail stations meet the requirements of the Americans with Disabilities Act (ADA). Amtrak, States, political subdivisions of States, Regional Rail Development Authorities, local governmental infrastructure-owning entities, and the Federal Railroad Administration are eligible to receive funds under this subsection for a variety of projects, including station upgrades for ADA compliance, debt servicing and buyouts, capital investments in infrastructure and equipment, and FRA-led planning, management, and oversight projects necessary to implement this subsection. This financial assistance opportunity will be phased out as the maintenance backlog is eliminated; once in a state of good repair, the on-going maintenance and end-of-life replacement of these assets will be supported under State of Good Repair and Recapitalization (subsection 24605(d)).

Subsection 24605(c) National Network Service—authorizes the Secretary to provide financial assistance to Amtrak in the form of operating support for long-distance passenger services and capital support for long-distance infrastructure improvement and maintenance projects. Amtrak may undertake capital projects to maintain national backbone systems, such as reservations, security, and mechanical facilities, and for projects to enhance mobility on non-Amtrak-owned infrastructure to improve the reliability of long-distance or State-supported corridor services. *Note: the authorization of appropriations for the existing Congestion Grant program (at 49 U.S.C. 24105) for fiscal years 2012 and 2013 is repealed in Section 1106 of this Act, Miscellaneous Corrections, Revisions and Repeals.*

Subsection 24605(d) State of Good Repair and Recapitalization—authorizes the Secretary to provide financial assistance for the annualized repair and recapitalization of publicly-owned infrastructure and fleet. Financial assistance provided under this subsection is intended to provide support for maintaining publicly-owned infrastructure and fleet in a continual state of good repair and to support the maintenance of sufficient reserves for replacement. Eligible recipients for funding under this subprogram are States, political subdivisions of a State, local governmental infrastructure-owning entities, Amtrak, and Regional Development Authorities, among others. The Federal share of project costs under this subsection may not exceed 80 percent of the total project cost.

Section 24606 Passenger rail planning—defines and provides requirements for a National Passenger Rail Development Plan and Regional Passenger Rail Development Plans.

Subsection 24606(a) National Passenger Rail Development Plan—requires the Secretary to complete a National Passenger Rail Development Plan within one year of the date of enactment. The Plan is intended to set national policy regarding high-speed and intercity passenger rail, including identifying investment strategies and priorities. The Plan, once completed, will also serve as the foundation for Regional Passenger Rail Development Plans (section 24606(b)).

Subsection 24606(b) Regional Passenger Rail Development Plans—defines and describes the requirements for Regional Passenger Rail Development Plans. Two or more States, or a Regional Rail Development Authority (section 24607), are encouraged to develop a plan for a comprehensive and integrated passenger rail network in their region. Among other requirements, a plan must include a map of proposed or existing alignments, a phasing plan for implementing segments, projects that share benefits with freight operators, cost estimates, and potential non-Federal funding sources, including private sector participation. A plan must be developed with stakeholder involvement and formally adopted by each participating State. Additionally, to incentivize regional planning and coordination, High-Speed Corridor Development projects (section 24604(b)) that are identified through and consistent with an adopted Regional Passenger Rail Development Plan will be eligible to receive a higher Federal match.

Section 24607 Regional rail development authorities—authorizes the Secretary to establish Regional Rail Development Authorities in consultation with State governors. A Regional Rail Development Authority established pursuant to this section has the power to undertake development activities for Core Express, Regional, and Emerging Corridors, such as planning, engineering, environmental analyses, coordinating financing, and managing construction contracting, and will be an eligible recipient for financial assistance under the network development program (section 24604) and portions of the system preservation and renewal program (section 24605). Each Regional Rail Development Authority will be led by an Executive Director appointed by the Secretary and will include a deliberative body with members representing all applicable States, Amtrak, freight railroads, and other stakeholders.

Section 24608 Oversight—authorizes the Secretary to expend funds to conduct oversight on projects awarded under Chapter 246. The Secretary is required to develop and implement oversight procedures to identify, mitigate, and monitor risks to successful delivery of projects. This section requires that an applicant for financial assistance provide project delivery documentation, which may include project management plans, financial plans, system safety plans, agreements with project sponsors, infrastructure owners, and service operators, and project risk management plans.

Section 24609 Financial assistance provisions—includes provisions that apply to financial assistance provided under Chapter 246, including all the conditions imposed on grants made under Chapter 244—Intercity Passenger Rail Service Corridor Capital Assistance. In addition, States must have an entity with the powers to discharge the requirements of Chapter 246 before receiving financial assistance under this chapter.

SEC. 1103. OBLIGATION CEILING.

Section 1103 makes clear that the total of all obligations from the Passenger Rail Account of the Transportation Trust Fund is not to exceed certain specified levels for each of fiscal years 2012 through 2017.

SEC. 1104. BUY AMERICA.

Subsection 1104(a) codifies Chapter 287—Buy America Preferences, which establishes the Buy America provisions applicable to all funds authorized to be appropriated under subtitle V, title 49, United States Code, and administered by the Department of Transportation, as well as direct loans or loan guarantees under section 822 of title 45, United States Code, consisting of the following provisions:

Section 28701 Buying goods produced in the United States—prevents the Secretary from obligating any funds authorized under Subtitle V, title 49, or providing direct loans or loan guarantees under 45 U.S.C. 822 under contracts in excess of $100,000, unless the steel, iron, and manufactured products used are produced in the United States. This section identifies circumstances in which the Secretary may waive this requirement, such as when applying it would be inconsistent with the public interest or would excessively inflate the cost of a project, and identifies other circumstances in which the Secretary may not waive the requirement. In the event that the Secretary issues a waiver, the waiver request and justification must be published on the Department of Transportation's public Web site and in the Federal Register, and an opportunity for public comment on the finding must be provided. This section preserves a State's ability to also impose more stringent requirements than this article provides. It also provides processes for a manufacturer to correct after bid opening any certification of noncompliance or failure to properly complete the certification, and for a party adversely affected by an agency action to seek review.

Section 28702 Fraudulent use of "Made in America" label—provides that person may not receive a contract or subcontract made with funds authorized under subtitle V of title 49 or under 45 U.S.C. 822 where that person is found to have intentionally falsely represented that goods were produced in the United States.

Subsection 1104(b) Conforming Amendment—amends the analysis for subtitle V to include an item for Chapter 287.

Subsection 1104(c) Related Amendment—repeals Amtrak's existing Domestic Buying Preferences (49 U.S.C. 24305(f)), as Chapter 287 applies to Amtrak.

SEC. 1105. MISCELLANEOUS RAIL PROVISIONS.

Section 1105 includes the following various rail-related provisions:

Subsection 1105(a) Authorizations—authorizes appropriations for research and development and for safety and operations in fiscal years 2012 through 2017. Section 20117 of title 49 is amended to authorize appropriations to implement the railroad safety laws at 49 U.S.C. chapters 201-213 and carry out the responsibilities under the hazardous materials transportation laws at 49 U.S.C. chapter 51 through fiscal year 2017.

Subsection 1105(b) Application, Award and Oversight Charge—amends 45 U.S.C. 823 to allow the Secretary to charge applicants for expenses related to award and project management oversight for Railroad Rehabilitation and Improvement Financing program awards. These fees are in addition to fees the Secretary is currently authorized to charge for application evaluations and loan appraisals. Fees to cover costs of award and project management oversight may not exceed more than one-half of 1 percent of the principal amount of the obligation and are credited to the Federal Railroad Administration's Safety and Operations.

Subsection 1105(c) Early Acquisition of Real Property Interests for Rail—amends 49 U.S.C. chapter 241 by adding Section 24106, which allows a project sponsor to acquire real property interests for a rail improvement project, consisting of the following provisions:

Section 24106 Early acquisition of real property interests for rail—provides conditions under which the Secretary may make funds available to project sponsors to acquire real property interests for a rail transportation improvement program authorized under subtitle V of title 49, United States Code. The Secretary may reimburse project sponsors for the cost of early acquisition of real property for a project subject to several conditions, including that actual construction of the project will occur within 20 years, that acquisition will not interfere with unbiased completion of National Environmental Policy Act review, and that development of the property will not occur until after all environmental reviews have been completed. If the property acquired early is not incorporated into an eligible project within the time allowed, the Secretary shall offset the amount reimbursed for acquisition against funds allocated to the project sponsor.

Section 24107 Limitations on claims—provides that a claim arising under Federal law seeking judicial review of a permit, license, or approval issued by a Federal agency for a railroad capital project shall be barred unless it is filed within 180 days after publication of a notice the Federal Register announcing that the permit, license, or approval is final, with limited exceptions.

Subsection 1105(d) Railroad User Fees—amends 49 U.S.C. 20115 to provide new guidelines on the imposition of railroad safety fees on railroad carriers. The revised section limits the amount of fees that may be required of railroad carriers subject to Part A of Subtitle V of title 49, United States Code, to a maximum of $80,000,000 per year for fiscal years 2012-2017. The fees are to be deposited in the Federal Railroad Administration's Safety and Operations account, rather than the Treasury's general fund, and may be used to carry out eligible activities of that account. The revision also removes the requirements for reports to Congress on fees collected and the September 30, 1995, expiration date.

SEC. 1106. MISCELLANEOUS CORRECTIONS, REVISIONS AND REPEALS.

Section 1106 makes technical corrections, revisions, and repeals in title 49 of the United States Code and in Public Law 110-432, the Rail Safety Improvement Act of 2008 and the Passenger Rail Investment and Improvement Act of 2008.

Subsections 1106(a)-(c) make minor corrections for technical reasons to provisions of title 49 of the United States Code that were enacted in or amended by Public Law 110-432, the Rail Safety Improvement Act of 2008, and to provisions of Division A of Public Law 110-432 that are not amendments to the United States Code. These changes are made to clarify the meaning of the provisions, such as by substituting defined statutory terms for undefined terms; to replace colloquial language with more formal language; to correct an error of spelling, capitalization, punctuation, or diction; or to eliminate an ambiguity or internal inconsistency.

Three of the technical amendments in subsection 1106(b) of the Act require more explanation: the amendments in paragraphs (b)(9), (b)(12), and (b)(14). Paragraph 1106(b)(9) revises 49 U.S.C. 20160, the provision requiring railroad carriers to report information about highway-rail crossings to the U.S. Department of Transportation's National Crossing Inventory. By way of factual background, it should be noted that some highway-rail crossings have more than one track, and that at a crossing that has more than one track, sometimes one railroad carrier operates on one track and a different railroad carrier operates on another track. Currently, the literal language of 49 U.S.C. 20160 requires a railroad carrier to report to the National Crossing Inventory current information specified by the Secretary (which by the Secretary's instruction includes information on the amount and type of train traffic through a crossing) on a track that the railroad may not in fact use, simply because the railroad carrier happens to operate on a different track through the same crossing. Paragraph 1106(b)(9) of the Act revises 49 U.S.C. 20160 to clarify that a railroad carrier must report on each crossing that it operates through, but only with respect to the track or tracks on which it operates. A railroad carrier should not be required to report on matters at the same crossing but regarding a track on which it does not operate because that carrier is not the best source of this information.

Paragraphs (b)(12) and (b)(14) of subsection 1106(b) of the Act clarify interrelated provisions of the hours of service laws at 49 U.S.C. ch. 211. Paragraph 1106(b)(12) of the Act amends 49 U.S.C. 21102(c) to clarify that, like train employees of intercity and commuter railroads, the train employees of tourist, historic, scenic, or excursion railroads (tourist railroads) are subject to "old section 21103," i.e., 49 U.S.C. 21103 as it existed on the day before the enactment of the Rail Safety Improvement Act of 2008. In turn, paragraph 1106(b)(14) of the Act clarifies the scope of the Secretary's authority to prescribe hours of service regulations and orders for train employees under 49 U.S.C. 21109(b) that may differ from the requirements of 49 U.S.C. 21103, as amended by the Rail Safety Improvement Act of 2008. Currently, 49 U.S.C. 21109(b) authorizes such regulations and orders "for train employees engaged in commuter rail passenger transportation and intercity rail passenger transportation (as defined in section 24102 of this title)…" The Secretary of Transportation believes that Congress intended that these authorized substantive hours of service regulations and orders apply to the train employees of all railroads that provide rail passenger transportation and that Congress did not intend to apply the statutory provision applicable to freight service (49 U.S.C. 21103 as amended in 2008) to the train employees of tourist railroads, because tourist railroad operations are more similar to other passenger service than they are to freight service. For example, passenger operations tend to be scheduled, as do tourist railroad operations,

whereas freight operations tend to be unscheduled. The provisions of the hours of service laws that apply to train employees on freight railroads are, therefore, not as appropriate for train employees on tourist railroads. Accordingly, the technical amendment would make it clear that train employees who provide rail passenger transportation on tourist, historic, scenic, or excursion railroads may also be covered by these regulations and orders.

Subsection 1106(d) Revisions to Division B of Public Law 110-432, the Passenger Rail Investment and Improvement Act of 2008—makes revisions to two provisions of the Passenger Rail Investment and Improvement Act of 2008 that are not amendments to the United States Code. Section 209, State-Supported Routes, is amended to permit the Secretary to revise or amend, in consultation with Amtrak, the methodology for allocating operating and capital costs along select passenger rail routes. Additionally, Section 305, Next Generation Corridor Train Equipment Pool, is amended to provide a sunset on the committee established pursuant to that section. The Committee will have completed its duties upon completion of specifications for all Tier I passenger equipment categories. The other functions available to the Committee will henceforth be functions of the organizational and financial framework to be established by the Secretary according to Section 1102 of this Act (paragraph 24604(d)(2)).

Subsection 1106(e) Miscellaneous Repeals—strikes various provisions in title 49 of the United States Code and in Division B of Public Law 110-432, the Passenger Rail Investment and Improvement Act of 2008. Several of the repeals strike authorizations of appropriations for fiscal years beginning in 2012 for programs that have been integrated or restructured into the network development or system preservation and renewal programs, such as 24406 (Intercity Passenger Rail Service Corridor Capital Assistance), 24105 (Congestion grants), and section 101(a) of Division B of Public Law 110-432 (Amtrak Operating Grants). This subsection also includes the repeal of section 20154, Capital grants for rail line relocation projects, which has been integrated into chapter 226—Freight Network Development (section 22605). Finally, this subsection repeals the requirement for State-initiated updates to State Rail Plans to be "reapproved" by the Secretary of the U.S. Department of Transportation (section 22702).

TITLE II--SURFACE TRANSPORTATION INFRASTRUCTURE REFORM

Subtitle A--Accelerating Project Delivery

SEC. 2001. PROJECT DELIVERY ACCELERATION INITIATIVE.

****[NEED ANALYSIS]**

SEC. 2002. EFFICIENCIES IN CONTRACTING.

The construction manager/general contractor (CMGC) method of contracting, also referred to as construction manager at-risk, has traditionally been widely used in the

vertical building industry, but has been used only sparingly in the highway construction industry. Over the past decade, some State and local governments have broadened the use of CMGC to highway construction and used such method on Federal-aid highway projects under Special Experimental Project No. 14 (SEP-14). CMGC has also been the subject of evaluation under the National Cooperative Highway Research Program (NCHRP) of the Transportation Research Board in *NCHRP Synthesis 402*. After gaining experience and analysis of the CMGC contracting method, the use of CMGC has proven to be a useful and beneficial contract delivery method with the major benefit being derived from contractor input into the preconstruction design phase of a project. While the use of CMGC may not be appropriate for every project, it has the potential to significantly improve the cost and efficiency in the delivery of highway projects. As such, this section amends 23 U.S.C. 112 to allow for the use of CMGC in the Federal-aid highway program.

SEC. 2003. APPLICATION OF CATEGORICAL EXCLUSIONS FOR MULTI-MODAL PROJECTS.

The ability for one mode to consult another mode on the use of a categorical exclusion on a component of a multi-modal project has been identified as valuable tool in project delivery. Through the two rounds of TIGER and as a result of the emphasis on modal choice and a fully integrated transportation system, more and more projects are multi-modal. This section provides clarification of the authority of any modal administration with funding authority to consult with a cooperating modal administration and use an appropriate categorical exclusion for those components of the project that qualify for a categorical exclusion under the cooperating modal administration's regulations. This clarification will help accelerate project delivery by reducing the amount of unnecessary environmental analysis and increasing coordination and partnership within the Department.

SEC. 2004. INTEGRATION OF PLANNING AND ENVIRONMENTAL REVIEW.

This section creates a new provision in Subchapter 1 of Chapter 1 of title 23 to provide authority and procedures for the integration of planning and the environmental review processes.

The purpose of this section is to describe how to complete certain activities in the planning process and achieve certainty that products from these activities can be used during project development. This certainty is achieved by encouraging planning and environmental staff in transportation and regulatory and review agencies to share data and analysis tools and improve coordination. When successfully implemented, this approach makes the entire life cycle of a transportation project a more seamless process. It minimizes duplication of effort, reduces delays in transportation improvements, and results in a more environmentally sensitive project.

Specifically, this section would amend definitions of the NEPA, planning products, project, and project sponsor to provide clarity based on existing guidance. This section would integrate statewide and metropolitan transportation planning with the NEPA process to streamline project delivery and ensure continuity of public involvement. It would allow regulatory and review agencies to better understand and agree to purpose and need, define the range of alternatives and eliminate some of them, and begin the public involvement and documentation needed in the NEPA process during the planning stage. This approach provides a broader and strategic perspective on environmental and cultural resource compliance that includes consultation with tribes and other agencies about mitigation, consultation of conservation plans, regional habitat mappings, and more.

This section does not make the NEPA applicable to the transportation planning process conducted under title 23.

SEC. 2005. NATIONAL ENVIRONMENTAL POLICY ACT PROCESS REFORMS.

This section amends section 139 of title 23 to further efficient transportation project delivery and reduce lengthy delays in the delivery process.

First, this section would amend section 139 to require a project sponsor to provide the Secretary with reasonable assurance of its ability to fund the entire project prior to the issuance of the Notice of Intent. The project sponsor would also have to demonstrate to the Secretary that its project selection procedures included consideration of a full range of revenue generating options.

This section would create a new subsection to provide a "scoping" provision to focus lead agency attention on relevant and important issues to be analyzed under NEPA. Reconsideration of this initial scoping decision by the Secretary could only occur if significant new circumstances or information arise that affect the proposal or its impacts. This section would also allow for the preferred alternative to be identified at any time after the initiation of the scoping process.

This section would amend an existing paragraph regarding issue resolution. This amendment would allow relevant participants to meet--at the request of a Federal agency of jurisdiction, project sponsor, or the Governor of a State in which the project is located--to resolve issues that could cause delay in the completion of the environmental review process, or could result in a denial of any approvals required for the project. If no resolution can be made within the 30-day period following the initial meeting, the Secretary may convene an issue resolution meeting within 30 days after the end of the previous 30-day period. If this occurs, the Secretary must notify the Committee on Environment and Public Works of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Council on Environmental Quality that a meeting is being convened under this issue resolution process.

This section would also create a new paragraph to require that any decision relating to a transportation project, such as a project permit, license or other approval be made by the Federal agency with jurisdiction no later than 180 days after the date that a NEPA decision for a project has been issued, or 180 days after the date that an application is submitted for the permit, license or approval. Under this paragraph the 180 day period may be extended by the Secretary for just cause. This new subsection is intended to keep the project delivery process moving forward and prevent long delays caused by failure to obtain needed permits, approvals, or disapprovals from other Federal agencies.

Finally, this section would allow the Secretary to combine the Final Environmental Impact Statement and the Record of Decision into a single document once the preferred alternative is identified in the draft environmental impact statement. The purpose of this combined document is to eliminate lengthy time periods between the Final Environmental Impact Statement and the Record of Decision, and to further support timely project development.

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

This section would amend section 108 of title 23 to expand early acquisition authority and enable States to utilize Federal funds to participate in costs of early acquisition (in advance of the completion of environmental reviews) of real property interests potentially needed for future transportation purposes as a permitted "preconstruction activity". This section would provide the opportunity to reserve future alignment alternatives by allowing early acquisition of property interests. This section would permit Federal funds to be used for the acquisition of property interests needed for future projects if the acquired property is used on the final project and other conditions are met. Any acquisition carried out under this authority would be done on a voluntary acquisition basis.

SEC. 2007. ALTERNATIVE RELOCATION PAYMENT DEMONSTRATION PROGRAM.

This section would provide authority for up to five States to establish a demonstration program to streamline the relocation process by permitting a lump-sum payment for acquisition and relocation where elected by the displaced occupant. The payment would be based upon just compensation for property acquired and estimated eligible relocation benefits calculated in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The goal of establishing and carrying out the demonstration program is to determine if the proposed measures will reduce administrative burden and costs to States and to displaced occupants by streamlining the process to establish and administer relocation benefits.

Sec. 2008. SURFACE TRANSPORTATION PROJECT DELIVERY PROGRAM.

This section would amend 23 U.S.C. 327 to make permanent the NEPA delegation program included in Section 6005 of SAFETEA-LU. Specifically, this section would amend section 327 by striking the word "pilot"; striking the 6-year automatic termination date; and eliminating the current 5-State participation limitation, thus making all States eligible for participation. This section also would allow the Secretary to evaluate and reevaluate States for permanent participation in the program. This section includes a provision for a State to elect to terminate its participation in the program by providing at least 90 days notice to the Secretary.

This section would further amend section 327 of title 23, United States Code, to clarify that by signing an agreement with the Secretary, the States waive their sovereign immunity. This would include both 11th amendment immunity to suit in Federal court and immunity to liability.

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

This section would amend section 326 of title 23, United States Code, to clarify that by signing assignment memoranda of understanding, the States waive their sovereign immunity. This would include both 11th amendment immunity to suit in Federal court, and immunity to liability.

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

This section would accelerate project delivery to large metropolitan areas by establishing a pilot program for local governments with a population of 2,500,000 or more and meeting certain conditions to become direct recipients of Federal-aid highway funding.

Subsection (a) would direct the Secretary to carry out a pilot program under this section. Upon a written agreement between the Secretary, a local government, and the respective State in which the local government is located, a local government could assume the responsibilities of a State with respect to highway projects selected for Federal-aid funding through the existing planning process. Subsection (a) also would specify that a local government selected for participation under this program would assume responsibility for the same procedural and substantive requirements as would apply to the State, including requirements related to reporting, right-of-way acquisition, environment, engineering, civil rights, design and inspection, procurement, construction administration, financial administration, performance management, and all other applicable requirements.

Subsection (b) would specify that the Secretary could allow up to 3 local governments for participation in the pilot program. A local government meeting the population threshold and demonstrating the organizational and financial capacity necessary for participation would be eligible for participation. Subsection (b) would direct the Secretary to establish an application process and selection criteria.

Subsection (c) would provide for the transfer of funds apportioned to a State to a participating local government for the projects for which local oversight has been approved.

Subsection (d) would direct the Secretary to set aside funds to cover the additional costs that will be incurred by the Federal Highway Administration in providing oversight to additional entities.

Subsection (e) would specify the conditions under which the Secretary could terminate the participation of a local government in the pilot program.

Subtitle B – National Infrastructure Innovation and Finance Fund

Part 1--National Infrastructure Innovation and Finance Fund

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

The bill would insert a new chapter 9 in title 49, United States Code (Transportation), and establish the National Infrastructure Innovation and Finance Fund (NIIFF or Fund) as an operating unit of the Department of Transportation. The Fund is designed as an innovative infrastructure financing mechanism that would seek out and invest in infrastructure projects of regional and national significance that would otherwise be difficult to fund. Funding would be provided in the form of grants, loans and lines of credit, and loan guarantees and would support transportation and transportation-affiliated projects. The new chapter 9 is contained in section 1 of the bill and consists of three sections.

Section 901 of title 49: Section 901 comprises the overall structure and objectives of the Fund. In section 901(a), the definition of "transportation related project" establishes the reach of the new authority, that is to "a project that is part of or related to a transportation improvement. Transportation improvements involve highway, bridge, aviation, port and marine, or public transportation facilities and systems; intercity passenger bus or passenger rail facilities and vehicles; or freight rail assets."

Section 901(a) specifies that an "eligible project" is "a capital project that advances the objectives of chapter 9 and (1) is comprised of activities included in a regional plan; (2) has eligible project costs related to a single project, or has aggregate eligible project costs related to a program of projects that are coordinated to achieve a unified improvement; and (3) is a transportation-related project; a project that is a component of a non-transportation project and that is by itself a transportation-related project; or an additional non-transportation component to a transportation project that satisfies the criteria and strategy of the new chapter . "Eligible project cost" is defined as including "a cost associated with development phase planning and design activities, construction, acquisition, rehabilitation, environmental remediation, interest expense during

construction, and reasonably required reserves, and excludes operating costs, research and development costs, and any other costs not otherwise specifically provided for herein."

The Fund objectives are set forth in new sections 901(c) and (d). They make clear that the Fund is intended to serve broader objectives in the National economy than typical transportation infrastructure projects. Specifically, the overarching objective of the Fund is "to invest in infrastructure projects that significantly enhance the economic competitiveness of the United States or a region thereof by increasing or otherwise improving economic output, productivity, or competitive commercial advantage." Secondary objectives are as follows:

- To provide funding for projects that otherwise face significant barriers to funding due to problems associated with the need to combine resources across multiple jurisdictions or modes of transportation.
- Improvement to the environmental sustainability of a national or regional transportation network, as measured by improvement in energy efficiency, reduction in greenhouse gas emissions, conservation of natural resources, or other beneficial environmental impacts.
- Improvement to the safety of transportation facilities and systems, as measured by reduction in risk of transportation-related incidents, injuries, or deaths.
- Improvement to the livability and affordability of a community, as measured by the integration of transportation infrastructure with housing, commerce, and other community aspects that affect quality of life, and the availability to community residents of transportation choices that provide opportunities to lower household transportation costs.
- Improvement to the efficiency or throughput of a national or regional transportation network through enhancements to existing infrastructure and new investment designed to improve the efficiency of existing infrastructure.

Section 901(e) establishes as the Fund strategy to especially target projects or programs of related projects with a demonstrated difficulty obtaining complete financing through other available public or private sources of funds for reasons including project complexity, incorporation of multiple jurisdictions, incorporation of multiple transportation modes, or other comparable transactional barriers. To the extent practical, the Fund would also use its resources for transformational transportation investments that promotes the distribution of benefits to economically distressed areas; promotes geographic diversity in the distribution of benefits; promotes cross-jurisdictional infrastructure planning and co-investment among a broad range of participants, including States, tribal governments, municipalities, and private investors; integrates multiple transportation modes in the movement of passengers or freight; and integrates transportation infrastructure investment planning, such as regional plans, with land-use, economic development, and other infrastructure investment plans.

Sections 901(e)(2) and (3) provide for publication of the Fund strategy and Operating Guidance (a detailed description of its operating policies and procedures) within six

month of enactment, and after offering the opportunity for public comment on the proposed publications.

Section 901(f) sets forth the governance of the Fund, with three primary parts. The first is an Executive Director, appointed by the President and with Senate confirmation. The Executive Director reports to the Secretary of Transportation and is responsible for the day-to-day operations of the Fund. The Executive Director must have demonstrated expertise in transportation infrastructure planning within at least two of the following three areas: two or more distinct transportation modes; economic analysis; and project, public, or corporate finance.

Section 901(f)(2) provides for an Investment Council, which is responsible for establishing and approving the Investment Prospectus, in consultation with a Fund Advisory Committee; updating the Investment Prospectus on each biennial anniversary of its original publication; reviewing Investment Plans and related application materials and other analyses provided to the Investment Council by the Executive Director; determining by majority vote whether or not to recommend Investment Plans submitted by the Executive Director to the Secretary for funding; and certifying reports to Congress and other publications of the Fund. The nine-member Council consists of four Department of Transportation senior officials and five cabinet members (Secretaries of Treasury, Commerce, Housing and Urban Development, and Energy and the Administrator of the Environmental Protection Agency). Among its duties, the Council would report to relevant committees of Congress biennially on Fund status and would include an assessment of the Fund as a model for infrastructure investment and may include a recommendation on whether or not to extend the Fund's activities to non-transportation infrastructure sectors likely to benefit the United States, including renewable energy generation, energy transmission and storage, energy efficiency, drinking water and wastewater systems, and telecommunications.

Section 901(f)(3) provides for a Fund Advisory Committee, to be appointed by the President within six months of enactment and established to advise the Investment Council and the Secretary with respect to the following:

- Alignment of the investment prospectus and its contents with the primary objective, secondary objectives and other elements of the fund strategy as described in this chapter.
- Alignment of the framework and methodology used to determine qualification scores and variance estimates with the primary objective, secondary objectives, and the Fund strategy.
- Consistency of the calculation of qualification scores and variance estimates with academic standards for analytical rigor and data quality typically applied to peer-reviewed social science research.
- Alignment of investment decision mechanics and outcomes with the Investment Prospectus and the requirements of this chapter.

- Integrity and effectiveness of Fund operations and performance, including application evaluation processes, Investment Plan processes and determinations, and the optimization of the Fund's performance as a portfolio.
- Fund progress in financing projects with a demonstrated difficulty obtaining complete financing through other available public or private sources of funds for reasons including project complexity, incorporation of multiple jurisdictions, incorporation of multiple transportation modes, or other comparable transactional barriers.
- Prospects for the extension of the Fund's activities to non-transportation infrastructure sectors likely to benefit the United States, including renewable energy generation, energy transmission and storage, energy efficiency, drinking water and wastewater systems, and telecommunications.

Within 90 days of each Investment Council decision on an Investment Plan, the Fund Advisory Committee would issue a report that includes an assessment of the adherence of each funding decision, including applications funded and not funded, to the requirements of the Investment Prospectus, Operating Guidance, and chapter 9; the consistency of each funding decision for applications funded with the primary objective, the secondary objectives, the Fund strategy and the requirements of the chapter; the validity of the qualification certification of each funded application; the return on Federal investment likely to result from each funded Investment Plan; and the return on total investment likely to result from each funded Investment Plan. The Committee would also publish a biennial report on the execution of the Fund strategy that includes an independent assessment of the Fund's performance in terms of the elements specified above; and an independent analysis of the prospects for the extension of the Fund's activities to non-transportation infrastructure sectors likely to benefit the United States, including renewable energy generation, energy transmission and storage, energy efficiency, drinking water and wastewater systems, and telecommunications.

The Fund Advisory Committee would be subject to the Federal Advisory Committee Act, and would consist of five members with expertise in one or more of the following areas: economics and economic analysis; project finance.; portfolio or fund management; organized labor interests; environmental interests; American business and trade interests; rural community development; State Department of Transportation policies and priorities; Metropolitan Planning Organization policies and priorities; other infrastructure planning, redevelopment, and development-related codes and policies. Committee members would be declared to not be Federal employees for any purpose, but would be entitled to compensation for days during which the member is engaged in the performance of duties of the Committee.

Section 902 of title 49: Section 902 specifies the three types of financial assistance available from the Fund and its other authorities. Among them is the authority to charge administrative and other fees for such things as the costs of loan servicing, hiring expert firms, including counsel in the field of municipal and project finance, and financial advisors to assist in the underwriting, credit analysis, or other independent review.

Planning and Feasibility Grants: In each of the five years authorized for the Fund, up to $150 million would be made available to a recipient for a specific project covering costs associated with planning and formulating optimal project design; assessing project technical feasibility; assessing potential project performance; and incorporating the project proposal into a regional plan. The Fund could pay up to 100 percent of eligible planning and feasibility costs, as follows: an activity reasonably necessary to obtain Federal, State, and local permits, licenses, and approvals for an eligible project, including the costs of concept development and preliminary design, economic and environmental analyses, public involvement, and application, licensing, and permit fees.

National Infrastructure Innovation Grants: The Fund would be authorized to make grants to fund capital investments in transportation infrastructure that meets the definition of "eligible project" under chapter 9. The grants could only fund project costs covered under an Investment Plan approved by the Secretary and would be subject to the terms and conditions of the relevant approved Investment Plan. Grants made by the Fund could not exceed 50 percent of the eligible project costs of an eligible project.

Direct Loans And Other Credit Assistance: The Fund would be authorized to make available direct loans and lines of credit, as well as loan guarantees under section 902(e)(1) and (2). As a general matter, in the case of direct loans and lines of credit, a loan could not be subordinated to another debt contracted by the borrower (unless subordination is necessary to achieve Federal objectives), or to any other claims against the borrowers in the case of default; the interest rate would be set by reference to a benchmark interest rate (yield) on marketable Treasury securities with a similar maturity to the direct loans being made or the non-Federal loans being guaranteed; the Executive Director must find that there is a reasonable assurance of repayment before extending credit assistance; a loan may not be obligated (and a new loan guarantees may not be committed) except to the extent that appropriations of budget authority to cover their costs are made in advance, as required in Section 504 of the Federal Credit Reform Act of 1990; and the total principal amount of the direct loan shall not exceed 70 percent of total eligible project costs less the percentage of those eligible project costs that are otherwise funded by the Fund. The Fund would allow credit to any prospective borrower only when it is necessary to alleviate a credit market imperfection, or when it is necessary to achieve specified Federal objectives by providing credit assistance, and such assistance is the most efficient way to meet those objectives on a borrower-by-borrower basis.

As a general matter in the case of a loan guarantee, the same strictures would apply as apply to direct loans, plus the following: a loan could be guaranteed if the income from the loan is excluded from gross income for the purposes of Chapter 1 of the Internal Revenue Code of 1986, or if the guarantee provides significant collateral or security for other obligations (the income from which is so excluded); fees or premiums for loan guarantee or insurance coverage will be set at levels that minimize the cost to the Government of such coverage, while supporting achievement of the program's objectives; the minimum guarantee fee or insurance premium will be (at) (no more than _____ percent below) the level sufficient to cover the agency's costs for paying all of the estimated costs to the Government of the expected default claims and other obligations;

loan guarantee fees will be reviewed every ____ month(s) to ensure that the fees assessed on new loan guarantees are at a level sufficient to cover the referenced percentage of the agency's most recent estimates of its costs. Further, if as a result of a default by a borrower under a guaranteed loan, after the holder thereof has made such further collection efforts and instituted such enforcement proceedings as the **Administrator??** may require, the **Administrator** determines that the holder has suffered a loss, the **Administrator** will pay to such holder _____ percent of such loss, as specified in the guarantee contract. Upon making any such payment, the **Administrator** will be subrogated to all the rights of the recipient of the payment. The **Administrator** will be entitled to recover from the borrower the amount of any payments made pursuant to any guarantee entered into under this chapter.

Section 902(f) addresses the evaluation and processing on individual financial assistance applications. In addition to qualifying as an "eligible project" (elsewhere defined), (1) eligible project costs identified in the application must exceed $50,000,000, unless the application is for a project or program of related projects located entirely in an area classified as rural by the United States Census Bureau (in that case costs must exceed $1,000,000); (2) financial assistance from sources outside of the Fund adequate to support at least thirty percent of the total eligible project costs included in the application must be identified; and (3) a majority of project benefits identified in the application must accrue beyond a highly localized area, including commercial or residential real estate development, a shopping or amusement complex, or a recreational area.

Also under subsection (f) the Fund would assign to each eligible application a single numerical factor on the basis of an evaluation of the information and data collected from the applicant. This factor shall be the application's qualification score and shall be determined by the ratio of the net present value of benefits to the net present value of costs reasonably expected to result from the funding of the project or projects as proposed in the application. The methodology used to calculate the qualification score would (1) primarily measure the significance of a project to the economic competitiveness of the United States or a region thereof; (2) weigh the net present value of benefits attributable to economic competitiveness at least twice as heavily as all other benefits combined but in a manner that does not undermine the validity of the calculated ratio of benefits to costs; (3) apply equal weighting to all measures of the net present value of costs; and (4) include standardized measures of the expected variance in both total and specific benefits and costs associated with the project.

In order to certify an application as qualified, the Executive Director would, at a minimum, find that the application's qualification score is greater than the larger of either 1.0 or some other factor published in the Investment Prospectus as a threshold for qualification; and is competitive with scores issued to applications currently under consideration and scores issued to applications previously funded under this chapter, taking into account the Executive Director's assessment of the extent to which the application under consideration achieves the following in order of relative priority: (1) forwards the primary objective of the Fund; (2) addresses a special infrastructure investment challenge due to cost, complexity, cross-jurisdictional scope, multimodal

features, or use of innovative technologies; (3) provides a cost effective approach to achieving the benefits described in the application relative to alternative approaches to achieving comparable benefits, taking into account the estimated variance of measures of costs and benefits associated with the project; (4) combines Fund funds with other sources of funds; (5) delivers revenue streams from public or private sources dedicated to pay debt service, meet ongoing operating expenses, or provide for needed maintenance and capital renewal over the life cycle of the funded asset; (6) encourages use of innovative procurement, asset management, or financing to optimize the all-in-life-cycle cost-effectiveness of a project; (7) promotes a distribution of project benefits that is geographically diverse; and (8) is ready to commence construction upon receiving a commitment of assistance from the Fund.

Section 902(g) establishes a Investment Plan process that is the exclusive means by which favorable funding decisions are made by the Fund. Specifically, the Fund would establish a process for determining the level, form, and terms of financial assistance to be offered by the Fund to complete a financing package adequate to fund the project or projects included in the application. The priority of the Fund in the investment planning process would be to establish a mutually agreeable financing package adequate to fund the qualified application, while maximizing expected project benefits relative to Fund investment. When considering the appropriate level and form of Fund resources to include in an Investment Plan, the Fund would consider the qualification score achieved by the application relative to other current applications and previously funded applications and the competitiveness of the application at fulfilling the strategy of the Fund as outlined in the Investment Prospectus, and would strive to make efficient and effective use of Federal resources by considering (1) the amount of Fund budgetary resources required to complete a financing package with lower amounts being preferred; (2) the percentage of Federal resources included in the Investment Plan in the form of grants with lower percentages being preferred; (3) the costs and the risks to the Federal taxpayer imposed by the terms of assistance provided in the financing package with lower costs and risks being preferred; and (4) the percentage of eligible project costs to be funded through non-Federal resources pledged by the applicant to complete a financing package, with higher percentages being preferred;

Also under subsection (g), the Fund shall determine through the investment planning process the terms of assistance to be offered to applicants at its sole discretion subject to the requirements of chapter 9 and subject to the availability of funding any other statutory and regulatory requirements. If the Fund and the applicant are able to reach mutually agreeable terms, the Fund would record determinations on Fund assistance along with details of the complete financing package in an Investment Plan. Under no circumstances would the Fund approve an Investment Plan that does not identify a complete financing package. Under no circumstances would the Fund be required or compelled to reach agreement on an Investment Plan.

The Executive Director of the Fund would submit Investment Plans approved by the Fund to the Investment Council at regular submission intervals, as set forth in the Operating Guidance. The Fund and the Department would establish, in operating

procedures and in the Operating Guidance, communications practices and compliance procedures that protect Fund professional staff responsible for negotiating Investment Plans from outside or otherwise inappropriate influence, including necessary restrictions on communications between Fund staff responsible for the investment planning process and individuals and organizations both within and outside of the Department of Transportation, including the Fund Investment Council, the Office of the Secretary, the Secretary and other elements within the Department as needed to safeguard the ability of the Fund to fairly and independently formulate Investment Plans as directed under this subsection.

Section 902(h) provides for the role of the Investment Council in evaluating each Investment Plan and deciding whether to recommend the Plan to the Secretary. After receiving a Plan from the Executive Director, the Council would vote on whether or not to recommend funding the Plan and communicate the outcome of the vote to the Secretary. Investment Plans submitted by the Executive Director to the Investment Council could not be modified. Investment Plans recommended for funding would be forwarded to the Secretary for approval. The Secretary would consider each Investment Plan recommended by the Investment Council without modification, and either approve or reject the Investment Plan. Applications with rejected Investment Plans would be returned to the Executive Director, with reconsideration by the Fund no sooner than one year after the date of return.

Section 902(i) addresses the relationship of Fund activities with other Federal laws. In the case of financial assistance provided by the Fund that would otherwise be eligible for financial assistance under title 23 or chapter 53 of title 49, policies would be established for determining which requirements of the title or chapter would be applied to the Fund projects, except that labor standards under title 23 or chapter 53 would apply in all cases, including, when applicable, the requirement that all laborers and mechanics employed by contractors or subcontractors on construction work performed on the projects would be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor under sections 3141-3144, 3146, and 3147 of title 40, United States Code. Also, applicable planning and programming requirements of sections 134 and 135 of title 23, United States Code, would apply in every case.

In the case of all financial assistance provided by the Fund, all applicable environmental laws and requirements, including the National Environmental Policy Act of 1969 (NEPA) and the National Historic Preservation Act (NHPA), would apply. Detailed specifications are provided as to the designation of "Federal lead agency" and "joint lead agency" under Council on Environmental Quality regulations.

In the event that a project has cross-modal components, the Fund would have the discretion to designate the specific requirements that shall apply to the project.

Section 903 of title 49: Section 903(a) would authorize appropriations for Fund activities over the Fiscal-Year 2011-2015 time period, from $4 billion in FY2011 to $6 billion in FY2015. Amounts made available would remain available until expended.

Of the total made available in each fiscal year, not more than $150 million would be available to make Planning and Feasibility Grants, and not more than $50 million would be available for the analysis of costs and benefits of projects. In addition, of the total amount made available, from $70 million in FY 2011 to $52 million in FY 2015 would be available for costs of administering the new chapter 9.

SEC. 2102. TITLE 5 AMENDMENT.

This section would add to the Executive Pay authorities of the Federal Government at 5 U.S.C. 5315 the position of the Executive Director of the Fund.

Part 2--Freight Policy Office

SEC. 2151. OFFICE OF FREIGHT POLICY.

This section would establish an Office of Freight Policy in the Office of the Under Secretary for Policy, establish a National Freight Transportation Policy (and goals for this policy), direct the Secretary to designate a National Freight Transportation System, direct the Secretary to issue a biennial National Freight Transportation Plan (which would include a report on the conditions and performance of the National Freight Transportation System), direct the Secretary to develop transportation investment data and planning tools, direct the Secretary to use the findings of the National Freight Transportation Plan to guide investment decisions subject to the Secretary's discretion, and repeal 49 U.S.C. 5503 (Office of Intermodalism).

Subtitle C--Federal-Aid Highways

Part 1--Authorizations and Programs

SEC. 2201. AUTHORIZATION OF APPROPRIATIONS.

Section 2201(a) authorizes sums out of the Highway Account of the Transportation Trust Fund for the safety program, the national highway program, the livability program, and the federal allocation program. Section 2201(b) defines the terms "small business concern" and "socially and economically disadvantaged individuals," establishes a general rule for the expenditure of funds under certain titles of this Act and section 403 of title 23, requires states to provide the Secretary with an annual listing of disadvantaged business enterprises, requires the Secretary to establish minimum uniform criteria for use by State governments, and preserves the eligibility of individuals or entities to receive funding who are prevented from complying with this section due to a court order. This section also includes authorizations for critical highway infrastructure, including additional funds in fiscal year 2012 for transfer to the General Services Administration

for cross-border transportation activities and funding for credit assistance under the Transportation Infrastructure Finance and Innovation Act program.

SEC. 2202. OBLIGATION CEILING.

Subsection (a) would provide the overall ceiling on obligations for Federal-aid highway and highway safety construction programs for each of fiscal years 2012 through 2017.

Subsection (b) identifies the fund categories that would be exempt from the ceiling on obligations in subsection (a). This would include funds provided by earlier Acts that were exempt from limitation under such Acts, and new contract authority under the Transportation Opportunities Act for the Emergency Relief Program ($100,000,000 for each fiscal year) and $639,000,000 in funding apportioned for the Flexible Investment Program for each fiscal year.

Subsection (c) would provide the methodology for the distribution of the obligation authority, conforming the methodology to reflect the newly proposed program structure.

Subsection (d) would require the redistribution of obligation authority after August 1 of each fiscal year (commonly known as the August Redistribution process). The redistribution of obligation authority under the August Redistribution process would remain unchanged from current requirements.

Subsection (e) would provide that obligation limitation for the Transportation Research Programs and for the Surface Transportation Revenue Alternatives Office would be available until used (no-year limitation). The subsection would also provide that obligation limitation on funds set aside for the administrative expenses of Critical Highway Infrastructure Program would be available for a period of 3 fiscal years. The no-year and multi-year obligation limitation provided in a fiscal year would not count against the obligation ceilings in subsequent fiscal years.

Subsection (f) would retain the current requirement that, no later than 30 days after the distribution of obligation authority, authorized Federal-aid highway program contract authority that will not be allocated to the States and will not be available for obligation due to the imposition of the obligation limitation shall be redistributed among the States. The redistributed contract authority would be available to be obligated for activities eligible under the Flexible Investment Program.

SEC. 2203. APPORTIONMENTS.

This section would amend section 104 of title 23 to reflect the newly proposed Federal Highway Administration's program structure.

Subsection (a) of section 104 would be amended by this section to update the apportionment amounts from the Highway Account of the Transportation Trust Fund that

would be made available for Federal Highway Administration's operating expenses from fiscal year 2012 through fiscal year 2017.

Subsection (b) of section 104 would provide an outline for the apportionment factors for distribution of funds to the States for various programs, to be apportioned after the funds authorized in subsection (d) of this section have been set aside.

Subsection (c) of section 104 would provide a substantially unchanged version of current subsection 104(e), "Certification of apportionments." This provision would remove the reference to apportionments under sections 105 and 144.

Subsection (d) section 104 would be a substantially unchanged version of current subsection 104(f), "Metropolitan planning." This section would decrease the set aside amount for the metropolitan planning program from 1.25 percent to 1 percent and amend the programs from which the set aside would be taken to the Highway Infrastructure Performance Program, the Flexible Investment Program, and the Livable Communities Program.

Subsection (e) of section 104 would be a substantially unchanged version of current subsection 104(j). This provision would require the Secretary to submit a report, via the Internet, to Congress for each fiscal year on how funds were obligated in the preceding fiscal year. The report would include the amount obligated by each state for Federal-aid highways and highway safety construction, the balance of each State's unobligated apportionment and the rates of obligations apportioned or set aside under this section according to program, funding category or subcategory, type of improvement and State. Subsection (f) of section 104 would be a substantially unchanged version of current subsection 104(k), "Transfer of highway and transit funds." This section would remove the requirement under current subsection (k)(3)(C) for the surface transportation program and remove the reference under current subsection (k)(3)(B) to apportionments under sections 105 and 144.

SEC. 2204. DEFINITIONS.

This section would provide a definition of the terms "asset management," "Federal lands access transportation facility, " "Federal lands transportation facility," "State strategic highway safety plan," and "tribal transportation facility."

This section would strike the definitions for the terms "Federal lands highway," "forest highway," "Indian reservation road," "park road," "parkway," "public lands development roads and trails," "public lands highway," "public lands highways," and "refuge road," to be consistent with the new program structure.

This section would amend the definition of "construction" to clarify that non-traditional highway projects, preliminary engineering, reconstruction, preservation and all capital improvements that enhance the efficiency or effectiveness of an eligible Federal-aid highway are eligible construction costs.

This section would amend the definition of "Federal-aid highway" to add the qualifier "public" before "highway eligible for assistance under this chapter" and to insert the word functionally into the phrase "other than a highway functionally classified as a local road or rural minor collector." This modification would make the definition consistent with the eligibilities found in this bill and the term functional classification. Additionally, this change would clarify that local roads are classified by function rather than ownership.

This section would amend the definition of "Federal-aid system" to update the phrase "any of the Federal aid highway systems" with "the National Highway System."

This section would amend the definition of "maintenance area" to include the qualifier "air quality" before the words "nonattainment area" and "attainment area."

This section would delete a portion of the definition of "project" to clarify existing language.

This section would amend the definition of "project agreement" to clarify that such agreements are executed by the Secretary and the recipient.

This section would amend the definition of "safety improvement project" to be consistent with the definition in proposed section 148, the Highway Safety Improvement Program.

The definition of "transportation enhancement activity" at current subsection (a)(35) would be deleted. The eligibilities for transportation enhancement activities would be relocated to proposed section 150(a), the Livable Communities Program.

The definition of "transportation systems management and operations" would be relocated to subsection (a)(30). The definition of "transportation systems management and operation" would be amended to clarify that transportation systems management and operations is an "strategy" for operations and management of the transportation system and not a federal program. The existing definition would be expanded by providing examples of strategies and coordination activities that may be involved in transportation systems management and operations.

The definition of the term "truck stop electrification system" would be moved from current subsection (a)(38), "advanced truck stop electrification system," to subsection (a)(32). The subsection would be largely unamended, except to remove the word "advanced" from the term in order to adopt the more commonly used terminology.

Subsection (b)(1) would update the declaration of policy to accelerating the construction, reconstruction and rehabilitation of the National Highway System, from accelerating the construction of the Federal-aid highway systems.

Current subsection (b)(2), which prescribes completion dates for the Dwight D. Eisenhower National System of Interstate and Defense Highways, would be removed.

Proposed subsection (b)(2), Transportation needs of 21st Century, would be largely unamended, except to update the term "Interstate System" with "National Highway System" at proposed subsection (b)(2)(H).

Subsection (c) would be largely unamended, except to update the term "Federal-aid system" with "Federal aid highway."

SEC. 2205. NATIONAL HIGHWAY PROGRAM.

This section would establish the National Highway Program to provide funding to preserve and improve the condition and performance of the highway infrastructure critical to the competiveness of our economy and the livability of our communities.

Subsection (b) would establish the two components of the National Highway Program: the Highway Infrastructure Performance Program (HIPP) within section 119 of title 23, United States Code, and the Flexible Investment Program (FIP), within section 133 of title 23, United States Code. The HIPP would ensure strategic investments to achieve national goals for preserving and improving the infrastructure condition and performance of the National Highway System. The FIP would provide flexibility to States for investment decisions that improve the condition and performance of all Federal-aid highway facilities and of bridges on public roads.

Subsection (c) would provide that in order to use funds apportioned to carry out section 119, States shall develop a performance-based framework for investments including an asset management plan for the National Highway System to make progress toward achieving national goals.

SEC. 2206. NATIONAL HIGHWAY SYSTEM.

This section would define the Federal-aid system as being the National Highway System (NHS). It would also expand the NHS.

This section would expand the NHS under section 103(b) to include all urban and rural principal arterials, the strategic highway network and intermodal connectors. Initially, the NHS would expand from approximately 160,000 miles to 223,115 miles. The subsection would give the Secretary authority to modify the NHS for roadways that meet NHS criteria based on requests made by the States in cooperation with local and regional officials and metropolitan planning organization.

This section would require States under section 103(c) to develop and implement a risk-based State asset management plan for infrastructure assets on the NHS based on a process defined by the Secretary. State asset management plans would be required to include strategies leading to a program of projects that would make progress toward achievement of the national goals of improving the condition and operation of the NHS. The subsection would identify minimum components of the State asset management plan.

This section would carry forward existing requirements under section 103(d) for establishment and modification of the Interstate System.

This section would amend section 103(e) to update transfer provisions for remaining Interstate Construction funds to account for new funding categories.

This section would specify in section 103(f) that the term "National Freight Corridors" means the national freight corridors identified under section 310 of title 49. ****[??]**means the national freight corridors identified under section 310 of title 49. ****[??]**States would be afforded broadened flexibility on the use of HIPP and FIP funds along these corridors.

This section would also repeal the National Network designated under STAA of 1982. It would apply the conventional combination vehicle standards for operation. It would change the length of the conventional combination vehicle from 48 feet to 53 feet, which is the current industry standard. It would allow States to exempt segments that were open to traffic on the date of enactment of subsection (g) and on which all non-passenger commercial motor vehicles were banned, and it provides States to put in place temporary or permanent restrictions on the operation of commercial conventional combination vehicles, subject to approval by the Secretary, based on safety considerations, geometric constraints, work zones, weather, or traffic management requirements of special events or emergencies. This section also would provide reasonable access for conventional combination vehicles to services and terminals on the expanded NHS that applied to the National Network.

SEC. 2207. HIGHWAY INFRASTRUCTURE PERFORMANCE PROGRAM.

This section would establish the highway infrastructure performance program.

This section would establish under section 119(b) the purposes of this program to provide support for the condition and operational performance of the National Highway System and to ensure that investments of Federal-aid funds in highway infrastructure are directed to achievement of established national performance goals for infrastructure condition and operations.

This section would provide, with limited exceptions, that only facilities on the National Highway System are eligible under this program.

This section would provide under section 119(d) the list of eligible projects to include preservation and operational improvements without capacity improvements on the National Highway System. The section would establish eligibility for tunnel inspection and repair, and for cost effective improvements on National Freight Corridors.

This section would limit under 119(e) new capacity improvement under this program to construction of auxiliary lanes or widening of a bridge during rehabilitation or replacement.

SEC. 2208. FLEXIBLE INVESTMENT PROGRAM.

This section would establish a flexible investment program.

This section would establish under section 133(b) that the purpose of this program is to provide flexibility to States to direct funding to improve the condition and performance on Federal-aid highways and on bridges on any public road.

This section would provide the list of eligible projects under section 133(c), including eligibilities found currently in section 133. Unlike the HIPP, FIP funds could be used for capacity improvements.

This section would provide under section 133(d) that to be eligible for funding under this program, facilities must be functionally classified as other than local or rural minor collectors, unless such roads were on a Federal-aid highway system on January 1, 1991. Exceptions would apply for bridges on any public road, carpool and vanpool projects and safety projects.

This section would require under section 133(e) that projects be consistent with the planning requirements of sections 134 and 135 of title 23.

This section would set aside funding for highway bridges located on public roads, other than Federal-aid highways. The set aside would not be less than 15 percent of the amount of funds apportioned to the State for the Highway Bridge Program for fiscal year [2011]. It would continue the current provision for reduction of expenditures when the Secretary determines that the State has inadequate needs to justify the expenditure. It would also continue the current credit provisions for bridges not on a Federal-aid highway.

SEC. 2209. HISTORIC HIGHWAY BRIDGES.

This section would amend section 144 of title 23, United States Code, to align with the Flexible Investment Program and the Highway Infrastructure Performance Program. The eligibility and inspection requirements of the Highway Bridge Program would be deleted since eligibility for bridge infrastructure would be contained within the Flexible Investment Program and the Highway Infrastructure Performance Program. The inspection requirements would be consolidated under section 151. This section would retain and update the provisions concerning historic highway bridges.

Subsection (a) would require the Secretary in cooperation with the States to encourage the inventory, retention, rehabilitation, adaptive reuse, and future study of historic highway bridges.

Subsection (b) would define "historic highway bridge" as any bridge that is listed on, or eligible for listing on, the National Register of Historic Places.

Subsection (c) would continue current provisions for State inventories of bridges to determine their historic significance.

Subsection (d) would establish eligibility under this title for preservation of historic highway bridges. For bridges that will no longer be used for motorized vehicular traffic, reimbursable project costs would be limited to 200 percent of the estimated cost of demolition.

Subsection (e) would continue current requirements for making available for donation historic highway bridges that are proposed to be demolished and are reasonably expected to be relocated. It would also provide eligibility for future funding for preserved structures as otherwise provided in title 23.

SEC. 2210. NATIONAL BRIDGE AND TUNNEL INVENTORY AND INSPECTION PROGRAMS.

This section would continue the requirement of the National Bridge Inventory and would consolidate bridge inventory requirements previously contained in 23 USC 144.

This section would continue current provisions requiring the Secretary, in consultation with the States and the Secretaries of the appropriate Federal agencies, to determine the cost of replacing and rehabilitating bridges.

This section would establish requirements for a National Tunnel Inventory in section 151(c).

This section would require under section 151(d) that the Secretary, in consultation with the States and the Secretaries of the appropriate Federal agencies, to determine the cost of replacing and rehabilitating tunnels.

This section would require under section 151(e) that the Secretary, in consultation with the State transportation departments and interested and knowledgeable private organizations and individuals, to establish national bridge inspection standards and national tunnel inspection standards.

This section would set minimum requirements for inspection standards.

This section would provide that the Secretary shall establish a program designed to train appropriate governmental employees to carry out highway bridge and tunnel inspections.

This section would allow the Secretary to use funds made available from 23 USC 104(a) and 503 to carry out section 151.

This section would outline requirements for compliance with the national bridge inspection standards and the national tunnel inspection standards and the penalty for noncompliance. Whenever bridges are discovered with safety concerns in need of immediate action, this section would require the Secretary to immediately notify the State of noncompliance and require the State to correct the noncompliance.

This section would require the set aside of one percent of each State's HIPP and FIP apportionments, to be used for bridge and tunnel inspections under sections 119 and 133 of title 23.

SEC. 2211. LIVABILITY PROGRAM

This section would authorize a new Livability Program to promote safe and efficient multi-modal choices for transportation users throughout the country; increase access to transportation services; enhance the relationship between transportation and land use while protecting the environment; provide affordable connections from residences to employment centers and other key amenities; and enhance economic opportunities and environmental sustainability. The Livability Program would consist of three program components: the formula-based Livable Communities Program, the discretionary Bicycling and Walking Transportation Grant Program, and a discretionary Livability Capacity Building Grant Program.

Livable Communities Program

Subsection (c) would authorize the Secretary to establish a new formula-based Livable Communities Program, codified in section 150(a) of title 23. The purposes of this program would include helping States deliver transportation projects that improve quality of life for communities across the country, including rural and urban areas; improving the safety and efficiency of the transportation system for all transportation modes; reducing impacts of transportation on the environment, including the reduction of greenhouse gas emissions; reducing the need for costly future transportation infrastructure; ensuring efficient access to jobs, services and centers of trade; and encouraging private sector development patterns and investments that support livability goals.

Proposed section 150(a)(3) of title 23 would outline the eligible projects and activities under the Livable Communities Program. Eligible activities for the formula-based program would include those currently eligible under 23 U.S.C. sections 101(a)(35), 149(b), 162, 206, and 217 and SAFETEA-LU section 1404 (i.e., Transportation Enhancement Activities, Congestion Mitigation and Air Quality Improvement Program, National Scenic Byways Program, Recreational Trails Program, Bicycle Transportation and Pedestrian Walkways, and Safe Routes to School, respectively). The eligible activities from these popular programs represent key livability-related transportation activities, ranging from congestion reduction and traffic flow improvements to walking and bicycling facilities to environmental mitigation for highway projects.

Section 150(a)(4) would continue to require air quality improvements for nonattainment and maintenance areas. If a State has nonattainment or maintenance areas it would be required to devote at least15 percent of its Livable Communities Program funds to projects that will improve air quality in these areas. States without nonattainment and maintenance areas would not be constrained by this minimum requirement. Section 150(a)(5) would specify that a State may use Livable Communities Program funds for a transit project if such project would improve air quality in a nonattainment or maintenance area, except that such use of funds could not exceed the amount required to be set aside under paragraph (4).

Section 150(a)(6) would require States to use such sums as necessary to fund one or more State bicycle and pedestrian coordinators and a full-time safe routes to school coordinator.

Section 150(a)(7) would require States to develop a strategy to invest Livable Communities Program funding to achieve State targets that support national performance goals for improving livability. States would report annually on progress in achieving such targets.

Subsection (d) would include a transition period for the establishment of State performance targets.

****[NEED TO MODIFY] Bicycling and Walking Transportation Grant Program**

Subsection (c) would authorize the Secretary to establish a new discretionary Bicycling and Walking Transportation Grant Program, codified in section 150(b) of title 23, to assist communities in building safe and convenient pedestrian and bicycle networks.
As specified under proposed section 150(b)(3), under this program, eligible applicants would include State departments of transportation, tribal governments, local governments, or metropolitan planning organizations. Section 150(b)(4) would provide a list of eligible projects, which would include projects for constructing networks of nonmotorized transportation infrastructure facilities, including sidewalks, bikeways, and shared use paths, that connect people with public transportation, workplaces, schools, residences, businesses, recreation areas, and other community activity centers; providing for bicycle facilities, including bicycle sharing stations; restoring and upgrading current nonmotorized transportation infrastructure facilities; supporting educational activities and activities to encourage biking, safety-oriented activities, and technical assistance to further the purposes of the program; and improving safety for pedestrians and bicyclists. Section 150(b)(5) would provide that applicants could request up to $20 million for an eligible project. In selecting grants, the Secretary would consider a number of factors, including, for example, the extent to which the project would contribute to a mode shift to walking and bicycling, demonstrate community support, and commit State, local or other Federal matching funds.

Livability Capacity Building Grant Program

Subsection (e) would authorize a discretionary Livability Capacity Building Grant Program to improve capacity for addressing livability needs. Eligible applicants would include State departments of transportation, tribal governments, local governments, or metropolitan planning organizations. Eligible projects would include a variety of projects for capacity-building such as improving data collection, providing training, upgrading computers and software, and developing and implementing transportation modeling.

In awarding grants under this program, the Secretary would consider the extent to which the proposed project would help address the principles from the HUD-EPA-DOT interagency partnership for sustainable communities; the degree to which the project leverages investment; and the extent of coordination and collaboration demonstrated between all relevant transportation entities in connection with the project.

SEC. 2212. FEDERAL LANDS AND TRIBAL TRANSPORTATION PROGRAMS.

This section would amend sections 101 and 201-204 of title 23, United States Code, to: 1) improve multi-modal access, support increasing visitation to recreational areas on public lands, and expand economic development in and around Federal lands while preserving the environment and reducing congestion at our national treasures; 2) provide access to and through our national parks, forests, wildlife refuges, Bureau of Land Management lands, US Army Corps of Engineers recreation areas, and other Federal lands; and 3) enhance livable communities and the quality of life of tribal residents by including safer access to schools and healthcare facilities as well as improved opportunities for economic development on Tribal lands.

This section would replace current sections 201 through 204 of title 23. The current sections related to the individual components of the Federal lands highway program are scattered throughout these four sections. DOT proposes aligning the relevant subsections with the proper programs since many of the existing Federal lands programs are proposed to change significantly. Specifically, all of the code related to the Tribal transportation program was moved to section 202, all of the code related to the Federal lands transportation program was moved to section 203, and all of the code related to the Federal lands access transportation program was moved to section 204. Section 201 provides the overarching language that affects sections 202-204.

Section 201 – Federal lands and tribal transportation programs

Section 201(a) would generally replicate the purpose statement found currently in section 204(a)(1) with updates to; reflect new definitions.

Section 201(b)(1) would consolidate existing language currently found in sections 202(b), 202(c), 202(d), 202(e), and 203.

Section 201(b)(2), 201(b)(3), and 201(b)(4) would replicate existing language included in section 203 with updates to reflect new definitions.

Section 201(b)(5) would ensure that funds stemming from the component programs of the current Federal lands highway program continue to operate under the current laws and regulations.

Section 201(b)(6) would replicate existing language currently found in section 203. The authority to obligate funds at the point of approval of plans, specifications, and estimate would be expanded to include all funds (Title 23 and Non-title 23), similar to authorities currently granted to States under the Federal-aid program.

Section 201(c)(1) through 201(c)(5) would substantially replicate existing language currently found in sections 204(a)(2) through 204(a)(6). References to formal rulemakings for planning processes and management systems would be omitted; however, there would still be a requirement that these processes are followed, as appropriate.

Section 201(c)(6), Data Collection, would require Federal land management agencies to collect and report data necessary to implement the Federal lands transportation program, the Federal lands access program, and the tribal transportation program including inventory and condition information of their transportation facilities and bridge inspections of all publicly accessible bridges.

Section 201(c)(7), Administrative Expenses, would create a planning and data collection program category, funded by a set-aside of up to five percent of the Federal lands access program and the Federal lands transportation program. These funds would provide a dedicated funding source for comprehensive and coordinated transportation planning and performance management activities including data collection and reporting from Federal land management agencies. These funds would also support the transportation planning activities of Federal land management agencies that which are not eligible for Federal Lands Transportation Program funding, such as the Department of Defense and the Bureau of Reclamation.

Section 201(d), Reimbursable Agreements, would permit the use of reimbursable authority for work funded by States, Tribes, and local public authorities. Today, reimbursable authority is limited to a Federal-to-Federal arrangement only. This change would increase flexibility in supporting the delivery of projects.

Section 201(e), Loans, would permit the temporary loaning of funding between and within the recipients of the Federal lands transportation and Federal lands access programs to enable efficient and flexible use of funding. The loan is a purely voluntary activity and requires the consent of all participating entities.

<u>Section 202 – Tribal transportation program</u>

Section 202(a), Use of Funds, would be substantially similar to existing language found in current section 204(b). Section 202(a)(1) describes the program eligibilities, which would not change substantially from existing eligibilities described in sections 204(b)(1), 204(b)(5) and 204(h). The eligible activities lists would be combined and revised slightly to more closely match the eligibility list appearing in implementing regulations (25 CFR 170).

Sections 202(a)(2) through 202(a)(6) would be virtually identical to existing language currently appearing in sections 202(d)(2)(F), 204(b), and 204(f), with updates to conform to new definitions. The six percent administrative set-aside is a conversion of the annual dollar figures that appear in section 202(d)(2)(F)(i), which are equivalent to six percent of each year's program authorization. Approximately six percent has been set aside for administrative expenses over the past two authorizations.

Section 202(a)(7), Maintenance, would replicate existing language currently appearing in sections 204(c) and 204(l). The provision would be modified to permit spending on maintenance activities at the greater of $500,000 or 25% of the funding a Tribe receives from the Tribal share formula. This change would allow many smaller Tribes, who receive modest amount(s) of funds via the Tribal share formula, to immediately leverage their resources on maintenance activities and reap the benefits of those transportation improvements within their communities. The requirement for an annual maintenance report would be removed, because only a minimal number of the 564 Federally-recognized Tribes currently have a State-tribal maintenance agreement in place in which funding is transferred to the Tribes.

Sections 202(a)(8) and 202(a)(9) are virtually identical to language currently appearing in sections 204(d) and 204(e). References would be updated to conform to new definitions.

Section 202(b)(1) would replicate language currently appearing in section 202(d)(2).References to a negotiated rulemaking with Tribes would be replaced by a reference to 25 CFR 170, which is the result of that negotiated rulemaking.

Section 202(b)(2), National Tribal Transportation Facility Inventory, is similar to language currently appearing in section 202(d)(2)(G). The requirement for a report to Congress would be removed, since that report has been completed.

Section 202(b)(3), Regulations, is similar to language currently appearing in section 202(d)(2)(B). References to a negotiated rulemaking with tribes to establish a funding formula would be removed because the formula was established in 25 CFR 170, which is the result of that negotiated rulemaking.

Section 202(b)(4), Basis for Funding Formula, would replicate language currently appearing in section 202(d)(2)(D). The funding formula would be refined to require that at least 50 percent of the funding be generated from transportation facilities that are owned by Tribal Governments, the Bureau of Indian Affairs, or were part of the Indian

reservation roads program system inventory in 1992 or subsequent fiscal year. In this manner, the program preserves a minimum threshold of resources for roads owned by Tribes/BIA regardless if the inventory of State and County owned roads continues to increase.

Section 202(b)(5) would replicate language currently appearing in section 202(d)(2)(E). References to program names would be updated.

Section 202(b)(6) would replicate language currently appearing in section 202(d)(2)(F)(ii). A fourth provision would be added to require a Tribe to receive advanced written approval from a facility owner before that Tribe could approve plans, specifications, and estimates (PS&E), or commence with construction. This change would align the law with the current regulations appearing in 25 CFR 170.

Sections 202(b)(7) and 202(b)(8) would replicate language currently appearing in sections 202(d)(3) and 202(d)(5). References would be updated to conform to new definitions. Under 202(b)(8)(F), the approval of the Secretary would be added as a condition of accepting new Tribes for direct disbursement of funding from FHWA. This change would ensure that FHWA could manage the oversight required by the significantly increasing number of Tribes that want program funds directly from FHWA.

Section 202(c), Planning, would replicate language currently appearing in section 204(j). The amount of the set-aside would be increased from 2 percent to 3 percent to support the additional collection and reporting of data, and increased planning activities. References to program names would be updated and references to other sections would be conformed.

Section 202(d), Tribal Transportation Facility Bridges, would replicate language currently appearing in section 202(d)(4). The standalone $14 million Indian reservation roads bridge program would be replaced with up to a 5 percent set-aside of the Tribal Transportation Program thereby providing an opportunity to consolidate programs.

Section 202(e), Safety, would create a safety funding category of up to 2 percent set-aside of the Tribal Transportation Program to provide dedicated funds for transportation safety improvement projects, collection of safety information, development and operation of safety management systems, highway safety education programs, and other eligible activities under section 148. This proposed change is predicated on the disproportionate numbers of fatalities and crashes in Indian country compared to similar safety numbers in the remaining locations of their State(s).

Section 202(f), Federal-aid Eligible Projects, would replicate language currently appearing in section 204(c) with updates to references to new program names and sections.

<u>Section 203 – Federal Lands Transportation Program</u>

Section 203(a), Use of Funds, would substantially replicate language in current section 204(b). Section 203(a)(1) would describe the program eligibilities, which would not change substantially from existing eligibilities described in sections 204(b)(1), 204(b)(5) and 204(h). The operations and maintenance of transit facilities from section 204(b)(1)(B) would be removed.

Sections 203(a)(2) through 203(a)(5) would replicate existing language currently appearing in sections 204(b)(2), 204(d), 204(e) and 204(f). References to the "Buy Indian" Act and ISDEAA (P.L. 93-638) would be removed from the Federal Lands Transportation Program. References would be updated to conform to new definitions.

Section 203(b), Agency Program Distributions, would create a Federal Lands Transportation funding category for improvement projects on high-use Federal lands transportation facilities (public roads, bridges, trails, and transit systems) owned by the National Park Service, the U.S. Forest Service, the U.S. Fish & Wildlife Service, the U.S. Army Corps of Engineers, and the Bureau of Land Management. This program would be allocated to programs of projects for four of the five agencies in a competitive manner. The DOT proposes that a portion of the funds be reserved for the National Park Service (NPS) as shown in section 1101. The NPS would be required to demonstrate how their program of projects supports the below objectives similar to the other four agencies. The remaining four agencies would compete for the balance of the funds based on applications that describe how their programs of projects will:
(A) Address the transportation goals of the Secretary of Transportation, including performance management as appropriate;
(B) Address the resource management goals of the Secretaries of the respective Federal land management agencies; and
(C) Support high-use Federal recreation sites or economic generators.

Section 203(c), National Federal Lands Transportation Facility Inventory, would require the five Federal land management agencies to maintain inventories of their transportation facilities that provide access to high-use Federal recreation sites or economic generators.

<u>Section 204 – Federal Lands Access Program</u>

Section 204(a), Use of Funds, would substantially replicate existing language in current 23 USC 204(b). Section 204(a)(1) describes the program eligibilities, which would not change substantially from existing eligibilities described in 23 USC 204(b)(1), 204(b)(5) and 204(h). The operations and maintenance of transit facilities from 23 USC 204(b)(1)(B) would be removed.

Sections 204(a)(2) through 204(a)(5) are virtually identical to existing language currently appearing in 23 USC 204(b)(2), 204(d), 204(e) and 204(f). References to the "Buy Indian" Act and ISDEAA (P.L. 93-638) would be removed from the Federal Lands Transportation Program. References would be updated to conform to new definitions.

Section 204(b), Program Distributions, would create a Federal Lands Access funding category for improvement projects on Federal lands access transportation facilities (public roads, bridges, trails, and transit systems) owned by States, counties, or local governments which provide access to public or non-public Federal lands, including lands owned by the Departments of Interior, Agriculture, Defense, and Energy. This program would be allocated by formula to all 50 States, Puerto Rico, and the District of Columbia.

Section 204(c) would enable programming decisions to be made by a tri-partite committee in each state, made up of a representative from the Federal Highway Administration, a representative from the respective State Department of Transportation, and a representative from County or other local governments in that State.

Section 204(d) would require that this committee give preference to projects that provide access to, are adjacent to, or are located within high use Federal recreation sites, Federal economic generators, or gateway communities to public and non-public Federal lands.

Subsection (b) would repeal 23 U.S.C. 214, Public lands development roads and trails.

Subsection (c) would provide conforming amendments for consistency with the definition changes made in this section. This subsection would also replace the term "park road or parkway under Section 204" with "Federal lands transportation facility" in Section 138, Preservation of Parklands. This change would conform the new definitions and treat Federal lands transportation facilities in a consistent manner. This change would also exempt Federal owners from "section 4f" by amending section 138(a) of title 23. This exemption is similar to the exemption provided to the National Park Service under the Transportation Equity Act for the 21st Century.

SEC. 2213. EMERGENCY RELIEF PROGRAM.

This section would continue the emergency relief (ER) program at the existing annual authorization of $100 million.

This section would continue existing statutory requirements allowing nationwide ER program eligibility for natural disasters and catastrophic failures from an external cause.

This section would add language to clarify existing policy prohibiting ER funding participation in repairs when the construction phase of a replacement structure is included in the statewide transportation improvement program at the time of a disaster.

This section would require identification of all eligible ER sites and associated project costs, for any given disaster, to be identified within two years of the disaster occurrence. It would also continue existing provisions in title 23 section 120(e) limiting the eligibility of ER funding participation to the cost of repair or reconstruction of a comparable facility. The definition of a "comparable facility" would be moved from title 23, section 120(e) to this subsection.

This section would limit ER participation in debris removal costs to those events not eligible for assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. This provision would simplify the process of debris removal cost accounting for state and local agencies.This section would remove the $100 million cap on a single ER event within a state. This cap has historically been lifted by Congress through supplemental appropriations legislation when a large scale disaster results in ER expenses that exceed $100 million within a state.

This section would allow additional transit service to be an eligible ER expense when such service provides temporary substitute highway traffic service to accommodate detoured traffic associated with a disaster.

This section would allow eligibility for reimbursement of emergency relief work completed with an agency's own funds prior to determination of eligibility. This would eliminate confusion about state and federal lands management agencies' eligibility for reimbursement for emergency relief work completed with their own funds prior to a determination of eligibility.

This section would carry forward existing statutory requirements concerning the treatment of territories as a state for the purpose of ER program eligibility.

SEC. 2214. WORKFORCE DEVELOPMENT.

This section would amend section 140 of title 23, United States Code, by striking the authorization amount references for the on-the-job training and disadvantaged business enterprise programs. Such references, with higher authorization amounts, would be located in section 2201 of this bill.

SEC. 2215. HIGHWAY SAFETY IMPROVEMENT PROGRAM.

This section would provide important changes to the Highway Safety Improvement Program (HSIP), the core highway safety program created by SAFETEA-LU and codified in section 148 of title 23. This program supports DOT's highest priority, reducing transportation-related fatalities and injuries, and reflects the continuing importance of highway safety to our social and economic health and future productivity. This section would target highway safety concerns on all public roads and provide flexibility for States to use their safety funds to address their highest priority safety problems in ways that achieve the greatest safety benefits.

SAFETEA-LU advanced safety by requiring States to develop data-driven and comprehensive Strategic Highway Safety Plans (SHSP) in consultation with public and private sector safety stakeholders at the local, State and Federal levels. All fifty States and the District of Columbia have responded positively to this requirement by completing SHSPs that were approved by the Governor or the responsible agency in each State. This proposal would reinforce and strengthen the SHSP by providing for the establishment and

implementation of performance measures and targets for reducing the more than 33,000 fatalities that occur every year.

Building on the core HSIP authorized by SAFETEA-LU, FHWA identified improvements to the program to increase safety performance at the local, State and Federal levels. This section would require SHSP updates, an annual implementation plan describing how HSIP funds will be spent, and an annual evaluation report of the progress made toward improving safety performance as part of a State performance-based management program. The proposal would provide additional flexibility in the use of HSIP funds.

The proposal would replace the High Risk Rural Roads Program (HRRRP) with a 10 percent set aside dedicated to rural road safety and would eliminate the $220 million annual set-aside for railway-highway crossings. In SAFETEA-LU, these funds represented 17 percent of HSIP while highway-rail crossing fatalities represented less than 1 percent of all highway fatalities each year. The set-aside deprived States of funding to address greater safety needs such as roadway-departure crashes (which represent 53 percent of fatal crashes). Under this proposal, rail crossing safety projects would remain fully eligible for HSIP funds, so States could choose to spend appropriate HSIP funds to address railway-highway crossing safety problems.

As revised, section 148(a) would define "highway safety improvement program" to include projects, activities, plans and reports carried out under this section. The definition of "highway safety improvement project would include strategies, activities and projects on a public road consistent with the State strategic highway safety plan. The "project examples" definition would include a non-exhaustive list of activities eligible for the use of HSIP funds. This proposal would include new definitions for road safety audits, road users, systemic safety improvements and safety data.

Revised section 148(b) would require the Secretary to carry out an HSIP to achieve a significant reduction in traffic fatalities and serious injuries on all public roads.

Section 148(c) would specify the requirements for a State strategic highway safety improvement program. Paragraph (1) would describe the State highway safety improvement program States must have in place to obligate HSIP funds.

The State program would include a number of components:

Section 148(c)(2): Data and Analysis. The first step in meeting a State's safety needs isunderstanding the problems. States would develop a safety data system to: collect and maintain a record of safety data on all public roads; advance the State's capabilities for safety data collection, analysis and integration; identify roadway features that constitute a danger to road users; and perform safety problem identification and countermeasure analysis. This provision would be supported by the new Highway Safety Data Improvement Program under section 149 of title 23.

Section 148(c)(3): Strategic Highway Safety Plan. Under this proposal, States would continue the very successful SHSP process that began in SAFETEA-LU. This provision would require States to update their SHSPs every 5 years and submit them to the Secretary. An SHSP is a statewide-coordinated safety plan that provides a comprehensive framework for reducing highway fatalities and serious injuries on all public roads. The SHSP would be developed by the State DOT in a cooperative process with Local, State, Federal, and private sector safety stakeholders. The SHSP is a data-driven, four- to five-year comprehensive plan that establishes statewide goals, objectives, and areas of greatest need and integrates the four E's—engineering, education, enforcement and emergency services. This proposal would require SHSPs to include State safety performance targets developed in consultation with the Secretary.

This paragraph would add Federal and tribal stakeholders to the list of major State and local safety stakeholders States should consult before updating their SHSPs. Although this provision would not specifically include persons responsible for administering section 130 of title 23 at the State level and Operation Lifesaver from this list, States would have discretion to consult them and other major stakeholders.

Section 148(c)(4): Implementation. Based on the data collection and analysis required and consistent with the SHSP, States would prioritize their safety needs. The proposal would provide States with flexibility to address potential and existing highway safety problems. States would determine priorities for correcting roadway features that constitute a hazard to road users as well as highway safety improvement projects based on crashes, injuries, deaths, traffic volume, and other relevant data. A State should consider which projects maximize opportunities to advance safety as well as annual progress in achieving State safety goals in the SHSP in conjunction with the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration.

States would then establish and implement a schedule of highway safety improvement projects, activities or strategies to address the identified safety problems. A State would submit an annual implementation plan for the Secretary's review describing how the HSIP funds would be allocated; how the proposed projects, activities and strategies funded by the HSIP would allow the State to make progress toward achieving its safety performance targets; and the actions the State would undertake to meet its performance targets if it had not met them for two consecutive years.

Section 148(c)(5): Eligible Projects. This paragraph would provide that States could obligate HSIP funds for highway safety improvement projects on any public road or publicly owned pathway or trail and would encourage States to also make use of other funding to address their safety needs.

Section 148(c)(6): Flexible Funding. This provision would increase the percentage of HSIP funds that could be used for safety projects under other title 23 programs from 10 percent to 25 percent. The projects would be consistent with the SHSP, and the State would certify the funds are being used for the most effective projects to make progress

toward achieving its safety performance targets. This provision would provide flexibility to States to determine the most effective use of safety funds. If a State, as part of its SHSP process, identified greater opportunities for safety improvements through activities eligible under other highway programs, this provision would allow a greater portion of HSIP funds to support those activities. Since States would be required to achieve a performance target to reduce fatalities, they would be encouraged to determine the best ways to meet that target for their State and provided flexibility to use HSIP funds.

Section 148(c)(7): Rural Roads. This provision would require States to set aside 10 percent of their HSIP funds for projects to improve the safety on public rural roads. States would be encouraged to expend additional HSIP funds on public rural roads. The set-aside would replace the HRRRP in SAFETEA-LU because States encountered significant problems in obligating HRRRP funds due to the SAFETEA-LU language. This proposal would provide flexibility to States to address safety problems on all public rural roads. States would not have to determine statewide average crash rates by functional classification in order to use these funds on rural public roads. Since almost 60 percent of fatalities occur on rural roads, the proposal would ensure that at least 10 percent of HSIP funds would be used to address these crashes. If a State certifies to the Secretary it has met all State needs for safety improvements on rural public roads, the State could use the funds set aside for rural public roads for any HSIP project.

Section 148(c)(8): State Performance Management. Consistent with the overall approach to a performance based Federal-aid program, States would be required to establish a performance-based framework for their State highway safety improvement programs. The HSIP performance-based framework would be coordinated with the safety programs of the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration, since the DOT agencies will be working together to achieve a national safety goal. The State performance-based management framework would include statewide roadway safety performance measures and targets developed in consultation with the Secretary. States would also be required to track annual progress in achieving performance targets and analyze and assess results. This evaluation would be used to set priorities for the next annual implementation plan.

States would submit an annual report to the Secretary on their progress in implementing the program, including the performance-based management requirements. This report would describe how HSIP program funds were allocated and the extent to which the HSIP projects, activities, and strategies contributed to achieving the State's safety performance targets. Since safety goals are shared across agencies, the State also would identify progress made in conjunction with the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration in achieving State safety goals.

The provision would allow flexibility for States that meet their safety targets. Only States that achieve their performance targets could transfer up to 50 percent of their HSIP funds for use under other title 23 programs. In cases where a State does not meet its performance target in a fiscal year, the proposal would limit flexibility by requiring that,

in the following year, the portion of a State's obligation authority that is equal to its HSIP apportionment be used for HSIP projects.

To help the public understand the HSIP program, follow how funds are used, and track State progress toward meeting safety goals, section 148(d) would require that all plans and reports submitted to the Secretary be made available to the public through the web site of the State Department of Transportation or other means as the Secretary deems appropriate. This would include the SHSP, the annual implementation plan and the annual performance report. As revised, this subsection would require States, rather than the Secretary, to post the reports.

Section 148(e) would continue the provision that reports, surveys, schedules, lists or data relating to this program are not subject to discovery or admission into evidence in a Federal or State court proceedings or for any other purposes in any action for damages.

Section 148(f) would continue the SAFETEA-LU match requirement for HSIP funds. The Federal share of HSIP projects would continue to be 90 percent, with the exception of specific highway safety improvements included in section 120(c), which would be accorded up to 100% Federal share.

Subsection (b) would provide an appropriate transition period for the new HSIP requirements. States would have until October 1 of the second fiscal year after enactment to submit to the Secretary and have in effect an updated strategic highway safety plan that meets the new requirements. Before such date, HSIP funds would be apportioned to a State for eligible projects consistent with the State's existing SHSP. After such date, a State that had not submitted an updated SHSP would only receive HSIP apportionment equal to the amount apportioned to the State in fiscal year 2011 for each subsequent year until the State had in effect and submitted an updated SHSP to the Secretary.

States would have one year after the Secretary establishes safety performance measures and a national target to develop, in consultation with the Secretary, State safety performance targets. Until a State had developed and identified in its SHSP State safety performance targets, the Secretary could approve obligations of funds to a State to carry out its HSIP for eligible projects consistent with the State's existing SHSP.

Section 2310(c) would amend section 130 of title 23 to eliminate subsection (e), the set-aside of HSIP funds for the elimination of hazards and installation of protective devices at railway-highway crossing. In SAFETEA-LU, these funds represented 17 percent of HSIP funds, while highway-rail crossing fatalities represented less than 1 percent of all highway fatalities each year. The set-aside deprived States of funding to address greater safety needs such as roadway-departure crashes (which represent 53 percent of fatal crashes). Rail crossing safety projects would remain fully eligible for HSIP funds, so States could choose to spend appropriate HSIP funds to address railway-highway crossing safety problems. Subsections (f)(1), (2) and (3) would be deleted because they are no longer needed.

SEC. 2216. HIGHWAY SAFETY DATA IMPROVEMENT PROGRAM

This section would authorize a new Highway Safety Data Improvement Program (HSDIP) under section 149 of title 23 to ensure that States have the most complete and reliable highway safety data available in order to make the most cost effective infrastructure design decisions with the greatest safety payoff. This program primarily would focus on improvement of roadway inventory data systems. The HSDIP would provide States with the necessary tools and information to use crash data, along with information about roadway design characteristics and traffic data, to make better safety investment decisions. With these data systems integrated into highway basemaps, advanced analysis tools could be used to improve States' safety programs. This program would bolster the data-driven principles of the Highway Safety Improvement Program (HSIP) in under section 148 of title 23. In addition, all other planning decisions for highways could benefit from the availability of basemaps.

In order to make appropriate data-driven decisions, highway professionals must use analytical practices that take advantage of a rich set of highway data elements. Several roadway safety tools are now available to conduct quantitative safety analyses, allowing States to quantify the safety effects of decisions in planning, design, operations, and maintenance. Robust safety data is needed to fully use these new tools and to make the most cost effective and impactful infrastructure design decisions, based on the actual safety aspects of the system.

Under the HSDIP, States would receive funding to assist in the creation of highway basemaps—with the ability to geolocate attribute data through linear referencing system—of all public roads. States would be able to enhance their roadway inventory data systems and analysis for all public roads by linking roadway safety data to basemaps to determine highway safety improvement project and strategy priorities. The HSDIP also would help improve the timeliness, accuracy, completeness, consistency, integration, and accessibility of roadway safety data.

Section 149(a) would direct the Secretary to establish and implement a highway safety data improvement program. Section 149(b) would specify the purposes of the HSDIP. Section 149(c) would include definitions for highway basemaps, highway safety data improvement projects, model inventory of roadway elements, roadway safety analysis tools and roadway safety data.

Section 149(d) would specify the eligible uses of HSDIP funds. HSDIP funds could be used to create, update, or enhance a highway basemap as well as to collect roadway safety data for creation of or use on a highway basemap of all public roads in a State. To support the data collection and highway basemaps, HSDIP funds also would be available to store and maintain roadway safety data in an electronic format. These basemaps also could be used as a mapping layer with other highway, multi-modal and economic development data. Finally, this provision would allow States to use HSDIP funds to develop analytical processes for roadway safety data elements and to acquire and

implement the roadway safety analysis tools which will provide information to make cost-effective safety investment decisions.

Section 149(e) would require States to develop a strategic highway safety data improvement plan that describes a program of strategies to achieve a data-driven safety program. The data improvement plan would define State safety data improvement goals and annual safety data targets to inform how HSDIP funds should be spent over the authorization period. States would have one year from date of enactment to submit their strategic highway safety data improvement plan to the Secretary. The data improvement plan would describe what the State intends to achieve with its HSDIP funds and the projects, strategies and activities it will implement to achieve data improvement goals. Under section 149(f), States would report to the Secretary on progress in achieving State roadway safety data targets and would publish their reports on their State DOT websites.

Section 149(g) would provide that the Federal share of HSDIP projects would be 90 percent. Under section 149(h), if a State certifies to the Secretary that it has met all its needs for highway safety data improvements, the State could use HSDIP funds for any project under the HSIP.

Subsection (b) would allow an appropriate transition period for States to develop their strategic highway safety data improvement plans.

Subsection (c) would provide that $17.5 million from the HSDIP be reserved for the Federal Highway Administration to work with the National Highway Traffic Safety Administration, the Federal Motor Carrier Safety Administration and the Research and Innovative Technology Administration to foster cross modal implementation of safety data programs and implement an integrated strategic and tactical approach to planning for safety data improvements. FHWA would work with its modal partners to develop coordinated safety data plans and improve the standardization, timeliness, accuracy, completeness, consistency, integration, and accessibility of safety data, systems, and processes.

SEC. 2217. TOLLING.

This section amends existing law to include two new options that provide more flexibility to finance new construction or capacity, and manage congestion, through the imposition of tolls. The first option focuses on Metropolitan Congestion Reduction and permits State and local governments to impose tolls on existing Interstate and non-Interstate facilities for the purposes of improving or reducing congestion in metropolitan areas with populations over 1 million people. Under this option, tolls may be imposed on specific lanes, whole facilities, or a network of facilities within the metropolitan area. The tolls must vary in order to manage demand and may only be collected through electronic toll collection systems. Toll revenues must first be used for the improvement, operation and maintenance of the facilities that are tolled, and any revenues in excess of the facilities' needs may be used for other title 23 eligible projects directly benefiting the operational performance of the tolled facility or facilities if the State or public authority certifies that

the tolled facility or facilities are being adequately maintained, that priority for use of the revenues that have been collected has been given to capital improvement projects located on the toll facility or facilities that reduce congestion, and if the annual performance report demonstrates that the pricing strategy has been effective in reducing or managing congestion. In order to toll a facility under this option, the State or local government must submit an application to the Secretary that identifies the facilities to be tolled, a description of the congestion problem sought to be addressed,, a facility management plan, a description of the transportation choices available to users of the facilities, what measures are being taken to address the impacts on low income populations, an analysis of whether the anticipated traffic diversion will significantly affect the safety of the routes onto which diversion may occur, and a monitoring and reporting plan.

The second option is focused on Interstate System Improvement and permits States and local governments to impose tolls for the purpose to initially construct Interstate facilities if the facility could not otherwise be constructed without the collection of tolls. The Interstate System Improvement option also permits State and local governments to toll existing Interstate facilities for the purpose of constructing one or more lanes. Any tolls collected under this program may only be collected through electronic toll collection systems. Toll revenues may only be used for the improvement, operation and maintenance of the facilities that are tolled. In order to toll a facility under this option, the State or local government must submit an application to the Secretary that identifies the facility to be tolled, describes the project and mobility needs to be addressed, includes a financial analysis showing that the facility could be constructed without the collection of tolls in the case of initial construction, a facility management plan, an analysis of any expected traffic diversion in the case of an existing free facility, what measures are being taken to address the impacts on low income populations, and a proposed monitoring and reporting plan.

This provision also makes various conforming amendments repealing existing pilot programs that are no longer needed. State and local governments should be able to impose tolls largely to the same extent permitted to do so under existing programs. Any facility operating pursuant to the terms of an executed toll or cooperative agreement under any of these repealed pilot programs may continue tolling pursuant to the terms of those agreements. Also, the interoperability requirements are amended to apply to any toll facility operating under authority granted by the Secretary rather than only certain specified pilot programs.

SEC. 2218. SURFACE TRANSPORTATION REVENUE ALTERNATIVES OFFICE.

This section would establish a Surface Transportation Revenue Alternatives Office within the Federal Highway Administration. The Office would analyze the feasibility of implementing a national mileage-based user fee system that would convey prices to users to reflect system use and other travel externalities and serve as a funding source for surface transportation programs.

As vehicles become more efficient and the use of non-petroleum energy sources become more prevalent the current user fee system for funding the transportation system will become less viable. As a result, there is considerable interest in the potential for a mileage-based excise tax regime as a revenue source for surface transportation programs. Many unanswered questions and issues remain concerning the technologies that might be used to implement mileage-based user charges. The final outcome of the Office's 6-year effort would be documented evidence of the feasibility of a Nationally-implemented mileage-based user fee system and recommendations for next steps leading to the potential implementation of such a system.

Subsection (c) would establish a Surface Transportation Revenue Alternatives Policy Decision Group ("the Group"), consisting of public agency representatives as determined by the Secretary, to inform the selection and evaluation of mileage-based user fee systems. The Group would create a study framework that defines the functionality of a mileage-based user fee system, identify mileage-based user fee systems for field testing, provide objectives to assess technological, administrative, institutional, privacy, and other issues associated with identified systems, establish a public awareness communications plan, and evaluate the system design of mileage-based user fee systems.

Subsection (d) would require the Office to conduct field trials of the mileage-based user fee systems indentified by the Group for testing. In constructing the field trials, the Office would consider the capability of States to coordinate administrative and financial functions, the reliability of technology over greater distances and terrains, administrative cost estimates, and user acceptance.

SEC. 2219. TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.

This section would establish a foundation for transportation systems management and operations, codified in section 168 of title 23, United States Code.

Proposed section 168(b) of title 23 would express the purposes of the section, which reflect Departmental priorities and include furthering efficient and effective management and operation of the transportation system in order to promote the safe, reliable, and secure movement of people and goods at all times and under varying conditions; improving the safety, performance, and reliability of existing infrastructure while bolstering the Nation’s economic competitiveness and supporting livable and sustainable communities; and ensuring that the strategic performance of Federal transportation system investments is sustained for all those that depend upon the transportation system by the coordinated and collaborative implementation of a transportation systems management and operations strategy.

Proposed section 168(c) of title 23 would authorize the Secretary to collaborate with and provide guidance to government and private entities at the federal, state, regional, and local level in order to improve transportation systems management and operations, thereby increasing the performance, safety, reliability, and security of our surface

transportation system. This section would also encourage and authorize multi-State agreements in order to support a transportation systems management and operations strategy within interstate regions or corridors. Such agreements are especially important during road construction, emergencies, and weather-related events.

Proposed section 168(d) of title 23 sets forth the objectives of a transportation systems management and operations strategy, including reducing congestion, planning for and organizing operations, and enhancing freight management. This section also provides examples of strategies toward achieving the objectives, such as travel demand management, collaboration and coordination, and use of advanced technologies.

Part 2--Performance Management

SEC. 2301. PERFORMANCE MANAGEMENT PROCESS.

This section would authorize the establishment of Performance Management of the Federal-aid program, identify national goals to be achieved by the Federal program, and establish a process by which the Secretary and the states would measure progress in attaining the goals. Performance Management is the means to make the most efficient investment of federal funds, increase the accountability and transparency of the federal program, achieve national goals, and improve decision-making.

The process, referenced throughout the bill, would include the identification of measures to assess system performance, the determination of national and separate state targets based on resources, the evaluation of the system, the identification of strategies to achieve the targeted outcomes, and the monitoring of system progress in meeting the targets and achieving the goals.

The process would be evolutionary. In several goal areas, consistent state data do not currently exist and for others, tools do not allow forecasting of future conditions. As experience is gained and improved data becomes available, new measures will be identified by the Secretary and targets developed by the states in consultation with the Secretary. By phasing-in Performance Management starting with the data that currently exists, for safety and system condition, the states will gain needed experience and allow for potential problems to be discovered early and best practices identified and applied to other goal areas.

SEC. 2302. METROPOLITAN TRANSPORTATION PLANNING.

Section 134 (Metropolitan transportation planning) of Title 23 as revised is amended to establish new metropolitan planning organization (MPO) designation and planning requirements. Modifications to MPO designation requirements ensure that MPO boundaries reflect regional development patterns and account for the size and technical capacity of MPOs. The new approach to planning focuses on enhancing the effectiveness of MPOs, both independently and as a partner with state DOTs, local jurisdictions, and

other planning bodies, in developing and implementing metropolitan transportation plans and Transportation Improvement Programs (TIPs).

Subsection (c) (*General requirements*) increases the minimum population threshold for MPO designation from 50,000 to 200,000 and establishes population-based tiers among MPOs in order to better align technical capacity and resource availability with planning requirements:

- *Tier I* designation is reserved for MPOs operating within urbanized areas of 1 million or more persons. Tier I MPOs are required to implement a performance-based, outcome-driven approach to planning. MPOs operating within urbanized areas of more than 200,000, but less than 1 million persons, may request, with the support of the Governor, designation as a Tier I MPO if it can demonstrate to the Secretary adequate technical capacity to fulfill the requirements of a Tier I MPO.

- *Tier II* designation is reserved for MPOs operating within urbanized areas of less than 1 million, but more than 200,000 persons. Tier II MPOs are subject to more streamlined performance-based planning requirements.

- Existing MPOs operating within urbanized areas of less than 200,000 persons prior to enactment of the Transportation Opportunities Act may, with the support of the Governor, request designation as a Tier II MPO. In the absence of a Tier II designation, these existing MPOs operating within urbanized areas of less than 200,000 persons are to be dissolved and the planning responsibilities returned to the State for those communities.

MPOs operating within contiguous or adjacent urbanized areas may elect to consolidate in order to meet the population thresholds required in order to achieve designation as a Tier I or Tier II MPO.

Subsection (g) (*MPO consultation in metropolitan transportation plan and TIP coordination*) requires MPOs to cooperate with officials and entities responsible for related planning activities, enhancing consideration of other key planning activities in the development of metropolitan transportation plans and TIPs. Additionally, MPOs that are adjacent or geographically close are required to coordinate their planning processes, including the preparation of metropolitan transportation plans and TIPs, to the maximum extent practicable.

Subsection (h) (*Scope of planning process*) is revised to begin the transition to, and implementation of, a performance-based, outcome-driven planning process in which MPOs are charged with considering certain outcomes as objectives in the planning process. In recognition of locally-preferred solutions and innovation, MPOs are granted the flexibility to develop and implement effective performance measures and targets for the national outcomes, in addition to measures that may be specifically prescribed by the Secretary. MPOs are required to periodically develop and publish a system performance report describing the condition of, and performance of, their transportation system. The

report is designed to serve as the basis for the development of policies, programs, and investment priorities that are reflected in the transportation plans and TIPs.

Subsection (i) (*Participation by interested parties*) improves the planning process through enhanced public participation and input.

Subsections (j) and (k) (*Development of a metropolitan transportation plan* and *Metropolitan TIP*) require MPOs to develop transportation plans and TIPs that focus on projects selected to achieve outcomes and performance targets. Accountability in planning is improved by requiring the development of fiscally-constrained transportation plans and TIPs so that MPOs select projects with a realistic financial model. Furthermore, TIPs must include, for illustrative purposes, the preliminary elements of benefit-cost analysis for certain projects that exceed an expected total project cost.

Subsection (n) (*Performance-based planning process evaluation*) allows the Secretary to evaluate periodically the quality of the performance-based planning processes of each MPO. The Secretary is empowered to designate high-performing MPOs, as well as those that have made significant progress in improving their performance-based planning processes. The Secretary may use these designations as a criterion when administering certain discretionary programs.

SEC. 2303. STATEWIDE AND NON-METROPOLITAN TRANSPORTATION PLANNING.

Section 135 (Statewide transportation planning) of Title 23 is amended to establish new statewide transportation planning requirements. The new approach to planning focuses on enhancing the effectiveness of States, both independently and as a partner with metropolitan areas, local jurisdictions, and other planning bodies, in developing and implementing statewide transportation plans and Statewide Transportation Improvement Programs (STIPs).

Subsection (a) (*General requirements*) ensures that that States incorporate without change, or by reference, the metropolitan transportation plans and TIPs -- prepared by MPOs located within the State -- into statewide transportation plans and STIPs. Additionally, States are required to assume the planning responsibilities of existing small-urbanized areas (with a population of less than 200,000) that are no longer under the jurisdiction of a MPO.

Subsection (c) (*Coordination in multistate areas*) encourages Governors with responsibility for a portion of a multistate planning area and/or transportation corridor to coordinate their planning processes. The Secretary is allowed to consider the effectiveness of multistate coordination when approving funding for a multistate corridor project and when administering certain discretionary programs.

Subsection (d) (*Relationship with other planning officials*) requires States, to the extent practicable, to cooperate with officials and entities responsible for related planning activities in the development of statewide transportation plans and STIPs.

Subsection (e) (*Scope of planning process*) is revised to begin the transition to, and implementation of, a performance-based, outcome-driven planning process in which States are charged with considering certain outcomes as objectives in the planning process. In recognition of locally-preferred solutions and innovation, States, in coordination with MPOs, are granted the flexibility to develop and implement effective performance measures and targets for the national outcomes, in addition to measures that may be specifically prescribed by the Secretary. States are required to periodically develop and publish a system performance report describing the condition of, and performance of, their transportation system. The report is designed to serve as the basis for the development of policies, programs, and investment priorities that are reflected in the statewide transportation plans and STIPs.

Subsection (f) (*Participation by interested parties*) improves the planning process through enhanced public participation and input.

Subsections (h) and (i) (*Statewide transportation plan* and *STIP*) require States to develop statewide transportation plans and STIPs that focus on projects selected to achieve outcomes and performance targets. Accountability in planning is improved by requiring the development of fiscally-constrained statewide transportation plans and STIPs so that States select projects with a realistic financial model. Furthermore, STIPs must include, for illustrative purposes, the preliminary elements of benefit-cost analysis for certain projects that exceed an expected total project cost.

Subsection (l) (*Certification*) requires the Secretary to certify at least every 5 years that the planning process of a State is being carried out as outlined in Sec. 135.

Subsection (m) (*Performance-based planning process evaluation*) allows the Secretary to evaluate periodically the quality of the performance-based planning processes for each State. The Secretary is empowered to designate high-performing States, as well as those that have made significant progress in improving their performance-based planning processes. The Secretary may use these designations as a criterion when administrating certain discretionary programs.

Part 3--Improved Federal Stewardship

SEC. 2501. SPECIAL PERMITS DURING PERIODS OF NATIONAL EMERGENCY.

Section 127 of title 23, United States Code, establishes vehicle weight limitations. This section would amend 127 to grant States the legal authority to issue permits for overweight divisible loads for limited periods of time during declared emergencies.

Current law restricts the authority for the States to issue overweight special permits by restricting their authority to non-divisible loads or preempting their authority to exceed certain limits with respect to some vehicle combinations. Such authority is needed in order to expedite relief supplies that are divisible (e.g., bottled water).

Section 31112 of title 49, United States Code, establishes vehicle length limitations. This section would amend 31112 to grant States the legal authority to issue permits for divisible loads which exceed the length limitations for limited periods of time during declared emergencies. Current law restricts the authority for the States to issue overlength special permits by restricting their authority to non-divisible loads or preempting their authority to exceed certain limits with respect to some vehicle combinations. Such authority is needed in order to expedite relief supplies that are divisible (e.g., bottled water).

SEC. 2502. CHARGING INFRASTRUCTURE IN INTERSTATE RIGHTS-OF-WAY.

This section would amend section 111 of title 23, United States Code, to allow States to permit charging infrastructure to be placed in safety rest areas or other sites constructed or located within rights-of-way of the Interstate System in the State, and to charge users a fee, or permit the charging of a fee, for use of such charging infrastructure. Such charging infrastructure would not be eligible for Title 23 funding. This section would also include a definition for the term charging infrastructure.

SEC. 2503. FEDERAL SHARE PAYABLE.

This section would amend section 120 of title 23, United States Code, by amending terms to reflect the newly proposed Federal Highway Administration's program structure.

This section would also strike subsection (g) to bring the reimbursement of preliminary engineering and construction engineering into alignment with Federal cost principles, provisions of this title, and current consultant contracting requirements.

This section would also add “shoulder and centerline rumble strips and stripes” to the list of safety projects that are eligible for 100 percent federal funding. Rumble strips are raised or grooved patterns on the roadway that provide both an audible warning (rumbling sound) and a physical vibration to alert drivers that they are leaving the driving lane. They may be installed on the roadway shoulders on undivided and divided highways r or on the centerline of undivided highways. If the placement of rumble strips coincides with centerline or edgeline striping, the devices are referred to as rumble stripes. Rumble strips and rumble stripes are proven, low cost, highly effective safety countermeasures with a high benefit cost ratio. They are one of the most effective options for addressing roadway departure crashes (over 50% of all fatalities), particularly in rural areas.

SEC. 2504. HOV FACILITIES.

This provision would restore the original intent of section 166 of title 23 by eliminating access for low emission and energy efficient vehicles from HOV lanes and strengthen performance requirements for facilities that allow use by statutorily permitted single-occupant vehicles. These changes would specify what actions should be taken when performance becomes degraded and potential penalties for non-compliance. Additionally, before opening a facility to high occupancy toll vehicles, this section would require the submission of a report establishing that the facility is not already degraded and that the presence of such vehicles will not cause the facility to become degraded. Once access is allowed, state agencies would be required to provide the Secretary with a semi-annual report on the impact of such vehicles on the operation of the facility and adjacent highways.

Part 4--Other

SEC. 2601. PROGRAM EFFICIENCIES.

This section would maintain the current prohibition on States or political subdivisions of a State from restricting the access of motorcycles to any highway or portion of a highway for which Federal-aid highway funds have been used. It would continue the existing authority of a State or political subdivision of a State to regulate motorcycles for safety.

This section would maintain existing pay back requirements of funds used for preliminary engineering of a project if on-site construction of, or acquisition of right-of-way for, a highway project is not commenced within 10 years. This section would change the phrase "the State shall pay an amount equal to the amount of Federal funds made available for such engineering" to "the State shall pay an amount equal to the amount of Federal funds reimbursed for such engineering" to improve clarity.

SEC. 2602. ALASKA HIGHWAY.

Section 218(c) of title 23, United States Code, would be amended by inserting "related to the State's ferry system" after "equipment in Alaska" in order to clarify that the Alaska Marine Highway System includes all existing or planned transportation facilities and equipment in Alaska related to the State's ferry system.

SEC. 2603. LETTING OF CONTRACTS.

This section would amend sections 112(a) and 112(b)(1) of title 23, United States Code, pertaining to the bidding requirements for Federal-aid highway projects. Section 112(b)(1) now requires construction contracts to be awarded by competitive bidding, on the basis of the lowest responsive bid submitted by a responsible bidder. This section prohibits the imposition of a requirement or obligation as a condition precedent to the award of a contract to a bidder unless it is otherwise lawful and specifically set forth in the advertised specifications. Under section 112(b)(1), a State may demonstrate to the

satisfaction of the Secretary that another bidding method would be more cost effective or because an emergency exists.

Section 112 previously contained language allowing the Secretary to find that under the circumstances relating to a project, some other bidding method would be in the public interest. This language was struck in 1983, and current language concerning cost effectiveness was implemented. This amendment to section 112(b)(1) reinserts the prior language to provide additional flexibility in limited circumstances for the Secretary to affirmatively find that some other bidding method would be in the public interest.

Although amending section 112(b)(1) alone would provide the Secretary additional flexibility to affirmatively find that some other bidding method would be in the public interest, it may not fully address all competition issues. A 2007 Sixth Circuit case determined that section 112(b)(1) only deals with the process of how bids are awarded, rather than the substance of the underlying contract provisions themselves. City of Cleveland v. Ohio, 508 F.3d 827 (6th Cir. 2007). The Court stated that section 112(a), on the other hand, "gives the FHWA the authority to review 'plans and specifications' with an eye toward 'securing competition' within the public bidding process." In light of the distinction drawn by the Court between subsection (a) and (b), this section amends section 112(a) to include similar public interest language to afford the Secretary with flexibility to find that the inclusion of a certain contract provision would be in the public interest, notwithstanding the provision's adverse impact on competition.

SEC. 2604. CONSTRUCTION.

This section would maintain current provisions in section 114(a) of title 23 concerning State responsibility for construction; the Secretary's right to conduct such inspections and take such corrective action; and the prohibition of any informational signs other than official traffic control devices conforming to standards developed by the Secretary of Transportation. This section would amend section 114(a) to include a reference to the exception provided in section 321 of title 23 concerning signs identifying funding sources.

This section also would maintain current restrictions concerning convict labor and convict produced materials and construction work in Alaska, but would amend sections 114(b) and (c) to reflect the change in the definition of "Federal-aid system".

SEC.2605. MAINTENANCE.

This section would provide that other direct recipients are responsible for the maintenance of projects construction with Federal-aid funds. Paragraph (1)(B) of this section would restore the original intent of section 116 of title 23—that all highway projects shall be maintained, not just those on the Federal-aid system.

Paragraph (2)(B) of this section would remove the reference to the Federal-aid secondary

system, which was eliminated in 1991 by ISTEA.

SEC. 2606. PROJECT APPROVAL AND OVERSIGHT.

This section would maintain existing provisions regarding project approval and oversight but would amend the value engineering requirements in subsection (e) of section 106 of title 23 to clarify their applicability to the National Highway System. This section would establish a requirement that States develop and sustain a value engineering program.

This section also would establish funding eligibility for State administration of subgrants and oversight of subrecipients.

SEC. 2607. ADJUSTMENTS TO PENALTY PROVISIONS.

This section would make significant changes to the existing program structure and would concentrate funding in a smaller number of programs. To ensure that currently enacted penalty provisions continue to work as originally intended, the penalty provisions would be amended to apply to new programs comparable to those to which the original penalty applied. In cases where the new programs are disproportionately larger in size than their predecessors, the penalty percentage would be reduced, so that the penalty imposed would be approximately equivalent to what was imposed in the past.

SEC. 2608. OPEN CONTAINER REQUIREMENTS.

This section amends section 154(c) ("Transfer of funds") of title 23, United States Code, by (1) Revising paragraph (2) to provide that for fiscal year 2012 and thereafter, that (A) On October 1, 2011, and each October 1, thereafter, if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall reserve an amount equal to 2 percent of the funds to be apportioned to the State on that date under each of paragraphs (1) and (2) of section 104(b) until the State identifies to the Secretary how it will use such reserved funds among the uses authorized under subparagraph (A) and (B) of paragraph (1), and paragraph (3); and (B) Thereafter, the Secretary shall transfer those funds identified by the State for use as described under subparagraph (A) and (B) of paragraph (1) to the apportionment of the State under section 402, and shall release those funds identified by the State for use as described under paragraph (3); and (2) Revising paragraph (3) to provide that a State may elect to use all or a portion of the funds transferred under paragraph (2) for activities eligible under section 148. This section also makes a conforming amendment to paragraph (5).

SEC. 2609. MINIMUM PENALTIES FOR REPEAT OFFENDERS FOR DRIVING WHILE INTOXICATED OR DRIVING UNDER THE INFLUENCE.

Subsection (a) of this section amends section 164(a)(5) of title 23, United States Code, to eliminate the limited driving privileges restriction in clause (A)(ii) for drivers who have an alcohol ignition interlock installed in their vehicles.

Subsection (b) of this section amends section 164(b) of such title by (1) Revising paragraph (2) to provide that for fiscal year 2012 and thereafter, that: (A) On October 1, 2011, and each October 1, thereafter, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall reserve an amount equal to 2 percent of the funds to be apportioned to the State on that date under each of paragraphs (1) and (2) of section 104(b) until the State identifies to the Secretary how it will use such reserved funds among the uses authorized under subparagraph (A) and (B) of paragraph (1), and paragraph (3); and (B) Thereafter, the Secretary shall transfer those funds identified by the State for use as described under subparagraph (A) and (B) of paragraph (1) to the apportionment of the State under section 402, and shall release those funds identified by the State for use as described under paragraph (3); and (2) Revising paragraph (3) to provide that a State may elect to use all or a portion of the funds transferred under paragraph (2) for activities eligible under section 148. This section also makes a conforming amendment to paragraph (5).

SEC. 2610. UNIFORM RELOCATION ASSISTANCE ACT AMENDMENTS.

This section would amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act).

Subsection (a) would increase the maximum amount payable to cover the actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new location (reestablishment), and the optional maximum alternative fixed business allowance amount that a business, farm, or nonprofit organization may elect to receive in lieu of actual moving and related expenses. Since the current statutory limits were established in 1988, the complexities and expenses associated with moving and reestablishing a displaced farm, nonprofit organization, or small business at its new site have greatly increased.

Background:

The Lead Agency (FHWA) convened an All Federal Agency Uniform Act Update working group (working group), of representatives of the 18 Federal Agencies subject to the Uniform Act, in 2005 to consider the adequacy of the current limits. The working group considered research conducted by the Lead Agency, 775 public comments received during the comment period on the rulemaking issued on January 4, 2005 (49 CFR Part 24 – Federal Register Volume 70, No.2), more than 200 comments received during national listening sessions, programmatic data from State and Federal programs, and the working group's Uniform Act programmatic experience. The research also included a review of programmatic data from several States that established in State law reestablishment and alternative business payments in excess of the Uniform Act statutory limits, a review of the Lead Agency's programmatic data on these payments, a research and analysis of the historic rate of growth of several economic indexes and that growth rate's effect on the current statutory limits, a Virginia State study of its business relocation processes, and the Lead Agency's National Business Relocation Study of 2002.

Based on its review of the research and comments received, the working group concluded that time, inflation, and market conditions have made the current statutory limits inadequate. The working group believes that the adjusted amounts will more fairly reflect the costs businesses incur when displaced by Federal or federally-assisted projects.

A GAO report, entitled "Eminent Domain: Information about Its Uses and Effect on Property Owners and Communities Is Limited," (GAO-07-28, November 30, 2006) supports the working group's determination that current statutory limits are inadequate. The report notes that State and local officials interviewed for the report stated that certain relocation benefits were too low and needed to be increased.

The amounts of the proposed increases in the statutory limits for reestablishing a displaced farm, nonprofit organization, or small business at its new location were based on recommendations from the Lead Agency's National Business Relocation Study of 2002, and a review of the findings from the Virginia State study of its business relocation processes and State and Federal historic programmatic data on these payments. The goal of the proposed increases is to reflect current economic conditions. The increases would be consistent with the intent of the Uniform Act to provide the benefits necessary to relocate and reestablish successfully.

Subsection (b) would increase the maximum amount payable to any displaced person who is a homeowner that meets the statutory eligibility criteria. The working group believes, based on its review of the Lead Agency's programmatic data, project data from several Federal agency projects, research and from member agencies' experience with their respective programs, that the proposed increase will reduce the frequency and need to utilize the last resort provisions for housing replacement authorized under section 206.

Subsection (b) also would require that a displaced person must have owned and occupied a dwelling for not less than 90 days (instead of 180 days) prior to the initiation of negotiations for the acquisition of the property in order to be eligible to receive a replacement housing payment for a displaced homeowner.

Background:

Sections 205 and 206 of title 42 U.S.C. provide that projects cannot go forward unless comparable replacement housing is available to displaced persons. Section 206 provides that if replacement housing is not available the displacing agency may take necessary and appropriate action to provide housing so that a project may proceed. Frequently the most effective way of providing housing under section 206 is to provide relocation payments that exceed the statutory limit. The Uniform Act requires justification for use of this provision on a case-by-case basis. The current statutory limit has resulted in the more frequent use of the section 206 last resort housing provision, which increases administrative burdens a displacing agency experiences as a result of these requirements.

FHWA, as the Lead Agency, has researched the effectiveness of this payment, which included a review of the Lead Agency's historic programmatic data on this payment, a review and analysis of the historic growth rate of several economic indexes, and a comparison of those growth rates to actual growth in program average claim amount. The research has shown that the current benefit limit has led to an excessive utilization of the section 206 last resort housing provision. The Lead Agency's programmatic data shows that from 1991 to 2001 the utilization of the last resort provision has nearly doubled. Over the last several years, the last resort provisions were utilized on an average of 40 percent of the 180-day homeowner cases. The increased use of last resort provisions is primarily the result of the costs of available comparable dwellings exceeding the current statutory maximum.

The increased use of the last resort provisions creates additional administrative requirements, including the need to justify the use of the provisions on a case-by-case basis, and diminishes an agency's ability to effectively and efficiently ensure that projects and programs can proceed on a timely basis. FHWA contacted 8 State Department of Transportation officials, officials from 3 Federal agencies and a principal from a national right-of-way contracting agency to determine what administrative effort and costs are specifically associated with reviewing and approving last resort claims. The goals of the proposed payment increase are to ensure that the housing replacement payments to displaced persons are made as expeditiously as possible and to reduce the administrative burdens necessitated by the need to utilize routinely the section 206 last resort housing provisions.

Subsection (b) also would require that a displaced person must have owned and occupied a dwelling for not less than 90 days (instead of 180 days) prior to the initiation of negotiations for the acquisition of the property in order to be eligible to receive a replacement housing payment for a homeowner. The current 180-day occupancy requirement has proven to be unnecessarily restrictive. In some cases, homeowners fail to meet the length of occupancy requirements and, as a result, are not eligible for a number of the benefits that homeowners in occupancy at least 180 days may receive. The members of the working group do not believe that the reduction in length of occupancy requirements for a homeowner will result in a significant increase in either the costs associated with relocating displaced persons or in instances where people purchase and occupy a dwelling solely to gain eligibility for Federal program benefits.

The proposed change in the homeowner occupancy requirement would make benefits accessible to homeowners who are not currently eligible and would also ensure that these homeowners have a greater probability of continuing to be homeowners after they are relocated. The proposed requirement also would reduce the displacing agency's administrative costs by streamlining the process that displacing agencies must follow when displacing homeowners. This streamlining includes the elimination of administrative procedures that must be followed in those instances when homeowners occupy their dwelling for a period of more than 90 days but less than 180 days and a reduction in administrative burden associated with the use of the last resort provisions.

Subsection (c) would increase the maximum replacement housing payment allowed for qualified displaced tenants. Research has shown that the current benefit limit leads to an excessive need to utilize the section 206 last resort housing provisions.

Subsection (c) also would eliminate the provision addressing the amount of replacement housing payment available to a qualified homeowner who occupied a dwelling for more than 90 days, but less than 180 days.

Background:

The Lead Agency's programmatic data indicates that, on average, the last resort provisions are required for tenant relocations in more than 50 percent of the displacements. The increased use of the section 206 last resort housing provisions result in additional administrative requirements and burdens, including the need to justify the use of the provisions on a case-by-case basis. The use of the last resort provision impacts an agency's ability to ensure effectively and efficiently that projects and programs can proceed on a timely basis. The purpose of increasing the payment limit is to ensure that the housing replacement payments to displaced persons are made as expeditiously as possible and to eliminate the additional administrative burdens associated with utilization of the last resort provisions. .

Based on a review of the available information, the working group believes that the proposed increase in the statutory limit will decrease the need to utilize the section 206 last resort housing provisions. The section 206 last resort housing provisions were intended to address unique situations in which comparable dwellings are not otherwise available. However, there has been an upward trend in the use of the section 206 last resort housing provisions, for tenants, because the cost of available comparable rental units cause eligibility calculations that routinely exceed the current statutory maximum payment amount. An increase in the statutory amount will reduce the need to utilize the last resort provisions; thus, providing housing replacement payments to tenants more expeditiously and relieving acquisition agencies of unneeded administrative burden.

Subsection (d) would require each Federal Agency to report annually to the Lead Agency (FHWA) on its Uniform Act activities. With the information from the proposed reports, FHWA, as the Lead Agency, would compile information contained in each Agency's report and include the information in the annual U.S. Department of Transportation Report on implementation of the Uniform Act.

Subsection (d) also would require the Lead Agency to issue regulations to allow for periodic adjustment of the statutory benefit levels established in this bill. The ability to periodically adjust benefit levels would ensure that displaced persons and businesses receive benefits that are appropriate, consistent with the intent of the Uniform Act, and fairly compensate them.

Background:

The need for this proposed changed was noted by 4 commenters during the national listening sessions and by the majority of the working group members. The GAO report mentioned above noted that the lack of available data limited their assessment of the use of eminent domain both State and nationwide.

The information would serve to enhance the Lead Agency's ability to effectively carry out the duties outlined in section 213 of the Uniform Act by providing accurate and up-to-date information on the impact of the Federal Government's real estate acquisition and relocation activities. The information would be used by the by the Lead Agency to identify emerging issues and programmatic trends, determine areas of programmatic need and to utilize more effectively Lead Agency resources to meet identified needs. As suggested by the GAO report, this information would also be used by others to perform an objective analysis of use and effect of eminent domain and other related issues.

Subsection (e) would add a new section to the Uniform Act, requiring the head of the Lead Agency to enter into agreements with other Federal agencies for providing services related to the Uniform Act. The services may include coordination, monitoring, research, training, and other related activities. This new section also would require other Federal agencies subject to the Uniform Act to provide a specified minimum amount of funding to the head of the Lead Agency each year for these services.

Background:

The need for additional Uniform Act services was noted in several of the Lead Agencies research efforts, by several of the working group members, and in the GAO report. In 2006, FHWA initiated a research effort, Future Needs of Public Sector Real Estate, to provide information to make strategic decisions about resources so that public sector real estate work in the future is accomplished as effectively and efficiently as possible. Three consultants, using different approaches, each undertook independent research. The three reports, including methodology and conclusions, are available on the FHWA Web site (www.fhwa.dot.gov/realestate/fnpsrwgraph.htm). The findings of the research included the need for enhanced training, career path development for Uniform Act public sector real estate professionals, a certification program for these professionals, development of technological resources to meet future needs and enhanced outreach activities.

The GAO report also included findings that suggest a need for enhanced Lead Agency activity, both to respond to requests for increases to benefits and services provided to displaced persons, as well as to ensure that Uniform Act requirements are consistently understood and implemented. The working group believes that these new requirements will give Federal agencies subject to the Uniform Act some of the tools needed to address the identified needs.

Subsection (f) would amend section 308(a) of title 23 to facilitate the lead agencies provision of services related to the Uniform Act proposed under Subsection (e)

Subsection (g) would provide that most of these amendments to the Uniform Act would take effect upon enactment. However, amendments made under subsections (a) through (c) of this section would take effect two years after the date of enactment of this Act. The delayed effective date is necessary to give States sufficient time to amend their statutes that provide for relocation payments.

SEC. 2611. COMPLETE STREETS.
[TO BE PROVIDED]