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SENATE

{ REPORT
109-62

AMENDING CHAPTER 53 OF TITLE 49, UNITED STATES CODE, TO IMPROVE THE NATION'S PUBLIC TRANSPOR- TATION AND FOR OTHER PURPOSES

APRIL 28, 2005.—Ordered to be printed

Mr. SHELBY, from the Committee on Banking, Housing, and Urban
Affairs, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 907]

[Including cost estimate of Congressional Budget Office]

The Committee on Banking, Housing, and Urban Affairs, reported an original bill (S. 907) to amend chapter 53 of title 49, United States Code, to improve the Nation's public transportation and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

HISTORY OF THE LEGISLATION

The bill reported by the Committee incorporates proposals developed in consultation with the Administration, leading transit authorities, and transit-related industry leaders from across the country. Beginning soon after passage of the Transportation Equity Act for the 21st Century (TEA-21), the Committee began an aggressive schedule of hearings to evaluate the effectiveness and implementation of TEA-21 policies. The below descriptions detail the series of hearings that went into development of the Federal Public Transportation Act of 2005.

In 2000, the Committee held hearings on labor protection provisions of the Federal transit program. The first hearing, entitled

“The Ability of the U.S. Department of Labor to Delay or to Derail Mass Transit Projects that have been Approved and Funded by Congress,” was held on April 25, 2000. Testifying on behalf of the Administration was the Honorable Nuria Fernandez, Acting Administrator of the Federal Transit Administration (FTA) and Mr. Bernard Anderson, Assistant Secretary for the Employment Standards Administration at the U.S. Department of Labor. Also testifying were: Mr. John Anderson, Jr., Director of the Transportation Issues, Resources, Community, and Economic Development Division at the Government Accountability Office (GAO); Mr. James La Sala, International President of the Amalgamated Transit Union; Mr. Charles Money Penny, Legislative Representative at the Transport Workers Union of America; Mr. Roger Snoble, President and Executive Director of the Dallas Area Rapid Transit Authority; Mr. Lee Gibson, Assistant General Manager for Transit and Chief Operating Officer of the Regional Transportation Commission of Clark County, Nevada; and Mr. James Stoezel, Railroad Operations and Management Consultant at Transit Safety Management (on behalf of Bay State Transit Services, Inc.).

The second hearing, entitled “The FTA’s Approval of Extending the Amtrak Commuter Rail Contract” was held on July 11, 2000. The hearing examined conflicts between State and Federal laws concerning competitive bidding requirements after a prolonged contract dispute involving Amtrak. The Honorable Nuria Fernandez, acting Administrator of the Federal Transit Administration, testified on behalf of the Administration. Mr. George Warrington, President and Chief Executive Officer of the National Railroad Passenger Corporation (Amtrak) also testified.

On October 4, 2001, the Committee held a hearing entitled “Transit Safety in the Wake of September 11,” in order to scrutinize the various security threats potentially facing public transportation and evaluate Federal, state and local efforts to combat them and improve transportation security overall. The Honorable Jennifer Dorn, Administrator of the Federal Transit Administration testified on behalf of the Administration. Also testifying were: Mr. William Millar, President of the American Public Transportation Association (APTA); Mr. Robert Molofsky, General Counsel to the Amalgamated Transit Union; and Mr. Richard White, General Manager of the Washington Metropolitan Area Transit Authority (WMATA).

On March 13, 2002, the Committee held a hearing on implementation and reauthorization of TEA-21, entitled “Transit in the 21st Century: Successes and Challenges (Part I).” The hearing explored the Administration’s principles for reauthorization and ways in which the Congress could further improve upon current law. The Honorable Norman Mineta, Secretary of the Department of Transportation (DOT) testified on behalf of the Administration. Also testifying were: Mr. William Millar, President of the American Public Transportation Association; Mr. Dale Marsico, Executive Director of the Community Transportation Association of America; and Mr. John English, General Manager of the Utah Transit Authority.

On April 25, 2002, the Committee held a hearing entitled “Transit in the 21st Century: Successes and Challenges (Part II).” The hearing explored the diversity of transportation needs in urban, rural and suburban communities and the various challenges each

of these communities must try to satisfy. The Honorable Jennifer Dorn, Administrator of the Federal Transit Administration testified on behalf of the Administration. Also testifying were: Ms. Faye Moore, General Manager of the Southeastern Pennsylvania Transportation Authority; Dr. Beverly Scott, General Manager of the Rhode Island Public Transportation Authority; and Mr. Larry Worth, Executive Director of the Northeastern Colorado Association of Local Governments.

Testifying on June 13, 2002, in a hearing entitled “TEA-21: A National Partnership,” were the Honorable Carolyn Kilpatrick, a U.S. Representative in Congress from the State of Michigan; also testifying were: the Honorable Kwame Kilpatrick, the Mayor of Detroit, Michigan; the Honorable H. Brent Coles, the Mayor of Boise, Idaho; and the Honorable Kenneth Mayfield, County Commissioner of Dallas County, Texas. This hearing continued to identify the particular public transportation needs of different regions and communities across the country and highlighted the similarity of benefits public transportation infrastructure confers on both urban and rural communities.

On June 26, 2002, the Committee held a hearing entitled “TEA-21: Investing in Our Economy and Environment.” The Committee heard testimony from Mr. Carl Guardino, President and Chief Executive Officer of the Silicon Valley Manufacturing Group; Mr. Herschel Abbot, Jr., Vice-President of Governmental Affairs for the BellSouth Corporation; Mr. Robert Broadbent, Manager of the Las Vegas Monorail Company; Mr. Hank Dittmar, President of the Great American State Foundation (on behalf of the Surface Transportation Policy Project); and Mr. Michael Replogle, Transportation Director of Environmental Defense. The hearing examined the potential for conflicts between economic development and environmental protection and ways in which public transportation can help reconcile these two important objectives.

On July 17, 2002, in a hearing entitled “Transit: A Lifeline for America’s Citizens,” the Committee received testimony from Ms. Jessie Tehranchi of Birmingham, Alabama; Ms. Gloria McKenzie of Albany, New York; Ms. Faye Thompson of Kenova, West Virginia; Ms. Lavada DeSalles, a Member of the Board of Directors for the American Association of Retired Persons (AARP); Mr. Andrew Imperato, President and Chief Executive Officer of the American Association for People with Disabilities; and Mr. John Porcari, Secretary of the Maryland Department of Transportation. The hearing explored the value of public transportation to many elderly, disabled and rural persons and the extent to which these individuals depend upon robust transportation systems in order to maintain their freedom, health and economic independence.

On September 18, 2002, the Committee held a hearing entitled “Transit Security: One Year Later” in order to review the security needs of transit providers after the events of September the 11th and to assess the impact of security measures already taken. The Committee heard testimony from the Honorable Jennifer Dorn, Administrator of the Federal Transit Administration on behalf of the Administration. Also testifying were: Mr. Peter Guerrero, Director of Physical Infrastructure Issues for the Government Accountability Office.

On October 8, 2002, the Committee held a hearing entitled "Perspectives on America's Transit Needs." The hearing examined the limitations of the current public transportation system in the face of growing demand; it also explored the specific needs of growing states and the importance of public transportation to many workers and to the economy. The Honorable Jennifer Dorn, Administrator of the Federal Transit Administration, testified on behalf of the Administration. Also testifying were: The Honorable Patrick McCrory, Mayor of Charlotte, North Carolina; Mr. Eric Rodriguez, Director of the Economic Mobility Initiative for the National Council of La Raza; Mr. Wendell Cox, Visiting Fellow at the Heritage Foundation and Principal at Wendell Cox Consultancy; Mr. Roy Kienitz, Secretary of the Maryland Department of Planning; Mr. David Winstead, of the Maryland Chamber of Commerce and Chairman of the Transportation Coalition, on behalf of the U.S. Chamber of Commerce.

On June 10, 2003, the Committee held a hearing entitled "The Administration's Proposal for Reauthorization of the Federal Transportation Program." During this hearing, the Committee explored the Administration's public transportation reauthorization proposal and ways in which the Congress could improve upon it. The Honorable Norman Mineta, Secretary of the Department of Transportation, testified on behalf of the Administration. Also testifying were: Mr. William Millar, President of the American Public Transportation Association; Mr. Jeff Morales, Director of the California Department of Transportation; Mr. Robert Molofsky, General Counsel to the Amalgamated Transit Union; Mr. Jim Seal, Consultant to the Federal Transit Administration; and Mr. Woody Blunt of the American Bus Association.

On June 24, 2003, the Committee held a hearing entitled "Bus Rapid Transit and Other Bus Service Innovations." This hearing examined Bus Rapid Transit (BRT), a new modal technology, and its significant quality and reliability benefits over traditional bus services, as well as its cost savings compared to other transportation alternatives, particularly light rail. The Honorable Jennifer Dorn, Administrator of the Federal Transit Administration, testified on behalf of the Administration. Also testifying were: Ms. JayEtta Hecker, Director of Physical Infrastructure Issues for the Government Accountability Office; Mr. Gary Brosch, Chairman of the National Bus Rapid Transit Institute at the University of South Florida and the Center for Urban Transit Research at the University of California, Berkeley; Mr. Kenneth Hamm, General Manager of the Lane Transit District, located in Eugene, Oregon; Mr. Oscar Diaz, assistant to Mr. Enrique Penalosa, Administrative Director of the Institute for Transportation and Development Policy; Ms. Anne Canby, President of the Surface Transportation Policy Project.

On July 23, 2003, the Committee held a hearing entitled "Enhancing the Role of the Private Sector in Public Transportation." During this hearing, the Committee attempted to ascertain ways in which the Federal Government could foster increased involvement by the private sector with public transportation and ways to foster partnerships between the private and public sectors. Testifying were: Mr. Irwin Rosenberg, President of the American Transit Services Council and Vice-President of Government Relations to

Laidlaw Transit Services, Inc.; Mr. Robert Molofsky, General Counsel to the Amalgamated Transit Union; Mr. Peter Pantuso, President and Chief Executive Officer of the American Bus Association; and Ms. Margie Wilcox, Co-Chair of the Paratransit and Contracting Steering Committee for the Taxicab, Limousine, and Paratransit Association.

Finally, on March 17, 2005, the Committee conducted a mark up of an original bill, "The Federal Public Transportation Act of 2005," to reauthorize the public transportation portion of TEA-21. The Committee, by unanimous consent, ordered the bill, as amended, to be reported. The reauthorization was for a period of six years through September 30, 2009. The bill authorized \$51.6 billion for Federal transit programs over the six-year period from fiscal years 2004 to 2009.

NEED FOR LEGISLATION

Public transportation services are often the only form of transportation available to many citizens. These services provide mobility to the millions of Americans who cannot, for various reasons, use an automobile. More than 80 million Americans, almost one-third of the U.S. population, cannot drive or do not have access to a car. Senior citizens are the fastest growing segment of the U.S. population; many of them require access to public transportation in order to maintain their independence and to access vital healthcare services. Millions of Americans with disabilities also require reliable and safe public transportation in order to access basic services.

An estimated 10 million people use transit each workday. Nearly 30 million Americans ride transit during any given month. More than half (54 percent) of all trips on transit are for the purpose of employment. People who choose to use public transportation come from every income level and demographic background. Federal transportation programs are no longer solely urban-centered. TEA-21 has provided transportation funding to both urban and non-urban areas. As a result, transportation in rural America dramatically improved under TEA-21. Today, rural transportation providers carry riders a billion miles each year. Rural areas have a higher incidence of elderly and disabled populations, and a higher percentage of low-income persons than urban areas. It is estimated that the rural U.S. alone has 30 million non-drivers, including senior citizens, the disabled and low-income families. Today, the American public transportation industry consists of nearly 6,000 transit systems in both urban and rural areas. These transportation agencies operate a diverse array of vehicles, including subways, buses, light rail, commuter railroads, ferries, vans, cable cars, aerial tramways, and taxis. Non-profit elderly and disabled service providers constitute almost two-thirds of systems.

In its report, 2002 Status of the Nation's Highways, Bridges and Transit: Conditions and Performance, the U.S. Department of Transportation estimated that annual public transportation investment requirements, at a minimum, are \$14.8 billion (in year 2000 dollars) just to maintain the conditions and performance of the Nation's transit systems at their 2000 level. To improve the average condition of transit assets to "good" by 2020, as well to improve performance by increasing transit speeds and reducing occupancy rates, would require an additional \$5.8 billion per year for a total

average annual capital investment of \$20.6 billion (in year 2000 dollars).

In the reports on highway, bridge and transit conditions and performance, the U.S. Department of Transportation also estimates the value of a variety of benefits generated by public transportation. These include benefits of basic mobility, location efficiency, and congestion management. The benefits of basic mobility have been estimated at \$27 billion (in year 2005 dollars). These are benefits to low-income users who would otherwise not have access to jobs, shopping, and other needs, because they have limited or no access to automobiles. Location efficiency was estimated to be worth \$23 billion. These benefits come from more efficient transit-oriented land use patterns that help reduce the need for trips or the length of trips. The benefits of congestion relief provided by transit are estimated at \$20 billion. This estimate is based on the travel-time savings from using transit and the reduction in highway user costs as trips are attracted from the highway system to transit.

According to the Texas Transportation Institute's (TTI) "2004 Urban Mobility Report," congestion costs \$63 billion, more than 3.5 billion hours of delay and 5.7 billion gallons of excess fuel annually. The average driver loses more than a week of work (46 hours) each year sitting in gridlock. The same report finds that without public transportation, there would be 1.1 billion more hours (29% more) of delay. In sum, the TTI report also finds that public transportation reduces the cost of congestion by about \$20 billion per year.

Public transportation investments help create employment and sustain economic health. The Department of Transportation has estimated that for every \$1 billion in Federal highway and transit investment, 47,500 jobs are created or sustained. Furthermore, according to a Cambridge Systematics, Inc. study, for every \$10 spent on transit capital projects, \$30 in business sales is generated. A recent report by Robert Shapiro of the Progressive Policy Institute and Kevin Hassett of the American Enterprise Institute estimated that U.S. companies and individuals derive over \$788 billion per year in direct economic benefits from the nation's surface transportation system (including public transportation). These benefits are produced by direct economic costs of \$185 billion per year in building, operating, and maintaining the systems, leaving at least \$603 billion per year in net economic benefits.

The air quality benefits of public transportation over single occupant vehicle use are also well documented. While diminishing roadway traffic, transit reduces auto-related pollution and fuel consumption. America's transit travel, in replacing automobile travel, stops over 126 million pounds of hydrocarbons—a primary cause of smog—and 156 million pounds of nitrogen oxides from being released into the atmosphere.

The Transportation Equity Act for the 21st Century (TEA-21) expired on September 30, 2003, and has temporarily been extended through May 31, 2005. The delay in providing a long-term authorization has had a significant impact on State and local governments which have been unable to develop long-term programs for funding. Public transportation represents an important part of the Nation's transportation infrastructure, which by its nature requires long-term planning and project development. Delays in funding

have resulted in project delays which ultimately increase costs and delay the benefits which projects are designed to produce. The impact is particularly significant in States with short construction seasons since planning must be done well in advance of contracting for construction. The Committee has responded and taken action to reauthorize the public transportation title of TEA-21 in order to continue the Federal Government's critical role in public transit programs.

BACKGROUND

Although TEA-21 returned much of the decision-making authority to state and local Governments, TEA-21 maintained a strong Federal role in the capital financing of public transportation. TEA-21 has worked exceptionally well because of four basic principles: flexibility on funding decisions for state and local Governments, the encouragement of public participation in the planning process, an emphasis on intermodal connectivity, and the promotion of environmentally sound approaches to transportation delivery. TEA-21 provided opportunities for state and local officials to use highway and transit funds flexibly for surface transportation projects. This flexibility has provided local decision makers with the tools to invest in the best transportation solutions for that area, regardless of mode. The transportation planning provisions of TEA-21 are important to metropolitan areas and transit systems, as they allow for a balanced planning process that looks at all feasible local solutions and provides for appropriate citizen participation in the planning process. TEA-21 specifically requires that local governments consult with the public to decide among the various transportation options.

While the program structure provided by TEA-21 is fundamentally sound, there are a number of areas in which improvements are needed. First, current funding formulae do not fully reflect the wide range of transit needs. Specifically, funding formulae look only at current population and transit service factors, and hence are not capable of providing resources to develop new services in areas now not well served by transit, nor to get ahead of problems before they become difficult to address. In response, the bill adds several new formulae, the better to represent growing transit needs throughout the country including: a Growing States Formula, a High Density Formula, a Rural Low Density Formula, and a Transit-Intensive Formula. In addition, the bill increases funding for bus/bus facilities and sets aside funding for intermodal bus facilities to address the needs of the majority of communities which have bus-only systems. Existing labor protections have not been changed since the program was first authorized in the 1960's. To conform to changes in the industry, the economy, and other Federal programs, the bill harmonizes requirements for labor protection for transit workers with existing federal railway Class III labor statute.

The improvements made by ISTEA and TEA-21 to the FTA New Starts program have significantly improved the accountability of the program. In general, New Starts projects are well supported by analysis, and are now producing good value for money. However, more can be done to assure that the widest range of public transportation investments are eligible for funding and to assure that project sponsors have the best information available when they de-

velop projects. Accordingly, the bill makes less-expensive, more flexible Bus Rapid Transit an eligible project for Full Funding Grant Agreements (FFGA) by eliminating the limitation that only fixed guideway projects are eligible for Small Starts funding. It establishes a “Small Starts” program for projects seeking \$75 million or less in New Start funds. These projects would undergo a more streamlined rating process than projects in excess of \$75 million. The current exemption for projects under \$25 million is eliminated and thus all projects receiving funding would get analyzed and rated. The bill allows FTA to reward transit agencies with a higher federal match for those projects whose cost and ridership estimates are within a 10% range of original forecasts available to decision-makers at the time the particular transportation option was selected. It also establishes an annually-updated Contractor Performance Assessment Report (CPAR) which analyzes the consistency and accuracy of cost and ridership estimates to provide transit agencies a tool to assist in choosing contractors with the highest success rates. Finally, it requires FTA to conduct “Before and After” studies to look at the extent to which New Starts projects met their cost and ridership projections.

The flexibility and incentives provided by ISTEA and TEA-21 have improved the performance and efficiency of public transportation. The bill being reported makes a number of changes to continue these favorable trends. It makes private operators of public transportation “sub-recipients” of federal grant funds, thereby fostering competition and creating an opportunity for lower costs and greater service improvements. It requires coordination of social service transportation throughout the program by providing incentives to States that eliminate duplication, reduce overlap, and improve service. Finally, the bill increases the focus on safety, security and crime prevention in response to the events of September 11, 2001 and continued terrorist threats against transit systems by increasing the eligibility for security-related activities in each step of the process from planning to maintaining systems.

SECTION BY SECTION ANALYSIS

Sec. 1. Short title

The Federal public transportation program now covers rural and other non-urban constituencies, as well as urbanized areas. Accordingly, the title of this bill is meant to reflect this evolution by referring to “public” transportation instead of “mass” transportation.

Sec. 2. Updated terminology; Amendments to title 49, United States Code

For the reasons expressed above, throughout Chapter 53, the term “mass transportation” is replaced, where appropriate, with “public transportation.” “Public” is more representative of the wider range of services now being provided throughout the country, and is the term more commonly used by the industry.

Sec. 3. Policies, findings, and purposes

Section 5301(a) currently states that it is in the national interest to encourage and promote the development of transportation systems because they maximize mobility and minimize transportation-

related fuel consumption and air pollution. This provision highlights the positive impact on the Nation's economy as a result of the development and revitalization of public transportation systems.

The finding in Section 5301(b)(1) is updated to reflect the 2000 Census of Population as the outdated census data referenced in the original section is not current.

Currently, Section 5301(e) requires that a special effort be made to preserve the environment and important historical and cultural assets when carrying out capital programs funded under Sections 5309 and 5310. These principles should apply to all Chapter 53 public transportation programs. Therefore, this bill amends Section 5301(e) to reflect this objective.

Sec. 4. Definitions

- Makes the intercity bus portion of intermodal terminals eligible for funding.
- Makes capital costs related to crime prevention and security, as well as emergency response drills and training (but not other operating expenses), eligible program-wide.
- Allows transit operators to fund debt service reserves with capital funds.
- Defines "mobility management" as an eligible cost in the urbanized area formula program.
- Restates the definition of "local public transportation."

The definition of "capital project" is amended to make the intercity bus portions of intermodal terminals or transportation malls eligible for assistance in all Chapter 53 programs.

Capital costs for crime prevention and security currently are allowable as formula grant expenditures. In addition, specific capital grant making authority for crime prevention and security is only found in Section 5321 of Title 49, U.S.C. This section has never received a direct appropriation and, therefore, is repealed. In its stead, the definition of "capital project" under Section 5302(a)(1), which applies to the entire FTA program, is amended to include capital security needs and planning as well as emergency response drills and training, but not other operational costs related to crime prevention and security.

The Committee believes that improved integrated, interoperable, emergency communications infrastructure are one way for transit operators to improve their response to emergency situations, and that such expenditures are eligible capital expenditures under the bill.

The term "capital project" is expanded to include a debt service reserve to allow transit agencies to borrow money less expensively. Under this approach, a grantee would temporarily set aside grant funds to establish the reserve. The reserve would be available to make payments to repay a portion of the borrowing should other pledged funds become unavailable. By having such a reserve in place, the risk of the borrowing is reduced, and the interest rate is likely to be substantially lower, thus reducing the cost of the borrowing.

Section 5307 is amended to allow grantees to use their urbanized area formula grants for "mobility management." Therefore, Section 5302, "Definitions," is amended to define the term "mobility man-

agement.” This term refers to an activity or project that tailors public transportation services to specific markets and manages demand for public transportation. Such goals could be accomplished by coordinating transportation service provider strategies and enhancing ridership growth in a cost-effective and efficient manner. Mobility management functions would involve managing public transportation travel logistics and would focus on resolving consumer mobility issues. Mobility managers could serve as transportation travel agents, consumer advocates, and service coordinators.

The definition of “public transportation” is essentially the same as the definition of “mass transportation” in current law. An additional reference to “local” is added however, to codify current practice of providing transportation service that serves a specific urbanized or rural area and its environs. Intercity services (bus or rail) are not intended to be assisted under this Chapter, except for intercity bus services under Section 5311(f), and the newly-provided eligibility of the intercity bus portion of intermodal terminals and the already-eligible intercity rail portions of intermodal terminals.

The definition of “urbanized area” is revised to reflect the Department of Commerce’s role in designating urbanized areas via the decennial Census.

Technical changes are made to the definition of “capital projects” to clarify that new projects can be either innovative or improved, rather than having to be both innovative and improved.

Technical changes are made to the definition of “transit enhancements” to clarify that a project may include any of the list of historic preservation activities. In addition, technical changes are made to clarify that projects may include pedestrian access or walkways.

Sec. 5. Metropolitan planning

- Locates all provisions for metropolitan planning in Section 5303.
- Maintains the requirement for separate Transportation Plans and Transportation Improvement Programs.
 - Requires certification of the planning process every four years.
 - The provision in current law allowing the planning process to be certified even if the requirements for private sector participation are not met is repealed; however, language is added to clarify that local criteria will be the basis for such decisionmaking.
 - Strengthens the requirement for public participation in the planning process.

Section 3005 rewrites Section 5303 as a single section on Metropolitan Planning, to put all of these provisions in a single section identical to that in Title 23, U.S.C. Because transit and highways are authorized in separate Senate Committees, this is accomplished in Section 5303 and in Section 5304 for Statewide Planning. Since the entire section is rewritten, most of the language is repeated, but changes are not made unless where expressly noted.

Section 5303(a) includes definitions used in Sections 5303 and 5304 which are unique to the planning programs.

Section 5303(b) provides general requirements for the planning process. Section 5303(b)(1) revises existing law by substituting the word “metropolitan” for “urbanized.” Metropolitan is a more accurate representation of the terms used in this section since the term

better represents urbanized areas and the areas that are anticipated to become urbanized over a twenty-year period.

Section 5303(b)(4) provides that the Metropolitan Planning Organization (MPO), the State DOT, and the appropriate public transit provider agree on the approaches that will be used in the metropolitan decisionmaking process regarding complex transportation improvements. This section indicates that planning and sponsoring organizations are jointly responsible for the planning and development of projects.

Section 5303(c) provides procedures and requirements for designation of metropolitan planning organizations. Section 5303(c)(1)(A) modifies existing law to reflect a change in procedure by the U.S. Census Bureau in defining central cities.

Section 5303(c)(2) modifies existing law to clarify terminology regarding a transportation management area (TMA). The current statute uses the term “designation” regarding both the institution responsible for metropolitan planning (the MPO) and the kinds of areas which must be established as a TMA. It also links the two by indicating that when a TMA is “designated,” certain requirements apply, including changes in MPO board membership and certification. TMAs are established by the Secretary based on population information from the Census Bureau. MPOs may be designated and redesignated upon agreement of local officials and the Governor at any time. To clarify that the geography identification does not force a change in the MPO policy board, the word “identified” is used to denote the establishment of a TMA, leaving the term “designated” for the process of establishing an MPO.

Section 5303(c)(2)(B) modifies existing law to remove an obsolete provision relating to MPO membership in 1991. There is no continuing need for this provision.

Section 5303(c)(5) is a technical change to reflect that the Census Bureau has changed the terms it uses. The Census no longer uses the term “central city” and thus that reference is deleted and replaced by “largest incorporated city” which is used by the Census Bureau in naming the urbanized area.

Section 5303(d) provides details on the way in which the boundaries of metropolitan planning areas are established. Section 5303(d)(2)(B) is a technical change to reflect the reality that the Office of Management and Budget, not the Census Bureau, designates standard metropolitan statistical areas.

Section 5303(d)(3) clarifies that a new MPO need not be created if a new urbanized area is designated inside an existing metropolitan planning area. Although it would not be prohibited under this provision, designation of a second MPO is not required.

Sections 5302 (e) and (f) include requirements for how MPOs are to coordinate when plans and planned projects affect adjacent areas.

Section 5303(f)(3) is added to emphasize the need for coordination where an improvement does not actually cross an MPO boundary, but still has impacts outside the boundary.

Section 5303(f)(4) is added to encourage coordination of the transportation planning process with other types of planning activities that are affected by transportation, including State and local planned growth initiatives, economic development, environmental protection, airport operations, housing, and freight.

Section 5303(g) provides details on the scope of the planning process and the factors which are to be considered. Sections 5303(g)(1)(B) and (C) modify existing law to give added emphasis to security and safety by making each a separate planning factor.

Section 5303(g)(1)(E) is amended to provide more detail on how protection of the environment is to be considered and would add a reference to planned growth patterns. In addition, subparagraphs (A), (D), (F), and (H) under Section 5303(g)(1) reference opportunities to engage public and private operators in the metropolitan planning process.

Section 5303(h) details how transportation plans are to be developed. The section modifies existing law by dropping the adjective “long-range” in association with the plan. There is only one plan and it has a 20-year horizon. The continued use of “long-range” reinforces the perception that there is a “short-range” or another plan that must also be created.

A new Section 5303(h)(2) provides details on the mitigation activities which must be considered in developing transportation plans.

Section 5303(h)(3)(C) modifies existing law to strengthen the importance of operations and management in the planning process.

Section 5303(h)(4) is added to ensure consultation between the MPO and various land use management, natural resource, and environmental protection agencies. Section 5303(h)(5) modifies existing law to encourage stronger coordination among transportation and air quality planning processes.

Section 5303(i) provides details on public participation in the planning process. The list of parties participating in planning is expanded to explicitly include private providers. It also adds bicyclists and pedestrians to the list of parties afforded a specific opportunity to comment on the plan before its approval. The provision requires development of a participation plan in consultation with interested parties. Participation is required both on the plan itself, as well as on the process for developing the plan. MPOs must certify that they have complied with their participation plan before the transportation plan can be approved.

Section 5303(j) provides details on the transportation improvement program. The program update cycle is set at every four years. Current project selection requirements are modified to indicate that the State is responsible for selection of projects in the State managed programs. A new provision is added at Section 5303(j)(4)(B) which requires publication of the projects for which funds have actually been obligated. A rulemaking is required within 120 days, specifying certain details about how such project lists should be published so that the public can better access the information.

Section 5303(k) specifies how transportation management areas are identified and the planning processes required in such areas. The section modifies existing law to provide clarification to the meaning of transportation management areas. The term “designation” is replaced by “identification” to reduce confusion between institutional change and geographic area identification. The section allowing a request to designate an area below 200,000 in population is eliminated because it has seldom been used, and has no direct funding implications. The term “metropolitan planning orga-

nization serving” is added to clarify the fact that a TMA is a geographic area, not an institution that conducts planning.

Section 5303(k)(3) modifies existing law to streamline and integrate the congestion management process into the overall planning process and plan development.

Section 5303(k)(4) modifies existing law on selection of projects for implementation to highlight the role of the MPO as an institution, as discussed above.

Section 5303(k)(5) modifies existing law to reflect the focus on the MPO planning process and to clarify that all Federal funds available to the metropolitan area can be withheld as a sanction for not being certified. The minimum cycle for certification is extended to four years in nonattainment and maintenance areas and five years in attainment areas.

Current language prohibiting decertification for failure to meet the private sector participation requirements in Section 5306 is not reenacted. Section 5306 is modified to make clear that local criteria will be the basis for deciding on how to address these requirements.

A provision related to transfer of ISTEA funds is removed because it is outdated. Transfer of funds is still covered by 23 U.S.C. 104(k).

Section 5303(l) modifies existing law to reflect streamlining and integration of congestion management planning into the overall planning process.

Section 5303(m) provides additional requirements for nonattainment areas.

Section 5303(n) continues current law with regard to the authority of MPOs with respect to other agencies.

Section 5303(o) indicates that funds set aside under 23 U.S.C. 104(f) and 49 U.S.C. 5308 are available to carry out the metropolitan planning process.

Section 5303(p) continues current practice and law on the relationship of transportation plans and the National Environmental Policy Act.

Sec. 6. Statewide Planning

- Statewide planning requirements are included in Title 49 explicitly, rather than only by reference to 23 U.S.C. 135.

- The statewide provisions currently in 23 U.S.C. 135 are modified to conform to the changes made to the metropolitan planning process.

- A Statewide Transportation Improvement Program is continued with projects drawn from the Metropolitan Transportation Improvement Program.

A completely revised Section 5304—Statewide Planning incorporates, with revisions, existing Section 135 of Title 23 and provides a common statewide planning section for both FTA and FHWA. The descriptions below refer only to the revisions made.

The term “long-range” which modifies “transportation plan” is deleted, since the plan is already identified as a 20-year plan.

TEA-21 used various references when describing local officials in rural areas. A consistent reference is now used throughout: “affected officials with responsibility for transportation.”

“Non-metropolitan local officials” is defined in a new Section 5303(a)—Definitions.

Existing Section 135(a)(2) of Title 23 is incorporated in Section 5304(a)(1), with amended language: “To accomplish the objectives stated in Section 5301(a)” inserted before “each” and “Subject to . . . Title 49” deleted; “subject to Section 5303” is added after the end of the paragraph.

Existing Section 135(b) of Title 23 is now incorporated in Section 5304(b), with added language: “with other related Statewide planning activities such as trade and economic development and related multi-State planning efforts,” after “areas of the State and” to recognize the importance of trade and economic development in each State and with other States.

Section 5304(c) is added to allow States to enter into compacts or agreements for the purpose of formal planning cooperation and coordination, since so many projects have multi-State implications. A similar provision is included in existing Section 134(d)(2), Metropolitan Planning, and is included in the metropolitan planning section in Section 5303(d)(2).

In Section 5304(d)(1), the phrase “and implementing projects and services” is added after “strategies” to reflect the concept that not only projects, but also transportation services, are developed through the planning process.

In Section 5304(d)(1)(A), the term “non-metropolitan areas” is inserted into the planning factor related to economic vitality after “States.” These have been often-neglected areas and this would require States to consider economic vitality for rural areas as well as urbanized areas. (“Non-metropolitan areas” is defined in a recent amendment to the joint FHWA/FTA planning regulations).

Sections 5304(d)(1)(B) and (C) refer to existing law, wherein “security” was a joint factor with “safety.” After the terrorism attacks of September 11, 2001, security has taken on a new dimension. Security would now be a separate factor in subparagraph (C) to highlight this concern at all levels of Government.

In Section 5304(d)(1)(D), the term “options available to” is deleted after “mobility” so that it is clear that this is more complex than simply considering options.

Section 5304(d)(1)(E) is expanded to include more details on the way in which environmental protections should be considered. In addition, more detail is added on how plans should be consistent with regional land use plans. Language is added to require consistency, so that investments are made where they will have the most significant impact.

A new Section 5304(d)(3) is added to focus on how mitigation activities should be addressed in Statewide plans and programs.

A new Section 5304(f)(2)(D) is added to require consultation with land use management, natural resource, environmental protection, conservation, and historic preservation agencies.

The term “representatives of transportation agency employees,” is replaced in Section 5304(f)(3) by “representatives of public transportation employees,” and the term “representatives of users of public transit,” is replaced by “representatives of users of public transportation” to provide greater consistency with the definitions in Section 5303(a). The term “representatives of users of pedestrian walkways and bicycle transportation facilities,” is inserted after the

term “users of public transportation” to identify the importance of this class of users. In addition, new requirements are added to ensure adequate opportunity for public participation.

A new paragraph, “Existing System,” is added in Section 5304(f)(8) to address the need for assessment of the existing system to maximize its potential through various means, such as Intelligent Transportation Systems.

A new Section 5304(f)(9) is added to provide for expanded publication of the Statewide plan.

Section 135(f)(1)(B)(ii)(II) required that States submit to the Secretary, within one year of TEA–21’s passage, the details of their consultation process with non-metropolitan officials. This requirement has been accomplished, so the provision is deleted.

Section 5304(g) provides for details on the Statewide Transportation Improvement Program. Section 5304(g)(3) (existing Section 135(f)(1)(C)) substitutes the term “State” for the term “Governor.” This reflects current practice in most States. The same changes made for the listed parties in Section 5304(f)(3) above are made in this section as well.

Section 5304(g)(4) establishes 4-year increments and updates for the Statewide Transportation Improvement Program. This is consistent with metropolitan planning requirements, which provide that projects in the metropolitan transportation improvement program may be selected for advancement. Provisions similar to those in Section 5303 for a cooperative process in arriving at the annual listing of obligated projects is included. An annual list is included in Section 5304 since the State is the recipient of substantial funds from both FTA and FHWA.

Section 5304 (g)(4)(B)(ii) (existing Section 135(f)(2)(C)(ii)) is amended to ensure that the identical projects programmed in the metropolitan transportation plans are brought into the Statewide Transportation Improvement Program without modifications.

In Section 5304(g)(5), Section 5311 of Title 49 is added to the National Highway System, bridge, and other projects that require “consultation” and that are excepted from “cooperation” since this program is generally run by the States as a discretionary program after criteria are set.

Section 5304(g)(6) (existing Section 135(f)(4)) is renamed “Statewide Transportation Improvement Program Approval” and would require a STIP approval “at least every four years by the Secretary.” A new Section 5304(g)(7), Planning Finding, (existing Section 135(f)(4)) is set out separately.

Sec. 7. Transportation management areas

Section 5305, which covers planning in Transportation Management Areas, is repealed since its provisions have been incorporated in Section 5303.

Sec. 8. Private enterprise participation

- Clarifying language is added to make clear that local criteria are to be the basis for deciding on how to involve the private sector.
- A rulemaking is required to implement all of the changes made throughout the statute on private sector participation.

Current language that prohibits decertification for failure to meet the private sector participation requirements in Section 5306

is not reenacted. All other planning requirements must be met in order for the metropolitan planning process to be certified. It is not appropriate to single out this requirement for lesser attention in the planning process. Section 5306 is modified to make clear that local criteria will be the basis for deciding on how to address these requirements.

The bill makes a number of changes in Chapter 53 to enhance the role of the private sector in the provision of public transportation services. These include important enhancements to the role of private transportation providers in the planning process, changes in funding eligibility, and funding allocations. In the area of planning, the bill includes a requirement that private operators engaged in public transportation be considered in the policy and plan development activities of metropolitan areas, which include short-range program planning.

Specifically, private operator services are to be considered with regard to the following planning factors: supporting economic vitality, increasing access/mobility, modal connectivity and integration, and preserving/enhancing the existing system. In the area of funding eligibility, private operators would be eligible as “sub-recipients” of Federal funds under the Section 5307 (urbanized area formula), 5309 (discretionary capital grants), 5310 (elderly and disabled formula), and 5311 (non-urbanized area formula) programs. As sub-recipients, private sector transportation providers would be permitted to do more than simply compete for contracts with a public transit provider; they would be eligible to receive grants through the designated recipient for the provision of public transportation services that they define and deliver. Further, every community seeking funds from the Section 5310 (elderly and disabled), and Job Access and Reverse Commute program would be required to engage in a coordinated local transportation/human service planning process that includes private sector participation in the planning process. In addition, mobility management activities, which include working with the private sector to coordinate transportation services to meet customer needs, would become an eligible expense under the Section 5307 (urbanized area formula) program.

Finally, the intercity bus portion of intermodal terminals would be made eligible for FTA funding. This will facilitate linkages between local public transportation and intercity bus transportation (which is provided by private operators). In the area of funding, bus capital funding in the amount of \$75 million per year would be set aside for intermodal terminals. In light of these changes, Section 5306 is amended to require the Secretary to publish a formal rule on how these provisions would be implemented.

Sec. 9. Urbanized Area Formula Grants program

- Transit enhancements program is administered as a certification rather than as a set-aside.
- Private companies engaged in public transportation are eligible subrecipients of Federal grants.
- Mobility management is made an eligible expense.
- The eligibility requirements for local match within this section are streamlined to include all advertising revenue as well as contracts with social service organizations.

- Certain urbanized areas which grew to a population of over 200,000 can use funds for operating assistance in 2006 through 2007, with the amounts progressively phased down.

Currently, Subsection 5307(h) requires streamlined administrative procedures for track and signal improvements. This subsection is deleted because separate treatment for track and signal projects is no longer needed.

Currently, Subsection 5307(j) requires that grantees submit annual reports on sales of advertising and concessions. This subsection is deleted because it is redundant with a similar requirement of the National Transit Database.

Subsection 5307(k) dealing with “transit enhancement activities” is mainstreamed into a new subparagraph (K) in Section 5307(d)(1). Currently, that subsection allows for a one percent set-aside for transit enhancements and requires a report listing the projects. Under new subparagraph (K), a recipient with at least a population of 200,000 in its urbanized area could instead certify that one percent of its Section 5307 funds has been expended on transit enhancements.

Subsection 5307(a) is revised to include definitions for “sub-recipient,” as well as “designated recipient.” A subrecipient includes any entity receiving funding from the designated recipient. This will facilitate private sector participation in public transportation.

Subsection (b) is amended to state more explicitly the general authority for grants under Section 5307. Eligibility is expanded to include “mobility management” as defined in Subsection 5302(a)(7a). Paragraph (4) is struck since separate eligibility for reconstructing or rehabilitating rolling stock is no longer needed, since these terms have been included in the definition of capital project in Subsection 5303(a).

Currently, urbanized areas over 200,000 may not use funds from the urbanized area formula program for operating assistance. A number of urbanized areas’ status changed unexpectedly as a result of the 2000 census, due to changes in the Census Bureau’s definitions and procedures for defining urbanized areas. These areas were allowed to continue to use funds for operating assistance for 2003 by P.L. 107–232, for 2004 by the Surface Transportation Extension Act of 2003, and for the first eight months of 2005 by the Surface Transportation Extension Act of 2004, Part V. These provisions are extended for the remainder of 2005 as currently enacted. For 2006 and 2007, these provisions are phased out. Urbanized areas covered by these provisions would be allowed to use 50 percent of their current limits on operating assistance in 2006 and 25 percent in 2007. This should provide these areas with more than ample time to develop and implement transition plans. The Committee strongly opposes continuing these provisions beyond 2007 and believes the more appropriate role for the Federal Government is in capital investment.

Currently, the Urbanized Area Formula program allows the local match to include only those revenues from advertising and concessions that were generated above a 1985 baseline. This bill strikes this 1985 baseline in Section 5307(e) in an effort to foster aggressive local financing. In addition, Subsection 5307(e) is amended to permit revenues received from contracts with State or local social

service agencies to count as eligible to match Section 5307(e) grants. Such revenues are already eligible as non-Federal share in the Section 5311 non-urbanized area program. Allowing such revenues to count as non-Federal share will provide an incentive to coordinate services between transit agencies, a process that the Committee and the Administration have actively worked to foster.

Section 5307(g)(4) is deleted to remove an obsolete standard for setting interest rates on advance construction projects. TEA-21 included a provision which required that the interest rate be set based on the most favorable terms available to the recipient and thus this is unnecessary.

Under current law, Section 5307(n)(1) states that 18 U.S.C. 1001, regarding false or fraudulent statements, applies only to certificates or submissions provided pursuant to Section 5307, "Urbanized Area Formula Grants." This paragraph is moved to Section 5323, General Provisions on Assistance. Under Section 5223, 18 U.S.C. 1001 applies to any Federal public transportation grant program.

A technical amendment is made to Subsection 5307(k)(2) to provide a complete list of requirements with which grant recipients must comply. In addition, a provision is added to Subsection 5307(k) to clarify that the Hatch Act does not apply to non-supervisory employees of grant recipients. This provision was included in the former Section 5 of the Urban Mass Transportation Act of 1964, as amended. However, it was inadvertently not included in Chapter 53 when the Urban Mass Transportation Act of 1964, as amended, was codified.

Sec. 10. Planning Programs

- The existing Clean Fuels Formula Program is merged into the Bus and Bus Facilities Program.
- The Metropolitan and Statewide planning grant programs are consolidated into a new Section 5308; procedures and formulae for both are unchanged.
- A new Planning Capacity Building "set-aside" is established.
- Discretionary Planning Funding is made available for Alternatives Analysis; such studies are now funded from the New Starts program.

The Clean Fuels Formula Grant program, established in TEA-21, set up a separate program to foster the procurement of alternative fuel vehicles. In each year of the authorization period, those funds were redirected into the bus and bus facilities program. Regardless, the purpose of this program is being fulfilled through capital grants for buses. Forty percent of buses procured with Federal transit assistance as part of the bus and bus facilities program use alternative fuels.

Currently, the Metropolitan Planning Program is authorized in Sections 5303(g) and (h) and the Statewide Planning Program is authorized in Section 5313(b). The bill brings these provisions together into a unified Section 5308, funded as a takedown from the formula programs. While the takedown comes only from the formula and research program authorization, the amount is set at 1.25 percent of the total amount in the capital and formula programs. This is an increase from funding under TEA-21, during which planning was authorized at an amount equal to about 1 per-

cent of total funding. The current split of funding between metropolitan and statewide planning is maintained.

Current Subsection 5303(g) is moved to Subsection 5308(a) and is changed from “Transportation Plans and Programs” to “General Authority” for consistency with FTA’s other program subsections. Language is added for transportation plans and programs since these are the primary products of the Federally funded transportation planning process. Section 5308(a)(3) explicitly authorizes eligibility for peer exchanges and activities related to peer reviews.

Subsection 5303(h) moves to Subsection 5308(b) and is renamed from “Balanced and Comprehensive Planning” to “Purpose.” Existing Section 5303(h)(4) is eliminated since it is obsolete with the addition of new urbanized areas in the 2000 Decennial Census.

Section 5303(h)(2) is moved to Section 5308(c)(2), and modified by directing States to make allocations of planning funds to MPOs promptly and eliminating any direct role for the Department of Transportation. FTA retains flexibility with respect to an administrative formula for areas over 1 million population currently added in the apportionments to States on a per capita basis.

Section 5308(d) relocates the existing State planning and research program from 49 U.S.C. 5313(b). The formula for apportionments does not change and consolidates the formula planning programs in Section 5305.

Section 5308(e) establishes “Capacity Building” as an eligible activity within transportation planning. Capacity Building promotes activities that support and strengthen the planning processes required under 49 U.S.C. 5303–6. Through this initiative, metropolitan planning organizations and transportation operators can use planning funds to plan, develop and implement innovations and enhancements that support and strengthen the planning processes. The Secretary is authorized to conduct research, engage in program development, collect and disseminate information, and provide technical assistance in connection with metropolitan and statewide planning processes. The initiative will be carried out jointly by FTA and FHWA.

Subsection (g)(1) allocates \$5 million for Capacity Building, and \$20 million for discretionary grants for Alternatives Analysis. At present, Alternatives Analysis is inappropriately funded from the New Starts program. The current practice of funding the Alternatives Analysis of New Starts presumes that the result of the Locally Preferred Alternative will, in fact, be a New Start. If Alternatives Analysis is a true look at alternatives in the process of providing transportation, the appropriate place for these funds to be expended is within the planning program. The remainder of planning money is split 82.72% for metropolitan planning and 17.28% to carry out statewide planning and research program.

Existing Section 5303(h)(5) is relocated to a new Section 5308(f), “Government’s Share of Costs,” and applies to both planning programs.

Section 5308(h) provides the period of funding availability that is identical to current funding availability under Section 5303.

Sec. 11. Capital Investment Program

- The Bus, New Starts and Fixed Guideway Modernization programs continue in the Capital Investment Programs; funds are

split approximately 23% bus, 40% New Starts and 37% Fixed Guideway Modernization.

- Bus funds going to private non-profit organizations or rural transit systems as subrecipients are administered under the requirements of the Elderly and Disabled and Rural programs, respectively. The requirements for statewide transit providers depend on where the project is located.

- Non-fixed guideway corridor improvements are eligible for New Starts funds for projects under \$75 million.

- Funding for Alternatives Analysis is made available from the Planning Program rather than the Capital Investment Program.

- Current procedures and criteria apply to New Starts projects over \$75 million in New Starts share while simplified procedures and criteria apply to New Starts projects under \$75 million in New Starts share.

- The current exemption for projects under \$25 million is eliminated.

- The current three level rating system (Highly Recommended, Recommended, Not Recommended) is replaced by a five level system (High to Low).

- The maximum New Starts share is retained at 80 percent.

- A higher than requested share can be provided for projects which keep cost and ridership estimates within 10 percent of the forecasts used as the basis for establishing the Locally Preferred Alternative.

- Grantees will be allowed to keep a portion of the cost savings in the case where projects are completed under budget.

- Before-and-After Studies will be required in law.

- A Public Private Partnership Pilot Program is established.

- The New Starts Report and Supplemental Report are replaced by reports issued three times a year focusing on changes to ratings and an annual report on budget recommendations.

The General Authority section is amended to limit the program to focus on three activities: New Starts, fixed guideway modernization, and buses and bus facilities.

References to “capital investment loans” are deleted from Section 5309 since, historically, only capital investment grants have been awarded pursuant to this section.

Both fixed and non-fixed guideway projects which make major improvements to transportation corridors are included in the New Starts program for projects under \$75 million, to encourage, among other things, consideration of Bus Rapid Transit options. The \$25 million threshold is eliminated. All projects under the program will be subject to a rating and evaluation process. Fixed guideways will continue to be required of projects seeking over \$75 million in New Starts funds. The Committee expects that the Federal Transit Administration will develop an appropriate methodology for evaluating the costs and benefits of non-fixed guideway projects, consistent with that applied to fixed guideway projects.

As noted earlier, the eligibility for Alternatives Analysis is relocated to the planning grant program under Section 5308. Alternatives Analysis is a planning function and therefore it is not appropriate to fund these activities out of the capital program.

Section 5309(a) is amended expressly to allow programs of projects of bus and bus related facilities. The individual agencies

included in such a program of projects would be treated as subrecipients. Under current law, private non-profit agencies which receive assistance through a State's program of projects must be treated as contractors to the State and thus the assembly of such a program is treated as a procurement action, subject to all of the rules normally intended to apply to contractual relationships. This has inhibited State flexibility and added to the administrative burden on States interested in developing programs of projects for assistance under Section 5309.

In addition, Section 5309(a) is amended to assure that grants under Section 5309 to transit agencies outside urban areas would be treated the same way as grants under Section 5311. Similarly, grants to private non-profit subrecipients would be treated the same way as private non-profit organizations are treated under Section 5310. Statewide transit providers would be required to follow the requirements which would apply under Section 5307 if the project is located in an urbanized area and under Section 5311 if the project is located outside urbanized areas.

Section 5309(b) includes a new definition of Alternatives Analysis. An Alternatives Analysis will include a complete evaluation of a range of alternatives, selection and formal adoption by the metropolitan planning organization of a Locally Preferred Alternative, and produce the information needed to evaluate the Locally Preferred Alternative under this section.

Before making an award under Section 5309, the Secretary must find that applicants (1) have complied with statutory planning and private enterprise provisions, (2) have the legal, financial and technical capacity necessary to carry out the project, (3) will have satisfactory continuing control of the project's use and capability, and (4) will maintain project property. The amendment to Section 5309(d) permits the Secretary to rely on a Section 5307 applicant's certification containing the same project attributes when applying for Section 5309 funds. It also clarifies that the term "technical capacity" includes the safety and security aspects of a transit project.

Section 5309(e) is amended to improve the evaluation of New Starts projects. The factors, considerations, and determinations in Section 5309(e)(2-4) are essentially those in current law, although new factors were added to ensure that the Secretary assess the reliability of the forecasts of costs and ridership and land use is elevated from a "consideration" to a justifying factor. Too often, as projects develop through the New Starts process, the estimated costs increase while the forecasted ridership decreases, reducing the cost-effectiveness of the proposed project. In addition, language in current law is strengthened to require the Secretary to assure that New Starts projects are implemented only if the quality of local bus services will not be degraded.

Section 5309(e) applies in full to projects with a proposed New Starts share of more than \$75 million. New starts projects proposing a Federal share of under \$75 million will be subject to a streamlined rating process under a new Section 5309(f). These streamlined procedures include a simplified list of findings (which include cost-effectiveness, land use and economic development impacts) and determinations. Projects will have to be evaluated on the basis of forecasts made for project opening. Financial plans will be limited to the period during which the project is being con-

structed and financed. A simplified Project Construction Grant Agreement is used to reflect the major features of Full Funding Grant Agreements.

Under current law, projects with a Federal share of less than \$25 million are exempt from the New Starts rating process. The bill eliminates this exemption, thus requiring that all projects be rated. This will assure that all candidates for Federal funding, no matter how small, are the subject of appropriate analysis and evaluation. Current language which exempts projects funded with flexible funds from Title 23 is not continued, because it is unnecessary since Section 5309(e) applies to projects which are candidates for discretionary funding under the New Starts program. Because they have already been subject to analysis and rating, projects with FFGAs executed prior to enactment are exempt from the new requirements.

A new Section 5309(e)(1) is added to make clear that all New Starts projects with a Federal share of over \$75 million would be implemented under a Full Funding Grant Agreement (FFGA), be subject to ratings under this section, and authorized in law. A project would have to receive an overall rating of at least "medium" to receive an FFGA.

The consideration under Section 5309(e)(3)(E) is expanded slightly to include the positive effect on capacity, utilization, or longevity of other surface transportation facilities.

Under current law, the Secretary must evaluate and rate a project as "highly recommended," "recommended," or "not recommended." In response to the Government Accountability Office's recent suggestion that an approach be developed to better distinguish projects, the ratings are changed to "high," "medium-high," "medium," "low-medium," or "low." This enables FTA to better manage the pipeline of projects, educate grantees, and distinguish between projects.

The requirement that projects be given priority if they are transportation control measures in State Implementation Plans for non-attainment areas is dropped, because air quality is already considered in the rating of a project, and it is therefore unnecessary.

A new Subsection 5309(e)(8) is added to require periodic publication of the policies and procedures used in rating projects. This will help improve the transparency and predictability of the rating process.

The Committee is seeking to identify cost drivers for critical, complex, and capital intensive transit New Starts projects. Public Private Partnerships (PPP) may provide an important way to achieve significant savings. These partnerships with qualification-based selection and performance-based contracting integrate risk sharing, streamline project development, engineering, and construction, and preserve the integrity of the NEPA process, which results in the potential for significant schedule and cost advantages over traditional infrastructure development. The Secretary is directed, in Section 5309(g)(2)(e), to undertake a pilot program in which major investment projects are to be selected for PPPs, during the development phase of the projects, with a goal of demonstrating project cost savings. The Secretary also is directed to work with states and local entities to identify and eliminate existing impediments to successful implementation of PPP's. The Committee ex-

pects the Secretary to initiate the pilot program as soon as practicable after enactment, in order that the benefits of PPP's may be understood and potentially applied to other transit New Starts projects.

A new statutory requirement for "Before and After Studies" as part of Full Funding Grant Agreements is added in Section 5309(g). Such studies are already required by the regulation implementing Section 5309(e) and are an essential part of improving the New Starts program. By better understanding the actual costs and benefits of New Starts projects, especially the early planning stages when the Locally Preferred Alternative (LPA) is chosen, the planning process can be improved, and future projects can be based on estimates of costs and benefits which are more accurate. In addition, FTA would be required to produce an annual report each year which would summarize the results of these studies.

Although there is a strong demand for New Starts funding, reduction of the maximum Federal share is not an approach taken in this bill. The maximum Federal share for highway and transit projects stays the same, in order to assure that there is a level playing field between highway and transit projects at the local level. Nonetheless, it does not prevent project sponsors from overmatching the statutory minimum local share or FTA from considering a sponsor's overmatch as part of the process of evaluating the local share.

Often there are significant increases in the scope and costs of the projects as they develop from concept to FFGA. In such cases, the cost-effectiveness of the alternative selected could very well be significantly inferior at the time of FFGA than when the original LPA was selected. To provide an incentive to local project sponsors to avoid such cost and scope "creep", the Secretary is to take into account the cost and ridership calculation of the project at the end of Alternatives Analysis in establishing the Federal commitment level to a project. The Secretary would be given the discretion to reward project sponsors with a higher proportional share if the cost and benefit analyses at FFGA are within 10% of the original calculation. In this way, more meritorious projects and those which have better controlled costs can be provided a higher Federal share. This provision will protect the integrity of the decision making process and will ensure that more accurate data is presented as the basis for selection of the LPA. As a result of this provision, however, no project would be eligible to receive a total Federal share of greater than 80%.

In addition, the Secretary is given the discretion to allow project sponsors to benefit if an FFGA project is completed under budget. The provision in current law often prevents the grantee from keeping funds which remain and this potentially results in a perverse incentive to spend the remaining funds inappropriately. The new provision would expressly allow sponsors to retain a portion of the under-run for other eligible public transportation purposes, upon approval by the Secretary.

The Committee believes that it may be appropriate for the contractors to public transit agencies to share in the cost savings if they have contributed to such under-runs as a result of good performance. Thus, the Committee directs the Department of Transportation to conduct a study on the appropriateness of applying the

principles of contractor performance awards contained in the Federal Acquisition Regulations, 48 CFR Subpart 16.4.

Section 5309(g) is amended to allow the non-Federal share to include funding from a variety of sources, including contract revenues from other agencies (as is now the case for the non-urbanized area program). This can be a powerful spur to improve coordination of transportation services in a region, a top priority for the Committee.

Current law allows use of up to eight percent of the amounts available in each fiscal year for Alternatives Analysis and Preliminary Engineering within New Starts. As amended, Section 5309, at Subsection (m)(2) limits the use of such funds to Preliminary Engineering, which marks the first substantive stage of a project. As noted earlier, funding for Alternatives Analysis would be available from the planning program, as well as from an urbanized area's formula funds under Section 5307.

A reference to 23 U.S.C. 103(e)(4) in Section 5309 is deleted since Subsection 103(e) was repealed by Section 1106 of TEA-21.

Section 5309(i)(3) would continue to set aside \$10,400,000 each year for Alaska and Hawaii ferry boats, the same amount as is in TEA-21. The factors in Section 5309(i)(6) to be considered by the Secretary in selecting bus and bus facilities grants is expanded to include both the age and condition of the buses, fleets, and facilities.

In lieu of establishing a new program for intermodal facilities as proposed by the Administration, \$75 million is set aside each year from the bus discretionary program for these facilities. Eligibility for the intercity portion of intermodal terminals is established by the amendment to Section 5302.

The bill changes the New Starts reporting requirement to one annual funding report and three status reports as reflected in a new Section 5309(q). Currently, rating all projects for the annual report requires grantees not eligible for funding to rush their studies, frequently degrading their quality, so that information can be produced for the report. The annual report would describe only projects receiving funding based on evaluations and ratings and on existing commitments and anticipated funding levels for the next 3 years. Every four months, a report would be released with FTA ratings of only those projects with significant changes in their summary rating or some other key feature, or those that recently have entered preliminary engineering or final design. Every report would contain a table with summary rating information for all projects currently in the New Starts pipeline.

The requirement for an annual review by the General Accountability Office of the New Starts rating and evaluation process is continued. These reports have been useful to Congress by providing an objective overview of the New Starts rating process.

The Federal Transit Administration is required to issue a "Contractor Performance Assessment Report" (CPAR). This report will analyze the consistency and accuracy of cost and ridership estimates made by contractors to public transportation agencies developing major capital investments. This would provide public transportation agencies with a tool to assist in choosing contractors with the highest success rates in predicting cost and ridership.

Sec. 12. Formula Grants for New Freedom for Elderly Individuals and Individuals With Disabilities

- The program is expanded and renamed to include activities which provide access to persons with disabilities, in addition to that which is required to meet the requirements of the Americans with Disabilities Act.
- Medical access needs are given priority in the program.
- Current formulae and program structure continue as in current law.
- Matching requirements are expanded to include funding from other Federal programs and contracts with human service agencies.
- The sliding scale match is applied in States with large amounts of public lands.
- A requirement is inserted that projects must be drawn from a human service transportation coordination plan.

Currently, under Section 5310, the Secretary may provide grants for the special needs of elderly individuals and individuals with disabilities directly (1) to a State or local Government authority; or (2) to the chief executive office of the State for allocation to private non-profit corporations or associations when such service is unavailable or insufficient, or (3) to Governmental authorities approved by the State to coordinate services for these two populations groups, if there are no non-profit corporations readily available to provide the service. Section 5310 is amended to authorize grants directly to a State, which would then be able to allocate the funds to a private non-profit organization or a Governmental authority under the same conditions required in current law.

Persons with disabilities are particularly in need of service beyond that provided in response to the Americans with Disabilities Act. Funding for Section 5310 is expanded and explicit eligibility is provided for Governmental authorities providing services in excess of that provided by the Americans with Disabilities Act. This will help fulfill the goals of the President's New Freedom Initiative, without creating a new program. In addition, language is added to clarify that a priority of Section 5310 program funds is the provision of access to medical care.

Section 5310(a)(3) allows a State to use up to 15 percent of the amounts it receives under this section to administer, plan, and provide technical assistance. This is an increase from the present administrative practice of allowing up to 10 percent of the amounts for these purposes, and is necessary because of the added complexity of the program and the enhanced requirements for coordination of services. In addition, this additional authority makes this program consistent with the Section 5311 program, so that both state-administered programs essentially have similar structures.

Consistent with existing Section 5310, grants would be made for capital public transportation projects planned, designed, and carried out to meet the special needs of this population and could include the acquisition of public transportation services as a capital expense. The Federal share cannot exceed 80 percent of the net capital costs of the projects, as determined by the Secretary. The remainder of the funds could be provided from a variety of other sources, including undistributed cash surpluses, or from amounts appropriated or made available for transportation from any other

Federal department or agency other than the Department of Transportation, except for Federal Lands Highway funds, as well as contract revenue received from human service agencies. These are the same sources as for the Formula Grants program for other than urbanized areas as proposed under Section 13 of this bill. Having identical requirements for local matching funds is intended to provide the same incentive to coordination of human service transportation as is now provided in the Section 5311 program.

This section is also amended to allow for a sliding scale approach to the match requirements for capital expenses for those states that have a large percentage of public lands, and as a result, have a lower tax base from which to draw resources to fund the matching requirement mandated by these programs. It is similar in nature to a provision already in current law in the highway program.

As is current practice, funds under Subsection (b)(1) are apportioned to States based on a formula administered by the Secretary. In administering this formula, the Secretary will consider the number of elderly individuals and individuals with disabilities in a State. Under current law, unobligated Section 5310 funds available during the fourth quarter of each fiscal year may be transferred to Urbanized Area or Other Than Urbanized Area Formula Grant programs in order to supplement funds apportioned under those sections. Subsection (b)(2) allows recipients of grants under this section to transfer Section 5310 funds to those programs at any time provided that the funds are used for the purposes originally authorized. This would eliminate the artificial fourth quarter requirement since States typically budget for such transfers in the beginning of each fiscal year. In addition, States could make funds available to a subrecipient in a single transaction that included several FTA program-funding sources.

Under Subsection (d), a recipient of a grant is subject to all Section 5307 grant requirements to the extent the Secretary deems appropriate. Recipients would be required to certify that the projects for which funds are requested are drawn from a plan for human service transportation coordination. The effect of this provision and those included in the non-urbanized formula program and the Jobs Access and Reverse Commute Program will be to enhance coordination between these programs and with programs of other Departments, such as Health and Human Services, Labor, and Education. The Committee expects that FTA will give grantees an appropriate opportunity to develop these plans by phasing in this requirement during FY 2006. Finally, recipients are required to certify that allocations made to subrecipients were distributed in a fair and equitable manner.

Subsections (e) through (i) are the same as in current law. Subsection (e) requires states to develop annual programs of projects. Subsection (f) allows vehicles acquired under this section to be leased to local Governmental agencies to improve service coordination. Subsection (g) allows vehicles acquired under this section to be used for "Meals on Wheels" services as long as the service does not interfere with use of the vehicles for public transportation purposes. Subsection (h) allows vehicles to be transferred to another eligible recipient if they are no longer needed by the original recipient. Finally, Subsection (i) states that fares do not have to be charged on services assisted by Section 5310 funds.

Sec. 13. Formula grants for other than urbanized areas

- Indian tribes become eligible direct recipients of program funds, with a portion of funding set aside for tribes beginning in FY 2006.
- Private companies engaged in public transportation are eligible as subrecipients.
- The Rural Transit Assistance Program becomes a 2 percent takedown from the program.
- Recipients must submit data on service levels, costs, and revenues to the National Transit Database.
- A new formula tier is established based on land area to address the needs of low-density states. The remaining 80 percent of funds are to be allocated using the current formula.
- Matching funds may come from contracts with human service agencies (as in current law) or from other Federal programs.
- The “sliding scale match” is applied in States with large amounts of public lands for capital grants and proportionally for operating assistance.

Section 5311(a) defines an eligible recipient and subrecipient of other than urbanized area program funds. Indian tribes are established as direct recipients. Private operators engaged in public transportation are made eligible as subrecipients of 5311 funds, providing for opportunities for involvement of the private sector, as was the original intent when the Urban Mass Transportation Act of 1964 was first enacted. The Administration proposed this change as part of their SAFETEA proposal with the belief that this would provide a better opportunity for private operators to participate in the decision-making processes regarding their role in providing public transportation services.

Section 5311(b) allows other than urbanized area formula grants to be used for capital transportation projects, or operating assistance projects (as is currently allowed), including the acquisition of transportation services, provided the projects are contained in a State program of public transportation service projects (including agreements with private providers of public transportation services).

Currently, urbanized area program grant recipients must submit data on service levels, costs, and revenues, in accordance with requirements of the National Transit Database. Current law is amended to require a simplified version of these data collection requirements for the other than urbanized area program. Given the large growth in funding for this program, it is crucial that recipients report basic information on the effectiveness of this program. The Committee expects that the data collection requirements will be tailored to the smaller size of the typical public transportation system in rural areas, while still providing enough information to judge the condition and performance of our Nation’s network of rural public transportation services.

Under current law, recipients of grants and contracts for transportation research, technical assistance, training, or related support services, such as those given under the Rural Transportation Assistance Program (RTAP), must compete annually for National Planning and Research funds. Section 5311(b)(3), as redesignated, provides up to two percent of Section 5311 funds to carry out RTAP activities. This amendment better correlates funding for RTAP with

the amount of funding for rural service overall, thereby stabilizing the program. Since the formula funding level for rural transit increases, a proportionate increase in the level of funding for training and technical assistance delivered at the State level is available. New paragraph (4) allows the Secretary to use up to 15 percent of the two percent to sustain ongoing national project activities such as the National Transit Resource Center, production training modules, and occasional rural transit research projects of national interest.

An increasing amount of funding is set aside for Indian Tribes each fiscal year beginning in fiscal year 2006. Of the remainder, eighty percent of the Section 5311 program amount is apportioned to States pursuant to the same formula currently being used and now set forth in Section 5311(c)(3), which uses population in non-urbanized areas to allocate funds. The remaining twenty percent is apportioned on land area in non-urbanized areas. This new factor is added to reflect the fact that rural public transportation services are more difficult to provide because of the long distances between homes and basic services and thus are more costly in states with low population densities.

Section 5311(f) is amended to strike “after September 30, 1993,” since that date has passed. Section 5311(f)(2) requires the State to consult with affected intercity bus service providers before certifying that the State’s intercity bus service needs are being adequately met. Such consultation will help to ensure the State is aware of any unmet intercity bus service needs which private bus operators could fulfill.

Subsection 5311(g) retains the Federal share for any capital project at 80 percent or less of the net costs of such a project, as determined by the Secretary. Also retained is the Federal share for operating assistance at 50 percent or less of the net costs of an operating project, as determined by the Secretary. Consistent with current law, the remainder does not include revenues from the operation of public transportation systems. Rather, the remainder can be provided from a variety of other sources, including undistributed cash surpluses, or from amounts appropriated or made available for transportation from any other Federal department or agency other than the Department of Transportation, except for Federal Lands Highway funds. Current Section 5311(e)(2), which prohibits a State from limiting the level or extent of the Government’s share for operating expenses, is moved to Section 5311(g)(2) under the heading “Government’s Share of Costs.”

Subsection 5311(g) is also amended to allow for a sliding scale approach to the match requirements for capital expenses under this section for those states that have a large percentage of public lands, and as a result, have a lower tax base from which to draw resources. It is similar in nature to a provision already in current law in the highway program. The match for operating assistance is set at $\frac{5}{8}$ of the match for capital projects.

Sec. 14. Research, development, demonstration, and deployment projects

- The current unutilized University Research and Fellowships programs are eliminated.

- “Other transactions” are allowed in addition to grants and contracts.

Currently, Section 5312 does not address deployment of emerging technologies, and inappropriately includes training. As amended, Section 5312 authorizes public transportation service planning, and research, development, demonstration, and deployment projects.

The former University Research and Fellowships programs authorized by Subsections (b) and (c) are repealed, as these programs have not been funded for many years. The intermodal University Research Program, which is administered by the Research and Innovative Technology Administration essentially has replaced the transit-only University Research program in Subsection (b). The need for a separate fellowship program in Subsection (c) is now addressed by the wide variety of transit training opportunities, such as the National Transit Institute through which many more transit managers receive training for the amounts of a single fellowship under the program in Subsection (c).

Throughout the Federal Government, the term “other transactions” is used to provide executive branch agencies with broad discretion to enter into project agreements under terms that would encourage private parties to participate in Federally-assisted projects. Since the term “other agreements” in Section 5312(b)(2), as redesignated, provides the same authority, this section is amended to replace that term with “other transactions,” for consistency.

Sec. 15. Cooperative Research Grant Program

- The Transit Cooperative Research Program remains unchanged.

Amendments to Section 5313 provide the correct funding authorization citation. Since the statewide planning program under current Subsection (b) would be merged into the new metropolitan and statewide planning grant program in Section 5308, Subsection (b) is stricken and the title of Section 5313 is changed to reflect the fact that only the Transit Cooperative Research Program is authorized by this section.

Sec. 16. National research programs

- Project Action is continued at current funding levels.
- A new program of Medical Transportation Demonstration Grants is established.
- A new National Technical Assistance Center for Senior Transportation is established.
- A study on how to increase the use of Alternative Fuels in public transportation is required.
- Operational demonstration contracts are allowed under conditions set by the Secretary.

Section 5314 would be amended to delete the word “Planning” from the heading, since the focus of the section is on research, and planning has been provided for elsewhere in Chapter 53.

Amendments to Section 5314(a)(1) would provide the correct funding authorization citation and reflect the fact that the University Transportation Centers program in existing Section 5317 has been moved to Section 5505 of Title 49.

Subsection (a)(2) continues to provide \$3,000,000 for Project Action, which is designed to help ensure that public transportation-related assistance, programs, research, education, and other activities comply with the Americans with Disabilities Act of 1990.

Under current law, operational demonstration projects involving public transportation must comply with the Department of Labor's transit employee protection requirements under Section 5333(b). These new technologies are tested for short periods of time on single vehicles rather than on entire fleets. Moreover, these types of operational projects do not create an employee protective risk, the purpose for which Section 5333(b) was enacted. Therefore, Section 5314(a)(3) is amended to relieve this compliance requirement.

Current Section 5314(a)(4)(B) requires FTA to establish an Industry Technical Panel composed of transportation suppliers and others involved in technology development. This provision is deleted, as such a panel is unnecessary given FTA's continuing working relationship with all facets of the transit industry.

A new Subsection (a)(6) is added to establish a program of medical transportation demonstration grants. These grants will be focused on improving methods of transportation for persons in need of kidney dialysis.

A new National Technical Assistance Center for Senior Transportation would be established in a new Section 5314(c). Similar to Project Action, the Center would undertake research, provide technical assistance, and make demonstration grants on methods to improve transportation for elderly individuals.

A study is required by Section 5314(d) on how to increase the use of alternative fuels in public transportation.

Sec. 17. National Transit Institute

- The National Transit Institute will be continued at Rutgers University.

Currently, Section 5315(a) requires establishment of the National Transit Institute (NTI) at Rutgers University. This subsection would continue the Institute at this location for the new authorization period. The Committee is concerned about the effectiveness of programs at the NTI and directs the Federal Transit Administration to exercise careful oversight over its operation to assure that the Institute is producing benefits commensurate with the investment being made.

Existing Section 5315(b) requires the Secretary to delegate the NTI the authority to develop and conduct educational and training programs pertaining to public transportation. NTI already has sufficient authority to conduct any type of educational or training program, and therefore, this section is deleted.

Sec. 18. Bus testing facility

- Special testing requirements for "New Model" buses are continued.

Technical changes are made in the requirements for the testing of new model buses.

Sec. 19. Bicycle facilities

Currently all bicycle facilities, have a Federal share of 90 percent, unless they are funded as "transit enhancements" which are

eligible for a Federal share of 95 percent. Because the enhancement program is being continued as a certification rather than a set-aside, a technical correction was needed.

Sec. 20. Suspended light rail technology pilot project

Section 5320, which authorizes a suspended light rail system technology pilot program, is repealed because it has proved to be impractical and has not been implemented.

Sec. 21. Crime prevention and security

As noted earlier, capital costs related to crime prevention and security have been explicitly authorized as part of a capital project throughout Chapter 53. Accordingly, Section 5321, which provides for separate eligibility, but which has never been separately funded, is repealed.

Sec. 22. General provisions on assistance

- Environmental and public hearing requirements are revised to conform with the applicable cross-cutting statutes.
- Special terms and conditions for technology deployment projects will be allowed.
- Revenue bond proceeds can be used as local match for transportation projects.
- Debt Service Reserve Funds are made an eligible project activity.
- Public transportation agencies can receive land which becomes available as a result of base closures.
- Small and private non-profit agencies are exempted from pre-award and post-delivery audit requirements.

Subsection (a) is amended to include the term “private company engaged in public transportation” rather than “private mass transportation company” to utilize more current terminology and to comport with changes made to the term throughout Chapter 53.

The provisions of Section 5323(b) are edited to mesh the statutory requirements of Federal transit law more closely with current practice under the National Environmental Policy Act (NEPA).

FTA does not depend on the “certificate of the applicant” that the environmental review was properly performed. Rather, NEPA makes consideration of a proposed project’s environmental record a direct Federal responsibility. Accordingly, FTA participates directly in the environmental process for a proposed project and reviews the final environmental record before accepting it.

Methods for providing public comment have broadened considerably since the language regarding a public hearing was enacted in Section 5323(b). This section is amended to provide the same consideration to comments submitted by mail or electronic means, as the consideration given to comments transcribed at a hearing. In addition, non-English speaking persons or hearing-impaired persons are provided the opportunity to comment through special arrangements.

This section eliminates the two-step process for announcing a hearing. Under the current process, the applicant announces the opportunity for a hearing and then waits for a response. This bill requires that a hearing be held whenever the project affects signifi-

cant social, economic, or environmental interests in the community, regardless of whether one has been requested.

A new Section 5323(e) allows grants for new technology, including the integration of innovative techniques, subject to the requirements of Section 5309, but only to the extent the Secretary deems appropriate. Federal grant requirements, particularly in the case of major capital projects, are often difficult and burdensome when imposed on the introduction of new technology. Revised Subsection (c) strengthens and leverages private sector participation by permitting the Secretary to establish appropriate terms and conditions for projects involving the integration of new innovative or improved products, techniques, or methods. Such discretion will facilitate new and improved public transportation resources, as well as benefit both the public and private sectors.

The former Section 5323(e) required the Secretary to issue a bus passenger seat functional specification based on a finding by State and local governments of “local requirements for safety, comfort, maintenance, and life-cycle costs.” Industry has adopted an effective standard, the Secretary has issued a specification, and if the need were to arise again, the National Highway Traffic Safety Administration would be the more appropriate agency to address the matter. Therefore, this subsection is deleted.

Section 3011(a) of TEA–21 allows a recipient of an urbanized area formula grant under Section 5307 or a major capital investment grant under Section 5309 to use proceeds from the issuance of revenue bonds as a local match. Since this provision has been beneficial to transit operators, it is codified in Section 5323(f)(1).

Section 5323(f)(2) provides transit grantees with an additional innovative financing tool. Typically, only a small portion of public transportation investment is financed with municipal bonds. Currently, a recipient deposits bond proceeds in a debt service reserve to ensure timely payment of principal and interest on the municipal bonds supporting the transit project. Regardless, the municipal bonds are typically rated below “AA” because they are secured by variable revenue streams and thus demand a higher rate of interest. Under Section 5323(f)(2), the Secretary could allow a recipient to use Section 5307 or 5309 dollars to reimburse it for deposits made to the debt service reserve. Because Federal transit funds are typically viewed as higher creditworthy revenues, transit bond ratings would be strengthened and interest costs reduced. As a result, State and local investment would increase, and there would be improved capital planning, lower costs, and speedier project development.

Section 5323(h)(1), which prohibits a grant or loan from being used to pay ordinary Governmental or non-project operating expenses, is moved to Section 5323(p).

Section 5323(h)(2), which prohibits a grant or loan from being used to support a procurement that uses an exclusionary or discriminatory specification, appropriately belongs in Section 5325 and is relocated.

Subsection (h) is revised to provide for the transfer of lands or interests in lands owned by the United States. The Department of Defense regulations (32 CFR Parts 90 and 91) provide for the disposition of surplus land resulting from the Defense Base Closure

and Realignment Act to be transferred free to “grantees” that have Federal sponsors with Federal land transfer statutes.

However, within the Department of Transportation, only the Federal Highway Administration and the Federal Aviation Administration have such authority. By amending Chapter 53 to include a Federal land transfer statute under Section 5323(h), FTA grantees will be eligible to receive surplus Government land for authorized public transportation projects, under certain terms and conditions, but at no cost, just as other agencies would.

Reference to the Intermodal Surface Transportation Efficiency Act of 1991 in Subsection (j)(5) is obsolete, and the provision is amended accordingly.

Current Section 5323(l), which indicates that the planning and programming requirements of 23 U.S.C. 135 apply to grants made under 49 U.S.C. 5307–5311, is deleted because statewide planning has been included in the planning requirements under Sections 5303 and 5304. Subsection (l) is then used to provide for the applicability of 18 U.S.C. 1001, dealing with false or fraudulent statements, to Federal transit programs. Currently, Section 1001 applies only to certificates or submissions provided pursuant to Section 5307, “Urbanized Area Public Transportation Formula Grants.”

Section 5323(m) provides that an independent pre-award review and a post-delivery audit must be conducted when a grantee purchases rolling stock. These reviews must show compliance with Buy America requirements, the motor vehicle safety requirements, and the bid specifications. In addition to reviewing and documenting the origin of each component and subcomponent and the location and cost of final assembly, the grantee must use an on-site inspector when it purchases more than 10 vehicles. As a result, the grantee must have someone on site at the assembly plant to review and observe the actual manufacture of the vehicle. This is costly and burdensome on smaller grantees that may not have the staff or sophistication to devote to such audits.

Therefore, Section 5323(m) would be amended to eliminate these requirements for private non-profit organizations and grantees serving urbanized areas with fewer than one million people. All manufacturers and suppliers would have to continue to certify compliance with Buy America during the bidding process, and they would remain bound by their original certification. However, these grantees will not have to certify twice in order for the vehicles to comply with Buy America. The vast majority of vehicles purchased will still undergo the audits.

Sec. 23. Special provisions for capital projects

- Environmental and relocation assistance requirements are revised to conform to applicable cross-cutting statutes (NEPA and Uniform Relocation Assistance Act).

- Protective and hardship acquisitions are allowed, consistent with current regulations.

- Advance Right of Way acquisitions are allowed under certain conditions.

Currently, Section 5324 contains relocation program requirements as a condition of receipt of Federal assistance. The Secretary must make an affirmative finding that two of the numerous condi-

tions contained in the Uniform Relocation Assistance and Real Property Acquisition Policies Act ("the Act"), 42 U.S.C. 4601 et seq., have been fulfilled. All State agencies, defined in the Act as covering entities that would be FTA grantees, must comply with these two provisions of the statute to be eligible for Federal transit assistance. Therefore, in order to ensure that grantees are complying with the applicable requirements, Section 5324(a) is amended to reference the relevant sections of the Act directly.

Section 5324(b) continues to allow protective and hardship acquisitions as defined in 23 CFR 771.117, but it also allows advance acquisition where the strict requirements associated with a protective acquisition are not met. At present, a protective acquisition is permitted only if the development of the property is imminent as evidenced by concrete steps taken by a developer to build, subdivide, or otherwise develop the land. Because it increases the cost of the property to the public when it is finally acquired for transportation purposes, outside market forces do not generally respect transportation project schedules for environmental review and unduly influence the sale and development of real property. This provision allows for the acquisition when market forces dictate, and thereby avoids multiple transactions on the same property and the associated escalation in cost. A strictly limited number of such advance acquisitions is allowed without prejudice to the consideration of alternative locations or alternative projects, because the resale of a few parcels if a different alternative is selected, is feasible, and presents little or no burden to the transportation agency.

Section 5324(c) addresses FTA's current practice of allowing the acquisition of pre-existing railroad right of way (ROW) in advance of any specific project decisions on how the ROW will be used. In some cases, a firm project proposal and the associated environmental review may still be years away at the time of the acquisition, but the commercial railroad that owns the ROW seeks to liquidate the asset through its sale, and its preservation as a transportation ROW can only be assured through its acquisition. Any changes in the use of the railroad ROW are subject to appropriate environmental review prior to the change. The purposes of other Federal laws regulating railroads (e.g., those governing the abandonment of rail ROW) would not be compromised by this provision.

Section 5324(d) (formerly Section 5324(b)) meshes the statutory requirements of Federal transit law more closely with current FTA practice under NEPA, and 49 U.S.C. 303 (commonly called "Section 4(f)"), and other environmental laws. Of the Secretaries listed in current transit law, only the Secretary of the Interior frequently has an interest in FTA projects and routinely consults with FTA on those projects. Reference to the Secretaries of Agriculture, Health and Human Services, and Housing and Urban Development are removed since these agencies rarely have any interest in transit projects and the requirement for routine consultation with their Departments has not proven to be necessary or productive. FTA grant applicants are required by NEPA regulations to identify the Federal interests and parties affected by a proposed transit project. It is a very rare case that a transit project does affect one of the Departments on the list.

The Council on Environmental Quality has delegated its routine project review responsibilities to the Environmental Protection

Agency (EPA). In addition, EPA is required by Section 309 of the Clean Air Act to review the environmental impact statements of every other Federal agency. Federal transit law should be consistent with current delegations of responsibilities and with other Federal law. The amendment deletes Council on Environmental Quality (CEQ) and substitutes the Administrator of EPA.

Methods for providing the public with adequate opportunity to present views have broadened considerably since the original language about a public hearing transcript was enacted. At present, FTA practice is to give full consideration to every public comment on the project, whether that comment was transcribed at the formal public hearing, was received in written form through the mail or by email, or, in some cases, was transcribed from a telephone voice mail service established for this purpose. Federal transit law should not single out the hearing transcript for greater attention than other valid forms of public comment on the project. Therefore, Section 5324(b) is redesignated as Section 5324(d) and is amended accordingly.

FTA has not used the existing authority to hold its own separate hearing on a project proposed for FTA funding. The local transit agency planning the project and constructing, owning, and operating the project must be directly accountable to the public affected and served by the project. The agency must take responsibility for the public involvement process and must consider the public comments in deciding its course of action. FTA should not substitute its judgment in these local matters. The authority to hold a separate FTA hearing is therefore unnecessary and is deleted.

Sec. 24. Contract Requirements

- Current provisions regarding procurement and contracts are consolidated in a single section.
- Competition in all procurements is explicitly established as the presumptive standard.
- Brooks Act coverage in program management covers only architectural, engineering, and design contracts; performance and audit standards now referenced are incorporated in Title 49.
- Current requirements in FTA guidance on the need for grantees to assure that contractors have adequate capacity to carry out a contract are included in law.
- Grantees must refer to the Contractor Performance Assessment Report when selecting contractors to do work on projects seeking FFGAs.
- Buses acquired under this title are exempt from State dealer requirements.

Section 5326, "Special Procurements," is consolidated with Section 5325, "Contract Requirements," since the provisions of Section 5326 fall within the scope of Section 5325.

Existing Section 5307 requires the use of competitive procurement as defined or approved by the Secretary in carrying out procurement under that section. Section 5325(a) is amended to expressly require the use of competitive procurement procedures for any procurement carried out under Chapter 53. This amendment strengthens competition standards and stretches procurement dollars in third party contracting.

The revised language in redesignated Section 5325(b)—referred to as “The Brooks Act”—clarifies that program management is limited to architectural, engineering, and design contracts. Also, the reference to 23 U.S.C. 112(b)(2)(C) through (F), which deals with performance and audit standards and indirect cost rates, is removed. Instead, Subsection (b) is revised specifically to include these provisions.

TEA-21 allowed for turnkey system projects, also known as design-build contracting, in Federally funded public transportation projects, including demonstration projects. Section 5325(d) (existing Section 5326(a)), replaces the term “turnkey” with the more commonly used term “design-build.” Also, this section is amended to delete any reference to “demonstration projects,” since design-build contracting has matured beyond the demonstration phase. In addition, design-build contracting does not necessarily result in lower project costs or new technologies and, as a result, this concept, which appears in existing Section 5326(a)(2), is removed.

Current provisions on multiyear rolling stock procurements now included in Section 5326(b) are relocated to Section 5325(e). Current provisions on the acquisition of rolling stock using a variety of procurement methods now included in Section 5325(c) are relocated to Section 5325(f).

Section 5325 is amended to provide that buses purchased with assistance from the Federal Transit program are exempt from any state requirement to have such buses purchased only from in-state bus dealers.

Currently, FTA and the Comptroller General can inspect contract records for capital projects receiving Federal transit assistance, but only in cases of “noncompetitive bidding.” Investigations of the merits of competitive bids are based on (1) whether a grantee violated what it certified to, or (2) the protest procedures in the Government-wide Common Grant Rule. New Subsection 5325(g), “Examination of the Records,” strengthens oversight by allowing FTA or the Comptroller General to inspect all contract documents.

The “grant prohibition” provision, dealing with contract requirements, was erroneously included under Section 5323, “General Provisions On Assistance,” and is relocated appropriately under Section 5325(h).

A new provision is added to Section 5325(i) to strengthen the requirements that contractors to public transportation agencies must have adequate technical and financial capacity to carry out a proposed contract. This elevates already existing FTA and OMB requirements on third-party contracting to a statutory requirement.

Grantees must refer to the Contractor Performance Assessment Reports required under Section 5309 when selecting contractors to do work on major capital investments.

Sec. 25. Project management oversight and review

- Security is added to the issues to be included in a project management plan.
- The takedown for oversight is increased to 1 percent in all programs.
- Cross-cutting analyses of oversight results is allowed.

Given the new security concerns—and in keeping with actual practice in the field—Section 5327(a) is revised to require that a

project management oversight (PMO) plan include “safety and security management.”

Section 5327(c)(1) is amended to allow a one percent takedown for PMO activities related to the planning program (5308) and the expanded Formula Grants program for special needs of elderly individuals and individuals with disabilities (5310). These programs will require comprehensive agency oversight.

Section 5327(c) is amended to strike the reference to 23 U.S.C. 103(e)(4), which was repealed by TEA–21.

The section also provides new authority for the use of oversight funds to conduct analyses which cut across multiple projects. At present, oversight funds may be used only to review each project in isolation. Cross-cutting analyses could help identify major problems which need attention and could help develop best-practice methods which could be gleaned from a review of a set of similar projects.

Sec. 26. Project review

- The schedules for FTA review of projects in the New Starts process are updated to clarify the relationship to the New Starts process and criteria; the advancement of projects is not automatic, but rather depends on meeting the requirements of that section.

- The concept of Programs of Interrelated Projects is not continued.

Section 3026 amends Section 5328(a), which established a firm schedule for various FTA approvals associated with New Starts projects and reporting to Congressional committees on failures to meet those schedules. The schedule for FTA review continues to be maintained to ensure that projects are not delayed inordinately. The section is amended to tie the schedule to the requirements of Section 5309(e). In addition, since the decision on whether to advance a project to a Full Funding Grant Agreement is not automatic and depends on the relative merits of projects being considered for funding, as well as the readiness of individual projects, Subsection (a)(4) is repealed.

Subsection (c), which provides for a program of interrelated projects specifically identified in law, is now obsolete and is removed.

Sec. 27. Investigations of safety and security risk

- FTA investigation authority is expanded expressly to include security issues.

- The penalty for failure to address issues is modified.

- A Memorandum of Understanding between the Departments of Transportation and Homeland Security is required.

Section 5329 authorizes FTA to investigate “safety hazards,” but does not authorize FTA expressly to investigate “security” matters. The provision could be interpreted as not permitting FTA to investigate or to assist with security matters absent some particular “hazard.” Therefore, this section is amended to promote active cooperation between FTA and its grantees on security matters, by clarifying that FTA may assist grantees on security matters and investigate security concerns without notice of a specific breach of security at a transit system.

The existing section also contains an “all or nothing” provision that authorizes the Secretary to withhold “further financial assistance” upon a transit system’s failure to correct a safety hazard. Section 5329 allows the Secretary to determine the amount of funding to be withheld.

Section 5329(b) required that a report on safety hazards in the transit industry be completed by 1992. The report has been completed and thus this provision is deleted.

A new requirement is added for a Memorandum of Understanding between the Departments of Transportation and Homeland Security specifying the details of how the agencies would cooperate on setting national security standards for public transportation, would establish funding priorities for DHS grants to public transportation agencies, and would coordinate with each other and public transportation agencies on security matters.

Sec. 28. Withholding amounts for non-compliance with state safety oversight

- Safety oversight is required during the design phase of New Starts.
- States can designate a single agency to handle oversight of systems serving more than one State.

Section 5330 is amended to change the heading to “Withholding Amounts for Non-Compliance with State Safety Oversight Requirements” the better to reflect the requirements in this section.

Amendments to Section 5330 ensure that safety is considered well before a rail fixed-guideway system begins revenue service, i.e., during the design phase of the project.

Section 5330 allows a single transit system operating in more than one State to designate a single entity to oversee the safety of a rail fixed-guideway system. Because this provision is discretionary, a rail fixed-guideway system operating in two or more States may be subject to more than one oversight agency, each having different safety standards. In order to strengthen the provision’s goal of safety and reduce the burden on grantees having to comply with differing standards, Section 5330 is revised to make such a designation mandatory.

Subsection (f) required the Secretary to issue regulations no later than December 18, 1992. Because the regulations have been issued, Subsection (f) is deleted.

Sec. 29. Terrorist attacks and other acts of violence against public transportation

- Controllers of public transportation are protected by laws against violence toward transportation facilities.

The term “mass transportation” is changed to “public transportation” throughout Chapter 53 of Title 49, U.S.C., for the reasons set forth in Section 3001 of the bill. Section 1993 of Title 18, U.S.C., is a criminal statute prohibiting terrorist attacks and other acts of violence against the Nation’s transit systems, most of which receive Federal public transportation assistance under Chapter 53 of Title 49. Section 1993 of Title 18 is amended to replace the term “mass transportation” with “public transportation.”

Section 1993(a)(5) makes it a Federal crime to interfere with anyone “dispatching, operating, or maintaining a mass transpor-

tation vehicle or ferry.” The statute does not address those who “control” such vehicles, and arguably excludes rail system “controllers” (central command employees who control the movement of rail cars). Although such controllers “operate” vehicles in some cases, and thus may fall within the statute, the statute does not expressly cover them. The amendment to Section 1993(a)(5) explicitly provides that interference with a rail controller constitutes a Federal crime.

Sec. 30. Controlled substances and alcohol misuse testing

- Allows ferry boats to be covered only by Coast Guard requirements rather than both Coast Guard and FTA.

Currently, Section 5331 authorizes the Secretary to exclude from FTA drug and alcohol testing requirements those public transportation providers that are covered adequately by the testing statutes of the Federal Motor Carrier Safety Administration (FMCSA) or the Federal Railroad Administration (FRA). Section 5331 is amended to expand the Secretary’s authority to exclude from FTA testing requirements, those public transportation providers that are adequately covered under other Federal or Departmental testing statutes or regulations, such as the U.S. Coast Guard’s testing provisions applicable to ferryboat employees.

Section 5331(f)(3) states that this section shall not prevent the Secretary from continuing in effect, amending, or supplementing a regulation governing drug and alcohol testing prescribed before October 28, 1991. FTA drug and alcohol regulations are now codified (49 CFR Part 655) and therefore Subsection (f)(3) is unnecessary.

Sec. 31. Employee protective arrangements

- The time for severance pay and benefits for transit workers is reduced to four years to comport with existing rail worker protections for Class III railroads.
- This section does not automatically require labor protections to be continued after a change in contractor.
- Grants for purchase of like-kind equipment or facilities do not have to be referred by the Department of Labor prior to certification.

The Committee has substantial legislative history on the issue of Section 5333(b) labor protection, commonly referred to as “Section 13(c)” — a reference to the section as contained in the pre-codified Federal Transit Act.

Current law provides for 6 years of severance pay at full pay and benefits in the case where public transportation employees’ jobs are lost as a result of a grant. This applies to nearly every transit agency, as few exist in the absence of federal support. The bill would change the length of severance pay required under Section 5333(b) to 4 years. The precedent for this modification comes from changes resulting from the Interstate Commerce Commission’s sunset and subsequent replacement by the Surface Transportation Board. At that time, the requirement for severance pay for workers at Class III railroads (which are most analogous to transit agencies) was reduced from 6 years to 4 years. The Committee notes that this change does not alter requirements for severance pay for workers covered under other laws, such as those governing the rights of railroad workers.

On April 25, 2000, the Committee held a hearing entitled “The Ability of the U.S. Department of Labor to Delay or to Derail Mass Transit Projects that have been Approved and Funded by Congress.” The hearing highlighted numerous cases where Section 13(c) had been an obstacle to effective management of public transportation. Transit agency representatives from Dallas, Texas; Las Vegas, Nevada; and Boston, Massachusetts testified about their particular experiences with delayed grants or interference with the transit agency’s ability to make effective choices to increase the efficiency of transit operations and capital investments.

On July 11, 2000, the Committee held a hearing entitled “The FTA’s Approval of Extending the Amtrak Commuter Rail Contract.” Witnesses included Acting Administrator Nuria Fernandez and Amtrak President George Warrington. Amtrak had a contract to provide service to the Massachusetts Bay Transportation Authority (MBTA) since the mid-1980s, despite the fact that Federal Government grant rules require that contracts using federal funds be put out for competitive bid at least every five years. In 1998, FTA wrote a letter to the MBTA requiring it to compete the contract or risk losing federal funds. In response, MBTA put the contract out for bid and received four bids ranging from \$175 million to Amtrak’s bid of \$291 million. Additionally, MBTA rated the proposals on the basis of quality. Amtrak ranked worst based on measures of both price and quality. MBTA selected the best contractor on both factors, but when it came time to transition to the winning contractor, the Department of Labor’s reinterpretation of Section 13(c) prevented the successful bidder from carrying out the contract and the contract with Amtrak was extended. Section 13(c) required the new contractor to maintain the same work force, the same rates of pay, and the same work rules, thereby eliminating any cost savings that would have been achieved by transition to the new contractor. The result was to render the competitive bidding process meaningless.

The Committee believes that the current provisions contained in Section 5333(b) are in need of significant reform to prevent the abrogation of free-market principles and cost escalations deleterious to the effective provision of public transportation. Operational flexibility is a key foundation for competitive contracting. Accordingly, this bill provides that 13(c) requirements do not automatically attach to newly solicited contracts, or require that an identical workforce or rules be maintained under new contracts. Carrying over benefits from contractor to contractor was not envisioned when Section 13(c) was enacted and as such, this restores the original intent of Section 13(c).

The bill codifies the Department of Labor’s decision (commonly referred to as the “Las Vegas” decision), which found that a change in contractors would not extinguish obligations under prior Section 5333(b) arrangements. This provision is not intended to extend, expand, or contract labor protection collective bargaining terms and conditions applicable to subsequent contracts.

In addition, the bill establishes in law a Special Warranty now applied by administrative practice in the Section 5311 program for other-than-urbanized-areas and applies it in the Job Access and Reverse Commute Program.

The Committee expects the Department of Labor to promulgate regulations to implement the changes made by this bill.

Sec. 32. Administrative procedures

- Provides FTA with explicit authority to issue regulations.
- Allows the Secretary to regulate public transportation operations in the case of national emergencies.

Questions with respect to FTA's regulatory authority occasionally arise (e.g., with respect to the safety and security of transit systems and, some years ago, illegal drug and alcohol use). Amendments to Section 5334(a) clarify that the Secretary has the authority to issue regulations as necessary to carry out the Federal transit provisions in Chapter 53.

Current Section 5324(c), "Prohibitions Against Regulating Operations and Charges," is moved to Section 5334, "Administrative Provisions," as a new Subsection (b). It is appropriate to house this prohibition in the "Administrative Provisions" section and make it expressly applicable chapter-wide, rather than on capital projects only. While it has been the practice of FTA to forego any regulation of operations or charges with respect to any grant based on legislative history, current law is ambiguous. Moving this provision will clarify that FTA may not regulate operations or charges, except in emergencies. The appropriate Federal role in public transportation is to provide financial assistance only, and not to regulate operations. Also, this provision is amended to specify that the Secretary is prohibited from regulating a recipient's routes, schedules, rates, fares, tolls, and rentals, just as this provision had specified prior to the recodification of the Federal Transit Act into 49 U.S.C. Chapter 53 in 1994. In light of the September 11 terrorist attacks, this provision is further amended to allow the Secretary of Transportation, under direction by the President, to regulate the operation of and charges for public transportation systems for purposes of national defense or in the event of a national or regional emergency.

Sec. 33. Reports and audits

Section 5335(b), requiring that the Comptroller General submit "transferability reports" to Congress, is removed, as the report is no longer needed on a recurring basis. Information on the use of flexible funding under Title 23 is readily available.

Sec. 34. Apportionments of appropriations for formula grants

- For basic apportionments, the existing urbanized area formula continues as in current law.
- A Transit Intensive Cities Tier is added, allocating \$35 million per year to those areas under 200,000 population which operate more service (revenue vehicle hours) per capita than areas 200,000 to 1 million.
- A study of rural and urban incentives is required.

The formula in Section 5336 sees the addition of a new "Transit Intensive Cities" tier. Under current law, funds are allocated to urbanized areas with a population of less than 200,000 only on the basis of urbanized area population and population density. Fund allocations do not reflect the amount of transit service provided. Thus, certain small areas which sometimes have more transit serv-

ice than areas with more than 200,000 people do not get funding sufficient to recapitalize their transit systems. The “Transit Intensive Cities” tier would allocate funds to small urbanized areas with transit service levels (represented by revenue vehicle hours) per capita greater than the per capita service levels in areas with population of 200,000 to 1,000,000 on the basis of transit service levels. Funds from this tier are available for capital purposes only.

The provision in Section 5336(h) regarding adjustments in apportionments from the Mass Transit Account and general funds is deleted.

The redundant provision in Section 5336(j) which describes the grant requirements which apply to funds allocated by Section 5336 is deleted. These requirements are already applied to the Section 5307 program by Section 5307(n).

The provision in Section 5336(k) which referred to treatment of former urbanized areas in Fiscal Year 1993 is deleted.

A provision is added to require a study of incentives which might be added to the urbanized area and other-than-urbanized area formula programs. The Administration proposed a program of incentive allocations based on increases in ridership which the Committee seriously considered. However, in light of numerous questions about how such a program would work, the factors to be considered, and the manner in which grants could be used, the Committee instead calls for a study of the issues involved in establishing such a program. The Committee believes that there may be some merit in building incentives into the allocation of Federal funds. The report should address the possibility of rewarding improvements in ridership (as was proposed by the Administration) as well as improvements in efficiency (cost per unit of service provided), effectiveness (service utilization per unit of service provided), and cost-effectiveness (cost per unit of service utilization). The Committee is particularly interested in assessments of incentives for improvements in efficiency, which could spur public transportation agencies to explore more use of competition in the selection of service provider as well as increased use of privately provided service.

Sec. 35. Fixed guideway modernization apportionments

- The current formula for the fixed guideway modernization program is retained.

The formula in Section 5337 is currently used to allocate fixed guideway modernization funds in Section 5309 and is retained unchanged. Section 5337(e) is removed, since that section provided for a special rule from October 1, 1997, through March 31, 1998.

Sec. 36. Authorizations

- Funds all programs except New Starts from the Mass Transit Account
- Funds New Starts from the General Fund.

Section 5338 authorizes amounts from the General Fund, and makes available amounts from the Mass Transit Account of the Highway Trust Fund, to carry out Federal public transportation programs in Fiscal Years 2005 through 2009. Funds from the Mass Transit Account are provided as “contract authority.”

Section 5338(a), provides funds for all programs for Fiscal Year 2005 in accordance with the Consolidated Appropriations Act.

Section 5338(b) Formula Grants and Research, provides funds for Fiscal Years 2006 through 2009 from the Mass Transit Account to carry out Sections 5305, 5307, 5308, 5309 (bus and fixed-guideway modernization), 5310–5318, 5322, 5335 and 5505 of Title 49, and Sections 3037 and 3038 of Pub. L. 105–178. It also provides for a takedown for grants to the Alaska Railroad for improvements to its passenger operations under Section 5307.

Section 5338(c), Major Capital Investment Program Grants, authorizes appropriations from the General Fund in Fiscal Years 2006 through 2009 to carry out Section 5309 (New Starts). Section 5338(c) authorizes funds from the Trust Fund for administrative expenses. Amounts available under Subsections (a) and (b) remain available until expended and grants financed from amounts derived from the Mass Transit Account or through advance appropriations under those subsections would be contract authority.

Throughout the life of TEA–21, planning funds to carry out 49 U.S.C. 5303–5305 and 5313(b) were authorized and made available pursuant to 49 U.S.C. 5338(c). Grants for both planning programs are mainstreamed into 49 U.S.C. 5308. Funding for the planning programs are authorized as a takedown from the Urbanized Area Public Transportation Formula Grants account.

The bill provides that 1.75 percent of the funds are available for planning in Fiscal Years 2006 through 2009. This percentage represents a minimal increase over previous Fiscal Years. The amount proposed in fiscal year 2005 takes into account that this fiscal year will be the first year of reauthorization and is based on the Consolidated Appropriations Act.

The bill provides funding for the National Transit Database (NTD) authorized under Section 5335 in fiscal years 2006 through 2009. The NTD workload has increased substantially with the advent of monthly reporting on safety and security and with the new requirements for the phased in rural and asset condition reporting.

Sec. 37. Apportionments based on growing and high density states formula factors

- Adds a new formula to allocate funds to States based on their population growth and on their level of population density. This formula is split evenly between “Growing States” and “High Density” factors.

- Adds a new formula to allocate funds to Growing States. Amounts are allocated to States based on amount of population forecast in 2015. In each State, the amount is split between urbanized areas and non-urbanized areas in proportion to the population in 2015.

- Adds a new formula to allocate funds based on State population density in excess of a benchmark multiplied by the urbanized land area.

A new Section 5340 is added to allocate funds to Growing and High Density states. For this section, the term “State” is defined only to mean the 50 States.

With respect to Growing States, the current formulae in Chapter 53 all look back to population in the most recent decennial census and to the most recent transit service level data in the National

Transit Database. While this is helpful in assuring that funds are allocated based on need, they focus on existing needs, not the potential needs which exist in growing areas. Thus, it is very difficult for areas which foresee the need for expanded transit services to use funds allocated by the current formulae to address those needs.

The new Section 5340 allocates funds based on the population forecasts for fifteen years after the date of that census. Forecasts are based on the trend between the most recent decennial census and Census Bureau population estimates. Funds allocated to the States are then sub-allocated to urbanized and non-urbanized areas based on forecast population, where available. Funds allocated to urbanized areas are included in their Section 5307 apportionment. Funds allocated for non-urbanized areas are included in the states' Section 5311 apportionments.

Similarly, other States are of extremely high density, and have public transportation needs and abilities in excess of average and the ability to service those needs more effectively than average, and thus, the current formulae do not fully account for these needs. For States with population densities in excess of 370 persons per square mile, funds are allocated based on the amount by which their population exceeds the product of their land area and the percentage of total State population in urbanized areas as determined by the most recent Decennial Census.

Sec. 38. Job access and reverse commute

- Continues Job Access and Reverse Commute as a competitive discretionary program.
- Tailors grant requirements to the type of recipient.
- Requires projects to be drawn from a human service transportation coordination plan.
- Expands definition of "eligible person" to allow States to conform definition of eligible clients to their own TANF definition.

Section 3037 of TEA-21 authorized the Job Access and Reverse Commute (JARC) program to assist welfare recipients and other low-income individuals in getting to and from jobs. The JARC program is reauthorized by amending Section 3037 of TEA-21 to provide funding authorizations for Fiscal Years 2005 through 2009.

The JARC program continues as a national competition. The coordination requirements are amended to conform to the changes made in Sections 5307, 5310, and 5311. Section 3037(b)(2) is amended to clarify that funds can be used for the provision of service as well as the development of service.

Section 3037(b) is amended to expand the definition of "eligible low-income individual" to allow States the flexibility to use JARC funds to assist the same individuals as assisted under the State-administered Temporary Assistance to Needy Families program (TANF). At present, the JARC program sets up a nationwide definition at 150 percent of the poverty line, while some States may choose to define eligibility differently. The bill allows the continuation of current eligibility as well as the new eligibility, tied to the TANF program within the State. No change is made in the activities eligible under the JARC program. Hence, all activities which have been deemed eligible remain eligible.

Section 3037(b) is amended to expand the definition of "eligible low-income individual" to allow States the flexibility to use JARC

funds to assist the same individuals as assisted under the State-administered Temporary Assistance to Needy Families program (TANF). At present, the JARC program sets up a nationwide definition at 150 percent of the poverty line, while some states may choose to define eligibility differently. The bill allows the continuation of current eligibility as well as the new eligibility, tied to the TANF program within the State.

Section 3037(j) is amended to change the terms and conditions of JARC grants to match the type of recipient. Under current law, all JARC grants are subject to the terms and conditions of Section 5307, including those to recipients in other than urbanized areas, or recipients who are private non-profit organizations. This represents a significant burden to these recipients, since the requirements are tailored to public agencies in urbanized areas. The bill makes grants to public transportation operators and to private companies engaged in public transportation in urbanized areas under the same terms and conditions as required under the urbanized area formula program. Grants to public transportation operators and to private companies engaged in public transportation outside urbanized areas will be subject to the requirements of the Section 5311 program. Grants to private non-profit organizations will be subject to the requirements of the Section 5310 program.

Sec. 39. Over-the-Road Bus Accessibility Program

- Continues Over-the-Road Bus Accessibility Program.

The heading of Section 3038 is changed from the “Rural Transportation Accessibility Incentive Program” to its more commonly used name “Over-the-Road Bus Accessibility Program.” In addition, Section 3038 is amended to reflect authorization of funds for this program in Fiscal Years 2005 through 2009.

Sec. 40. Transit in Parks

- Authorizes grants for public transportation projects in National Parks and other public lands.

This section funds, for the first time, a program to provide funding for public transportation in National Parks and public lands at a level of \$25 million per year. The Departments of Transportation and Interior will work cooperatively to develop and select capital improvements.

Under this program, the Departments of Transportation and Interior will work cooperatively to select capital projects for funding within and in the vicinity of sites in the National Park System, the National Wildlife Refuges, Federal recreational areas, and other public lands, including National Forest System lands. This program is intended to help these areas address the problem of overcrowding that has come with increased visitation. TEA-21 required the Department of Transportation to conduct a study of alternative transportation needs in the national parks and other public lands, and that study confirmed that the parks are able and willing to develop transit alternatives. This program will help the parks make investments in traditional public transportation, such as shuttle buses or trolleys, or other types of public transportation appropriate to a park setting, such as waterborne transportation or bicycle and pedestrian facilities.

Sec. 41. Obligation ceiling

This section establishes the obligation ceiling for each fiscal year, equal to the total amounts authorized.

Sec. 42. Adjustments for the Surface Transportation Extension Act of 2004

This section provides that the amounts for Fiscal Year 2005 are in lieu of, and not in addition to, the amounts authorized for the first eight months of Fiscal Year 2005 by the Surface Transportation Extension Act of 2004. In addition, the section provides for an adjustment to the calculations of apportionments for the fixed-guideway modernization program, since that formula assumes a full year of funding.

Sec. 43. Disadvantaged Business Enterprise

This section continues the Disadvantaged Business Enterprise requirements contained in the Transportation Equity Act for the 21st Century.

COST ESTIMATE

APRIL 11, 2005.

Hon. RICHARD C. SHELBY,
*Chairman, Committee on Banking, Housing, and Urban Affairs,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the Federal Public Transportation Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne Mehlman.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Federal Public Transportation Act of 2005

Summary: CBO estimates that implementing the bill would cost \$25.3 billion over the 2006–2010 period, assuming appropriation action consistent with the bill. The legislation would extend the authority for the surface transportation programs administered by the Federal Transit Administration (FTA). For those programs, CBO estimates that the bill would provide about \$82 billion in contract authority (the authority to incur obligations in advance of appropriations) over the 2006–2015. The bill also would authorize the appropriation of about \$6.2 billion for those programs over the same period.

The amount of new spending on transit programs under the bill would add to outlays expected from funding previously provided. In total, CBO estimates that discretionary outlays would sum to about \$37.3 billion over the 2006–2010 for the affected transit programs.

Consistent with the rules set forth in the Balanced Budget and Emergency Deficit Control Act, CBO assumes that the contract authority for the transit programs would continue at the same rate

provided immediately before the authority for the programs would expire in 2009. Hence, this estimate includes an additional \$8.6 billion in contract authority in each year over the 2010–2015 period.

This bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). It would benefit state and local governments by reauthorizing federal funding for public transportation programs. While some provisions in the bill would result in additional costs for these governments, those costs would result from complying with conditions of federal assistance.

Estimated cost to the Federal Government: The estimated budgetary impact of the bill is summarized in the table below. The costs of this legislation fall primarily within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2005	2006	2007	2008	2009	2010
SPENDING SUBJECT TO APPROPRIATION						
FTA's Spending Under Current Law:						
Authorization Level ^a	918	0	0	0	0	0
Estimated Outlays	6,844	4,619	3,382	2,293	1,217	470
Proposed Changes:						
Estimated Authorization Level ^b	0	1,387	1,465	1,601	1,744	0
Estimated Outlays	0	1,231	3,764	5,666	7,359	7,280
Total Spending Under the Bill:						
Estimated Authorization Level ^b	918	1,387	1,465	1,601	1,744	0
Estimated Outlays	6,844	5,850	7,146	7,959	8,576	7,750
DIRECT SPENDING						
FTA's Direct Spending Under the Current-Law Baseline:						
Estimated Budget Authority ^b	6,691	6,691	6,691	6,691	6,691	6,691
Estimated Outlays	0	0	0	0	0	0
Proposed Changes:						
Estimated Budget Authority ^b	0	131	518	1,186	1,892	1,892
Estimated Outlays	0	0	0	0	0	0
Total Direct Spending Under the Bill:						
Estimated Budget Authority ^b	6,691	6,822	7,209	7,877	8,583	8,583
Estimated Outlays	0	0	0	0	0	0

^aThis is the amount of budget authority appropriated for the transit programs for 2005; it does not include contract authority for that year.

^bUnder current law, most budget authority for the transit programs is provided as contract authority, a mandatory form of budget authority. Outlays from those programs, however, are subject to obligation limitations contained in appropriation acts and are therefore discretionary. The legislation would provide contract authority for each of those programs and also would authorize the appropriation of discretionary funds for those programs as well. For this estimate, CBO assumes that obligation limitations will continue to control most spending from those programs.

Basis of Estimate

For this estimate, CBO assumes that the bill will be enacted by May 31, 2005, when the current authority for most of the surface transportation program expire and that future appropriation actions will be consistent with the funding levels authorized in the bill.

Contract Authority

The legislation would extend the authority for the surface transportation programs administered by the FTA through 2009. Under current law, most budget authority for such programs is provided as contract authority, a mandatory form of budget authority. Outlays from those programs, however, are subject to obligation limitations contained in appropriation acts and are therefore discretionary. For this estimate, CBO assumes that obligation limitations

will continue to control most spending from those programs and that appropriation acts would include obligation limitations equal to the contract authority levels for those programs. For the transit programs, the bill would provide a total of \$39.1 billion of contract authority over the 2006–2010 period, or \$5.6 billion more than assumed under the CBO baseline for these programs. For the 2006–2015 period, projected contract authority would total \$82 billion or \$15.1 billion more than assumed under the CBO baseline for these programs.

Spending Subject to Appropriation

In addition to providing contract authority, this legislation would authorize the appropriation of \$6.2 billion over the 2006–2009 period for various transit programs. Assuming appropriation action consistent with the authorization and obligation levels specified in the bill, CBO estimates that implementing the bill would cost about \$25.3 billion over the 2006–2010 period. The amounts of new spending under the bill would add to outlays expected from funding previously provided. In total, CBO estimates that discretionary outlays would sum to about \$37.3 billion over the 2006–2010 period for the affected transit programs.

Estimated impact on state, local, and tribal governments: This bill contains no intergovernmental mandates as defined in UMRA. The bill would benefit state and local governments by reauthorizing federal funding for public transportation programs. While some provisions in the bill would result in additional costs for these governments, those costs would result from complying with the conditions of federal assistance.

Included in the bill are changes to existing transportation planning requirements imposed on states and local Metropolitan Planning Organizations (MPOs). These requirements are conditions of receiving federal transportation assistance. According to MPO representatives, some of these changes would impose additional costs on MPOs, particularly a requirement that they include certain environmental considerations as part of the planning process. At the same time, states and MPOs receive funds from federal highway and transit programs to offset planning costs, and this bill would increase the amount of transit funds set aside for that purpose.

Estimated impact on the private sector: The bill contains no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Spending: Susanne Mehlman; impact on state, local, and tribal governments: Marjorie Miller; impact on the private sector: Jean Talarico.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW (CORDON RULE)

On March 17, 2005, the Committee unanimously approved a motion by Senator Shelby to waive the Cordon Rule. Thus, in the opinion of the Committee, it is necessary to dispense with the requirements of section 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

ADDITIONAL VIEWS

The legislation reported by the Committee is vitally important to keep America moving forward in the 21st century. The investment authorized in this bill is critical to our efforts to improve our citizens' mobility and strengthen our national economy. The bill takes a responsible approach to addressing the various types of transit needs in communities all across the nation, and we appreciate this legislation. While we continue to support the investment level and the highway/transit balance reflected in the reauthorization bill which passed the Senate last year, we recognize the need to move forward and therefore supported the bill reported by the Committee with the understanding that we will continue to press for a more appropriate balance between these two programs on the Senate floor.

While there are a number of provisions in the legislation that modify various aspects of the transit programs, for the most part of the bill not enact major changes to a program that has worked well. For example, while the bill enhances the role of private-sector transit providers in several ways, it was not intended to change the long-standing congressional policy that decisions involving the choice between public and private transit operators should be left to local authorities who are better equipped to make local transportation decisions, and the federal government should remain neutral with respect to such local decision-making.

The bill makes several modifications to section 5333(b), known as section 13(c), the transit employee labor protections. Section 13(c) has been a part of every transit bill since 1964, providing important collective bargaining and job right protections. It has served to unify a broad coalition of transit industry and employee representatives who have worked together to expand the Federal transit program to what it is today: an unequivocal success. We do not agree with the characterization in the Section-by-Section of the testimony given in the Committee's hearings, nor do we believe that the description of the events in Boston accurately reflects the circumstances of that case. In fact, the issue in Boston stemmed from the Massachusetts Bay Transportation Authority's use of a flawed bidding process, which led to the selection of an unqualified contractor. Contrary to critic's allegations, the U.S. Government Accountability Office has found that Section 13(c) does not delay processing time for grants, nor does it inhibit transit agencies from contracting out their services. Given the substantial benefits to Section 13(c) to the nation's transit systems, we do not believe that any modifications to Section 13(c) were necessary.

However, given that modifications were made, we believe it is important that their scope be properly understood. One of the modifications addresses employee job guarantees when one private contractor replaces another private contractor through competitive

bidding. Legislative history shows that Congress intended Section 13(c) to apply to grants in all such cases, with specific benefits dependent upon the facts of each case; this issue was addressed in the Department of Labor's "Las Vegas decision," dated September 21, 1994, as amplified by letter dated November 7, 1994. The bill includes language to ensure that the Department of Labor's decisions involving so-called "contractor to contractor rights" are governed by the standards set forth in the Las Vegas rulings, without otherwise affecting existing protective arrangements; this affirmation of existing DOL policy should not serve as a basis for objections under 29 CFR 215.3(d).

In addition, the amendment to section 5333(b)3), which reduces the protective period from a maximum of 6 years to a period not to exceed 4 years, applies exclusively to the duration of a dismissed or displaced employee allowance, and does not otherwise affect the protections afforded employees under section 5333(b). Moreover, the protections afforded to workers on Class III Railroads have never before been connected to transit labor protections, and should not be viewed as a precedent for any change to Section 13(c).

We believe that the Committee's hearing record provides ample evidence that Section 13(c) has contributed to the development of a well-trained, professional transit workforce which allows the transit industry to operate effectively even as the range of transit services continues to expand and technology continues to improve.

