United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 112th CONGRESS, SECOND SESSION

Vol. 158 WASHINGTON, THURSDAY, FEBRUARY 9, 2012 No. 22

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable TOM UDALL, a Senator from the State of New Mexico.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

God of sea, land and sky, we worship You. Guide our lawmakers today in Your straight path. Inspire them with insight and courage that they may walk with integrity. Search their hearts and lead them away from all indirection, equivocation, and pretense that will keep them from arriving at Your desired destination. Open their eyes to see opportunities in adversities, as You empower them to carve tunnels of hope through mountains of despair. Fortify their desire to live with sincerity and self-effacement for the glory of Your kingdom on Earth.

We pray in Your holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable TOM UDALL led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. INOUYE).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 9, 2012.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TOM UDALL, a Senator from the State of New Mexico, to perform the duties of the Chair.

DANIEL K. INOUYE,
President pro tempore.

Mr. UDALL of New Mexico thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, following leader remarks, the Senate will be in a period of morning business until 11 a.m. The majority will control the first half of the time and the Republicans will control the final half. Following morning business, the Senate will resume consideration of S. 1813. At 2 p.m., there will be a rollcall vote on the motion to invoke cloture on the motion to proceed to S. 1813.

We have been in consultation with the Republican leader and his staff, and we may have another vote this afternoon. We are probably going to have more than one vote this afternoon.

MEASURE PLACED ON CALENDAR—S. 2079

Mr. REID. Mr. President, I understand that S. 2079 is at the desk and due for its second reading.

The ACTING PRESIDENT pro tempore. The leader is correct. The clerk will read the title of the bill for the second time.

The assistant legislative clerk read as follows:

A bill (S. 2079) to extend the pay limitation for Members of Congress and Federal employees.

Mr. REID. Mr. President, I object to any further proceedings with respect to the bill.

The ACTING PRESIDENT pro tempore. Objection is heard. The bill will be placed on the calendar.

Mr. REID. Mr. President, I will have more to say about this later.

MORTGAGE FORECLOSURE SETTLEMENT

Mr. REID. Mr. President, I received a call from Secretary Donovan, the Secretary of Housing, indicating that Nevada was part of the settlement. It is in all the newspapers today. It appears Nevada will get about $1½ billion to work out our foreclosure problems in Nevada. We have led the Nation for years in foreclosures. We are not proud of that, but it is a fact.

For many years, we were the economic driver of the States. No State did better economically than Nevada for two decades. If you want a good job, come to Nevada. If you want to invest in real estate, come to Nevada or if you wanted to start a small business, come to Nevada. The collapse on Wall Street has hurt our housing market. We have not yet recovered. I commend the attorney general of Nevada, Catherine Masto, who was a fine lawyer before she became attorney general and has only become better with the work she has done. She negotiated this. I am very proud of her and confident the work she did will bring dividends to the beleaguered housing industry in Nevada.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

HONORING OUR ARMED FORCES

FIRST LIEUTENANT ERIC YATES

Mr. MCCONNELL. Mr. President, I have the sad duty today to share with my colleagues the story of one brave

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Printed on recycled paper.

Kentuckian who sacrificed his life for his country. First Lieutenant Eric Yates, of Rineyville, KY, was killed on September 18, 2010, in Kandahar province, Afghanistan, after insurgents attacked his patrol with an improvised explosive device. He was 26 years old.

For his heroic service, Lieutenant Yates received several awards, medals, and decorations, including the Bronze Star Medal, the Purple Heart, the National Defense Service Medal, the Afghanistan Campaign Medal with Bronze Service Star, the Global War on Terrorism Service Medal, the Army Service Ribbon, the Overseas Service Ribbon, the NATO Medal, the Combat Action Badge, and the Overseas Service Bar.

On Veterans Day last year, Lieutenant Yates's alma mater, Western Kentucky University, honored him by inducting him into its ROTC Hall of Fame. A likeness of Lieutenant Yates, etched in granite, was unveiled and placed on the university's landmark Guthrie Bell Tower.

The history department at Western Kentucky University, working with the Yates family, also established the First Lieutenant Eric Yates Memorial Scholarship. ''We have made it our mission to make it a scholarship that will be here forever, to keep Eric alive in our hearts,'' says Kathy Yates, Eric's mother. Thanks to fund raisers and generous donations, that scholarship fund now has over $20,000 in it.

Eric was born on July 1, 1984, to Kathy and David Yates, and grew up on a farm in Rineyville. A typical little kid, he liked to play with toy tractors and watch cartoons. Batman and Power Rangers were his favorites. ''He went through a phase where he wore a cape all the time so he would be ready for any impending danger,'' remembers Kathy. Eric attended Rineyville Elementary School, and played baseball.

On the farm, the Yates family grew hay and tobacco, and there was work to be done clearing weeds, topping plants, cutting the tobacco, and stripping it in the barn to get it ready for market. ''I am so thankful for that time we spent together working and talking, as that's when you really get to know your children and the work ethic they develop,'' Kathy says.

One spring when Eric was about 10 and his little brother Nathan was about 6, David told his two sons they could each pick a newborn calf after their hard work stripping tobacco all winter. Nathan picked out the biggest bull he could find. He could not understand why his big brother Eric chose a little heifer calf. ''I want the gift that's going to keep on giving,'' Eric said, and he went on to sell a calf from that cow every year for the next 13 years.

In high school Eric got his first job for Butternut Bread, filling the shelves in Wal-Mart, and was elected as treasurer of his school's chapter of Future Farmers of America.

During the summer of 2001, the Yates family took a vacation to our Nation's capital here in Washington, D.C. Eric was thrilled to visit the White House, the Smithsonian, Arlington Cemetery, the Korean Memorial, the Vietnam Memorial, Robert E. Lee's house, and the Tomb of the Unknown Soldier.

Kathy recalls how he practically taught the family a history lesson at every stop along the way. ''He was amazed by all of it,'' she says.

Soon after that summer trip came the events of 9/11. A junior in high school, Eric read as much about the brutal terrorist attacks on this country as he could. ''I had not seen anything that grabbed his attention like that fateful day,'' Kathy remembers. It was then that Eric began to think about a career in the U.S. Army.

After graduating from John Hardin High School in 2003, Eric started at Elizabethtown Community College. Then he transferred to Western Kentucky University and joined their ROTC program, with an eye toward a military career. He hoped to return to Hardin County one day after retiring from the Army, to teach and share his stories of military adventure.

Eric graduated from WKU in 2008. ''We were so proud of him that weekend as David and I put on his gold bars at his commissioning ceremony,'' Kathy says. After graduation, he joined the 101st Airborne Division and was stationed at Fort Campbell, Kentucky, a point of pride for Eric as that was the same division his grandfather, Herbert L. Crabb, had served in.

In May of 2010, Eric was deployed to Afghanistan with B Company, 1st Battalion, 502nd Infantry Regiment, 101st Airborne Division. It would be his first and only deployment.

We are thinking of First Lieutenant Yates's loved ones today, Mr. President, as I recount his story for my colleagues in the Senate, including his parents, David and Kathy Yates; his brother, Nathan Yates; his grandfather, Herbert L. Crabb; and many other beloved family members and friends.

Eric's family learned after his tragic death that he had left behind a letter he wanted read at his funeral. His parents have gracefully shared that letter with me, and I would like to read it for my colleagues now. Eric writes as follows:

Hello to everyone in attendance,

I'm sorry that you all had to gather here today for this event—no, really I am. But since you are here I would like to take the chance to say a few things, try to impart some of my knowledge and wisdom that I have stored up over the past 26 years. I consider myself fairly cultured and worldly, so please pay attention; I have the following advice.

Number one, take a chance. Get out there and do something you wouldn't normally do. You will see and do some really cool stuff and meet some really fine and interesting people. Once an Army buddy and myself ate breakfast with a homeless man in Oklahoma City, and I must say he left an impression on me.

Number two, watch the original Star Wars trilogy. It's an amazing story.

Number three, no matter how old you are, get off the couch and exercise. You will look and feel so much better, have more energy and be happier.

Number four, read a lot books, both fiction and non-fiction, newspapers, magazines, blogs, online stories, movie reviews—all these things will help you understand the world around you, your role in it, and why what happened to me happened where and when it did.

Number five, save your money. You don't own your things; your things own you.

Number six, liquor is better than beer.

Number seven, don't reject new ideas immediately.

That seems to be all that I wanted to say, so thank you for coming. Please have a safe trip home and have a good life. Love, Eric Yates.

It is a great loss, Mr. President, that First Lieutenant Eric Yates will not have a long and happy life himself, with the opportunities to share those lessons—and many more—with the people that fill that life. But I am honored to be able to share them now with my colleagues in the United States Senate.

And I am honored to stand here today and recognize Lieutenant Yates's heroic service, and the solemn sacrifice he has made on behalf of a loving family, a proud Commonwealth, and a grateful Nation.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will be in a period of morning business until 11 a.m., with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the majority controlling the first half and the Republicans controlling the final half.

Mr. MCCONNELL. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALEXANDER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ALEXANDER. I ask unanimous consent to speak for 15 minutes in morning business, and I ask the Chair to please notify me when I have 3 minutes remaining.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

LOWERING TUITION COSTS

Mr. ALEXANDER. Mr. President, since his State of the Union Address, President Obama and Vice President

BIDEN have been talking about their efforts to help students afford to go to college, which is something we are all in favor of.

The President's proposals include what he calls a higher education race to the top. It has a familiar sounding formula. Though, in this case, it will impose new rules and mandates and price controls on colleges and universities in States. Unfortunately, this race to the top is headed in the wrong direction.

The President should turn around his higher education race to the top and head it in the direction of Washington, DC, to help the federal government compete for ways to stop adding mandates and costs on States that are soaking up dollars and driving college tuition through the roof.

Let me be specific and offer three examples of how a race to the top headed toward Washington, DC, could actually help students by saving them money on their tuition.

First, Washington could stop overcharging students on their student loans. They are doing that now by borrowing money at 2.8 percent, loaning it to students at 6.8 percent, and using the profit to help pay for the new health care law and other government programs.

Second, Washington could help students with lower tuition by repealing the new Medicaid mandates on States that take effect in 2014. These new Medicaid mandates will further reduce State funding for higher education and raise tuition at public colleges and universities, which is where approximately 75 percent of students go to college.

Third, Washington could stop prohibiting States from reducing spending on Medicaid at a time when State revenues and expenditures are going down. That forces States to spend money on health care that otherwise would be available for higher education.

Let me talk about each of those three ideas.

First, this business of overcharging on student loans. I think it would come as a big surprise to most students to know that Washington is borrowing money at 2.8 percent and loaning it to them at 6.8 percent, and using the profit to pay for the health care law and for other government programs. We have roughly 25 million students attending 6,000 colleges and universities in America today, and approximately 16 million of those have Federal loans that allow them to spend that money at the school of their choice. Approximately 70 percent of the Federal funding made available for our higher education last year—about $116 billion—went for those student loans. Under the new health care law, the Department of Education is going to be borrowing money from the Treasury at 2.8 percent and then loaning it to the students at 6.8 percent. So, the government is actually overcharging 16 million students and taking that profit and spending it on new government programs, including the new health care law.

According to the Congressional Budget Office, over the next 10 years, here is where the profit goes, approximately: $8.7 billion goes to pay for the new health care law; $10.3 billion goes to pay down the Federal debt; and $36 billion goes to support other Pell grants. So if we really want to help students pay for tuition, why would we not use this profit to reduce the interest rate on student loans? CBO says we could have reduced the rate from 6.8 percent to 5.3 percent and let the students have the savings instead of letting the government have the savings. By reducing the interest on student loans that much, students would save an average of $2,200 over 10 years. That is a lot of money for the average student borrower who has approximately $25,000 in debt.

I have proposed the idea of legislation that puts a ''truth in lending'' label on every one of the 16 million student loans, saying this: Beware: Your government is overcharging you on your student loan to help pay for the health care law and other government programs.

Here is a second way Washington could help lower tuition rates. Washington could repeal the Medicaid mandates imposed on States that take effect in 2014 and will inevitably drive up tuition rates. This is how that works. The new health care law requires States to expand and help pay for Medicaid coverage. This in turn requires Governors who are making up budgets to take money that, otherwise, would likely go for higher education and spend it instead on Medicaid.

According to the Congressional Budget Office, this new expansion of Medicaid will cost States an additional $20 billion over 10 years and add 16 million more people to Medicaid programs. The CMS Chief Actuary says it may add 25 million to the Medicaid Program, costing States even more. We know this is going to happen because it has already happened. For years Medicaid mandates have been imposing huge costs on States, which in turn soaks up money for colleges, and in turn causes tuition to go up to replace that money.

According to the Kaiser Family Foundation, average State funding this year for Medicaid increased by 28.7 percent compared to the prior year. Where did the money come from? In Tennessee, which had a 15.8-percent increase in State spending on Medicaid last year, at the same time there was a 15-percent decrease in State spending for higher education. That is a real cut, not a Washington cut; that is 15 percent less money. That did what? There was a 7.3-percent increase in tuition at public universities and an 8.2-percent increase in tuition at community colleges to make up for the cuts.

In California, where the state enrolls 8.3 million Medicaid beneficiaries, they are expected to gain 2 million more when the new health care law is implemented in 2014. Just over the last year, there has been a 13.5-percent decrease in State support for higher education in California, along with a 21-percent increase in tuition and fees at State universities and a 37 percent increase in tuition at community colleges. Most of those students probably do not know that the principal reason their tuition is going up is because of the Federal health care mandates on the State.

From 2000 to 2006, spending by State governments on Medicaid increased by 62.6 percent. This has been going on long before President Obama came into office. I balanced it as Governor in the 1980s. Every year I tried to keep education funding at 50 percent of the State budgets. In those days the States paid for 70 percent of the cost of operating the University of Tennessee or the community college and tuition paid for 30 percent of the cost. We had an implicit deal with the students that if we raise tuition, we will raise State funding by about the same amount. Those days are long gone.

Medicaid costs on States are the most insoluble part of the budget dilemma we have here in Washington. I believe Medicaid either should be run 100 percent by the Federal Government or 100 percent by the States. I came to Washington and suggested that to President Reagan in the 1980s. He agreed, but many did not. So it is not new. We should not blame President Obama for the fact that this has gone on for 30 years, but we ought to hold him responsible for making it worse.

Here is how he has made it worse in a third way—by a so-called maintenance of effort requirement on States as a condition of continuing to receive Federal payments under Medicaid. The 2009 stimulus bill prohibited States from imposing new eligibility standards, methodologies, or procedures as a condition of receiving Federal Medicaid payments. The new health care law extends the maintenance of effort requirements through 2014. So for 5 years, throughout this recession, while State revenues are going down, the Federal Government in its wisdom has been imposing billions of new dollars in Medicaid mandates on States requiring them to spend more on Medicaid. And what happens? They must spend less on something else.

In 2010, New York Lieutenant Governor Richard Ravitch, a Democrat, eloquently talked about that problem. He said Medicaid is ''the largest single driver of New York's growing expenditures,'' making up more than one-third of the State total budget. New York spends twice as much on Medicaid as California. He said this spending is expected to grow at an annual rate of 18 percent over the next 4 years but that the Federal stimulus and health care expansions have made it harder for States such as New York and California to cut expenditures because of the strings attached. He said:

These strings prevent States from substituting Federal money for State funds, require States to spend minimum amounts of

their own funds, and prevent States from tightening eligibility standards for benefits.

So while the Federal Government is burdening the States with hundreds of billions of dollars in Medicaid liabilities, the President has made it worse by forbidding States from tightening their eligibility requirements as their economies shrink.

The administration and Congress have left Governors with little choice but to cut in other areas, and that usually turns out to be public higher education, where 75 percent of students go to school. So why is tuition going up? The biggest reason is us—Congress, Washington DC. Instead of pointing the finger at States and colleges, we ought to look in the mirror.

There is another problem with the President's proposals. His proposals are not likely to affect many students, and if they do they are more likely to hurt them than help them. Here is why that is true. Ninety-eight percent of all Federal money made available to college students goes directly to the students to spend at one of the 6,000 institutions of their choice.

The President's proposals would only affect three programs of campus-based aid that eventually affects about 2 percent of all students and impacts about 2 percent of all the federal money available for higher education. What the President would propose doing includes putting price controls on colleges offering those programs and saying that students could not go to the institution if tuition goes up too much. So if a low-income student wants to go to the University of Tennessee or North Carolina or Michigan and tuition goes up more than the Federal Government says it should, mostly because of Federal policies, what happens? The student cannot go to the University of Michigan or the University of Tennessee or the University of North Carolina. Those schools have plenty of applicants. They are going to get their students anyway. So the effect will be to make it harder for a low-income student to go to the college of his or her choice.

What should we be doing? I think it is pretty obvious. The taxpayers already are generous with support for students going to college. The average tuition at a 4-year public institution is $8,200. At a 2-year community college, it is $3,000. At private institutions, it may be closer to $28,000 or $30,000 a year. To make it easier, there are 16 million student loans—$116 billion in new student loans last year. There are 9 million Pell grants, supported by $41 billion in taxpayers' dollars. So half our 25 million college students have a Federal grant or loan to help pay for college, and they spend it at one of 6,000 institutions of their choice.

Still, the rising cost of tuition is a real problem for American families. Tuition and fees have soared over the past 10 years above the rate of inflation by 5.6 percent a year at public 4-year institutions. This adds up to about a 113 percent increase in tuition over the decade.

Colleges and universities need to do their part to cut costs. I have suggested that well-prepared students ought to be offered 3-year degrees instead of 4. The president of George Washington University has suggested ways that colleges could be more efficient. He said he could run two complete colleges with two complete faculties in the facilities now used half the year for one. That is without cutting the length of student vacations, increasing class size, or requiring faculty to teach more. Requiring one mandatory summer session for every student every 4 years, as Dartmouth College does, would improve institutions' bottom line. The GW president said his institution's bottom line would improve by $10 to $15 million a year. Those are just two good ideas.

There is nothing wrong with President Obama's proposal to encourage ideas like that, even to give grants and put the spotlight on colleges that are trying those things. The Malcolm Baldrige Award for Quality Control years ago did a lot to improve quality in business and government without spending very much. But mandates and price controls on 6,000 autonomous colleges and universities is not the right prescription. They are more likely to hurt students than help. They are more likely to drive up tuition than lower it. And they are more likely to diminish the quality of the best system of higher education in the world.

The reason we have the best system is, for one reason, because generally the Federal Government keeps its hands off those autonomous colleges, and the second reason is that students can choose among those 6,000 institutions with the money we make available to them in grants and loans.

Rather than creating new price controls, new mandates, and new regulations of the kind that have already pushed tuition higher, I suggest the President turn his race to the top around. Instead of heading it towards the States and colleges, head it towards Washington, DC. Stop overcharging students for their student loans, stop requiring States to spend more State dollars on health care at the expense of public colleges and universities, repeal the new Medicaid mandates that in 2014 will take already-high tuition and drive it even higher, and let the Federal agencies compete to see how they can stop adding costs that are the main reason college tuition is rising. That would be the real race to the top. That is the real way to help students afford college.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. HELLER. Mr. President, I ask unanimous consent that the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(The remarks of Mr. HELLER pertaining to the introduction of S. 2080 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. HELLER. I yield the floor.

Mr. HATCH. Mr. President, I ask unanimous consent to be permitted to speak and give my remarks in full.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Utah.

PREVENTIVE SERVICES MANDATE

Mr. HATCH. Mr. President, for some time now Americans have suspected that this administration has lost touch with the American people. John Meacham, the former editor of Newsweek and a fan of the President, explained this detachment by explaining that the President does not ''particularly like people.'' That might be an overstatement, but he is on to something. This administration seems to take its cues from the far left, whether or not they represent the aspirations and hopes of ordinary Americans.

Nowhere is this disconnection from the American people on better display than with the hamfisted decision by Secretary Kathleen Sebelius and the Department of Health and Human Services to require that religious persons and institutions violate their most cherished beliefs or face the consequences.

Late last year, HHS ordered all employers, including religious institutions, to cover in their employer insurance plans such things as sterilization, contraception, and abortion-inducing drugs and devices. With very limited exceptions, religious hospitals, universities, and charitable institutions would face the choice of dropping coverage for their employees or violating their consciences.

The Nation's Catholic bishops and many other religious institutions pleaded with this administration to grant broader waivers to avoid jeopardizing these institutions' constitutional rights to freely exercise religion. But the administration, rather than side with millions of religious Americans who just want to be left alone to practice their own faith, decided to throw in with the most radical of proabortion advocates. They decided to subordinate our central constitutional commitment to religious liberty to a radical agenda that is overtly hostile to all of these people of faith.

The response has been overwhelming. At church this weekend millions of American Catholics were read a letter from their bishops. The message was simple, and it was powerful. This action is unjust and one with which they

will not comply. They are right, and they shouldn't. The first amendment doubly protects religious liberty. It prohibits the government establishment of religion and explicitly protects the free exercise of religion, the first individual right listed in the Bill of Rights. That is how important religious liberty is to America.

In our system of government, such fundamental rights and principles are supposed to trump statutes, regulations, and political agendas. The Constitution and the liberties that it protects are supreme not the fleeting politically driven motivations of any particular administration. Yet the Obama administration, as it has always does, has turned these priorities upside down. In this administration, politics trumps absolutely everything else, even the Constitution and religious liberty. Instead of conforming their political agenda to the Constitution, they distort the Constitution and even liberty itself to conform to their political agenda.

The politicians driving this mandate underestimated the American people who have in succession rejected the sorry efforts by the administration to defend its actions. The administration first hid behind the opinion of a purportedly objective medical group that birth control should be included in health insurance plans, but the American people knew who was ultimately responsible for this rule—not some board of so-called experts but the President and his officers. They tried to minimize this mandate's impact by arguing that many States already have similar requirements. But this was incredibly misleading since nearly all of those States have much broader religious protections. In fact, only three States have religious exemptions as narrow and limited as this new Federal mandate.

They tried to assuage the concerns of religious citizens by saying that the rule does not cover churches and houses of worship, but Americans will not accept only the remnant of our constitutional rights that the President chooses to recognize. Were we supposed to thank the Obama administration for letting us retain a few scraps of religious liberty? There are many religious institutions and organizations that do not fit into the Obama administration's artificial, narrow categories but that just as fully exercise their faith and religious missions. Religious liberty belongs to the Catholic hospital or the University of Notre Dame no less than it belongs to the Catholic Church.

Then, when this simmering controversy broke wide open a few weeks ago, Secretary Sebelius thought she could make it all go away by agreeing not to impose this mandate for another year. Like her boss the President she just plain doesn't get it. Religious liberty is not a bargaining chip or a deal sweetener like premium floor mats or an upgraded appliance. Did she think Americans would not mind losing this cherished liberty if they were allowed to spend just a little extra time with it?

The Obama administration's attitude toward religious liberty has become ''enjoy it while it lasts.'' And to the administration's surprise, the American people have been less than enthusiastic about this cavalier attitude toward constitutional rights.

The President of the United States takes an oath to support and defend the Constitution, to stand for the fundamental liberty of all Americans. He and the officials responsible for this mandate have fallen far short of this oath.

The fight for religious liberty began before America was born, and it must be fought continually. We can all see that now. It is a part of our constitutional heritage. Our Founding Fathers pledged their lives, fortunes, and sacred honor to defend the principle that all people are created equal and endowed by God with certain unalienable rights. The right for persons and institutions to be free to practice their faith without undue interference by the government is among our most cherished rights and liberties.

There was a day when liberals and conservatives, Democrats and Republicans—everyone—joined to defend liberty. I should know. I was the principal Republican co-sponsor of the Religious Freedom Restoration Act which brought together unprecedented grassroots and congressional coalitions to defend this first freedom. They knew that rights such as religious liberty rise and fall together, that religious liberty cannot be packaged, sliced, diced, and doled out in little pieces to please certain interest groups. We need that same unity today because religious liberty is just as important and, sadly, just as threatened as it was in the past.

In addition to violating the first amendment right to freely exercise our religion, this mandate also appears to violate that landmark law, the Religious Freedom Restoration Act. It burdens the free exercise of religion and is clearly not, as the law requires, a narrow means of achieving a compelling purpose.

Last month the Supreme Court unanimously held that the right of religious organizations to decide who may further their religious mission trumps nondiscrimination statutes. The Obama administration argued that religious organizations are nothing special, that they should have no more freedom from Federal control than, say, a labor union or a social club. In other words, religious liberty is simply no big deal to the Obama administration.

Writing for the entire Supreme Court, Chief Justice Roberts called this a remarkable view of religious liberty, one that is ''hard to square with the text of the First Amendment itself, which gives special solicitude to the rights of religious organizations.''

Soon the Supreme Court will have the opportunity to rule on the constitutionality of ObamaCare. What the preventive services mandate confirms beyond all doubt is that the constitutional defects in ObamaCare only begin with the insurance mandate that will be before the Supreme Court. There are some other issues there as well, and I hope the Court examines every one of them and overturns this law.

The very DNA of ObamaCare is unconstitutional. At its core, the law and its expansion of government are a threat to personal liberty. The decision to implement this law in a way that forces religious institutions to violate their deepest principles is a vivid demonstration of what happens to personal liberty when the power of the state expands. As the state controls more and more of our lives to further a political agenda, our freedom is put in greater and greater jeopardy.

After 3 years of this administration, the American people seem to be saying enough is enough. Those responsible for this decision to force religious institutions to subsidize health coverage for abortifacient drugs need to be brought to account. The President needs to answer for this. Secretary Sebelius needs to answer for this. The Attorney General needs to answer for this. How could he let this happen?

Let me say, however, that getting answers is not enough. Congress needs to assert its authority as the representative of the American people, stand for the first amendment, and restore religious liberty by overturning this health care law.

For those who are on the front lines fighting this mandate: I applaud your courage, and please understand that you are not alone; you are Democrats, Independents, Republicans, and others. The Obama administration may not care about religious liberty, but the Constitution does, and I, along with many of my colleagues, will fight alongside you until we prevail over this unjust law. This new HHS mandate cannot be allowed to stand, and I am confident that if the will of the American people prevails, it will not stand.

I belong to a faith that has been persecuted and mischaracterized for many decades. We are the only church in the history of America that had a Governor issue an extermination order against its members. That is how bad it got in this greatest of all countries where religious liberty is without question our most valued right. We understand what it is like to be persecuted. I don't care whether one is liberal, conservative, independent, or what, and I don't care what religious beliefs folks out there all have. There is no excuse for this type of heavy-handed, ham-handed, overgovernmentalization of our religious freedom. We simply cannot allow this to stand.

Does President Obama have the guts to stand up for religious liberty? If he doesn't, he should not be President of this United States. If he does, I will be

the first to compliment him for it. It comes right down to the Constitution itself and, in many respects, I believe the most important provision in the Constitution. Religious liberty is something that our early leaders risked their lives to obtain because they were persecuted because of their religious beliefs.

I call on the President of the United States to change this, to acknowledge that this is a mistake, and to understand that we are united—Democrats, Republicans, Independents, and others—in the protection of this great liberty.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. BOXER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BROWN of Ohio). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 1813, which the clerk will report.

The legislative clerk read as follows:

Motion to proceed to the consideration of Calendar No. 311, S. 1813, a bill to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Well, Mr. President, this is a big day for those of us who believe strongly that we need to focus on job creation, a better business climate, a bill that will, in fact, not only protect jobs but create new jobs. That is the bill we are hoping will get the go-ahead at 2 o'clock, what we call MAP–21, the Moving Ahead for Progress in the 21st Century Act, S. 1813.

This has been—if I could use an analogy that fits—a long road to get to this point so we can, in fact, make sure we have an adequate road system, an adequate highway system, an adequate transit system, and that we make sure, as a world leader, our infrastructure—our bridges, our roads—keep up with the demands put upon them. There are many demands put upon them because we are a great nation with commerce and heavy-duty vehicles on our roadways and railroads that cross over roadways that create potential problems, and, certainly, we have a robust transit system that needs to keep up with the times.

Last night, I received a letter from the U.S. Chamber of Commerce, and I was very pleased to see it because they support the bill Senator INHOFE and I, on a bipartisan basis, were able to get through our committee on a unanimous vote.

It is a rare moment in history, frankly, when the U.S. Chamber of Commerce and labor unions all come together, with everyone on the same page, to say: Let's move forward with a bill. In these days of controversy and debate—and, Lord knows, I am immersed in many of them—this is one where we have been able to carve out a very important consensus, not only in the Environment and Public Works Committee but in the Banking Committee—where Senators JOHNSON and SHELBY work together—to get a piece of this bill done.

In the Finance Committee—where Senators there are led by Senator BAUCUS—they were able to hammer out a tough and important agreement to fund this bill because it has some shortfalls due to the fact that the highway trust fund has been going down because cars are getting better fuel economy—and that is a good thing—but the bad, unintended problem is the trust fund now has fewer dollars, so we run short of what we need to keep our bridges and highways and transit systems going.

So what a moment it was to see not only our committee but the Banking Committee, the Finance Committee, and the Commerce Committee, with a couple of exceptions on a couple of provisions—they did their job as well, and we are trying to work with them to resolve whatever matters remain in that portion of the bill.

But I want to quote from the letter from the Chamber of Commerce that I received last night. I want to share a couple lines with everyone. I am quoting:

The Chamber strongly supports this important legislation. Investment in transportation has proven to grow jobs, and the need for Congress to act on transportation infrastructure is clear.

Another quote:

Passing transportation reauthorization legislation is a specific action Congress and the Administration can take right now to support job growth and economic productivity without adding to the deficit.

Those two quotes I think show we have done our job well.

This is a bill that is paid for. This is a bill that, because of the way it was written, is a reform bill, which I will go into. But it also protects the jobs we currently have, which is 1.8 million jobs in the transportation area, and also, because of the way we have boosted a program called TIFIA—which I will talk about, which is a highly leveraged program—we have the capacity to add over a million new jobs. Mostly these jobs are in the private sector. That is where they are, and that is what we are focused on in this legislation.

I mentioned Senator INHOFE before, my ranking member on the Environment and Public Works Committee. I expect him to be in the Chamber shortly. I cannot tell you of the trusted partnership we were able to develop with him that went not only for his relationship with me in working on this bill, but the staff-to-staff relationships which have blossomed into friendships and trust. I think what we have shown is that each of us can be a tough but fair partner. Our staffs understand where we are coming from. But we have a bigger goal in front of us than our differences; that is, our agreement that it is our responsibility to fix our aging roads and highways and bridges—our infrastructure—to put people back to work, to boost our economy, and, as Senator INHOFE has talked about very often, with examples that are in many ways heart breaking, we have problems with safety in our Nation. We have bridges that are crumbling. We have seen them with our own eyes. We cannot turn away from this because we may have disagreements on lots of other things.

It has been a long but a very worthwhile journey to get to this stage because the payoff here, if this bill eventually becomes law, is, as I said, protecting 1.8 million jobs and creating up to another million jobs.

Again, I want to mention the Commerce Committee. I did not thank Senators ROCKEFELLER and HUTCHISON for their work on this as well. So we have four committees that are involved in writing this bill. Each committee has voted out their bills. If all goes right today, and we get a resounding go-ahead, I hope we begin with amendments on the EPW portion, and then move to add the different other bills to this bill, until we have added all four—all the committees together—and then I hope we will have a resounding vote and get to a conference committee. We have major differences with the other body, but I think we can work them out for the good of the people and the thousand organizations that back us in this bill, in this effort.

I also have to thank Senator HARRY REID, the majority leader. He brought this bill to the floor. He exerted the right kind of pressure on all of our committees. He encouraged us. He understands clearly that, as we try to get out of this recession—and we have seen beneficial results from our actions in a number of areas—this is going to mean a big boost for jobs.

I want to also say that within my committee we have what we call the big four: it is the chairman and the ranking member—myself and Senator INHOFE—and then it is the chairman of the Highway Subcommittee and the ranking member there; and that is Senator BAUCUS and Senator VITTER. So I honestly think if you look at the big four, and you look at our philosophies, and you look at where we are from and the differences we bring to the table, we cover the whole Senate in terms of

the range of ideologies but are tied together by a belief that this is something that needs to get done. And Senators BAUCUS and VITTER were with Senator INHOFE and me every step of the way, for which we are very grateful.

I mentioned, I alluded to a thousand organizations that have been involved on the outside pushing us to get this done. My hat is off to them. They make up a broad coalition. I have spoken frequently with them to give them an update on how we are doing, and I have to tell you they truly represent America. Over the course of this debate, if I have the time—and in many ways I hope I do not have the time because I hope we can get this done and not spend a whole lot of time on it because I think the committees have done such a good job, but if we have excess time on the floor, I intend to read as many of those organizations into the RECORD as I possibly can because that coalition is remarkable in its reach.

They were led by the U.S. Chamber of Commerce. It is an unprecedented coalition. They came together regardless of ideology and differences. Every time I look at this list, I am reminded that essentially it is America. It is America: business, labor groups, State organizations, city organizations, and organizations from all 50 States.

We received a letter from these thousand organizations recently, and I am going to quote some of what they said. They said:

> There are few federal efforts that rival the potential of critical transportation infrastructure investments for sustaining and creating jobs and economic activity. . . .

They wrote:

> In 2011, political leaders—Republican and Democrat, House, Senate and the Administration—stated a multi-year surface transportation bill is important for job creation and economic recovery. We urge you to follow words with action:

And this is what they asked us:

> Make Transportation Job #1 and move legislation immediately in the House and Senate to invest in the roads, bridges, [and] transit systems that are the backbone of [our] economy, its businesses large and small, and communities of all sizes.

Again, it is important to note, our surface transportation bill creates or saves millions of jobs, benefiting millions of American families across the country. What a great signal it will send, as we struggle to get out of the slowdown and we begin to see the light at the end of the tunnel. This will be a very large light because there are very few other things we can do here that have the reach of a transportation bill.

Let's talk about the construction industry. According to the most recent unemployment figures, there are 1.5 million construction workers out of work, with the industry facing an unemployment rate of 17.7 percent. Construction workers are out of work.

I show you a chart I have in the Chamber. The national unemployment rate is 8.3 percent. We want to see that come down. But look at that construction industry unemployment rate: 17.7 percent. These are real people with pride in what they do. And we know the housing industry has had a horrible time. It has stalled out, and it is in a horrible trough.

So if we can take those construction workers and offer them an opportunity to build the roads, the bridges, the highways, the transit systems, it will put them to work and we will get that 17.7-percent rate down.

I do not know if we have a picture of that stadium. This is a picture of the Super Bowl stadium. From what I understand, it seats about 100,000. That is what we see here. If we had 15, 15 of these pictures, 15 Super Bowl stadiums' worth of people, that is how many people are unemployed in construction.

I use this not only because I watch the Super Bowl, although my Niners did not get in and it was upsetting, but because this is a picture, a visual. Imagine every one of those people unemployed times 15. It is a visual. I think it is important that we keep in mind we are talking about real people who have lost real jobs because of this recession and especially the housing downturn.

This is a chance to put them to work. There is an urgent need to get this legislation through the conference committee and onto the President's desk because the current transportation authorization extension expires on March 31. I wish to say to colleagues who may be watching or staff who may be watching: You may have a lot of amendments in your mind, in your heart, and everybody has a right, and I support your right. But please think very hard before you start bringing down amendments that will slow us up. Those thousand organizations know we need to keep our eye on the ball, and these organizations are in all our States. They represent millions and millions and millions of American families. So let's not add extraneous matters, please. Let's not have frivolous amendments, killer amendments. We all can offer these. I have several I could offer in a heartbeat. But this is not the place to have our ideological disputes. This is a bill that is a jobs bill. This is a bill that is good for our businesses. This is a bill that will save 1.8 million jobs and create up to 1 million more at a time when we must have that kind of wind at our back.

There is another reason. Not only does the highway bill expire in March, but we also know the trust fund is running out of money for projects already in the pipeline. So we have to find a reliable and stable source of funding. Senator BAUCUS and his Finance Committee have come up with a way to responsibly fill this shortfall. I cannot thank them enough, the Democrats and Republicans on that committee. Thank you. Because what you have done is to have come up with some very good ways to pay for the shortfall, and those ways do no harm.

We must push forward for another reason which I alluded to before. America's aging infrastructure is crumbling. Let me just tell America this: Some 70,000 of our Nation's bridge are structurally deficient—70,000 of our Nation's bridges are structurally deficient, 50 percent of our roads are not up to standard.

If you are in your home and you have little kids and someone who is an expert comes up to you, an engineer, and says your house could easily crumble, we all know what you would do. You would get out of there, fix it, and then move the family back in. This is no different. If somebody tells you your house is crumbling, you have to fix it. If somebody says to us, our Nation's bridges are structurally deficient and over 50 percent of our roads are not up to standard, we have to act.

My dear friend and colleague who is going to manage this bill with me has arrived. I will tell him, I am about 5 minutes away from finishing my opening statement and yielding to him. But he is more eloquent than anyone I have ever heard on two issues; one, what is the role of government. He makes the point, which I am not going to take away from him, as to how infrastructure fits into that.

He also is eloquent on the point of safety. Because he has seen with his own eyes what happens if we do not get our infrastructure sound and safe. We have a deteriorating part of our infrastructure, and it needs to be fixed.

We cannot be an economic leader if we cannot move people and goods. We cannot thrive as a nation if our people are trapped in traffic and our businesses are trying to move goods and they are trapped in traffic. We lose 4.8 billion hours from work and we pay the price for that in loss of productive time and in dirty air.

As to our bill that was passed out of the Environment and Public Works Committee, I wish to say to my ranking member who was not here and his staff was not here at the time that I started, I praised him to the sky—and staff—because regardless of our differences on many issues, we have been able to put this country first in this bill.

I am so grateful for the spirit of cooperation we have brought to our work, which was captured in the Banking Committee where Senators JOHNSON and SHELBY got together, and in the Finance Committee where many Republicans joined our Democratic friends to figure out a way to fund this responsibly, and in the Commerce Committee where we have one or two little hiccups, but I do believe we are going to resolve them. I am proud we were out there first showing we could do this.

People said all over the Senate: If BOXER and INHOFE can do this, anything is possible.

MAP–21 is a reform bill, and I am proud about that. It consolidates 90 programs into less than 30. It focuses

on key national goals. It gives greater flexibility to the States to invest in their top priorities. It eliminates earmarks. It establishes performance measures to improve accountability. It accelerates project delivery, and it provides resources for a new national freight program.

This bill is responsible. It continues the current level of funding plus inflation which, as I said, protects 1.8 million jobs. The TIFIA Program, which Senator INHOFE and I agreed to increase, which stands for Transportation Infrastructure Finance and Innovation Act, is also embraced by Chairman MICA over on the House side.

So Republicans and Democrats agree that by making more funds available through TIFIA, we can mobilize up to $30 billion more from the $1 billion we have placed in that fund and create up to 1 million jobs.

I wish to thank the mayor of Los Angeles and the Chamber there and the workers there who brought the idea of leveraging to my attention. I wish to say that Tom Donahue, of the U.S. Chamber, president there, Richard Trumka, the president of the AFL and many business and labor groups throughout our Nation supported this TIFIA Program to stretch taxpayer dollars in a safe way.

Again, they have done that in the House bill as well, which is very good for us.

I am proud of this bill and the reforms in it. I am proud of working relationships we have established across party lines in our committee. I could say, very honestly, there are a lot of things this bill does not have that I am sorry about, that I wanted to see in there. I am not going to detail those. But I know Senator INHOFE feels the same way. But there were certain things that were lines in the sand for each of us, and it was a give and take that resulted in this compromise which is a good bill—a good solid bill.

We put those controversial issues aside for the good of the Nation. I will close with this. Ever since Dwight Eisenhower started us on a path to build the Interstate Highway System, transportation has been a bipartisan effort. I asked my staff to research some of the comments made by President Eisenhower in 1963 when he established the Federal Interstate Highway System.

Actually, he wrote his autobiography in 1963. He established the System in 1956.

This is what he said:

> More than any single action by the government since the end of the war, this one would change the face of America with straightaways, cloverleaf turns, bridges, and elongated parkways. Its impact on the American economy—the jobs it would produce in manufacturing and construction, the rural areas it would open up—was beyond calculation.

It is very important to note how bipartisan this is. Ronald Reagan in 1982, ''More efficient roads mean lower transportation costs.''

He said:

> Lately driving is not as much fun as it used to be. Time and wear have taken their toll on America's roads and highways.

He said it well. So we have Democratic Presidents, Republican Presidents, Democratic Senators, Republican Senators all working in a bipartisan way. Votes on these bills have been overwhelming, 79 to 8; 372 in the House to 47—all of our President's signing these laws. Historically, major surface transportation legislation has received overwhelming bipartisan support.

In 1991, the Intermodal Surface Transportation and Equity Act, ISTEA, with a Senate Democratic majority, passed by a vote of 79 to 8. The House, with a Democratic majority, passed it by a vote of 372 to 47. President George H.W. Bush signed it into law. At the December 18, 1991, signing ceremony, President Bush said:

> ISTEA is ''the most important transportation bill since President Eisenhower started the Interstate System 35 years ago . . . this bill also means investment in America's economic future, for an efficient transportation system is absolutely essential for a productive and efficient economy.''

In 1998, the Transportation Equity Act for the 21st Century, TEA–21, with a Senate Republican majority, passed by a vote of 88 to 5. The House with a Republican majority, passed it by a vote of 297 to 86. President Bill Clinton signed it into law.

In 2005, the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users, SAFETEA–LU, passed the Senate, with a Republican majority, by a vote of 91 to 4. The House, with a Republican majority, passed it by a vote of 412 to 8. President George W. Bush signed it into law.

Elected officials are not the only people who recognize the importance of maintaining our transportation systems. The American public also supports rebuilding the Nation through infrastructure investment.

According to a poll released last October by CNN, 72 percent of Americans—and 54 percent of Republicans—support ''increasing federal spending to build and repair roads, bridges and schools.''

Roads and bridges are neither Democratic nor Republican, and all elected officials need to leave partisanship on this issue at the door. Bipartisanship is the only way to get the job done, and Senator INHOFE's and my partnership in this effort is proof positive that it can be done.

Senator INHOFE and I do not agree on many issues, but we found common ground on this one. We agree that we must invest in our aging transportation systems, we must boost the economy, we must put people back to work, and we must pay for it in a way that is not divisive or partisan. Neither Senator INHOFE nor I got our wish list in this bill, but we do have a bill that both of us can support. At the end of the day, that is what matters.

The American people deserve to have their elected officials work together to solve our pressing problems, and that is what we did. The bill before us is thoroughly bipartisan, and therefore nobody will think it is perfect, but it is a very strong commitment to our transportation systems and to the health of our businesses, workers, and communities that depend on it.

I say today is a good day. I have tried to thank everyone I can think of who had anything to do with it. It is my privilege now to yield the floor and look forward to the comments of my ranking member.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I am not sure, I say to my good friend Senator BOXER, she is going to be too excited about some of the things because what I wish to do is establish what is unique about this bill.

There is a committee in the Senate. It is not like any committee in the House. In the House, they have two separate committees. It is called Environment and Public Works. So it is two almost unrelated committees. Our committee has more jurisdiction than any other committee in the Senate, but it handles things that are totally different.

I will sound a little partisan right now, but I am very concerned about President Obama and what he has done to this country in terms of the deficit. A lot of people do not realize that the budgets actually come from the President—not the Democrats, not the Republicans, not the House and the Senate. Those budgets have had deficits of around $4½ trillion. I have been very upset about that.

I am upset about what the President is doing with the military right now. If we have to go through the sequestration as is planned, we are going to lose about $1 trillion in defense spending over the next 10 years. The third area is in energy. We have the opportunity to be totally energy self-supporting just by developing our own resources, but the problem is a political problem. The fourth area is over regulation.

I say this because my good friend, the chairman of the Environment and Public Works Committee, would disagree with me in all those areas because we do not agree. I look at the regulations and the fact that, in my opinion, they are driving our manufacturing base overseas. I see the crown jewel of all regulations is cap and trade. They tried their best to do it. They had the McCain-Lieberman bill in 2003 and again in 2005. We had the Boxer bill—several Boxer bills that Senator BOXER was involved in—certainly Waxman-Markey.

We defeated them all, and now what the President is trying to do is do through regulation what he could not do through legislation. I only say that because I am in agreement with the chairman of the committee, Senator BOXER, on most of what she just said

because of the significance of this. I am going to repeat what I said yesterday, I guess it was, or the day before. When rankings come out, historically since I have been in the House and the Senate—I came to the Senate in 1994—I am always ranked among the most conservative Members.

My good friend Senator BOXER is ranked among the most liberal Members—progressive, liberal. But what I appreciate about her is that she is a sincere liberal.

She understands that. In her feelings, she believes government should be involved in more things than I do. I hasten to say this again, that while I have been historically considered the most conservative Member, I am a big spender in two areas. One area is national defense—I am very concerned about what is happening in national defense—the other area is infrastructure.

Way back when I was in the House and on the Transportation Infrastructure Committee, at that time we worked very hard for a robust bill, for reauthorizing the transportation system. We were successful. That was back in the good-old days, I say to Senator BOXER, when we always had surpluses in the highway trust fund.

The highway trust fund probably goes down as the most popular tax in history because people know, since 1953, it has been a trust fund where people pay their 18 or so cents per gallon, and it goes to maintaining those roads they are driving on. So it is directly related to the gasoline purchased.

Then some things happened. First of all, I can remember when we had surpluses. So everybody who had their own deal wanted to get in on surpluses, and they started expanding the highway trust fund expenditures beyond just maintaining and building roads. That was one of the problems. Then along came a lot of the changes. When they talk about electric cars, whether one is for them or against them, and mandating gas mileage, that reduces the proceeds dramatically. In the beginning, I think they probably should have had the highway trust fund geared to a percentage instead of cents.

Now fast-forward to recent times and we have a deteriorating system. I was proud of the Environment and Public Works Committee I have been talking about. In 2006, prior to the last election, I was chairman because the Republicans were in the majority. At that time, we did the 2005 highway reauthorization bill, and it was $286.4 billion—a very robust bill. Yet we could pretty much document that we didn't do anything new in that bill. We just maintained what we had. It expired in 2009. Since then, we have been operating on extensions.

This is significant. Before I get on to operating on an extension, I will mention what we are talking about, Senator BOXER and I. Our Environment and Public Works Committee has the jurisdiction over the highway title of the bill. Some things are controversial. Not many. I don't know of anything controversial in the highway title. The Commerce Committee with Senator ROCKEFELLER as chairman and Senator HUTCHISON as ranking member, the Finance Committee with Senators BAUCUS and HATCH, and the Banking Committee—that is TIM JOHNSON and RICHARD SHELBY from Alabama—have done their work now.

Ours is the highway title. In my State of Oklahoma, because of the condition of the bridges and highways—the last time I looked, I think Missouri and Oklahoma tied at dead last in the condition of our bridges—we had a young lady—and I have told this story many times; this is most compelling. This young lady—a mother of three small children in Oklahoma City—drove under one of our bridges and a chunk of concrete dropped off and killed them. These are serious matters. So bridges have dropped, just as one did in Minnesota and down in south Texas.

We have had so many times when crumbling infrastructure has given way. I remember when they considered Oklahoma—since we became a State in 1907, we are one of the newer States—people didn't think we had infrastructure problems. They thought that was just confined to California, New York, and the older parts of the country. That is not true anymore because in many of those older parts the infrastructure has been rebuilt while some of the newer States have been ignored. That is why in Oklahoma it is critical.

People say they don't want earmarks. Senator BOXER said: We don't have earmarks.

I would like to discuss that because I am a strong believer as opposed to the people who don't want us to do what we are supposed to be doing when we were sworn to uphold the Constitution, article I, section 9—we should be the ones, the House and Senate, to do the appropriating and the authorization. By saying we are not going to do it and defining earmarks as appropriations and authorization, I can see why Democrats lined up to do away with earmarks in a recent vote because that turns it over to President Obama, and he was very supportive of that.

Some Republicans are going to talk about that again. This is not something that is a problem with this bill. In this bill, we have things that come from the needs of our States. We have a secretary of transportation in Oklahoma who has been before our committee numerous times because that secretary of transportation has been in that job for many years now. Before that, he was director of transportation for, I think, 30 years. There is nobody who is more knowledgeable on that issue.

So we checked—and I do—with the department of transportation in Oklahoma on their prioritizing of projects. We have a system—and I wish all States had this system. We have transportation districts and chairmen of the districts. They can use the same criteria throughout Oklahoma, and they determine what should be fixed and where the money should be spent. So it is not a political decision, a decision where we are doing what most people consider to be earmarks and trying to help our friends. That is not what we do in Oklahoma. This system, frankly, works very well.

So now we go back to the extensions. Here is the problem with extensions. Our 2005 bill expired in 2009. We have now gone through eight extensions. The problem we have with extensions is that we cannot do anything creative. We cannot change, reform the system. We just have to take the money that is available and try to use it as best we can. But we cannot not reform a system that needs to be reformed.

I have said some things that were not all that complimentary about my partner—in this case, Senator BOXER. We have served together for years in trying to overcome these obstacles. On the highway title of the transportation bill that we are going to be voting on, we have done a good job. When I think about the reforms—and I compliment Senator BOXER. She has been in a real tough position with some of the more liberal members of her party and in some of the things to which she has agreed. We sat down and worked out the differences in a lot of these problems.

State flexibility, we have that in this bill, which we have never had before. I have always been a believer that we are the guys who are in the best position to determine the needs of the States.

I have often said I have served on the State level of government; I have been mayor of a major city. I believe the closer you get to the people, the more responsible government is. I believe that to be true. That is what we have done. We have done that in the flexibility that we have given the States in our program.

Senator BOXER mentioned that we cut down the number of programs by two-thirds. We are down to one-third in the number of programs we had before. That is major reform.

NEPA: We have done streamlining, which is something we have tried to do for a long time. Let me mention the one area of reform that I want everybody to listen to because this is significant. We have had a friendly disagreement, Senator BOXER and I, on transportation enhancement. These are things we could argue do not affect transportation directly. I have always believed these things we spend money on that comes from the highway trust fund should go into transportation projects. But they have not. Two percent of the highway funding is required to go to enhancements. That equates to 10 percent of the surface transportation money.

So we can use 10 percent or 2 percent, depending on which one we are applying it to. If we take 2 percent of the total funding, that is a lot of money. Enhancements are things people criticize us for. I think that criticism is just.

How did we handle this situation and get a highway bill in the highway title

portion? We sat down and worked out something right here on the floor of the Senate and said there has to be an answer. In Oklahoma, we don't even want enhancements. How can we handle this? We worked out an agreement that a State, at its own decision level, is able to use this 2 percent of the total highway funding that would go to enhancements in any way they want to do it, and primarily in taking care of some of the unfunded mandates, the requirements there, where the government is saying to people in Oklahoma that this is what they have to do—some endangered species stuff and those things, they can use it this way.

In my State, we cannot have any of the 2 percent going to enhancements. Other States feel differently. This is not one size fits all.

So we have the opportunity that they can do what they want. These are reforms. We never had reforms like those before. I am proud we are able to do it. I compliment the chairman of the committee for being willing to do this, for taking the time to talk to her colleagues and say: All right, the choice is not do we want a perfect bill for Democrats or do I want one for Republicans. I think we have a pretty near perfect bill for Republicans on the highway title. I am very proud of what we have come up with. Nonetheless, it has been heavy lifting. I applaud the chairman of the committee.

I want to go back to this extension. If we were to continue to operate on extensions, the amount of money we would be spending on highways would reduce by about 34 percent, about one-third. If we talk to Gary Ridley in Oklahoma as to what that would do in terms of our program that we already have online, we would have to default on some contracts. We would have to be in a situation where we are not able to do the things that are in our 5-year plan in Oklahoma. We think things out in Oklahoma. We go over the State and make determinations. It is done outside of the political system by people charged with different transportation districts. I can tell you now that it will be—it is a life-threatening issue. If we are dropping down by 34 percent, it will be a serious problem.

I suggest to every Member of the Senate, before they make final decisions on the bill, call their director of highways in their States and talk to them. Talk to your State legislators, Democrats and Republicans, conservatives and liberals alike. This is the one area where they will agree. In Oklahoma, they are in agreement. They want to have a highway bill. They look to constituents and say this is life threatening and we have to do a better job. This is a partnership thing. We are going to have more flexibility for State programs, streamlining, and are not going to be encumbered by mandatory enhancements. I don't know of one member of the Oklahoma House or Senate who doesn't want this.

What is wrong with doing what the people at home want? I used to work as mayor of the second largest city in Oklahoma. My phone rings off the hook about programs that need to be completed in our highway system in Oklahoma. I sometimes look at people who demagog the issue and talk about: Oh, no, we don't want to spend all this. There is one area where conservatives and liberals alike should be spending—two areas—national defense and infrastructure.

I remember when Congresswoman BACHMANN was talking around the country about the spending during the earmark argument. They got back to Minnesota and talked about the needs for transportation. She said, ''I am not talking about transportation.''

That is the point we need to get across. Of course, I throw in national defense, but that is not in this discussion. Transportation infrastructure is something we have to do. In Oklahoma, we are going to do our part, do everything we can to get with the bill. It is not going to change anything except for the fact that it is going to be able to handle that.

Oh, I didn't see—but I am managing the time.

By the way, I want to comment, Mr. President——

Mrs. BOXER. Wait a minute, the Senator is not managing.

Mr. INHOFE. Maybe I am not.

Mrs. BOXER. Well, we are both managing the time.

Mr. INHOFE. We are both doing it. All right.

What I am saying is that shouldn't really be a Democrat-Republican management here because there are a lot of Democrats who agree with me and a lot of Republicans who agree with Senator BOXER. But we do have the junior Senator from Kentucky here who wants to be heard.

Mrs. BOXER. Well, I do have some remarks I would like to make.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I thank the Chair.

I think Senator INHOFE and I will have to talk about how we are going to yield back and forth, but at this point I had not finished my remarks and I wanted to respond to his.

We are here as partners on this bill. We are not partners on a lot of things. And I didn't say, when I opened my remarks, where we are not partners, but my friend did, so I am going to respond to his opening comments in which for some reason he wanted to open by saying that the one place we differ—and he is right on this—is that he blames President Obama for the deficit. Now, I want to put this on the record: I do not. Let me tell you why. When Bill Clinton was the President of these United States, he turned over a booming surplus of $236 billion to George W. Bush, and it didn't take him but the blink of an eye to turn those surpluses as far as the eye could see into raging deficits, and he left President Obama a $1.4 trillion deficit, for which my colleagues on the other side blame President Obama. Not only did George W. Bush leave him this kind of deficit, but he left him the worst recession since the Great Depression, a total collapse of Wall Street, bleeding jobs—800,000 a month. Yet we have turned it around. The President has shown magnificent leadership—saved Detroit.

My friend further said that another place we disagree—and he is right—is that President Obama is driving manufacturing overseas. No. The Tax Code, which the Republicans support, which rewards companies for moving overseas, is very much responsible for that.

So that proves the point. We get mad at each other. He is annoyed now that I am saying these things, and I was annoyed at him for saying what he said. But the great news today is that we are here to pass a bill.

My friend said I had a problem with liberal Members in my own party. I have to say there was concern, for sure. He is right. But once I explained to them that the ranking member and I have to work together, they were terrific about it. And I think some of my colleague's Republican friends said the same. They said: OK, we have to make this happen. So I congratulate all Members on both sides of the aisle who put aside these really tough differences we have, and you just saw a little bit of it.

I am not going to get into the climate change area because my friend believes it is the greatest hoax and I believe it is a scientific fact.

We could go on and on with these arguments. It would be interesting. It would be like ''Crossfire.'' Do you remember that show where two people got up there and argued? Yes, we could do that in every way. But in this bill we have decided to fight for what we believe in but at the end of the day get a bill we believe is fair.

Did my friend want me to yield?

Mr. INHOFE. No. I just wanted to say that this should be very visible to everyone. How could you and I agree and feel so strongly about infrastructure in America when we have such diverse opinions philosophically? My case rests.

Mrs. BOXER. You made the point. I was happy when you made the point because it gave me a chance to argue with you, and we both enjoy that, and we will continue. Our friendship is deep. We each know when we talk to each other that it is from the heart. But when it comes to this particular issue, we both agree we have to get a bill done. So much is dependent upon it.

I just received a letter from the Americans for Transportation Mobility. Mr. President, I ask unanimous consent to have printed in the RECORD the letter to which I am referring.

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

WASHINGTON, DC, *February 8, 2012.*

TO THE MEMBERS OF THE UNITED STATES SENATE: The Americans for Transportation

Mobility (ATM) Coalition is a nationwide group representing business, labor, highway and public transportation interests that advocate for improved and increased investment in the nation's aging and overburdened transportation system. The ATM strongly supports the motion to proceed to S. 1813, ''Moving Ahead for Progress in the 21st Century'' (MAP–21), and urges the Senate to pass a multi-year reauthorization of highway, public transportation and safety programs that both includes reforms to the federal programs and maintains, at minimum, FY 2011 investment levels adjusted for inflation before the expiration of the six-month extension of current law on March 31, 2012.

At a time of continuing economic stagnation in the construction sector, slow U.S. economic growth, and increasing competitive pressures, multi-year highway and transit reform and investment legislation is critical for boosting productivity, U.S. economic competitiveness and supporting jobs. A study released last week by the Associated Equipment Distributors found that over two years, one dollar spent on infrastructure construction produces roughly double ($1.92) the initial spending in direct and indirect economic output. The long-term impact is also significant, with a dollar in aggregate public infrastructure spending generating $3.21 in economic output (GDP) over a 20-year period.

We commend the Senate committees that helped craft S. 1813, a bi-partisan bill for stabilizing federal transportation funding mechanisms for the near-term and avoiding draconian cuts amounting to one-third of total federal investment in highway, transit and safety programs. Cuts of this magnitude would accelerate the deteriorating performance of the nation's surface transportation network, greatly undermine U.S. economic growth and competitiveness, and result in the real loss of hundreds of thousands of jobs across the country. This bill includes important policy reforms that would improve the delivery of transportation improvements by consolidating programs, reducing red tape, and leveraging private sector resources.

The ATM Coalition will strongly oppose any amendments to reduce the funding levels established in this legislation, and remains committed to working with Congress to find reliable revenue streams sufficient to support the long-term growth and the fiscal sustainability of the Highway Trust Fund.

Without the certainty of a multi-year bill, current problems become harder to solve as highway and transit conditions worsen and land, labor, and materials get more expensive. Absent passage of a multi-year reauthorization, there would be continued uncertainty and erratic funding for critical infrastructure investments and the public and private sectors would continue to respond by delaying projects, withdrawing investment, and laying off employees.

We encourage you to support the motion to proceed to S. 1813. The ATM Coalition stands ready to bring together business, labor, highways and transit stakeholders to provide Congress the public support to pass an adequately funded multi-year surface transportation bill by March 31, 2012.

Sincerely,

AMERICANS FOR TRANSPORTATION MOBILITY.

Mrs. BOXER. I want to tell you who signed this letter. And my friend may not have seen it. The American Public Transportation Association, the American Road and Transportation Builders Association, the Associated Equipment Distributors, the Association of Equipment Manufacturers, the Associated General Contractors, the American Society of Civil Engineers, the International Union of Operating Engineers, the Laborers' International Union of North America, the National Asphalt Pavement Association, the National Stone, Sand, and Gravel Association, the United Brotherhood of Carpenters and Joiners of America, and the U.S. Chamber of Commerce.

Now, I have to say——

Mr. INHOFE. Will the Senator yield for a question.

Mrs. BOXER. Yes, but let me make one statement. This list I have just read represents America—Republicans, Democrats, and Independents.

Yes, I yield.

Mr. INHOFE. Even though we haven't ironed out how to handle time, we have a Senator who wanted to speak 20 minutes ago, and if we could, I would love to get back into the dialog.

Mrs. BOXER. I am finishing this, and then I will yield the floor and am happy to have him speak. I felt this was opening time for the chairman and the ranking member to lay down their case, and I am not about to let an attack on the President of the United States of America go unanswered. I am not going to do it. So if we are going to go down that road, we are going to have a give-and-take. If we are going down the road I hope we will go down, it is about getting this bill done.

So let me talk about this letter, and then I will yield the floor. And I say to my ranking member, we will decide how to divide the time, and we should. That is fine with me.

They say in this letter:

We commend the Senate committees that helped craft S. 1813, a bi-partisan bill for stabilizing federal transportation funding mechanisms for the near-term and avoiding draconian cuts amounting to one-third of total federal investment in highway, transit and safety programs.

They are talking about the fact that the highway trust fund is a third of where it should be. That is why we are so happy that the Finance Committee, on a bipartisan vote, is replacing these funds.

The letter goes on to talk about what would happen if we didn't do this bill.

Cuts of this magnitude would accelerate the deteriorating performance of the nation's surface transportation network, greatly undermine U.S. economic growth and competitiveness, and result in the real loss of hundreds of thousands of jobs across the country. This bill includes important policy reforms that would improve the delivery of transportation improvements by consolidating programs, reducing red tape, and leveraging private sector resources.

Additionally, this great coalition, which is comprised of the chamber of commerce, the unions, and business, says:

The ATM coalition will strongly oppose any amendments to reduce the funding levels established in this legislation, and remains committed to working with Congress to find reliable revenue streams sufficient to support the long-term growth and the fiscal sustainability of the Highway Trust Fund.

This next quote from their letter is so important:

Without the certainty of a multi-year bill, current problems become harder to solve as highway and transit conditions worsen and land, labor, and materials get more expensive. Absent passage of a multi-year reauthorization, there will be continued uncertainty and erratic funding for critical infrastructure investments and the public and the private sectors would continue to respond by delaying projects, withdrawing investment, and laying off employees.

We encourage you to support the motion to proceed to S. 1813.

Of course, Mr. President, that is the motion we will be voting on today at 2 p.m.

They continue:

The ATM Coalition stands ready to bring together business, labor, highways and transit stakeholders to provide Congress the public support to pass an adequately funded multi-year surface transportation bill by March 31, 2012.

On the issue of the enhancements, we already had a vote on enhancements before, and we turned back proposals to do away with enhancements. So what we did in this bill is we said to the States: Guess what, you have much more flexibility.

I have to tell you—and I won't do it now, but perhaps Senator PAUL is going to speak about these enhancements—we know for sure that these enhancements—and I think that is the wrong name because they are really safety projects—have saved lives because they fund things such as pedestrian paths and safe passageways for kids to get to school. So while my colleague and I may differ, I strongly believe Congress stands behind—I should say the Senate stands behind continuing to fund these safety projects, and we have given the States far more flexibility. So I hope we will defeat any amendment to remove the ability of our States to determine which of those safety projects they want because we have the facts behind us—13 percent of traffic fatalities involve pedestrians and bicyclists. I feel we give our States the opportunity, and if Oklahoma doesn't have any of these problems because it is a much more rural State than California, I am happy with that. But we have to understand that these are safety projects, and I hope we will defeat any amendment that tries to reduce the ability of the States to fund these projects.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I ask unanimous consent that the junior Senator from Kentucky be recognized for up to 7 minutes. He has been trying to get on for quite some time. I think that is agreeable with everyone.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Kentucky.

FOREIGN AID TO EGYPT

Mr. PAUL. Mr. President, I wish to commend the Senator from Oklahoma on being a leader in trying to repair and restore our infrastructure. I think

the Senator from Oklahoma has shown that this is a bipartisan issue.

I rise today not only to support the bipartisan nature of rebuilding our infrastructure but also to address an urgent concern regarding what is happening in Egypt. I rise to introduce an amendment to suspend foreign aid to Egypt until they release our American citizens.

The situation in Egypt over the past year has been tumultuous, and their people and government stand at a moment where they will choose their future. Will they stand for freedom? Will they choose to stand with the United States? The choice is entirely theirs, of course, but their recent actions are troubling and should give us reason to reconsider our significant aid to the Government of Egypt.

What bothers critics of our foreign policy is the disconnect between hope and reality. Well-intentioned people vote to give aid to countries in hopes they will promote freedom, democracy, and the interests of the United States abroad. Too often, though, it does none of those things. Instead, it enriches dictators and emboldens governments that act against our interests.

Right now American citizens who work for prodemocracy organizations in Egypt are being held hostage. There really is no other way to put it. These innocent American citizens are not being allowed to leave Egypt and are facing trial by a military government.

This situation has been allowed to escalate by the Obama administration over the past several months, as authorities in Egypt have accelerated a cynical war against these prodemocracy forces—these individuals who are American citizens—in an attempt to gain support from radicals who are convinced that NGOs represent a Western plot to undermine Egypt. These extremists seek to impose their own agenda in Egypt and are determined to prevent Egypt's democratic process as much as possible.

The Supreme Council of the Armed Forces in Egypt—the ones responsible for the transition—has demonstrated that they are not only willing but are in the process of using American citizens as scapegoats for the continual upheaval in Egypt. Their actions do not illustrate a significant democratic transition. In fact, they are encouraging and provoking distrust among the Egyptian people by making false allegations about the nature of these American citizens.

In the aftermath of the Arab revolution and the toppling of the authoritarian Mubarak government, Egypt finds itself in critical need of support in order to build a functioning democratic system. Yet, in late December, Egyptian authorities abruptly raided the offices of several nongovernmental organizations working toward democratic development, seizing their computers and documents. This past weekend Egyptian prosecutors filed criminal charges against these innocent American citizens. This must not be allowed to stand.

The American people should be concerned. We are subsidizing behavior, through U.S. taxpayer foreign aid to Egypt, that is leading to and allowing for the unjust detainment of American citizens in Egypt. Egypt is one of the largest recipients of foreign aid, totaling over $70 billion over the last half century. Egypt's ruling military has itself received $1.3 billion in foreign aid every year since 1987, and they have the gall to hold American citizens hostage. This must end.

Not everyone in this body agrees on foreign policy or on the role of U.S. foreign assistance. But the reckless actions of Egyptian authorities in this matter should bring us together to form one undeniable conclusion: American foreign assistance dollars should never be provided to any country that bullies our citizens, recklessly seeks to arrest them on imaginary charges or denies them access to their most basic rights.

Egypt must immediately stop the detainment and prosecution of these American citizens. If they fail to do so, then we have the moral obligation to immediately end their foreign aid. The time for action is now.

I will offer an amendment to suspend Egypt's foreign aid until our American citizens are released. It is our duty as our people's representatives to ensure no more American taxpayer dollars will flow to Egypt until they rescind the charges against innocent Americans and allow them to peacefully leave the country. The American people are behind this, and I advise the Senate to consider that we should no longer send foreign aid to a country that is illegally detaining our citizens.

I yield the floor.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Vermont.

Mr. LEAHY. Madam President, with the Senator from Kentucky still on the floor, I appreciate what he has said, and I am glad he has shown support for the Leahy amendment which passed in the last foreign aid bill.

There was a lot of pushback from a number of people, the administration and on the Senator's side of the aisle, initially, when I wrote into the law that said it would suspend any money—$1.3 billion—for the military, unless there was a certification that they were upholding the moves necessary toward democracy.

As a result, all the money the Senator is concerned about is being held back because of the Leahy amendment—which is joined in by Senator GRAHAM, whom I see coming onto the floor—when we did the Foreign Operations bill.

I appreciate the words of the Senator from Kentucky. I can assure him, with the Leahy amendment, none of the foreign aid is going to Egypt as they conduct their operations the way they are.

VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2011

Mr. President, I ask unanimous consent to have printed in the RECORD letters in support of the reauthorization of the bipartisan Violence Against Women Reauthorization Act report.

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

NATIONAL TASK FORCE TO END SEXUAL AND DOMESTIC VIOLENCE AGAINST WOMEN,

February 9, 2012.

DEAR REPRESENTATIVE: We, the undersigned organizations, represent millions of victims of domestic violence, dating violence, sexual assault and stalking, and the professionals who serve them, throughout the United States and territories. On behalf of the victims we represent, we ask that you support the Violence Against Women Act's (VAWA) reauthorization.

VAWA's programs support state, tribal and local efforts to address the pervasive and insidious crimes of domestic violence, dating violence, sexual assault and stalking. These programs have made great progress towards keeping victims safe and holding perpetrators accountable. This critical legislation must be reauthorized to ensure a continued response to these crimes.

Since its original passage in 1994, VAWA has dramatically enhanced our nation's response to violence against women. More victims report domestic violence to the police and the rate of non-fatal intimate partner violence against women has decreased by 53%. The sexual assault services program in VAWA helps rape crisis centers keep their doors open to provide the frontline response to victims of rape. VAWA provides for a coordinated community approach, improving collaboration between law enforcement and victim services providers to better meet the needs of victims. These comprehensive and cost-effective programs not only save lives, they also save money. In fact, VAWA saved nearly $12.6 billion in net averted social costs in just its first six years.

VAWA has unquestionably improved the national response to these terrible crimes. We urge you to support VAWA's reauthorization to build upon its successes and continue to enhance our nation's ability to hold perpetrators accountable and keep victims and their children safe from future harm.

We look forward to working with you throughout the reauthorization process. If you have any questions, please feel free to contact Juley Fulcher with Break the Cycle at jfulcher@breakthecycle.org, Rob Valente with the National Council of Juvenile and Family Court Judges at robvalente@dvpolicy.com, or Terri Poore with the National Alliance to End Sexual Violence at tpoore@fcasv.org.

Sincerely,

9to5, National Association of Working Women; A CALL TO MEN; AAUW; Alianza-National Latino Alliance to End Domestic Violence; Alternatives to Family Violence; American Association of University Women; American Civil Liberties Union; American College of Nurse-Midwives; American Indian Housing Organization (AICHO); American Probation and Parole Association; American Psychiatric Association; Americans Overseas Domestic Crisis Center; ASHA for Women; Asian & Pacific Islander Institute on Domestic Violence; ASISTA Immigration Assistance; Association of Jewish Family and Children's Agencies; Association of Prosecuting Attorneys; Association of Reproductive Health Professionals; Black Women's Health Imperative; Break the Cycle.

Casa de Esperanza; Church of the Brethren; Coalition of Labor Union Women; Daughters of Penelope; Deaf Abused Women's Network; Disciples Justice Action Network; Disciples Women of the Christian Church (Disciples of Christ); Domestic Violence Report; Feminist Majority/Feminist Majority Foundation; Futures Without Violence (formerly the Family Violence Prevention Fund); General Federation of Women's Clubs; Hadassah, The Women's Zionist Organization of America, Inc.; Indian Law Resource Center; Institute on Domestic Violence in the African-American Community; International Association of Forensic Nurses; Japanese American Citizens League; Jewish Council for Public Affairs; Jewish Women International; Joyful Heart Foundation; Korean American Women In Need (KAN–WIN); Legal Momentum.

MANA—A National Latina Organization; Men Can Stop Rape; Men's Resources International; Mennonite Central Committee US; Methodist Federation for Social Action; National Alliance of Women Veterans, Inc; National Alliance to End Sexual Violence; National American Indian Court Judges Association; National Association of Counties; National Association of VOCA Assistance Administrators; National Center for Victims of Crime; National Center on Domestic and Sexual Violence; National Clearinghouse on Abuse in Later Life; National Coalition Against Domestic Violence; National Coalition of Anti-Violence Programs; National Congress of American Indians Violence Against Women Task Force; National Council of Churches of Christ in the USA; National Council of Jewish Women; National Council of Juvenile and Family Court Judges; National Council of Negro Women; National Council of Women's Organizations; National Council on Independent Living.

National Dating Abuse Hotline; National Domestic Violence Hotline; National Domestic Violence Registry; National Housing Law Project; National Institute of Crime Prevention; National Latina Institute for Reproductive Health; National Law Center on Homelessness and Poverty; National Legal Aid and Defender Association; National Network to End Domestic Violence; National Organization for Women; National Organization of Sisters of Color Ending Sexual Assault; National Resource Center on Domestic Violence; National Resource Sharing Project; National Women's Political Caucus; NETWORK—A National Catholic Social Justice Lobby; Nursing Network on Violence Against Women International; Planned Parenthood Federation of America; Praxis International; Range Women's Advocates; Rape Abuse and Incest National Network; Religious Coalition for Reproductive Choice.

Sargent Shriver National Center on Poverty Law; Security on Campus Inc.; Service Women's Action Network; Sexuality Information and Education Council of the United States; Sisters in Sync; The Joe Torre Safe at Home Foundation; Tribal Law and Policy Institute; Union for Reform Judaism; United Church of Christ; United Methodist Church (General Board of Church and Society); Veteran Feminists of America; Voices of Men; Witness Justice; Women of Color Network; Women's Information Network; Women's Law Project.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL,
Washington, DC, January 11, 2012.

DEAR MEMBERS OF CONGRESS: Since its passage in 1994, the Violence Against Women Act (''VAWA'') has shined a bright light on domestic violence, bringing the issue out of the shadows and into the forefront of our efforts to protect women and families. VAWA transformed the response to domestic violence at the local, state and federal level. Its successes have been dramatic, with the annual incidence of domestic violence falling by more than 50 percent.

Even though the advancements made since in 1994 have been significant, a tremendous amount of work remains and we believe it is critical that the Congress reauthorize VAWA. Every day in this country, abusive husbands or partners kill three women, and for every victim killed, there are nine more who narrowly escape that fate. We see this realized in our home states every day. Earlier this year in Delaware, three children—ages 12, 2½ and 1½—watched their mother be beaten to death by her ex-boyfriend on a sidewalk. In Maine last summer, an abusive husband subject to a protective order murdered his wife and two young children before taking his own life.

Reauthorizing VAWA will send a clear message that this country does not tolerate violence against women and show Congress' commitment to reducing domestic violence, protecting women from sexual assault and securing justice for victims.

VAWA reauthorization will continue critical support for victim services and target three key areas where data shows we must focus our efforts in order to have the greatest impact:

Domestic violence, dating violence, and sexual assault are most prevalent among young women aged 16–24, with studies showing that youth attitudes are still largely tolerant of violence, and that women abused in adolescence are more likely to be abused again as adults. VAWA reauthorization will help us break that cycle by consolidating and strengthening programs aimed at both prevention and intervention, with a particular emphasis on more effectively engaging men and local community-based resources in the process.

A woman who has been sexually assaulted can be subjected to further distress when the healthcare, law enforcement, and legal response to her attack is not coordinated and productive. Whether it is a first responder without adequate training, a rape kit that goes unprocessed for lack of funding, or a phone call between a crisis counselor and a prosecutor that never takes place, sexual assault victims deserve better. We must develop and implement best practices, training, and communication tools across disciplines in order to effectively prosecute and punish perpetrators, as well as help victims heal and rebuild their lives.

There is a growing consensus among practitioners and researchers that domestic violence homicides are predictable and, therefore, often preventable. We can save the lives of untold numbers of potential homicide victims with better training for advocates, law enforcement, and others who interact with victims to recognize the warning signs and react meaningfully.

The fight to protect women from violence is one that never ends. It is not a year-to-year issue, which is why we think it is critical that Congress reauthorize the Violence Against Women Act. We know a great deal more about domestic violence, dating violence, sexual assault and stalking than we did 17 years ago. Reauthorizing VAWA will allow us to build on those lessons and continue to make progress and save lives.

VAWA was last reauthorized in 2006 and time is of the essence for reauthorization of this important law. We urge Congress to take on this critical mission and reauthorize VAWA.

NATIONAL SHERIFFS' ASSOCIATION,
Alexandria, VA, February 1, 2012.

Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC.
Hon. MIKE CRAPO,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY AND SENATOR CRAPO: On behalf of the National Sheriffs' Association (NSA) and 3,079 elected sheriffs nationwide, I am writing to express our support for the Violence Against Women Reauthorization Act (VAWA).

NSA and the nation's sheriffs recognizes the extreme seriousness that the crimes of domestic violence, sexual assault, dating violence, stalking, and sex trafficking have on law enforcement, victims, and communities across the nation. Originally established in 1994, VAWA works to increase officer and victim safety, while striving to prevent future abuse, by providing resources to law enforcement agencies to enhance their core programs and policies, as well as to reaffirm the commitment to reform systems, that affect victims of domestic violence, sexual assault, dating violence, stalking, and sex trafficking.

The reauthorization of VAWA would continue to enable law enforcement agencies across the country to adequately address domestic violence, sexual assault, dating violence, stalking, and sex trafficking crimes by expanding funding for programs that recognize the concerns and needs of victims. Furthermore, VAWA supports the key collaboration between the victims' services community; health care community; and law enforcement to ensure that all victims are receiving the critical treatment and services necessary after a crime has occurred.

However, we do have one point of concern regarding the VAWA reauthorization involving PREA (Prison Rape Elimination Act) standards as they apply to the Department of Homeland Security (DHS). NSA strongly believes that sexual violence and abuse have no place in our correctional facilities. As such, NSA has been working closely with the Department of Justice (DOJ) on PREA to ensure that the final standards take into consideration the vast differences between jails, which sheriffs largely operate, versus prisons; thus enabling for the efficient and effective implementation in jails nationwide.

Title X of the VAWA reauthorization would require DHS to establish and implement PREA standards for DHS detention facilities. As you may be aware, many sheriffs contract with DHS to house criminal aliens in their jails. As sheriffs will need to comply with PREA standards when finally established by the DOJ, NSA would ask that you, and the Senate Judiciary Committee, ensure that the VAWA reauthorization language clarifies that DHS PREA standards need to be consistent with DOJ PREA standards. This would ensure that there are not differing standards for jails based on the federal, state, or local detainees held, as well as help with the swift and successful implementation of final PREA standards.

While the law enforcement community, and society as a whole, has made great strides in combating such crimes as domestic violence, sexual assault, stalking, sex trafficking, and dating violence since the original enactment of VAWA, there is still more work that still needs to be done. The reauthorization of VAWA will enable the continued partnership among sheriffs and victims' advocates and service providers to protect victims and prevent future victimization throughout the United States.

Senator Leahy and Senator Crapo, the National Sheriffs' Association thanks you for

your leadership on this important issue in the 112th Congress.

Sincerely,

Sheriff PAUL H. FITZGERALD,
President.

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION,
Washington, DC, January 31, 2012.

Hon. PATRICK LEAHY,
Chairman, Senate Judiciary Committee.
Hon. CHARLES GRASSLEY,
Ranking Member, Senate Judiciary Committee.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER GRASSLEY: On behalf of the 26,000 members of the Federal Law Enforcement Officers Association (FLEOA), I am writing to express our full support for Senator Leahy's proposed reauthorization of the Violence Against Women Act (VAWA). FLEOA has supported the essential purpose of this legislation since it was first passed in 1994. According to the Centers for Disease Control and Prevention, one in four women will experience domestic violence in their lifetime. In our proud Land of the Free and Home of the Brave, this is unacceptable.

FLEOA fully supports the substitute amendment to S. 1925. The amendment properly calls for the U Visa cap to be raised to allow for the recapture of 5,000 unused U Visas. Current law authorizes an annual issuance of only 10,000 U Visas. Unfortunately, dangerous criminals remain undaunted by this cap and it only serves to discourage non-citizen battered women from cooperating with law enforcement.

The absolute priority for all law enforcement officers is the pursuit and capture of violent criminals. By limiting the number of U Visas law enforcement can request, Congress is effectively amputating the long arm of the law. Law enforcement officers and prosecutors don't hand out U Visas like cotton candy. U Visas are an essential tool carefully used by law enforcement and tempered with great scrutiny. Again, our unwavering priority is to do everything within our means to protect women who are victimized by violent criminals.

I respectfully ask that both parties rally behind this important legislation, and that we unite in recognition of the need to protect all battered women from dangerous criminals.

Respectfully submitted,

JON ADLER,
National President.

Mr. LEAHY. For almost 18 years, the Violence Against Women Act has been the centerpiece of the Federal Government's commitment to combat domestic violence, dating violence, sexual assault, and stalking.

Senator CRAPO and I introduced this bill, a moderate bill, which has now gone through the Senate Judiciary Committee and should be voted up or voted down. It saves money, but it also commits to those programs needed by our States.

At some point, if it is delayed much longer, I am going to come to the floor and recount some of the horrific crime scenes I went to of violence, sexual violence, domestic violence, the things that are being combated now, things that happened when we did not have the Violence Against Women Act.

Last Thursday, the Judiciary Committee approved the bipartisan Violence Against Women Reauthorization Act. For almost 18 years, the Violence Against Women Act, VAWA, has been the centerpiece of the Federal government's commitment to combat domestic violence, dating violence, sexual assault, and stalking.

It has been extraordinarily effective, and the annual incidence of domestic violence has fallen by more than 50 percent since the landmark law was first passed.

As a prosecutor in Vermont, I saw firsthand the destruction caused by domestic and sexual violence. Those were the days before VAWA, when too often people dismissed these serious crimes with a joke, and there were few, if any, services for victims.

We must not go back to those days. This law saves lives, and it must be reauthorized.

Senator CRAPO and I introduced a moderate bill that incorporates input from survivors of domestic and sexual violence all around the country and the tireless professionals who serve them every day.

This legislation builds on the progress that has been made in reducing violence against women, and it makes vital improvements to respond to remaining, unmet needs.

Unfortunately, partisan politics threaten to stop this critical legislation from moving forward. We have seen this same pattern too often.

The Trafficking Victims Protection Reauthorization Act and the Second Chance Act, both laws originally championed by Republican Senators and supported by Republican Presidents, are now suddenly unacceptable.

This obstruction must stop. These programs are too important. They save lives. They make our communities safer.

Nowhere is that more true than for the Violence Against Women Act. Certainly, helping survivors of domestic and sexual violence should be above politics.

The last two times VAWA was reauthorized, it was unanimously approved by the Senate. Now, this law, which has done more to stop domestic and sexual violence than any other legislation ever passed, faces Republican opposition. That is not right.

To those who suggest that this legislation creates too many new programs, I say that is simply not true. In fact, the bill reduces the scale of VAWA.

It consolidates 13 existing programs and reduces authorization levels by nearly 20 percent while providing for only one small additional program.

The improvements in this bill are important but modest when compared to previous reauthorizations, which created many new grant programs and raised authorization levels almost across the board.

I have heard some say that our bill protects too many victims. I find that disheartening. One thing I know from my time as a prosecutor, and I would hope it is something we can all agree on, is that every victim counts.

All victims deserve protection. That is a message we have heard loud and clear from our States and something I hope is common ground.

More than 200 national organizations and 500 State and local organizations have expressed their support for this bill.

Many of them have written strong letters urging swift passage of this legislation including the National Task Force to End Sexual and Domestic Violence, the National Association of Attorneys General, the National District Attorneys' Association, the National Sheriffs' Association, and the Federal Law Enforcement Officers Association.

This legislation has the support of five Republican Senators.

I thank Senators CRAPO, KIRK, MURKOWSKI, BROWN, and COLLINS for their willingness to step forward and support the reauthorization of this landmark legislation.

This is the Violence Against Women Act. It should not be a partisan matter.

I hope that all Senators will support this bill and that we can move quickly to reauthorize this critical legislation.

It is a law that has saved countless lives, and it is an example of what we can accomplish when we work together.

AIR NATIONAL GUARD AND RESERVES

Madam President, I am glad to see the senior Senator from South Carolina. For the first 50 or 60 years I was in the Senate—or it felt like that—it was a different senior Senator. But I am delighted to see the senior Senator from South Carolina, Mr. GRAHAM, who is joining me to address a matter of great importance to the Nation at a crucial moment in our history.

The U.S. Air Force last week offered a preliminary look into its budget for fiscal year 2013. While the President will formally submit his budget proposals on Monday, last week's briefing and information papers offered enough detail for the Senate to begin considering the overall strategic direction of the Air Force Future Years Defense Program. In Pentagon jargon, that is usually called FYDP.

I have to say I am deeply disappointed and very worried as I look at the first glance at that proposal.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Madam President, I appreciate the opportunity to engage in this colloquy.

As cochairman of the Guard Caucus, which obviously has the Air National Guard Component, Senator LEAHY has been a real pleasure to work with.

The bottom line is, this effort to downsize the Air Force falls incredibly heavy on the Air National Guard. There will be 3,000 Active-Duty members lost regarding the plan he just mentioned, 5,000 coming from the Air National Guard. The airframes to be eliminated in the plans Senator LEAHY just mentioned fall disproportionately on the Air National Guard. In just a moment, we are going to talk about the bang for your buck in terms of the Reserve component called the Air National Guard, and we are going to challenge the Congress and the Department

of Defense to reconsider this because, quite frankly, it makes no military or fiscal sense.

Mr. LEAHY. As an example of the approach to the budget cuts, one of the A–10 units slated for cutting, the 127th Wing from Michigan, just returned from fighting bravely in Afghanistan and as a welcome home: Great job. Sorry, we are going to disband you.

The approach to budget cuts the Air Force has decided to take is simply wrong. We have to have budget cuts. We know that. But there is a wide variety of reasons why this makes not the sense it should. I draw the Senate's attention to a study produced by the Pentagon last year that was signed by the Vice Chairman of the Joint Chiefs and the Assistant Secretary of Defense for Reserve Affairs that demonstrated what we already knew: Even when mobilized, Reserve component units are far less expensive than their peer units in the Active component.

It has always been a foregone conclusion that the Air National Guard costs are far less than Active component costs when they are on base or in garrison. Personnel are not drawing the salaries their peer units are and so on. But the Pentagon report showed something more interesting. It showed the Guard and Reserve save taxpayers dollars even when mobilized. The Reserve component units are estimated to be about one-third as expensive as similar Active component units, and they can deploy nearly half as often. That adds up to lot of savings in dollars and cents, but it also reflects a very major component of our security, because in the wars we fought in the last decade, we could not have done it without these Guard and Reserve units.

Mr. GRAHAM. The Senator is absolutely right. When we look at the utilization of the Guard and Reserve since 9/11, it has been at World War II levels. When we go into the combat theater, we can't tell the difference between Guard, Reserve or Active-Duty member, which is a testament to all three.

But when we look at what the Air Force is doing—and I think it is proper to consider the other services—the Marine Corps is making no reduction to their Reserves. The Army is making very small cuts in the Guard and Reserves and substantial cuts to the Active Forces. The Army and Marine Corps plans support the new strategic concept of reversibility; that is, the part of the Department of Defense strategic guidance. We cannot be sure what contingencies might arise, and we cannot afford to make cuts that will leave us incapable of responding when necessary.

Secretary Flournoy, during her last speech to the Defense for Policy, stated that ''the Guard and the Reserves will play an extremely important role'' in the reversibility concept because they give the military built-in adaptability and resourcefulness. This reversibility concept is what we are doing to reduce the defense infrastructure. If it were ever reversed or had to be reversed because of some contingency, we want to make sure that is possible. The Guard and Reserve is the most capable force to maintain and, in terms of the concept of reversibility, is our best bang for the buck.

So the Air Force is taking a different approach than the Army, Navy, and Marine Corps to their Reserve component, particularly their Air National Guard. I think Senator LEAHY and I are going to make sure that decision is examined in-depth.

Mr. LEAHY. I agree with my colleague on that, and that is why the bipartisan Guard Caucus will have some very strong statements.

We look at what the former Chief of Staff of the Air Force, GEN Ron Fogelman, said before these plans were announced. He argued for a larger Reserve component and a smaller Active-Duty Force. He did a guest column in DefenseNews. He said, among other things:

> The big question is, how does the department reduce its budget and continue to provide a modern, balanced and ready defense when more than half of the budget is committed to personnel costs?
>
> The answer to that question is right before us: We should return to our historic roots as a militia nation. So, what does that mean, exactly? Simply put, it means we should return to the constitutional construct for our military and the days when we maintained a smaller standing military and a robust militia.
>
> To do that, leaders must put old parochial norms aside and be willing to actually shift forces and capabilities to the National Guard and Reserve.

He said ''put old parochial norms aside.'' He goes on to say:

> This would enable significant personnel reductions in the active components. It would also result in a larger reserve component. Most important, it would preserve capability and equipment that has cost the American taxpayer trillions of dollars, nest it in our mostly part-time Guard and Reserve, and have it available should it be needed.
>
> This concept worked well for our country for the better part of two centuries. Unfortunately, several generations of leaders have come and gone, and most of today's leadership fails to recognize the true potential of the militia model.
>
> We need our collective senior military and civilian leaders to recognize there is a way back to a smaller active military and a larger militia posture. The fiscal environment and emerging threats demand it.

Those aren't my words. Those are the words of a former Air Force Chief of Staff.

Mr. GRAHAM. Senator LEAHY is right. When we look at our Constitution itself, it talks about a militia. When we look at the history of the country, it is the citizen soldier who got this whole concept called America started.

We do need a standing Army, Navy, Air Force, and Marine Corps. But when we are looking at the budget problems we face and the fiscal concerns we have as a nation and we want to restructure the military, I will be talking in just a minute about why we should be looking for a greater role from the Guard and Reserve just from economics. But when it comes to military capability, I think we have the best of both worlds now: a very efficient, quite frankly, cheaper force to maintain with very similar, if not like, capabilities. We don't want to let that concept be eroded by a plan that I think doesn't appreciate the role of the militia and doesn't appreciate the cost-benefit analysis from a robust Reserve component.

Mr. LEAHY. In fact, Senator GRAHAM and I introduced a successful amendment in last year's Defense authorization bill that required the Pentagon and the GAO perform studies that should produce more conclusive analysis of the relative cost of similar units in the Active components and the Reserve components. We are also aware of at least two other third-party studies currently underway to address the questions. I think we are going to have three or four such studies that will conclusively answer the questions. Senator GRAHAM and I—and I think most of our colleagues in the Senate—consider these proposed Air Force cuts to be dangerously premature. Once we cut the Reserve components, once we send an aircraft to the boneyard at Davis-Monthan Air Force Base and these airmen and pilots go out to civilian life, we don't get them back. In fact, that is precisely why the Army and Marine Corps have taken a different approach of preserving their Reserve component force structure: They can mobilize Active component troops they place in the Reserve component. But once we cut that, they are gone forever. They are gone forever.

Mr. GRAHAM. What I am about to provide to the body, I think we need to absorb and be aware of.

This study that Senator LEAHY is talking about, an analysis of the effectiveness and cost, is an ongoing endeavor. I would like to know more about what the study yields before we make what I think are pretty Draconian cuts in the Air National Guard.

But this is what we know before the study. This information is already in: According to an Air Guard briefing, the Air National Guard, operating under today's deployment constraints, is still 53 percent of the cost of an equivalent Active-Duty major command. The Air National Guard costs $2.25 billion less annually than a similarly sized Active Air Force command. That is $6.2 million a day in savings.

After 20 years of service, our average enlisted airman costs nearly $80,000 a year in total compensation. On the other hand, an identical Air National Guard enlisted airman costs about $10,000 a year, about an 85-percent savings.

Over a 20-year career, an Air National Guard airman will save the country about $1 million compared to an active-duty airman. At 22 years, an active-duty pilot will cost about $150,000 in compensation. On the other hand, an Air National Guard pilot at 22

years costs the taxpayers about $30,000 in total compensation. Over a 26-year career, an Air National Guard pilot will save the country nearly $2 million compared to an active-duty pilot.

Active-duty pilots retire on average with 22 years of service. Air National Guard pilots retire with an average of 26 years of experience, giving the country a greater level of experience and ability for those final 4 years, at a much lower cost. These cost figures do not even account for other life cycle and infrastructure savings that a Reserve component-first model would yield.

These are stunning numbers without the study to fully be accomplished. We are going to do our best, I say to Senator LEAHY, to tell the story of capability and cost.

Mr. LEAHY. Madam President, clearly this approach, if we keep the Guard and Reserve, saves our country precious resources at a time we need to tighten our belts. There are a couple of things we agree on. Everybody in the Senate agrees that our military has to be kept strong and vigilant to threats from our enemies. But the source of our military strength has been and always will be our economic might. If we are to protect ourselves militarily while also marshaling our economic power, moving to the kind of constitutional defense model my colleague has discussed should be our first choice.

I think these Air Force proposals are ill-advised and premature at the very least. I think they are flat-out wrong, as has already been said here on the floor. When any of us who have visited the areas, especially in the last few years, where our military guard and our Reserves are deployed, you cannot tell the difference between their duties or the risks they put themselves in—between the active-duty and Guard and Reserve components. The National Guard has been given a much greater role in our overall national defense—more missions, greater responsibility, heavier burdens. They perform these missions superbly, with great skill and effectiveness. They have defended our interests, and many have lost their lives doing it, but they carried out the same missions as everybody else.

The Senate National Guard Caucus worked closely with all concerned to accommodate and facilitate these changes. But now we are going to take an active role in informing the Senate as these are being made. We are not going to sit by while any of the military services decimate their Reserve components. We will work together, Senator GRAHAM and I, with the Senate Armed Services Committee on which he serves with distinction, and the Senate Appropriations Committee on which we are both privileged to serve, but also the entire membership of the Senate, to produce a thoughtful, well-conceived strategy for military manpower that makes use of a cost-effective and accessible, fully operational, trained, and ready Reserve component.

Mr. GRAHAM. I look forward to working with Senator LEAHY and others to bring about what he indicated to make it a reality. The bottom line of this whole discussion is that the Cold War is over. We are very proud of our standing military, our Army, Navy, Air Force, Marine Corps, Coast Guard—they do a terrific job, the standing military. The militia component has been the heart and soul of this country since its founding and in a post-Cold War war on terrorism environment where you have to call on resources that the Guard and Reserve have that are unique—like civil affairs. When you are going into Afghanistan and Iraq, it is one thing to clear the village; you have to hold the village. You have to hold it. Agricultural specialists come from the Guard and Reserve, people from Vermont and South Carolina who have skills in their day job, who can do more in the war effort than dropping a bomb.

As we look at the threats we face, I think we need to understand the Reserve component is more valuable than ever. We are not defending the Fulda Gap against a massive Soviet Union tank invasion. We have to be nimble, we have to deploy quickly. The Reserve component, particularly the Air National Guard, has a great return on investment and, like any other part of the military, can be reformed. But this proposal doesn't reform it; it in many ways neuters the Air National Guard and at a time when that makes no sense. We will continue this endeavor, and I look forward to working with Senator LEAHY and others to create a rational approach to the Reserve and Guard.

Mr. LEAHY. I thank my friend from South Carolina. We will from time to time report to the Senate on this issue. It is extremely important. It comes down to the bottom line: Have the best defense at the least cost to the taxpayer. That is what we are both aiming for.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRASSLEY. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE NOMINATION

Mr. REID. Madam President, I ask unanimous consent that today, February 9, at 1:30 p.m., the Senate proceed to executive session to consider Calendar No. 407; that there be 30 minutes divided in the usual form; that upon the use or yielding back of time the Senate proceed to vote with no intervening action or debate on Calendar No. 407; the motion to reconsider be considered made and laid upon the table with no intervening action or debate; that no further motions be in order; and that any statements related to this matter be printed in the RECORD; that President Obama be immediately notified of the Senate's action; and the Senate proceed then to legislative session and the cloture vote on the motion to proceed to S. 1813, under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Iowa.

Mr. GRASSLEY. I ask permission to speak as in morning business for about 12 or 13 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

OPERATION FAST AND FURIOUS

Mr. GRASSLEY. Madam President, for over a year now I have been investigating Fast and Furious. That is an operation coming out of the Bureau of Alcohol, Tobacco, and Firearms.

This has been a very complicated investigation. It has been made even more difficult because of the Justice Department's lack of candor and transparency. Basically, the Justice Department is stonewalling, interfering with Congress's constitutional responsibility of oversight.

For example, the Justice Department's Office of Inspector General recently disclosed that it has received 80,000 pages of documents from the Department and over 100,000 e-mails.

Think of what the Inspector General gets from the Department: 80,000 pages and 100,000 e-mails. How much do you think they have given the Congress of the United States, which has the constitutional responsibility of oversight? It is only 6,000 pages that we have received.

Similarly, the inspector general has been allowed to conduct 70 witness interviews. How many has the Justice Department allowed the Congress, in our responsibility of oversight, to interview? Only 9 witnesses.

Last week, Attorney General Eric Holder testified before the House Committee On Oversight and Government Reform. The Justice Department did a document dump to Congress the Friday night before the hearing. That has become a very bad habit of the Department of Justice. In fact, without giving us any advance notice that it was coming, they actually put a CD under the door of our office, after business hours. What did they do for the press? They gave the same documents to the press 2 hours before they ever gave them to us. Yes, they managed to find time to leak the documents to the press during regular business hours. This is the kind of cooperation we get from the Justice Department in our constitutional responsibility of oversight.

What I am telling my colleagues here is that we have a terrible lack of cooperation from the Justice Department. The Justice Department is not only thumbing its nose at the Senate, they are doing it to the entire Congress of the United States, when we know there are 80,000 pages of documents and they only give us 6,000 pages; when

there are 100,000 e-mails and we get a handful of e-mails. Why would they be so mysterious by putting a disk under our door on a Friday night and giving it to the press 2 hours before? What sort of attitude is that of our Justice Department toward the cooperation you ought to have with our filling our constitutional role of oversight? So I guess I would say there is hardly any cooperation whatsoever from the Justice Department.

Even though we get a dribble here and a dribble there, even though we get a CD under the door, instead of very openly face to face receiving documents, what we got last Friday did reveal further facts about a previously unknown proposal to allow these guns to cross the border.

We have long known that in March of 2011, Deputy Attorney General James Cole had a conference call with all Southwest border U.S. agents. In a follow-up e-mail after the call, Mr. Cole wrote:

> As I said on the call, to avoid any potential confusion, I want to reiterate the Department's policy: We should not design or conduct undercover operations which include guns crossing the border. If we have knowledge that guns are about to cross the border, we must take immediate action to stop the firearms from crossing the border, even if that prematurely terminates or otherwise jeopardizes an investigation.

Attorney General Holder himself told us in a hearing in May that Mr. Cole was simply reiterating an existing Justice policy in his e-mails, not communicating new policy. So imagine my surprise when I discovered in the document slid under my door late last Friday that while in Mexico Assistant Attorney General Lanny Breuer proposed letting guns cross the border. Mr. Breuer's proposal came at exactly the same time the Department was preparing to send its letter to me denying that the ATF ever does the very thing he was proposing.

In a February 4, 2011 e-mail, the Justice Department attache in Mexico City wrote to a number of officials at the Justice Department:

> AAG Breuer proposed allowing straw purchasers to cross into Mexico so [the Secretariat of Public Safety] can attest and [the Attorney General of Mexico] can prosecute and convict. Such coordinated operations between the US and Mexico may send a strong message to arms traffickers.

We have people here in Washington saying the program doesn't exist at the same time we have people talking down in Mexico City of what we are trying to accomplish by the illegal sale of guns.

That e-mail I quoted, the recipient of it included Mr. Breuer's deputy, Jason Weinstein, who was helping to write the Justice Department letter to me that they would later withdraw for its inaccuracies. In other words, they wrote a letter to me on February 4 of last year that in October they admitted they misled us. Mr. Weinstein was sending updates about the draft letter to Mr. Breuer in Mexico at the very same time so he cannot say he didn't know about it. Yet, during his testimony to the Senate Judiciary Committee, Mr. Breuer downplayed his involvement in reviewing the draft letter. It is outrageous to me that the head of the Justice Department's Criminal Division proposed exactly what his Department was denying to me was actually happening.

The Justice Department's letter to me clearly said:

> ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico.

They said that at the very same time Mr. Breuer was advocating that a Justice Department operation allow weapons to be transported into Mexico. Further, what Mr. Breuer advocated directly contradicted what the Justice Department said its policy was.

Is it possible they can have it both ways? No, you cannot have it both ways. If they didn't have a policy against such operations, and if the left hand doesn't know what the right hand is doing, perhaps it is not a surprise that an operation like Fast and Furious sprang up. After all, as that same Justice Department attache wrote of a meeting a few days after his first e-mail:

> I raised the issue that there is an inherent risk in allowing weapons to pass from the US to Mexico; the possibility of the [Government of Mexico] not seizing the weapons; and the weapons being used to commit a crime in Mexico.

Well, the light bulb went on. If you are selling 2,000 guns illegally and they don't interdict them, well, yes, they end up murdering hundreds of people in Mexico and at least one person in the United States.

If the Justice Department did have a policy against such operations, this is a record of Mr. Breuer proposing to violate it. That is not just my conclusion, that is the Attorney General's conclusion as well.

At last week's hearing in the House of Representatives, the Attorney General was asked to explain the contradiction between his deputy's anti-gunwalking policy and the evidence of Mr. Breuer's proposed operation to let guns cross the border. He could not answer that question, but the Attorney General answered:

> Well, clearly what was proposed in, I guess, February by Lanny Breuer was in contravention of the policy that I had the Deputy Attorney General make clear to everybody at Main Justice and to the field . . .

Perhaps this disconnect between Justice Department policy and Lanny Breuer's proposal explains Mr. Breuer's previous inaction to stop gunwalking. When he found out about gunwalking in Operation Wide Receiver in April of 2010, he failed to do anything to stop it or to hold anyone accountable. He simply had his deputy inform ATF leadership.

Regardless, Mr. Breuer's contravention of Justice Department policy is yet another reason why it is long past time for Mr. Breuer to leave the Department of Justice.

Mr. Breuer misled Congress about whether he was aware of the Department's false letter to me. To this day he is still the highest ranking official in any administration that we know was aware of gunwalking in any Federal program, yet he took no action to stop gunwalking. He failed to alert the Attorney General or the inspector general.

Mr. Breuer has failed the Justice Department, and he has failed the American people. This failure raises some important questions. When did Attorney General Holder determine that Mr. Breuer was proposing allowing straw purchasers to reach Mexico with traffic weapons? What has he done about it? Will Mr. Breuer be held accountable for hatching a plan to directly violate the Attorney General's anti-gunwalking policy? The Attorney General clearly testified that the proposal was in contravention of that policy. How does the Justice Department know other senior criminal division officials were not proposing operations similar to Fast and Furious? These are just a subset of some of the major questions remaining in our investigation of Fast and Furious.

It has now been 1 year since the Department sent me its false letter. How did the Justice Department move from its position of dismissing the complaints of whistleblowers to acknowledging that now those whistleblower complaints are true? What officials were internally dismissive of whistleblower complaints and who believes that they could have merit and should be taken seriously? To what extent did Justice Department officials seek to retaliate against whistleblowers? Exactly how and when did the Justice Department officials begin to learn the truth of what happened?

Former ATF Director Ken Melson has testified how and when he learned that guns had walked in Fast and Furious. What about Attorney General Holder? When and how did he learn guns had walked? What about Assistant Attorney General Lanny Breuer? A year after Operation Fast and Furious concluded, who will be held accountable? Why didn't top Justice officials see the clear connection between Fast and Furious and previously flawed operations that they have admitted they knew about? How has the Justice Department assessed the mistakes and culpability of these officials?

Finally, it is time for the Justice Department to stop stonewalling and start providing answers. It is time for Holder to share with Congress the other 74,000 pages of documents they have turned over to the inspector general. It is time for Holder to give us access to the dozens of other people the inspector general has been allowed to interview.

In short, it is time for Holder to come clean with the American people.

The sooner he does it, and the Department does it, the sooner we can get to the bottom of what happened.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

A SECOND OPINION

Mr. BARRASSO. Madam President, I come to the floor today, as I do week after week, as a physician who practiced medicine in Casper, WY, taking care of families in the community and across the State for about a quarter of a century. I come as a doctor providing a second opinion about the health care law. Since this health care law was signed by the President almost 2 years ago, the public has been overwhelmingly opposed to it. The Democrats in Congress drafted this health care law. They did so quickly and behind closed doors. In spite of the President's promise that the discussions would be held on C–SPAN, no one saw what was happening.

Now the bill is law and, as NANCY PELOSI said, first you have to pass it before you get to find out what is in it. We have, as Americans, witnessed week after week the unintended consequences of the rush of the Democrats to score what they thought would be a political victory. So I continue to come to the floor with a second opinion because week after week there is another new finding of this monstrous law, and it is why week after week this health care law remains incredibly unpopular. The list of victims of this law continues to grow longer each week. Small business owners, families, people who get their coverage through their employers, and patients all across the country have already been impacted by this health care law.

But on January 20, the third anniversary of the President's inauguration, the President's health care law found a very new target, and that target amazingly is religious liberty. Now this administration is mandating that religious institutions provide services that undermine the beliefs of religious institutions across the country. In my opinion, and in the opinion of many across this Nation, this ruling tramples one of the amendments of the Constitution. I would say it is an easy amendment to find since it is the first one. It is the one which protects the rights to freedom of religion and freedom of expression. Reading from the Constitution, Amendment No. 1, Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

If you take a look back at our Nation's history, the right to freedom of religion is one of the main reasons that many people came to America in the first place, and it is one of the reasons people have fought and have died for our Nation.

So what is someone to do? Well, Washington Archbishop Donald Wuerl has expressed the dilemma many institutions face, and he did it in a letter last week. The archbishop in Washington said the mandate will allow a Catholic school only one of three options: No. 1, to violate its beliefs by providing coverage for medications and procedures that Catholics believe are immoral; No. 2, to cease providing insurance coverage for all of its employees and then face ongoing and ultimately ruinous fines; or, No. 3, attempt to qualify for the exemptions by hiring and serving only Catholics, exclude everyone else.

Many Americans understand all three of those options are indefensible. Americans from across the political spectrum are speaking out against President Obama's big government power grab. One of my Democratic colleagues, Senator JOE MANCHIN, called this mandate un-American. Another, Senator BOB CASEY, a Democrat from Pennsylvania, objected to forcing Catholic institutions to violate their religious beliefs. Then we have former Representative Kathy Dahlkemper, a Democrat from Pennsylvania, who voted for the health care law in the House of Representatives, who said she would never have voted for the final version of the health care law ''if I expected the Obama administration to force Catholic hospitals and Catholic colleges and universities to pay for contraception.''

Even liberal commentators such as E.J. Dionne and Mark Shields have criticized the administration for being unwilling to offer a broader conscience exemption to religious-affiliated institutions.

Now that the President's liberal allies are even opposed to this unprecedented power grab, the White House is trying to clean up the mess. It has signaled that it is willing to compromise on its decision. Instead of a mild compromise, the regulation—and the entire health care law—needs to be fully repealed. As the Wall Street Journal editorial board points out:

> In any case HHS would revive this coercion whenever it is politically convenient sometime in Mr. Obama's second term. Religious liberty won't be protected from the entitlement state until Obamacare is repealed.

I think all Americans should be afraid of the course this White House is on with this regulation. This debate isn't about women's health; it is about power. Washington should not have the power to force religious people and religious institutions to take actions that contradict their beliefs.

What we are going to continue to see as the health care law and the mandates and the regulations continue to come out is a government and an administration that continue to expand the government reach in terms of its size, in terms of its scope, and in terms of its grab for power.

The health care law was supposed to be about people and health care—the care they need from the doctor they want at a cost they can afford. Instead we have a lot of IRS agents but no new doctors and nurses. I go to townhall meetings and ask: How many of you under this health care law who are hoping to get the care you need from a doctor you want at a price you can afford—how many of you believe the cost of your health care, because of this health care law, will increase, the costs to you will go up? All the hands went up. That is what the people believe when they hear more and more about this health care law.

Then I say: How many of you believe the quality and availability of your care will go down? Again, the hands went up.

These are the American people knowing everything they do about the health care law, which is very complicated and has not given them what they asked for: the care they need, from a doctor they want, at a cost they can afford. What they find and believe is that they are going to be actually paying more and getting less. That is not what the American people have been promised. It is not what they want. It is not what they expected. But it is what they are finding out they have received now that the law has passed.

So this clearly explains why Republicans in the Senate and in the House continue to be committed to repealing the President's health care law.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN of Ohio. I ask unanimous consent to address the Senate for up to 15 minutes as in morning business.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Reserving the right to object, if I could ask my friend through the Chair, would it be possible for me to have 2 minutes prior to his statement, and then following my remarks the floor will be the Senator's.

Mr. BROWN of Ohio. Sure.

Mrs. BOXER. Madam President, I wish to take 2 minutes to respond to Senator BARRASSO, who offered a second opinion. I hope my colleague will also talk about that.

I have to say it is stunning to see the assault on women's health that is taking place from the Republican Party day after day after day. First, they tried to stop women from getting breast screenings. Then they tried to stop us from getting cervical cancer screenings. Now they are going after our ability to get birth control.

I have to say this: We know that for a full 15 percent of women, birth control is pure medicine. They suffer from debilitating monthly pain, endometriosis. We have stories of women who couldn't afford birth control pills and a cyst got out of hand resulting in the loss of an ovary. We know that birth control is used for a very serious skin condition. So if they want to stand here and say that women don't have a right to our medicine, that is their right but don't put it into the frame of religious freedom.

We know President Obama said he was going to do what 28 States have

done; that is, to make sure women who work in this country have the ability to get access to birth control pills through their insurance. That is as simple as it gets. Twenty-eight States do it. I never heard a word out of them—never. And eight of those States had no exception when President Obama made an exception for 335,000 churches.

So let's not stand here and talk about the overreach of the Federal Government and the rest of it. The fact is our States have been doing this for years. More than 50 percent of women in this Nation have the ability to get contraception. It is about health. It is the Institute of Medicine that said it is critical. It will cut down on tens of thousands of abortions when families plan their families.

So as long as our colleagues on the other side want to make women a political football in this country, there are many of us here, women and men alike, who are going to stand sentry and say: You can't do this to the women of this Nation.

This is the 21st century, and we are arguing about birth control instead of how to get out of this economic malaise when we are finally seeing light at the end of the tunnel? Oh, no. I am hoping we go to a highway bill this afternoon, but we have to now have this diversion about an issue that was resolved, frankly, in the 1950s and in the 1960s.

So I thank my colleague for this opportunity. Senator BARRASSO has a right to a second opinion, but I think his opinion is off the mark.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN of Ohio. Madam President, I appreciate the comments of the Senator from California. She is on the floor today with Senator INHOFE—unlikely peas in a pod, one pretty liberal, one pretty conservative, very different views—to talk about job creation, infrastructure, building highways and bridges and public transit, and job creation. As so often is the case, people on the other side want to change the subject.

In my State, the elections 1½, 2 years ago were all about lost jobs, about lost manufacturing jobs that, frankly, accelerated during the Bush years, and we finally turned that manufacturing job loss around. We have seen 20 straight months of job increases in manufacturing.

But the legislature in Columbus, my State capital, and the Governor, what are they doing? They are not fighting for job creation. They are going after workers' rights and women's rights—the heartbeat bill, pretty extreme—instead of focusing on job creation.

That is what I came to discuss on the Senate floor today too—not specifically on this bill but another infrastructure bill, which I will get to in a moment.

The comment I heard from Senator BARRASSO, only from the end of his discussion, was that he wants to repeal the health care law. How do they tell a 23-year-old who now is on her mother's insurance, who is without a job and doesn't have insurance, that she is going to lose her insurance she has through her mother's insurance? How are they going to explain it to the family who has a child with a preexisting condition who now can get insurance when the insurance company denied it before? How are they going to explain it to the Medicare retiree, the 72-year-old woman on Medicare who now has no copay, no deductible, free screenings for osteoporosis, or the man who gets prostate screenings—how are they going to explain that? They want to repeal that.

How are they going to explain the fact that they want to repeal stopping one of the most insidious insurance company practices, which is that if people get too sick and they are too expensive, insurance companies just cut them off? They want to repeal that prohibition. I guess it is because they want to do the insurance companies' bidding over and over. That is a big part of their game.

It just breaks my heart when I see the progress we have made for the millions of Americans who now will have health insurance. I know the Senator and my colleagues, everybody in this body has good health insurance. People in this body are generally pretty affluent. They have good government insurance. But they don't want millions of men and women in our country—people who have lost jobs, people who are working without insurance—they don't want them to have insurance, all for some political gain of repealing ObamaCare. It is too bad.

Madam President, now I wish to focus on job creation. I wish to make some remarks on legislation I introduced today that is not directly Senator BOXER's and Senator INHOFE's highway bill, but it is about water and sewer systems and infrastructure.

WATER INFRASTRUCTURE IMPROVEMENTS

Mr. BROWN of Ohio. Mr. President, earlier today I was on a call with Tony Parrott, executive director of the Metropolitan Sewer District of Greater Cincinnati. We talked about how communities in Ohio are struggling to afford the necessary upgrades to improve sewer systems. In parts of the State with something called combined sewer systems, every time there are heavy rains waste and storm water overflows, the sewers overflow, and the water is dumped into our rivers and creeks and lakes.

The Environmental Protection Agency estimates that 800 billion gallons of untreated wastewater and storm water from these combined sewage overflows, these combined sewer systems, are released into our rivers, lakes, and streams each year. It poses a threat to public health and the environment, and it undermines the competitiveness of our businesses. So not only do building these water and sewer systems and upgrades create jobs, but we also know if we don't, local businesses aren't going to expand. If they are not certain they are going to have good, clean water available at a decent and reasonable cost, they are not going to expand their businesses, especially if it is manufacturing.

The cost of addressing these combined sewage overflow systems in Ohio is some $6 billion according to the EPA, $1 billion in northeast Ohio, and $2 billion in the Cincinnati area.

So that is why today, because there are 81 Ohio communities requiring water infrastructure improvements, I am reintroducing the Clean Water Affordability Act. In previous Congresses I introduced this legislation with our Republican colleague from Ohio, Senator Voinovich. This bill will protect ratepayers, lead to cleaner water, and promote economic development. It would invest $1.8 billion to be distributed over the next 5 years through a grant program for financially distressed communities administered by EPA Administrator Jackson. I have spoken to her conveying the concern of Ohio's CSO communities. The program provides a 75/25 cost share, similar to what we have done on highway issues in the past: 75 percent Federal Government cost, 25 percent local government cost.

It is estimated that every $1 billion invested in infrastructure, similar to the highway bill that Senators INHOFE and BOXER are working on, will create—that for every $1 billion invested, upwards of 20,000 jobs would be created.

It will promote green infrastructure. Cities such as Bucyrus or Steubenville should be encouraged to use green infrastructure if it costs less than traditional construction and produces the same environmental benefits.

I will continue to work with mayors such as Dave Berger of Lima and Bob Armstrong of Defiance, county commissioners, and others such as Tony Parrot, who explained to me how years of reduced infrastructure investments have eroded their water and sewer systems.

When we were kids in the 1950s and 1960s and 1970s and into the 1980s, the U.S. infrastructure was the envy of the world. Whether it was the interstate system, whether it was the Federal, State, local partnerships on water and sewer systems, whether it was the building of community colleges and the beginnings of technology and wiring for our telecommunications systems in the 1950s and 1960s, we were the envy of the world.

Today, because so many in this government think we need to cut spending at all costs on everything, we simply have not kept up with the infrastructure. That is why countries such as China that are investing so much money in infrastructure—we run the

risk of them passing us by in manufacturing and all the things we care about that build a solid middle class.

This legislation is an economic development imperative. This legislation is an imperative for citizens of our country—having clean drinking water, safe drinking water, predictable access to water at a reasonable cost. It is important for our families. It is important for our communities. It is important for business development. It is important for a strong middle-class manufacturing country, which we still are.

I ask my colleagues to support this important legislation I am introducing today.

Mr. BROWN of Ohio. I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CARDIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CARDIN. Mr. President, I take this time to urge my colleagues to let us proceed on the reauthorization of the surface transportation act, S. 1813. This is a critically important bill, and I am proud to be on two committees that have had jurisdiction over this bill. One is the Environment and Public Works Committee, where Senator BOXER and Senator INHOFE have worked together to bring out a bill that received the unanimous support of our committee. I also serve on the Senate Finance Committee, where Senator BAUCUS and Senator HATCH have worked together so we have the sufficient revenues in order to be able to finance the reauthorization bill during its 2-year reauthorization.

This bill is so important to our country. First, it gives predictability to our State and local governments. It gives predictability to the highway engineers. It gives predictability to contractors to know the funding will be there in order to advance our transportation programs. When we do these short-term extensions, it really does cause significant problems for planners. If you are trying to plan a transportation project, you need to know the funding is going to be there for more than just a few months. You need to have some degree of predictability. This legislation will allow us to give that predictability to those who are involved in the decisionmaking. It has been 2009 since we last reauthorized the surface transportation act. It is time for us to act.

This bill will also help us as far as American competitiveness is concerned. We need to have modern transportation infrastructure, whether it is our highways, our bridges, or our transit systems. We need to make sure we can meet the challenges to today's society.

I could talk about just in this region our needs in the transit area. We have one of the most congested communities in the Nation in Washington, DC. Many of my constituents who live in Maryland go to work every day in Washington, DC, working for the Federal Government, using the mass transit system. That system is aged and needs attention. We need to provide the financing nexus in this area in order to be as competitive as we can with transportation options for the people of this country.

This bill is important for jobs. You hear that over and over. In Maryland, the passage of this bill will preserve or expand 10,000 jobs for its people. I expect the Acting President pro tempore would have similar numbers in New Mexico. It is important in every State in this Nation.

It is also important for safety. I will give you one number in Maryland that really has me concerned. There are 359 bridges in the State of Maryland that have been rated structurally deficient and 4.6 million motorists travel over those bridges every day. The State of Maryland is taking steps to make sure the motorists are safe, but we need to fix those bridges in a more permanent way. The longer we wait, the more it costs. Deferred maintenance means we are not doing what we should to protect the future needs of our communities. This legislation puts a heavy priority on maintaining our transportation infrastructure so it is safe and we can move forward into the future.

The legislation is balanced between transit and highway. I know that in certain regions of this country, highways are the principal means of transportation, and their interest in transit is not quite as great as it is if you represent the people of New York or you represent the people of Maryland or you represent the people in an urban center where public transit becomes a very important part of our transportation needs. This legislation is balanced to take care of the needs of our highways and the needs of our transit systems. I think it is a credit to that balance that in the Environment and Public Works Committee and in the Banking Committee—the two committees that have principal jurisdiction over the highway program and over the transit program—we had unanimous support on bringing this bill forward. That is how we should be proceeding to consider legislation. We have that type of bipartisan cooperation because this bill is properly balanced.

Let me also point out that we have received hundreds of letters from organizations that support the passage of the surface transportation reauthorization act. We have the U.S. Chamber of Commerce, we have the AFL–CIO, we have businesses, we have labor groups, we have local communities, we have national groups.

This bill has been put together in a way where we can get it done this year, and it would be very important for the people of this country and for our economy.

Let me talk a little bit about my State of Maryland and the Maryland department of transportation. They have given us a list of projects that will move forward if we can get this bill reauthorized, from the beltway around Baltimore, to critical roads in Montgomery and Prince George's Counties, to our rural areas. I could share some of those specific examples. But this will affect the ability of Maryland to move forward with critical roads and transit needs, and we need to get that done.

I want to talk a little bit about some of the specific issues that are in the bill that I want to highlight.

The Appalachian Development Highway System is one for which we have put a separate provision historically in the code because we recognize that in bringing economic opportunity to that part of our Nation, which includes West Virginia, Maryland, and Pennsylvania—and it also includes some of our Southern States that are in the Appalachia highway region—it is tough to get jobs there. I was just recently in the most western part of Maryland up in Garrett County, and I can tell you it is difficult to get companies to move into that region. One of the problems is that you have to go over the mountains. It is not easy to get over the mountains.

We have a real opportunity around Cumberland, MD, to be able to expand dramatically the economic opportunities and jobs by completing the north-south highway that goes through Pennsylvania, Maryland, and West Virginia. Now there is reason to celebrate that in this bill that can become a reality. There is an amendment I had offered that is included in this legislation that provides the toll credits so we can advance this project. It was a major issue needed, particularly in the Pennsylvania part of this north-south highway.

So we do have reason to celebrate that in this legislation we have a way of completing the Appalachian Development Highway System in my part of the country.

Senator ROCKEFELLER has been working very closely on this issue, and I really applaud his leadership. We are going to be looking to see whether we might be able to strengthen it more, through amendments to this bill, to make sure these projects get the priority to which they are entitled.

For the sake of flexibility, we have combined many of the specific programs into more general programs. That is part of the balance in this legislation—to give greater flexibility to local governments. That is important. But we also want to make sure the national priorities receive the attention they need, and the Appalachian Development Highway System is a national priority. We want to make sure that is, in fact, done.

I wear another hat as chair of the Water and Wildlife Subcommittee on the Environment and Public Works Committee, and I want to do everything we can to make sure the Federal

Government, as a partner in developing highways and roads and transit systems, does what is important for clean water in our communities. A large part of the pollutants that enter into our waters comes from storm runoff. In the Chesapeake Bay region, the largest growth source of pollutants going into the Chesapeake Bay comes from storm runoff. Well, highway construction can help or hurt storm runoff. If you do it the right way, you actually can help keep pollutants out of our streams and rivers and bays. So I am hopeful that during the discussion of this bill on the floor of the Senate, we will look for ways we can make this bill helpful in the best practices being used in order to deal with storm runoff, as we deal with major transportation programs in this country.

One of the programs I have spent a lot of time on is the Transportation Enhancement Program, the TE Program. That has been used by local governments to do what is critically important to our communities. I could talk about bicycle paths. I could talk about paths that have connected communities, which has allowed us to take cars off the roads. This is a small amount of money, but it becomes very important for getting motorists off the roads. We have the use of the Transportation Enhancement Program so it is safe for motorists who want to pull off to the side of the road to see the vistas. We have used funds for that. That is a safety issue.

So transportation enhancements are important programs. We want to make sure the flexibility and funding opportunities remain. Chairman BOXER has been very careful to work out an arrangement so we can advance that, and I thank her for it. I have been working with Senator COCHRAN, and we are hoping to offer an amendment that will make it clear we need to work with the local governments as we look at how the transportation enhancement funds are being used.

Let me tell you about another opportunity I think we could have in the consideration of this bill, and that deals with our veterans.

There is a way we could use the training veterans receive while in military service to help when they come back here as far as truckdrivers are concerned. We are looking for an amendment in regard to that area where we could advance that issue.

There are many areas in this bill that we think are extremely important to advance our needs. It is a bipartisan bill. We have to get this done.

I know Senator BOXER is on the floor. Once again, I compliment her for her patience and leadership in working through each of these issues.

We are looking forward to a robust debate on the floor of the Senate. I hope Members who have amendments will allow us to proceed. Let's take a look at amendments, but let's proceed in the spirit in which the Environment and Public Works Committee, the Banking Committee, and the Finance Committee reported the bills to the Senate; that is, listen to each other, do not lose sight of the prize of getting this bill done, and be willing to compromise so that we can maintain the type of bipartisan cooperation we need in order to get this bill enacted. If we do that, we will be doing something so important to our country.

This bill will create jobs. This bill will help our economic recovery. This bill will help our future. I am proud to be part of the group that has brought this bill forward to the floor of the Senate.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CARPER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CARPER. Mr. President, I rise this afternoon to speak in favor of moving ahead for progress in the 21st century, something that most Americans—almost all Americans—have to be in favor of, and if a lot of them knew about this legislation, I think they would be in favor of it too.

It has been 862 days since SAFETEA-LU expired—862 days. That legislation was written in 2003, passed this body and signed into law in 2005. We have extended that legislation, SAFETEA-LU, eight times since it expired in 2009, brought it back from the dead eight times.

John Chambers, who is the CEO of a big technology company called CISCO, likes to say that the key to global economic competitiveness is having the best workforce and the best infrastructure in the world. He has said that is where the jobs will go in the 21st century—best workforce, best infrastructure, you will get the jobs. We must continue to modernize—in the spirit of those words—modernize and maintain our infrastructure if it is to remain the best.

I wish to start today by congratulating Senators BOXER and INHOFE for pulling together—and their staffs and subcommittee staffs as well—I wish to start by congratulating them for pulling together a bipartisan Transportation bill that begins to address America's infrastructure needs. This comes on the heels of our passing earlier this week a conference report, a compromise on the FAA reauthorization to bring the air traffic control system of our country into the 21st century and to also begin rebuilding and improving our airports as well. This is a pretty good one-two punch in the period of 1 week.

This legislation before us today makes key reforms to our Federal transportation policy that will help make the best use of our taxpayers' dollars. The legislation sets clear national goals for transportation investment. We do not just throw money at these problems; we actually strive to achieve a number of specific goals. And this bill asks State transportation departments to do their part to achieve those national goals. It accomplishes this by implementing new performance measures that will help to hold States accountable for the outcomes of the investments we are prepared to make. This will ensure that we are building the most effective multimodal transportation network we can by putting our dollars to the most productive use.

Passing this legislation is critically important to America's economic health at home and our competitiveness abroad. We have heard that here today, and we will hear it for the next several days. This legislation, if adopted and signed into law, will create or save several millions of jobs, in a day when we need every job we can save or create, in States such as New Mexico, States such as Delaware, and 48 other States as well.

In my State of Delaware, for example, we are planning significant new transportation investments. We already have a bunch of them underway, but new ones will contribute to our State's productivity. Some of those will help to relieve the congestion along important corridors such as I–95. We have already done some good work in putting in highway-speed E-ZPass on I–95 through the toll plaza to expedite and move the flow of traffic. We are now working on a big intersection where I–95 intersects with State Route 1, a major north-south highway. That has been a big bottleneck for years. We have some good work going on with that. We want to be able to finish that. Other improvements will allow shippers to move freight more quickly and reliably down roads such as Route 301, which comes up through Maryland and the Delmarva Peninsula into Delaware on its way to I–95.

Each of my colleagues could no doubt talk about similar efforts in their State. Each of these projects is part of our national transportation system. Taken together, the system is greater than the sum of its parts. Having a world-class transportation system has helped to make America what it is today. This bill will ensure that we have a transportation system that allows America to return to prosperity and to grow that prosperity.

I am looking forward to debating this bill on the Senate floor. I appreciate the time to get started on that here today. As a Senator and as a recovering Governor, I know that everything I can do I can do better, and as good as this legislation is I think there is always room for improvement.

I have never introduced a perfect bill. My friend who is presiding over the Senate may have, but I am not sure. As good as this legislation is, there is room for improvement.

I plan to bring forward a couple amendments that I think will improve

the bill. We talked about a few in the markup in the full committee. For example, I believe we need to do more on the issue of traffic congestion. I go back and forth on the train about every day and night, and in the morning I see traffic lined up for miles, trying to get from north to south and parallel to the Northeast corridor of Amtrak, as we zip along. This city is recognized as maybe the most congested city in America.

In 2010 I am told that drivers in the United States in the more urban and suburban areas wasted some 1.9 billion gallons of fuel due to traffic congestion. That is almost 2 billion gallons of fuel. Congestion is a major challenge in larger U.S. cities and increasingly even in smaller cities and towns too.

The burden and the cost of traffic congestion is felt by both travelers and freight shippers, diminishing our quality of life and costing us money. According to the Texas Transportation Institute—they come up with this study that is announced every year—the average commuter across the country spent 34 hours sitting in traffic—not moving at 40, 30, 20, or 10 miles an hour but sitting in traffic. That is up from 14 hours in 1982. This burden lowers productivity and results in wasted fuel and cost Americans more than $100 billion in 2010, or nearly $750 wasted for every commuter. Traffic congestion is also increasingly hurting the reliability of the transportation system, which is particularly important to freight shippers, where the value each minute can be as much as $5. It is about $300 an hour. As America's economy continues to recover, we must make sure that traffic is not a drag on job growth. According to that same Texas Transportation Institute, by 2015—3 years from now—the cost of gridlock will rise from $101 billion to something like $133 billion.

That is the bad news. There is good news too. Fortunately, we have new tools to address congestion. For example, better management of accidents, improved timing of traffic signals, real-time traveler information, and managed toll lanes—and I will talk more about that next week—all provide low-cost congestion benefits. These are just a few of the strategies that have been helping passengers and freight shippers to better anticipate, avoid, and manage the impact of congestion. They are smart and are being successfully used on a smaller scale. They are ideas we want to replicate in cities and counties and States across the country. I will offer an amendment that would, in the States with the worst congestion, target funding for these cost-effective congestion-relief strategies. My amendment will help to give Americans some of their time and money back. It will help shippers grow their businesses too. I hope my colleagues will support it.

Second, I believe that anything worth having is worth paying for. If we will not raise user fees at the Federal level, we should at least stop prohibiting States from doing so if that makes sense. I will offer an amendment to give States more flexibility to use tolls and user fees on their roadways. An increasing number of States are looking at tolls and user fees as a source of funding, and the Federal Government should not stand in their way.

We have used tolls as a source of revenue in Delaware for years, and it has helped us to maintain and improve the critical I–95 corridor and to provide a north-south corridor that stretches from the northern part of the State past Dover, past Dover Air Force Base and the central part of Dover.

Toll revenue is also often a critical part of forming public-private partnerships, which I know many of my colleagues support. I hope my colleagues will join me in supporting this amendment.

In closing, Congress needs to act on transportation legislation. The rest of the country is counting on us. The infrastructure of our country gets graded on an annual basis by, among others, the engineers of our Nation. They look at transportation more broadly than just highways and bridges. And it is not just railroads, bridges, and ports, they look at all of it. Last year, the grade they gave us was a D. That is not as in ''delightful,'' and that is not as in ''distinguished''—that is maybe more in the area of ''derelict.'' We can do a whole lot better.

We have taken action this week with respect to our air traffic control systems. We have taken a step toward beginning to rebuild and improve our airports. The legislation will let us, in the next 24 months, make our roads, highways, and bridges safer, less congested, and something we can treasure as a real asset.

Lastly—and I have said this before and it bears repeating—the major job of government—not the only but a major job of government—is to provide a nurturing environment for job creation and job preservation. It is not the only job of government, but it is a big job of government. A big part of creating that environment for job creation and preservation is a road, highway, and bridge infrastructure that we can all be proud of in the 21st century. This legislation will help us go in that direction. It is important to follow on the heels of this legislation and not just waste 2 years but build on it to do smarter things in the years to come.

That having been said, while the chairman is here, I thank her for her leadership. People say: Why can't Congress get anything done? I think the way Senator BOXER and Senator INHOFE have worked together on this legislation, with the staffs, is a great model for the rest of us. We thank them for their leadership.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mrs. BOXER. Mr. President, I thank the Senator from Delaware because he and the occupant of the chair are very important members of this great committee, the Environment and Public Works Committee. As one or our most senior Members, he has taken a tremendous interest in everything we do. I look to his leadership on a number of issues, including controlling mercury, which is dear to his heart and mine. He is a leader on nuclear plant safety and has been extremely helpful. I thank him for the good role he plays on that committee.

We will have a number of amendments. It is going to be delicate with the amendment process. That is fine. I encourage everybody, if they have an amendment, to go for it. But we have an agreement that the leadership on the committee—we are either all going to go for an amendment or not. We don't want to stymie this.

I appreciate the Senator alerting us that he is going to offer those two amendments. I urge the Senator to get them to us so we can share them with Senator INHOFE.

We have received another letter of support, which I am proud to put in the RECORD. I ask unanimous consent to have it printed in the RECORD.

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

FEBRUARY 9, 2012.

DEAR SENATOR: The twenty nine national associations and construction trade unions that comprise the Transportation Construction Coalition (TCC) strongly urge all members of the Senate to vote for the motion to proceed on S. 1813, the ''MAP–21'' surface transportation reauthorization proposal. This legislation would provide critical investments and policy reforms needed to improve the nation's highway and bridge network.

The federal highway and public transportation programs have been operating under a series of temporary extensions for more than two years. MAP–21 would end that dysfunctional cycle and restore stability to the federal surface transportation programs. In a very challenging budgetary environment, the legislation would authorize current (inflation-adjusted) levels of highway and public transportation investment. Furthermore, the Senate Finance Committee has developed a bipartisan plan to assure these investments do not add to the federal deficit.

The TCC has long supported reforming the federal highway and public transportation programs to focus on national goals and deliver transportation benefits faster and at lower cost. Specifically, we support steps to accelerate the transportation project environmental review and approval process through the use of deadlines, flexibility for state departments of transportation, expedited reviews for projects with no significant impact, and greater authority for the U.S. Department of Transportation with other federal agencies. The TCC also supports efforts to increase the involvement of the private sector resources to help meet the nation's transportation challenges.

We commend all senators involved in developing a comprehensive, bipartisan reauthorization proposal that would continue the strong tradition of federal leadership in the area of transportation policy. We urge all members of the Senate to vote to move the

surface transportation reauthorization process forward by supporting the motion to proceed on S. 1813.

Sincerely,

TRANSPORTATION CONSTRUCTION COALITION.

Mrs. BOXER. It is from the Transportation Construction Coalition. They are urging all of us for an ''aye'' vote on the motion to proceed to the Transportation bill. They have said wonderful things about our bill—that they like the steps we have taken to accelerate all the reviews and flexibility for the States, greater authority for our States, and the fact that we did this in a comprehensive way and in a bipartisan way. I am very grateful.

What I would like to do is read the names of these organizations because it shows you the depth in America of the support for this bill: The American Road and Transportation Builders; Associated General Contractors; the American Coal Ash Association; the American Concrete Pavement Association; the American Concrete Pipe Association; the American Council of Engineering Companies; the American Subcontractors Association; American Iron and Steel Institute; American Society of Civil Engineers; American Traffic Safety Services Association; the Asphalt Emulsion Manufacturers Association; Asphalt Recycling and Reclaiming Association; Associated Equipment Distributors; Association of Equipment Manufacturers; Concrete Reinforcing Steel Institute; International Slurry Surfacing Association; International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; International Union of Operating Engineers; Laborers-Employers Cooperation and Education Trust; Laborers' International Union of North America; National Asphalt Pavement Association; National Association of Surety Bond Producers; National Ready Mixed Concrete Association; National Stone, Sand & Gravel Association; National Utility Contractors Association; Portland Cement Association; Precase/Prestressed Concrete Institute; the Road Information Program; and the United Brotherhood of Carpenters and Joiners of America.

The reason I read these 29 organizations—there are 1,000 organizations behind our bill—I want colleagues to understand how people have come together from all sides of the aisle—union workers, nonunion workers, the businesses and union businesses. Everybody has come together—Democrats, Republicans, and Independents—on our committee. The reason is that we are coming out of a very tough and deep recession where housing was hurt deeply, and we are having a very tough time coming out of the housing recession. Construction workers have a 15-percent or more unemployment rate, compared to an 8.3-percent unemployment rate in the rest of the workforce. If you put them into Super Bowl stadiums, they would fill 15 Super Bowl stadiums. Imagine that.

We have an obligation to come together on behalf of jobs and the aging infrastructure that needs to be fixed. We have bridges collapsing and roads that are not up to par. We have problems in this Nation, and we can stop them and solve them only if we come together.

I will end here because my colleague would like the floor, and that is fine. I think we will have an opportunity at around the 2:15 hour or so to come together united and give a great vote of confidence to this bill, to move it ahead with an overwhelming vote. Maybe I am dreaming, but I hope for well over 60 votes to go forward. Then let's get to the amendment process and let's not offer extraneous amendments that have to do with everything but transportation. Let's keep this focused. Then we can get to conference and get a bill to the President.

In closing, if our bill is the law of the land, we would save 1.8 million jobs and be able to create up to another million jobs. There is a lot riding on this bill. I hope we will come together this afternoon.

Thank you for your indulgence.

I yield the floor.

EXECUTIVE SESSION

NOMINATION OF CATHY ANN BENCIVENGO TO BE A UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of Cathy Ann Bencivengo, of California, to be United States District Judge for the Southern District of California.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be 30 minutes of debate, equally divided, prior to a vote on the nomination, with the time already consumed counting toward the majority's portion.

The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I rise to speak on behalf of the nomination of magistrate judge Cathy Ann Bencivengo to the position of district judge for the Southern District of California.

Judge Bencivengo will fill a judicial emergency vacancy in a judicial district along the southwest border that has one of the highest and most rapidly increasing criminal caseloads in the country.

The Southern District of California includes San Diego and Imperial Counties. It borders Mexico, and it consequently has a large immigration caseload. It ranks fourth in the country in terms of criminal case filings per authorized judgeship.

The district's former chief judge, Irma Gonzalez, wrote me a letter urging Judge Bencivengo's confirmation and highlighting the felony caseload crisis in the district. As Chief Judge Gonzalez explained, since 2008 criminal case filings in the district have increased by 42 percent and civil case filings by 25 percent. In the past fiscal year alone, criminal cases had risen 17 percent up to the time of her letter. It is, in fact, a judicial emergency.

The ACTING PRESIDENT pro tempore. The Senator is advised the previous allotted time has expired.

Mrs. FEINSTEIN. I ask unanimous consent to speak for 7 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mrs. FEINSTEIN. Let me tell everyone a little about Judge Bencivengo. She is a consensus nominee who was approved by the Judiciary Committee by a voice vote. That does not often happen. There was no objection from any colleague on any side of the aisle.

She was recommended to me by a bipartisan judicial selection committee which I have established in California to advise me in recommending judicial nominees to the President. This committee reviews judicial candidates based on their legal skill, reputation, experience, temperament, and overall commitment to excellence.

Judge Bencivengo has been a U.S. magistrate judge in San Diego for the last 6 years, and she has earned an outstanding reputation in that judicial role.

Throughout my advisory committee's process, Judge Bencivengo has actually set herself apart as a person who would be truly exceptional. She was born in New Jersey. She began her undergraduate career at Rutgers. She earned a bachelor's in journalism and political science and a master's from Rutgers as well.

She worked for a leading American corporation—Johnson & Johnson—in New Brunswick. She then attended the University of Michigan Law School, where she excelled, graduating magna cum laude, and was inducted into the Order of the Coif.

After law school, she joined the San Diego firm of Gray Cary, which later became part of a major international law firm. She became a founding member of the firm's patent litigation group. Her knowledge of patent law, which she honed in law school and in private practice, made her a valued resource for her colleagues and clients, so she quickly rose through the ranks at her firm. She was selected as the national cochair of her firm's patent litigation group, a role in which she managed 70 patent attorneys.

In 2005, she became a magistrate judge, a role in which she has served as a serious and thoughtful jurist. Since her appointment, she has published 180 opinions, over 190 reports and recommendations, over 1,800 orders on nondispositive motions, and roughly 800 of her orders involved felony criminal cases.

She has substantial expertise in patent law, which will be welcome in the district, which is part of a new Federal judicial program designed to assign more patent cases to judges who are experts in the field of patent law. So she will be helpful.

Judge Bencivengo has received high praise from any number of people. I know of no opposition to her confirmation. I think this advice and consent process will yield a very good, seasoned San Diego magistrate judge for the district court, and I am very proud to recommend her and to have had unanimous consent of the Judiciary Committee for her confirmation.

I see Senator LEE on the floor. Perhaps I could ask unanimous consent that when Senator LEE concludes, and if there is time remaining, I be recognized to speak for a couple minutes as in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Utah.

Mr. LEE. Mr. President, I ask unanimous consent to speak for a period of up to 7 minutes.

The ACTING PRESIDENT pro tempore. The Senator has that time.

Mr. LEE. Mr. President, I rise in opposition to this nomination. I do so not because of the qualifications of this particular nominee, but instead I do so in defense of the U.S. Constitution.

In opposing President Obama's appointments, I have repeatedly made clear this is a constitutional issue. Each time I have spoken—and I have done so on numerous occasions—I have set forth in detail the reasons why I believe on a legal basis, on a constitutional basis, why President Obama's recent purported recess appointments are unprecedented and unconstitutional. I have also made absolutely clear that my opposition to President Obama's appointments is not partisan and that I will hold a Republican President equally accountable whenever any Republican President makes a similarly unconstitutional claim of power.

This President has enjoyed my cooperation up to this point. I voted for many, if not most, of his nominees. That cooperation cannot continue—not in the same way he has enjoyed it up to this point. In light of the fact he has disrespected our authority within this body, he has disrespected the Constitution.

Unfortunately, many of my colleagues have refused to engage on the real substance of this issue. Instead, they have repeatedly changed the subject to partisan politics, the nominations process, and Richard Cordray's qualifications to head the CFPB. Even worse, and despite my repeatedly making clear I intend to hold any Republican President to the same standard to protect the institutional and constitutional prerogatives of the Senate rather than the interests of any political party—given those are at stake—the Democrats, including the President himself, have accused me of playing politics. I wish to be clear again: This is not the case. I am here to defend the constitutional prerogatives of the Senate and the separation of powers and the system of checks and balances that are at the heart of our constitutional system.

The Senate's advice-and-consent role is grounded in the Constitution's system of checks and balances. In Federalist 51, James Madison wrote:

> . . . the great security against a gradual concentration of the several powers in the same [branch of government], consists in giving to those who administer each [branch] the necessary constitutional means and personal motives to resist encroachments of the others.

Among those constitutional means is the Senate's ability to withhold its consent for a nominee, forcing the President to work with Congress to address that body's concerns.

The key conclusion of the Department of Justice's Office of Legal Counsel memorandum, on which President Obama relied in making these recess appointments, is that the President may unilaterally decide and conclude that the Senate's pro forma sessions somehow do not constitute sessions of the Senate for purposes relevant to the recess appointments clause, in clause 3 of article II, section 2. If allowed to stand, this deeply flawed assertion would upend an important element of the Constitution's separation of powers. Under the procedures set forth by the Constitution, it is for the Senate, not for the President, to determine when the Senate is in session. Indeed, the Constitution expressly grants the Senate that prerogative, the power to ''determine the Rules of its Proceedings.''

Commenting on this very provision in his authoritative constitutional treatise, Joseph Story noted:

> [t]he humblest assembly of men is understood to possess [the power to make its own rules,] and it would be absurd to deprive the councils of the nation of a like authority.

Yet this is precisely the result of President Obama's attempt to tell the Senate when it is or is not in recess.

I am saddened some of my colleagues in the Senate are not more jealous of this body's rightful constitutional, institutional prerogatives. As they well know, the Constitution's protections do not belong to any one party, and its structural separation of powers is meant to protect against the abuses of present and future Presidents of both parties. Acquiescing to the President in the moment may result in temporary political gain for the President's party, but relinquishing this important piece of the Senate's constitutional role has lasting consequences for Republicans and Democrats alike.

It is on this basis, and because of the oath I have taken to uphold the Constitution of the United States, that I find myself dutybound to oppose this nomination. I strongly urge my colleagues on both sides of the aisle to take seriously their obligation both to the Constitution and to the institutional prerogatives of the Senate and to do the same.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I would like to briefly respond to Senator LEE's comments.

I understand the reasons for which he is opposing this nominee. I would again point out that, in my opinion, based on what I heard the distinguished Senator say, it has nothing to do with the nominee. It has to do with a peripheral issue. I would hope a majority of the Senate would understand this is a totally noncontroversial, totally capable, totally qualified, and totally good nominee. To hold her confirmation hostage is something that doesn't redound well on this body.

This is a judicial emergency in the Southern District of California, and we need to get this judge approved. So while I appreciate the Senator's comments—I think most of us are well aware of the feelings on the other side—I think somehow, some way, we have to come together and prevent what is happening. And what is happening is, if I don't get my way on something, I am going to hold up appointments, I am going to hold up confirmations, and I am going to do whatever I can to show I have power to disrupt this body.

In essence, the body can be disrupted. We know that. There are very strong minority rights in the Senate rules of order. But at the same time, we have an obligation to see that qualified people who want to serve in this government—in this case in the judicial arm, in the Federal Court system—have an opportunity to do so, and where there is real danger in terms of overly high caseloads, we can respond and get qualified nominees in place.

I appreciate what the Senator had to say. I understand it. But I appeal to this body: Please vote to approve Cathy Bencivengo to the Southern District of California.

Mr. LEAHY. Mr. President, today, the Senate will finally vote on the nomination of Judge Cathy Bencivengo to fill a vacancy on the the U.S. District Court for the Southern District of California, where she has served as a Magistrate Judge since 2005. An experienced judge and lawyer, with 17 years in private practice before becoming a Magistrate Judge, Judge Bencivengo received the highest possible rating from the ABA's Standing Committee on the Federal Judiciary, unanimously ''well qualified.'' Her nomination, which has the strong support of her home state Senators, Senators Feinstein and Boxer, was reported unanimously by the Judiciary Committee on October 6. Yet, despite the support of every Member of the Judiciary Committee, Democratic and Republican, and despite vacancies across the country in nearly one out of every 10 Federal judgeships, it has taken over 4

months for Senate Republicans to consent to a vote on Judge Bencivengo's nomination.

I thank the Majority Leader for securing today's vote. There is no reason or explanation why the Senate Republican leadership will not consent to vote on the other 18 judicial nominations waiting for final Senate action. All but three of them were reported by the Judiciary Committee without opposition, just like Judge Bencivengo's nomination.

Earlier this week I urged Senate Republicans to join with Democrats and take long overdue steps to remedy the serious vacancies crisis on Federal courts throughout the country. Consenting to vote on a single judicial nomination, only the third such vote we have had this year, is not much in the way of progress.

There is no reason or explanation for why Senate Republicans continue to block a vote on the nomination of Jesse Furman to fill a vacancy on the Southern District of New York. His nomination was voted out of the Judiciary Committee on September 15, nearly 5 months ago, without opposition from a single member of the Committee and a month before the nomination being considered today. Mr. Furman, an experienced Federal prosecutor who served as Counselor to Attorney General Michael Mukasey for 2 years during the Bush administration, is a nominee with an impressive background and bipartisan support. We should have voted on his nomination many months ago, and certainly before the end of the last session. Senate Republicans have now skipped over that nomination and stalled it for almost 5 months.

Senate Republicans continue to block even judicial nominations with home State support from Republican Senators. Republican Senator MARCO RUBIO and Democratic Senator BILL NELSON of Florida both introduced Judge Adalberto Jordan of Florida to the Judiciary Committee when we held his confirmation hearing last September for his nomination to fill a judicial emergency vacancy on the Eleventh Circuit, and both strongly support his nomination.

Judge Jordan is an experienced jurist who has served as a judge for the Southern District of Florida since 1999. If confirmed, Judge Jordan will be the first Cuban-born judge to serve on the Eleventh Circuit, which covers Florida, Georgia and Alabama. Born in Havana, Cuba, Judge Jordan immigrated to the United States at age 6, going on to graduate summa cum laude from the University of Miami law school. After law school, he clerked for Judge Thomas A. Clark on the Eleventh Circuit, the court to which he is now nominationed, and for Justice Sandra Day O'Connor, a President Reagan appointee to the United States Supreme Court. Judge Jordan has been a prosecutor in the Southern District of Florida, serving as Deputy Chief and then Chief of the Appellate Division. Judge Jordan has been a professor, since 1990 teaching at his alma mater, the University of Miami School of Law, as well as the Florida International University College of Law. It is no suprrise that the ABA's Standing Committee on the Federal Judiciary unanimously rated Judge Jordan ''well qualified'' to serve on the Eleventh Circuit, the highest possible rating from its non-partisan peer review. It is also no surprise that his nomination was reported unanimously by the Judiciary Committee nearly 4 months ago. The surprise is that Senate Republicans continue to stall action on this nomination for no good reason.

Judge Jordan is the kind of consensus judicial nominee that should be welcomed as one of the many examples of President Obama reaching out to work with Republican and Democratic home State senators and the kind of superbly qualified nominee we should all encourage to serve on the distinguished bench of Federal appeals court judges. In the past the Senate would have voted on his nomination within days or weeks of its being reported unanimously by the Judiciary Committee. Yet Republicans refused to consent to a vote on Judge Jordan's nomination before the end of the last session and it has been stalled on the Senate Calenadar for nearly 4 months. When we finally do vote on Judge Jordan's nomination I am certain he will be confirmed with broad bipartisan support, perhaps unanimously. There is no good reason the Senate is not voting to confirm Judge Jordan today.

If caseloads were really a concern of Republican Senators, as they contended when they filibustered the nomination last December of Caitlin Halligan to the D.C. Circuit, they would not continue to block us from voting on Judge Jordan's nomination to fill a judicial emergency vacancy on the Eleventh Circuit, one of the busier circuits in the country. They would not continue to block a vote on the nomination of Judge Jacqueline Nguyen, reported last December to fill a judicial emergency vacancy on the Ninth Circuit, the busiest Federal appeals court in the country. They would consent to vote on the nomination of Paul Watford, a well-qualified nominee to fill another judicial emeregency on the Ninth Circuit. They would stop blocking us from voting on the nominations of David Nuffer to fill a judicial emergency vacancy on the District of Utah, Michael Fitzgerald to fill a judicial emergency vacancy on the Central District of California, Miranda Du to fill a judicial emergency vacancy on the District of Nevada, Gregg Costa to fill a judicial emeregency vacancy on the Southern District of Texas, and David Guaderrama to fill a judicial emergency vacancy on the Western District of Texas.

Of the 19 judicial nominations now awaiting a final vote by the Senate, 16 were reported by the Judiciary Committee with the support of every Senator on the Committee, Democratic and Republican. Month after month and year after year, Senate Republicans find excuses to delay confirmation of consensus judicial nominees for no good reason. These delays are a disservice to the American people. They prevent the Senate from fulfilling its constitutional duty. And they are damaging to the ability of our Federal courts to provide justice to Americans around the country.

The cost of this across-the-board Republican obstruction is borne by the American people. More than half of all Americans, nearly 160 million, live in districts or circuits that have a judicial vacancy that could be filled today if Senate Republicans just agreed to vote on the nominations that have been reported favorably by the Judiciary Committee. It is wrong to delay votes on these qualified, consensus judicial nominees. The Senate should fill these numerous, extended judicial vacancies, not delay final action for no good reason.

By nearly any measure we are well behind where we should be. Three years into President Obama's first term, the Senate has confirmed a lower percentage of President Obama's judicial nominees than those of any President in the last 35 years. The Senate has confirmed just over 70 percent of President Obama's circuit and district nominees, with more than one in four not confirmed. This is in stark contrast to the nearly 87 percent of President George W. Bush's nominees who were confirmed, nearly nine out of every 10 nominees he sent to the Senate.

We remain well behind the pace set by the Senate during President Bush's first term. By this date in President Bush's first term, the Senate had confirmed 170 Federal circuit and district court nominations on the way to 205, and had lowered judicial vacancies to 46. By the time Americans went to the polls in November 2004, we had reduced vacancies to 28 nationwide, the lowest level in the last 20 years. In contrast, the Senate has confirmed only 125 of President Obama's district and circuit nominees, and judicial vacancies remain over 85. The vacancy rate is double what it was at this point in the Bush administration.

I, again, urge Senate Republicans to abandon their obstructionist tactics and do as Senate Democrats did when we worked to confirm 100 of President Bush's judicial nominees in 17 months. I urge them to work to reduce judicial vacancies as we did by considering and confirming President Bush's judicial nominations late into the Presidential election years of 2004 and 2008, reducing the vacancy rates in those years to their lowest levels in decades. That is the only way we have a chance to make up some of the ground we have lost and to address the serious and extended crisis in judicial vacancies.

I congratulate Judge Bencivengo on her confirmation today and hope that

we can soon take up the rest of the 18 judicial nominations still awaiting a Senate vote.

Mr. GRASSLEY. Mr. President, today the Senate is considering the nomination of Cathy Ann Bencivengo to be U.S. district judge for the Southern District of California. I support this nomination which will fill the vacancy that has been created by Judge Jeffrey Miller taking senior status. I would also note that this vacancy has been designated as a judicial emergency.

After today, the Senate will have confirmed 126 nominees to our article III courts. I would note that even as we continue to reduce judicial vacancies, the majority of vacancies have no nominee. In fact, 46 of 86 vacancies have no nomination. Furthermore, 18 of the 33 seats designated judicial emergencies have no nominee. So when I hear comments about ''unprecedented'' vacancy rates, I would ask my colleagues and the other interested parties to look first to the White House. The fact is, the Senate is doing its job in providing advice and consent to the President's judicial nominees.

Judge Cathy Ann Bencivengo presently serves as a U.S. magistrate judge for the Southern District of California. She was appointed to that court in 2005.

She received a bachelor of arts from the Rutgers University in 1980, a masters from Rutgers in 1981, and her juris doctorate from University of Michigan Law School in 1988.

Upon graduating law school, Judge Bencivengo became an associate at the law firm DLA Piper. There, she worked as a civil litigator, primarily handling intellectual property cases. In 1996, she became a partner at DLA Piper. She also was the national cochair of patent litigation for DLA Piper from 1993 to 2005.

In 1994, Judge Bencivengo was appointed as a judge pro tem for the San Diego Small Claims Court. She served there until 2006, volunteering approximately six times a year and hearing judgments on about 100 cases.

Since becoming a magistrate judge in 2005, Judge Bencivengo has presided over two cases that have gone to final verdict.

The American Bar Association Standing Committee on the Federal Judiciary has rated Judge Bencivengo with a unanimous ''well-qualified'' rating.

Mrs. BOXER: Mr. President, I am proud to vote for the confirmation of Magistrate Judge Cathy Ann Bencivengo to the U.S. District Court for the Southern District of California. Judge Bencivengo was recommended to the President by my colleague, Senator FEINSTEIN, and will be a great addition to the Federal bench.

Judge Bencivengo will bring to the bench her broad experience as a skilled lawyer and a Federal magistrate. A graduate of Rutgers University and the University of Michigan Law School, Judge Bencivengo served as a partner and the National Co-Chair of Patent Litigation Group for the international law firm of DLA Piper. In 2005, she received an appointment to become a Magistrate Judge for the Southern District of California, where she has authored more than 170 opinions.

I congratulate Judge Bencivengo and her family on this important day, and urge my colleagues in the Senate to join in voting to confirm this highly qualified nominee to the Federal bench.

I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The question is, Shall the Senate advise and consent to the nomination of Cathy Ann Bencivengo, of California, to be United States District Judge for the Southern District of California.

Mrs. FEINSTEIN. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. KYL. The following Senators are necessarily absent: the Senator from Illinois (Mr. KIRK), the Senator from Kansas (Mr. MORAN), the Senator from Kansas (Mr. ROBERTS), and the Senator from Mississippi (Mr. WICKER).

The PRESIDING OFFICER (Mr. SANDERS). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 90, nays 6, as follows:

[Rollcall Vote No. 16 Ex.]

YEAS—90

Akaka	Feinstein	McConnell
Alexander	Franken	Menendez
Ayotte	Gillibrand	Merkley
Barrasso	Graham	Mikulski
Baucus	Grassley	Murkowski
Begich	Hagan	Murray
Bennet	Harkin	Nelson (NE)
Bingaman	Hatch	Nelson (FL)
Blumenthal	Heller	Portman
Blunt	Hoeven	Pryor
Boozman	Hutchison	Reed
Boxer	Inhofe	Reid
Brown (MA)	Inouye	Rockefeller
Brown (OH)	Isakson	Rubio
Burr	Johanns	Sanders
Cantwell	Johnson (SD)	Schumer
Cardin	Johnson (WI)	Sessions
Carper	Kerry	Shaheen
Casey	Klobuchar	Snowe
Chambliss	Kohl	Stabenow
Coats	Kyl	Tester
Coburn	Landrieu	Thune
Cochran	Lautenberg	Toomey
Collins	Leahy	Udall (CO)
Conrad	Levin	Udall (NM)
Coons	Lieberman	Vitter
Corker	Lugar	Warner
Cornyn	Manchin	Webb
Durbin	McCain	Whitehouse
Enzi	McCaskill	Wyden

NAYS—6

Crapo	Lee	Risch
DeMint	Paul	Shelby

NOT VOTING—4

Kirk	Roberts
Moran	Wicker

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table. The President shall be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate resumes legislative session.

MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT—MOTION TO PROCEED

CLOTURE MOTION

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to Calendar No. 311, S. 1813, a bill to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes:

Barbara Boxer, Max Baucus, Mark L. Pryor, John D. Rockefeller IV, Benjamin L. Cardin, Al Franken, Jack Reed (RI), Sheldon Whitehouse, Amy Klobuchar, Bernard Sanders, Patrick J. Leahy, Tom Udall (NM), Frank R. Lautenberg, Richard Blumenthal, Jeff Merkley, Richard J. Durbin, Harry Reid.

The PRESIDING OFFICER. By unanimous consent the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 1813, a bill to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant bill clerk called the roll.

Mr. KYL. The following Senators are necessarily absent: the Senator from Illinois (Mr. KIRK), the Senator from Kansas (Mr. ROBERTS), the Senator from Kansas (Mr. MORAN), and the Senator from Mississippi (Mr. WICKER).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 85, nays 11, as follows:

[Rollcall Vote No. 17 Leg.]

YEAS—85

Akaka	Ayotte	Baucus
Alexander	Barrasso	Bennet

Bingaman
Blumenthal
Blunt
Boozman
Boxer
Brown (MA)
Brown (OH)
Burr
Cardin
Carper
Casey
Chambliss
Coats
Coburn
Cochran
Collins
Conrad
Coons
Corker
Cornyn
Crapo
Durbin
Enzi
Feinstein
Franken
Gillibrand
Graham
Grassley
Hagan
Harkin
Heller
Hoeven
Hutchison
Inhofe
Inouye
Isakson
Johnson (SD)
Kerry
Klobuchar
Kohl
Kyl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lugar
Manchin
McCain
McCaskill
McConnell
Menendez
Merkley
Mikulski
Murray
Nelson (NE)
Nelson (FL)
Portman
Pryor
Reed
Reid
Rockefeller
Sanders
Schumer
Sessions
Shaheen
Shelby
Snowe
Stabenow
Tester
Thune
Toomey
Udall (CO)
Udall (NM)
Vitter
Warner
Webb
Whitehouse
Wyden

NAYS—11

Begich
Cantwell
DeMint
Hatch
Johanns
Johnson (WI)
Lee
Murkowski
Paul
Risch
Rubio

NOT VOTING—4

Kirk
Moran
Roberts
Wicker

The PRESIDING OFFICER. On this vote, the yeas are 85, the nays are 11. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The Senator from California.

Mrs. BOXER. Mr. President, I wish to thank my colleagues. This is a tremendous vote here to move forward with one of the most important jobs bills we could do in this session, because we are talking about protecting 1.8 million jobs and the possibility of another 1 million jobs being created through an expanded TIFIA Program which leverages local funds at very little risk to the Federal Government. So this is a good vote.

I wish to take this opportunity now to thank colleagues on both sides of the aisle, but also to thank the over 1,000 groups out there—everyone ranging from left to right and everything in between; from workers organizations, to businesses, to the Chamber of Commerce, to the AFL–CIO. It is rare we can walk down the aisle together.

But now the true test comes. We have a lot of work to do to complete this legislation, to make it real, to give that certainty out there, get those jobs going. We have a lot of work to do. We have the Banking Committee which, under the able leadership of Senators JOHNSON and SHELBY, has a title we have to add. We have to add a title from the Finance Committee. We want to add the title from the Commerce Committee. Then we would have all four committees represented in this legislation. Then we can move to get a strong vote and get it to conference, and, I have to say, tell the House side that we have a truly bipartisan bill that deserves their consideration. But if we start seeing amendments that go to issues that are unrelated to this—the hot-button issues of the day, the issues where we have the ideological divide—we are going to slow this down.

I guess I wish to say to my colleagues on the Democratic side and the Republican side: Please do not mess up this bill and load this bill with extraneous matters. Senator INHOFE and I are very happy to look at germane amendments. We are ready to look at those. We have made an agreement that if we don't agree, we are going to oppose it. We are working together. But extraneous matters don't belong on this bill unless they have overwhelming support and they are not controversial. I am very hopeful, but I have seen bills come to the floor and get loaded down and at the end of the day the American people lose. We cannot afford to lose this bill.

I want my colleagues to imagine 15 Super Bowl stadiums and imagine in your mind's eye what it looks like, and in all of those 15 Super Bowl stadiums every seat is filled, every seat is filled with a construction worker. That is how many construction workers are out of work—more than 1 million. So we cannot fail these workers. We cannot fail these businesses. These are good jobs. The housing crisis is not yet behind us. We have a long way to go. Construction has slowed down. So we need to make sure our construction workers are back on the job. We need to make sure we fix our bridges that are crumbling. We need to make sure we keep goods moving. This is a 21st century economy with an infrastructure that is not keeping up.

I want to take a moment to thank again the members of the Environment and Public Works Committee. Senator SANDERS, who is in the chair, is a very important member who is focused like a laser beam on jobs. He focuses on jobs, jobs, jobs. He knows, as I do, that we didn't get everything we wanted in this bill, not by a long shot. But we know there are times you have to put that aside for the good of the people so we get something done; and something done here is protecting 1.8 million jobs and creating up to 1 million new jobs with our expanded TIFIA.

So I thank the Presiding Officer for his hard work on getting us to this moment. I thank Senator INHOFE for his amazing cooperation; Senators BAUCUS and VITTER and all the members of the committee; Senators JOHNSON and SHELBY of Banking; Senator ROCKEFELLER, who worked so hard with Senator HUTCHISON, and we hope will resolve the outstanding issues in Commerce; Senator BAUCUS, who worked with Senator HATCH, and we did get a good Finance piece.

We are so ready to go. We are going to wait to see whether our colleagues on the other side will insist upon 30 hours going postcloture or whether they will yield back that time and allow us to get started on the amendment process.

So at this moment, I am going to put in a quorum call, note the absence of a quorum, and hope we can quickly move to amend this bill.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. SHAHEEN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BEGICH. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE ECONOMY

Mr. BEGICH. Madam President, I come to the floor with a simple message about our economy. I know we are in the process of our Transportation bill, and the chairman of the committee may come out momentarily, so I will yield when that moment happens so we keep that process going because that bill is about creating jobs and infrastructure investment. But I just wanted to comment on the fact that we have made incredible progress, and we continue to make incredible progress, when we think about where we were 3 years ago and where we are today.

I know some in Washington like to focus on scare tactics and talk how bad things are or how they could be worse if we continue on whatever path they think we are on. But the fact is we have to look at the recent notifications produced not by a bunch of politicians but by other people who are looking at the economy or investing in the economy or participating in the economy in a pretty direct way. One statistic is reflected on this incredible chart. When we look at it, it speaks for itself.

Just prior to 2009 and a little after, we had about 8 million jobs that were lost. This chart shows we have now had 22 months of consecutive growth, but actually we have had 23 months of consecutive growth. This number, which says we have had 3.2 million new jobs, is actually closer to 3.7 million new jobs in our economy since the great recession started in late 2008, early 2009.

I know people come down and say: Oh, it could be better. I don't know about you, but the way I see it, this was bad; this is better. Can we do better? We always strive to do better. That is the American way. We try to do better as we move on. But there is no question there is good news and job losses are diminishing and now gone with job gains. These are private sector job gains, which is important but, more important, the underlying issue of the job gains is small business.

If we watched the data this last month—when the unemployment rate was estimated to be a little higher, but it actually came out at 8.3, lower than almost every economist thought—all we had to do was look underneath the data point and it was very clear that small businesses were hiring. They are the backbone of this economy. If they are hiring in December and January, in months when people expect—in January especially—the economy will start slowing down, the reason they are hiring is because they see the future and they see increasing sales and the potential.

Again, I know we hear people say: Oh, it is not as good as it could be. But 8.3 is better than what everybody figured it would be. Do I want it lower? Does the Presiding Officer want it lower? Of course, we do. But the trend lines are clear.

We also had a 4-year low in U.S. jobless claims, again boosting spending in our economy. An article in CNN in late December noted ''consumer confidence shoots higher again.'' Why is that important? The more consumers are confident about the economy, the more they engage in the economy.

It is interesting to note how low refinancing rates are—3.75 percent, 3.875 percent, unbelievably low. Yet people are still hesitant. But when we start looking at the data points from the last few weeks—especially one that came out yesterday—more and more people are refinancing—a 21-percent increase last month in refinancing. Why is that important? Again, consumers feel confident. The rates are strong for them so they can get a better rate on their home. Net result: More money in their pocket for themselves to spend on their families, on whatever they want to buy—vacations, a new remodel job they want to do, the kitchen they have been holding off fixing up or that fence that is tipping over a little bit. Now they will hire a small contractor to fix it. So consumer confidence is on the rise.

Again, we will hear it is not good enough. Yes, but it doesn't mean we are done. We have a lot of work ahead of us, but we have done incredible things.

In an AP article on February 3, just last week or so, we saw the headline ''Homebuilders See Stable Housing Market Ahead.'' Let me repeat that: stable housing market. Some people will say: It is not a growing housing market. No, but before it was diving, it was sinking, it was disappearing. So ''stable'' is good. Because when we go from stable and we move to the next level, that is growth.

The automobile industry—GM. I know I talk about this one a lot. Three years ago, it was flat on its back. People said: It is not going to survive; let it go away. Today, GM, according to a January 19 article in Forbes—not a very liberal magazine—''GM is No. 1 in the World Again in Auto Sales.'' No. 1. Why is that important? Because they are hiring more people, at all ranges in salaries. Their secondary facilitator, the suppliers are hiring more people. People who ship those cars are hiring more people; again, moving forward.

In the Budget Committee a couple days ago, Fed Chairman Bernanke was surprised by this strong growth in manufacturing. Again, a few years ago, people said: Oh, manufacturing, we are never going to get back to the good old days. Again, we see growth. ''Industrial Suppliers Power Up Sales,'' says a Wall Street Journal article from January 21.

Here is another headline—this one from CNBC on December 8: ''US State Tax Revenues return to Pre-recession Levels.'' Why is this important? That shows subeconomies within States and within communities are growing—again, a stronger economy.

Back in my home State, we are making progress on the Chuckchi and Beaufort Seas, where we will see huge potential oil and gas development, with 26 billion barrels of known recoverable oil today. I think it is a lot higher, but that is what we know about. It could provide, once in production, 30,000 jobs and millions in payroll, not just throughout Alaska but throughout this country because that is U.S. oil for U.S. consumption and utilization or export, if we are in the business of selling it. But the point is, it is jobs for Alaskans, jobs for Americans.

This month, Shell got a final air permit for its drillship, putting them one step closer to exploration. There is no question in my mind we are going to make that happen. Three years ago, people were saying: We are never going to do anything in Federal waters. We will never develop our resources in Alaska because it is in Federal hands, and the laws, the rules, the regulations don't allow it. I stand here to say that after just 3 years, National Petroleum Reserve, Chuckchi and Beaufort, billions of barrels of oil are in exploration and/or development. That has happened in just 3 years.

People are right when they say in the last 30 years we have had a lot of sluggish opportunity in that field. But today it is moving forward. In 3 years, there is new activity. That is powerful for our country from a national security perspective but also from an economic security perspective.

We know ConocoPhillips—again, I already mentioned National Petroleum Reserve-Alaska—has now received its permit to move forward, and they hope to start developing in 2013.

In 2010, investments in Alaska's mining exploration totaled more than $264 million, a 47-percent increase, and one-third of the total spent on mining exploration in the United States overall was in Alaska. There is a new gold rush in Alaska with continued increasing in gold prices. Placer mining applications, generally submitted by small family-run operations, rose from 350 in 2005 to over 581 this year. Alaska even has a reality show called ''Gold Rush.''

Exports to Alaska topped over $5 billion in 2011, and China is now our No. 1 top trading partner. There are liquefied natural gas opportunities in the Asian market that we are exploring. I can assure you Alaska and Alaska companies have a strong interest in moving forward.

The good news is spreading across this country. But as I say, our work is not done. We must continue to build on this progress and secure a long-term economic stability that will protect our middle-class American families and support our small businesses moving forward. We must address the deficit. Unemployment is still too high. It is better, but it is still too high, and our housing market is still a little weak. Europe's economic situation remains uncertain, and we continue to depend on unstable sources of foreign oil.

All of that is why we must move forward on an agenda that will continue to strengthen our economy, protect middle-class families, and support small businesses, including extending the payroll tax cuts and unemployment insurance, developing a true energy plan that includes domestic oil development, address tax reform to protect the middle class, rebuild this country's infrastructure, and strengthen our housing market.

We can and must improve our economy and address long-term fiscal challenges at the same time. Even with hard work ahead, there is a lot of reason for optimism. We are moving in the right direction. We are creating jobs, and we are turning this economy around.

I will end on this note. I spend time looking at every business publication and reading what is going on not just from a global perspective but from companies themselves, and I have been seeing headlines—again, from the Wall Street Journal—such as ''Jobs Power Market Rebound: Unemployment Rate Dips to 8.3% on Broad Gains,'' ''Dow at Highest Since May 2008.''

Some people say: It is hard to gauge that based on the market. But if you are one of those people who put a little money aside for your retirement—in maybe a 401(k) or an IRA—or you have a little set-aside for the kids to go to college, then you know 2009 was a sad year. You were thinking you were going to have to work a lot longer just to make up some of that money. Today, the market is double what it was then. I would challenge people to take their 2009 March-April statements, if they have them—an education account for their kids or an IRA—and compare that to what it is today. It is better. Can it be even better than it is today? Absolutely. That is what we will continue to strive for.

Again, I am going to continue to come to the floor and talk about this great economic news. I know people want to see the worst in things sometimes, but I think what has made this country great is that, generally, we see the best in things. We see what the opportunities are and we take advantage of them. We risk a little bit—as we did with the auto bailout and the cash for clunkers. We took a little risk and walked the road alone.

Today, that is almost all paid off and, guess what. There is a thriving industry providing jobs all across the country. So we have a lot to be proud of and a lot to look forward to. We just have to keep on the path, take a little risk once in a while, push the envelope, and bank on the American people.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MANCHIN). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I now ask unanimous consent that all postcloture time be yielded back and that the motion to proceed be agreed to; that the committee-reported amendments be agreed to and that the bill, as amended, be considered original text for the purposes of further amendment; further, that it be in order for Senator BOXER or designee, on behalf of Senators JOHNSON and SHELBY, the chairman and ranking member of the Banking Committee, to call amendment No. 1515, which is at the desk; finally, that following the reporting of the amendment, the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Under the previous order, all postcloture time is yielded back and the motion to proceed is agreed to.

MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (S. 1813) to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes.

The Senate proceeded to consider the bill (S. 1813) to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes, which had been reported from the Committee on Environment and Public Works, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics.)

S. 1813

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Moving Ahead for Progress in the 21st Century Act'' or the ''MAP–21''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—FEDERAL-AID HIGHWAYS

Subtitle A—Authorizations and Programs

Sec. 1101. Authorization of appropriations.
Sec. 1102. Obligation ceiling.
Sec. 1103. Definitions.
Sec. 1104. National highway system.
Sec. 1105. Apportionment.
Sec. 1106. National highway performance program.
Sec. 1107. Emergency relief.
Sec. 1108. Transportation mobility program.
Sec. 1109. Workforce development.
Sec. 1110. Highway use tax evasion projects.
Sec. 1111. National bridge and tunnel inventory and inspection standards.
Sec. 1112. Highway safety improvement program.
Sec. 1113. Congestion mitigation and air quality improvement program.
Sec. 1114. Territorial and Puerto Rico highway program.
Sec. 1115. National freight program.
Sec. 1116. Federal lands and tribal transportation programs.
Sec. 1117. Alaska Highway.
Sec. 1118. Projects of national and regional significance.

Subtitle B—Performance Management

Sec. 1201. Metropolitan transportation planning.
Sec. 1202. Statewide and nonmetropolitan transportation planning.
Sec. 1203. National goals.

Subtitle C—Acceleration of Project Delivery

Sec. 1301. Project delivery initiative.
Sec. 1302. Clarified eligibility for early acquisition activities prior to completion of NEPA review.
Sec. 1303. Efficiencies in contracting.
Sec. 1304. Innovative project delivery methods.
Sec. 1305. Assistance to affected State and Federal agencies.
Sec. 1306. Application of categorical exclusions for multimodal projects.
Sec. 1307. State assumption of responsibilities for categorical exclusions.
Sec. 1308. Surface transportation project delivery program.
Sec. 1309. Categorical exclusion for projects within the right-of-way.
Sec. 1310. Programmatic agreements and additional categorical exclusions.
Sec. 1311. Accelerated decisionmaking in environmental reviews.
Sec. 1312. Memoranda of agency agreements for early coordination.
Sec. 1313. Accelerated decisionmaking.
Sec. 1314. Environmental procedures initiative.
Sec. 1315. Alternative relocation payment demonstration program.
Sec. 1316. Review of Federal project and program delivery.

Subtitle D—Highway Safety

Sec. 1401. Jason's Law.
Sec. 1402. Open container requirements.
Sec. 1403. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence.
Sec. 1404. Adjustments to penalty provisions.
Sec. 1405. Highway worker safety.

Subtitle E—Miscellaneous

Sec. 1501. Program efficiencies.
Sec. 1502. Project approval and oversight.
Sec. 1503. Standards.
Sec. 1504. Construction.
Sec. 1505. Maintenance.
Sec. 1506. Federal share payable.
Sec. 1507. Transferability of Federal-aid highway funds.
Sec. 1508. Special permits during periods of national emergency.
Sec. 1509. Electric vehicle charging stations.
Sec. 1510. HOV facilities.
Sec. 1511. Construction equipment and vehicles.
Sec. 1512. Use of debris from demolished bridges and overpasses.
Sec. 1513. Extension of public transit vehicle exemption from axle weight restrictions.
Sec. 1514. Uniform Relocation Assistance Act amendments.
Sec. 1515. Use of youth service and conservation corps.
Sec. 1516. Consolidation of programs; repeal of obsolete provisions.
Sec. 1517. Rescissions.
Sec. 1518. State autonomy for culvert pipe selection.
Sec. 1519. Effective and significant performance measures.
Sec. 1520. Requirements for eligible bridge projects.

TITLE II—RESEARCH AND EDUCATION

Subtitle A—Funding

Sec. 2101. Authorization of appropriations.

Subtitle B—Research, Technology, and Education

Sec. 2201. Research, technology, and education.
Sec. 2202. Surface transportation research, development, and technology.
Sec. 2203. Research and technology development and deployment.
Sec. 2204. Training and education.
Sec. 2205. State planning and research.
Sec. 2206. International highway transportation program.
Sec. 2207. Surface transportation environmental cooperative research program.
Sec. 2208. National cooperative freight research.
Sec. 2209. University transportation centers program.
Sec. 2210. Bureau of transportation statistics.
Sec. 2211. Administrative authority.
Sec. 2212. Transportation research and development strategic planning.
Sec. 2213. National electronic vehicle corridors and recharging infrastructure network.

Subtitle C— **[**Funding**]***Intelligent Transportation Systems Research*

Sec. 2301. Use of funds for ITS activities.
Sec. 2302. Goals and purposes.
Sec. 2303. General authorities and requirements.
Sec. 2304. Research and development.
Sec. 2305. National architecture and standards.
Sec. 2306. 5.9 GHz vehicle-to-vehicle and vehicle-to-infrastructure communications systems deployment.

TITLE III—AMERICA FAST FORWARD FINANCING INNOVATION

Sec. 3001. Short title.
Sec. 3002. Transportation Infrastructure Finance and Innovation Act amendments.
Sec. 3003. State infrastructure banks.

TITLE IV—HIGHWAY SPENDING CONTROLS

Sec. 4001. Highway spending controls.

SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) DEPARTMENT.—The term ''Department'' means the Department of Transportation.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

TITLE I—FEDERAL-AID HIGHWAYS

Subtitle A—Authorizations and Programs

SEC. 1101. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(1) FEDERAL-AID HIGHWAY PROGRAM.—For the national highway performance program under section 119 of title 23, United States Code, the transportation mobility program under section 133 of that title, the highway safety improvement program under section 148 of that title, the congestion mitigation and air quality improvement program under section 149 of that title, the national freight program under section 167 of that title, and to carry out section 134 of that title—

(A) $39,143,000,000 for fiscal year 2012; and

(B) $39,806,000,000 for fiscal year 2013.

(2) TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION PROGRAM.—For credit assistance under the transportation infrastructure finance and innovation program under chapter 6 of title 23, United States Code, $1,000,000,000 for each of fiscal years 2012 and 2013.

(3) FEDERAL LANDS AND TRIBAL TRANSPORTATION PROGRAMS.—

(A) TRIBAL TRANSPORTATION PROGRAM.—For the tribal transportation program under section 202 of title 23, United States Code, $450,000,000 for each of fiscal years 2012 and 2013.

(B) FEDERAL LANDS TRANSPORTATION PROGRAM.—For the Federal lands transportation program under section 203 of title 23, United States Code, $300,000,000 for each of fiscal years 2012 and 2013, of which $260,000,000 of the amount made available for each fiscal year shall be the amount for the National Park Service and the United States Fish and Wildlife Service.

(C) FEDERAL LANDS ACCESS PROGRAM.—For the Federal lands access program under section 204 of title 23, United States Code, $250,000,000 for each of fiscal years 2012 and 2013.

(4) TERRITORIAL AND PUERTO RICO HIGHWAY PROGRAM.—For the territorial and Puerto Rico highway program under section 165 of title 23, United States Code, $180,000,000 for each of fiscal years 2012 and 2013.

(b) DISADVANTAGED BUSINESS ENTERPRISES.—

(1) DEFINITIONS.—In this subsection, the following definitions apply:

(A) SMALL BUSINESS CONCERN.—

(i) IN GENERAL.—The term ''small business concern'' means a small business concern (as the term is used in section 3 of the Small Business Act (15 U.S.C. 632)).

(ii) EXCLUSIONS.—The term ''small business concern'' does not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals that have average annual gross receipts during the preceding 3 fiscal years in excess of $22,410,000, as adjusted annually by the Secretary for inflation.

(B) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term ''socially and economically disadvantaged individuals'' means—

(i) women; and

(ii) any other socially and economically disadvantaged individuals (as the term is used in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and relevant subcontracting regulations promulgated pursuant to that Act).

(2) AMOUNTS FOR SMALL BUSINESS CONCERNS.—Except to the extent that the Secretary determines otherwise, not less than 10 percent of the amounts made available for any program under titles I, II, and III of this Act and section 403 of title 23, United States Code, shall be expended through small business concerns owned and controlled by socially and economically disadvantaged individuals.

(3) ANNUAL LISTING OF DISADVANTAGED BUSINESS ENTERPRISES.—Each State shall annually—

(A) survey and compile a list of the small business concerns referred to in paragraph (2) in the State, including the location of the small business concerns in the State; and

(B) notify the Secretary, in writing, of the percentage of the small business concerns that are controlled by—

(i) women;

(ii) socially and economically disadvantaged individuals (other than women); and

(iii) individuals who are women and are otherwise socially and economically disadvantaged individuals.

(4) UNIFORM CERTIFICATION.—

(A) IN GENERAL.—The Secretary shall establish minimum uniform criteria for use by State governments in certifying whether a concern qualifies as a small business concern for the purpose of this subsection.

(B) INCLUSIONS.—The minimum uniform criteria established under subparagraph (A) shall include, with respect to a potential small business concern—

(i) on-site visits;

(ii) personal interviews with personnel;

(iii) issuance or inspection of licenses;

(iv) analyses of stock ownership;

(v) listings of equipment;

(vi) analyses of bonding capacity;

(vii) listings of work completed;

(viii) examination of the resumes of principal owners;

(ix) analyses of financial capacity; and

(x) analyses of the type of work preferred.

(5) REPORTING.—The Secretary shall establish minimum requirements for use by State governments in reporting to the Secretary—

(A) information concerning disadvantaged business enterprise awards, commitments, and achievements; and

(B) such other information as the Secretary determines to be appropriate for the proper monitoring of the disadvantaged business enterprise program.

(6) COMPLIANCE WITH COURT ORDERS.—Nothing in this subsection limits the eligibility of an individual or entity to receive funds made available under titles I, II, and III of this Act and section 403 of title 23, United States Code, if the entity or person is prevented, in whole or in part, from complying with paragraph (2) because a Federal court issues a final order in which the court finds that a requirement or the implementation of paragraph (2) is unconstitutional.

SEC. 1102. OBLIGATION CEILING.

(a) GENERAL LIMITATION.—Subject to subsection (e), and notwithstanding any other provision of law, the obligations for Federal-aid highway and highway safety construction programs shall not exceed—

(1) $41,564,000,000 for fiscal year 2012; and

(2) $42,227,000,000 for fiscal year 2013.

(b) EXCEPTIONS.—The limitations under subsection (a) shall not apply to obligations under or for—

(1) section 125 of title 23, United States Code;

(2) section 147 of the Surface Transportation Assistance Act of 1978 (23 U.S.C. 144 note; 92 Stat. 2714);

(3) section 9 of the Federal-Aid Highway Act of 1981 (95 Stat. 1701);

(4) subsections (b) and (j) of section 131 of the Surface Transportation Assistance Act of 1982 (96 Stat. 2119);

(5) subsections (b) and (c) of section 149 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (101 Stat. 198);

(6) sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2027);

(7) section 157 of title 23, United States Code (as in effect on June 8, 1998);

(8) section 105 of title 23, United States Code (as in effect for fiscal years 1998 through 2004, but only in an amount equal to $639,000,000 for each of those fiscal years);

(9) Federal-aid highway programs for which obligation authority was made available under the Transportation Equity Act for the 21st Century (112 Stat. 107) or subsequent Acts for multiple years or to remain available until expended, but only to the extent that the obligation authority has not lapsed or been used;

(10) section 105 of title 23, United States Code (but, for each of fiscal years 2005 through 2011, only in an amount equal to $639,000,000 for each of those fiscal years);

(11) section 1603 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (119 Stat. 1248), to the extent that funds obligated in accordance with that section were not subject to a limitation on obligations at the time at which the funds were initially made available for obligation; and

(12) section 119 of title 23, United States Code (but, for each of fiscal years 2012 through 2013, only in an amount equal to $639,000,000 for each of those fiscal years).

(c) DISTRIBUTION OF OBLIGATION AUTHORITY.—For each of fiscal years 2012 through 2013, the Secretary—

(1) shall not distribute obligation authority provided by subsection (a) for the fiscal year for—

(A) amounts authorized for administrative expenses and programs by section 104(a) of title 23, United States Code; and

(B) amounts authorized for the Bureau of Transportation Statistics;

(2) shall not distribute an amount of obligation authority provided by subsection (a) that is equal to the unobligated balance of amounts made available from the Highway Trust Fund (other than the Mass Transit Account) for Federal-aid highway and highway safety construction programs for previous fiscal years the funds for which are allocated by the Secretary;

(3) shall determine the proportion that—

(A) the obligation authority provided by subsection (a) for the fiscal year, less the aggregate of amounts not distributed under paragraphs (1) and (2) of this subsection; bears to

(B) the total of the sums authorized to be appropriated for the Federal-aid highway and highway safety construction programs (other than sums authorized to be appropriated for provisions of law described in paragraphs (1) through (11) of subsection (b) and sums authorized to be appropriated for section 119 of title 23, United States Code, equal to the amount referred to in subsection (b)(12) for the fiscal year), less the aggregate of the amounts not distributed under paragraphs (1) and (2) of this subsection;

(4) shall distribute the obligation authority provided by subsection (a), less the aggregate amounts not distributed under paragraphs (1) and (2), for each of the programs that are allocated by the Secretary under this Act and title 23, United States Code (other than to programs to which paragraph (1) applies), by multiplying—

(A) the proportion determined under paragraph (3); by

(B) the amounts authorized to be appropriated for each such program for the fiscal year; and

(5) shall distribute the obligation authority provided by subsection (a), less the aggregate amounts not distributed under paragraphs (1) and (2) and the amounts distributed under paragraph (4), for Federal-aid highway and highway safety construction programs that are apportioned by the Secretary under title 23, United States Code (other than the amounts apportioned for the national highway performance program in section 119 of title 23, United States Code, that are exempt from the limitation under subsection (b)(12)) in the proportion that—

(A) amounts authorized to be appropriated for the programs that are apportioned under title 23, United States Code, to each State for the fiscal year; bears to

(B) the total of the amounts authorized to be appropriated for the programs that are apportioned under title 23, United States Code, to all States for the fiscal year.

(d) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.—Notwithstanding subsection (c),

the Secretary shall, after August 1 of each of fiscal years 2012 through 2013—

(1) revise a distribution of the obligation authority made available under subsection (c) if an amount distributed cannot be obligated during that fiscal year; and

(2) redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during that fiscal year, giving priority to those States having large unobligated balances of funds apportioned under sections 144 (as in effect on the day before the date of enactment of this Act) and 104 of title 23, United States Code.

(e) APPLICABILITY OF OBLIGATION LIMITATIONS TO TRANSPORTATION RESEARCH PROGRAMS.—

(1) IN GENERAL.—Except as provided in paragraph (2), obligation limitations imposed by subsection (a) shall apply to contract authority for transportation research programs carried out under—

(A) chapter 5 of title 23, United States Code; and

(B) title II of this Act.

(2) EXCEPTION.—Obligation authority made available under paragraph (1) shall—

(A) remain available for a period of 4 fiscal years; and

(B) be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

(f) REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.—

(1) IN GENERAL.—Not later than 30 days after the date of distribution of obligation authority under subsection (c) for each of fiscal years 2012 through 2013, the Secretary shall distribute to the States any funds that—

(A) are authorized to be appropriated for the fiscal year for Federal-aid highway programs; and

(B) the Secretary determines will not be allocated to the States, and will not be available for obligation, for the fiscal year because of the imposition of any obligation limitation for the fiscal year.

(2) RATIO.—Funds shall be distributed under paragraph (1) in the same proportion as the distribution of obligation authority under subsection (c)(5).

(3) AVAILABILITY.—Funds distributed to each State under paragraph (1) shall be available for any purpose described in section 133(c) of title 23, United States Code.

SEC. 1103. DEFINITIONS.

(a) DEFINITIONS.—Section 101(a) of title 23, United States Code, is amended—

(1) by striking paragraphs (6), (7), (9), (12), (19), (20), (24), (25), (26), (28), (38), and (39);

(2) by redesignating paragraphs (2), (3), (4), (5), (8), (13), (14), (15), (16), (17), (18), (21), (22), (23), (27), (29), (30), (31), (32), (33), (34), (35), (36), and (37) as paragraphs (3), (4), (5), (6), (9), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (28), (29), (33), and (34), respectively;

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

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

(4) in paragraph (4) (as redesignated by paragraph (2))—

(A) in the matter preceding subparagraph (A), by inserting ''or any project eligible for assistance under this title'' after ''of a highway'';

(B) by striking subparagraph (A) and inserting the following:

''(A) preliminary engineering, engineering, and design-related services directly relating to the construction of a highway project, including engineering, design, project development and management, construction project management and inspection, surveying, mapping (including the establishment of temporary and permanent geodetic control in accordance with specifications of the National Oceanic and Atmospheric Administration), and architectural-related services;'';

(C) in subparagraph (B)—

(i) by inserting ''reconstruction,'' before ''resurfacing''; and

(ii) by striking ''and rehabilitation'' and inserting ''rehabilitation, and preservation'';

(D) in subparagraph (E) by striking ''railway'' and inserting ''railway-highway''; and

(E) in subparagraph (F) by striking ''obstacles'' and inserting ''hazards''.

(5) in paragraph (6) (as so redesignated)—

(A) by inserting ''public'' before ''highway eligible''; and

(B) by inserting ''functionally'' before ''classified'';

(6) by inserting after paragraph (6) (as so redesignated) the following:

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

''(8) FEDERAL LANDS TRANSPORTATION FACILITY.—The term 'Federal lands transportation facility' means a public highway, road, bridge, trail, or transit system that is located on, is adjacent to, or provides access to Federal lands for which title and maintenance responsibility is vested in the Federal Government, and that appears on the national Federal lands transportation facility inventory described in section 203(c).'';

(7) in paragraph (11)(B) by inserting ''including public roads on dams'' after ''drainage structure'';

(8) in paragraph (14) (as so redesignated)—

(A) by striking ''as a'' and inserting ''as an air quality''; and

(B) by inserting ''air quality'' before ''attainment area'';

(9) in paragraph (18) (as so redesignated) by striking ''an undertaking to construct a particular portion of a highway, or if the context so implies, the particular portion of a highway so constructed or any other undertaking'' and inserting ''any undertaking'';

(10) in paragraph (19) (as so redesignated)—

(A) by striking ''the State transportation department and''; and

(B) by inserting ''and the recipient'' after ''Secretary'';

(11) by striking paragraph (23) (as so redesignated) and inserting the following:

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

(12) by inserting after paragraph (26) (as so redesignated) the following:

''(27) STATE STRATEGIC HIGHWAY SAFETY PLAN.—The term 'State strategic highway safety plan' has the same meaning given such term in section 148(a).'';

(13) by striking paragraph (29) (as so redesignated) and inserting the following:

''(29) TRANSPORTATION ENHANCEMENT ACTIVITY.—The term 'transportation enhancement activity' means any of the following activities when carried out as part of any program or project authorized or funded under this title, or as an independent program or project related to surface transportation:

''(A) Provision of facilities for pedestrians and bicycles.

''(B) Provision of safety and educational activities for pedestrians and bicyclists.

''(C) Acquisition of scenic easements and scenic or historic sites.

''(D) Scenic or historic highways and bridges.

''(E) Vegetation management practices in transportation rights-of-way and other activities eligible under section 319.

''(F) Historic preservation, rehabilitation, and operation of historic transportation buildings, structures, or facilities.

''(G) Preservation of abandoned railway corridors, including the conversion and use of the corridors for pedestrian or bicycle trails.

''(H) Inventory, control, and removal of outdoor advertising.

''(I) Archaeological planning and research.

''(J) Any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to—

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

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

(14) by inserting after paragraph (29) (as so redesignated) the following:

''(30) TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.—

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

''(B) INCLUSIONS.—The term 'transportation systems management and operations' includes—

''(i) actions such as traffic detection and surveillance, corridor management, freeway management, arterial management, active transportation and demand management, work zone management, emergency management, traveler information services, congestion pricing, parking management, automated enforcement, traffic control, commercial vehicle operations, freight management, and coordination of highway, rail, transit, bicycle, and pedestrian operations; and

''(ii) coordination of the implementation of regional transportation system management and operations investments (such as traffic incident management, traveler information services, emergency management, roadway weather management, intelligent transportation systems, communication networks, and information sharing systems) requiring agreements, integration, and interoperability to achieve targeted system performance, reliability, safety, and customer service levels.

''(31) TRIBAL TRANSPORTATION FACILITY.—The term 'tribal transportation facility' means a public highway, road, bridge, trail, or transit system that is located on or provides access to tribal land and appears on the national tribal transportation facility inventory described in section 202(b)(1).

''(32) TRUCK STOP ELECTRIFICATION SYSTEM.—The term 'truck stop electrification system' means a system that delivers heat, air conditioning, electricity, or communications to a heavy-duty vehicle.''.

(b) SENSE OF CONGRESS.—Section 101(c) of title 23, United States Code, is amended by striking ''system'' and inserting ''highway''.

SEC. 1104. NATIONAL HIGHWAY SYSTEM.

(a) IN GENERAL.—Section 103 of title 23, United States Code, is amended to read as follows:

''§ 103. National highway system

''(a) IN GENERAL.—For the purposes of this title, the Federal-aid system is the National Highway System, which includes the Interstate System.

''(b) NATIONAL HIGHWAY SYSTEM.—

''(1) DESCRIPTION.—The National Highway System consists of the highway routes and connections to transportation facilities that shall—

''(A) serve major population centers, international border crossings, ports, airports, public transportation facilities, and other intermodal transportation facilities and other major travel destinations;

''(B) meet national defense requirements; and

''(C) serve interstate and interregional travel and commerce.

''(2) COMPONENTS.—The National Highway System described in paragraph (1) consists of the following:

''(A) The National Highway System depicted on the map submitted by the Secretary of Transportation to Congress with the report entitled 'Pulling Together: The National Highway System and its Connections to Major Intermodal Terminals' and dated May 24, 1996, and modifications approved by the Secretary before the date of enactment of the MAP–21.

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

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

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

''(D) A strategic highway network that—

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

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

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

''(E) Major strategic highway network connectors that—

''(i) consist of highways that provide motor vehicle access between major military installations and highways that are part of the strategic highway network but were not included on the National Highway System before the date of enactment of the MAP–21; and

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

''(3) MODIFICATIONS TO NHS.—

''(A) IN GENERAL.—The Secretary may make any modification, including any modification consisting of a connector to a major intermodal terminal, to the National Highway System that is proposed by a State if the Secretary determines that the modification—

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

''(ii) enhances the national transportation characteristics of the National Highway System.

''(B) COOPERATION.—

''(i) IN GENERAL.—In proposing a modification under this paragraph, a State shall cooperate with local and regional officials.

''(ii) URBANIZED AREAS.—In an urbanized area, the local officials shall act through the metropolitan planning organization designated for the area under section 134.

''(c) INTERSTATE SYSTEM.—

''(1) DESCRIPTION.—

''(A) IN GENERAL.—The Dwight D. Eisenhower National System of Interstate and Defense Highways within the United States (including the District of Columbia and Puerto Rico) consists of highways designed, located, and selected in accordance with this paragraph.

''(B) DESIGN.—

''(i) IN GENERAL.—Except as provided in clause (ii), highways on the Interstate System shall be designed in accordance with the standards of section 109(b).

''(ii) EXCEPTION.—Highways on the Interstate System in Alaska and Puerto Rico shall be designed in accordance with such geometric and construction standards as are adequate for current and probable future traffic demands and the needs of the locality of the highway.

''(C) LOCATION.—Highways on the Interstate System shall be located so as—

''(i) to connect by routes, as direct as practicable, the principal metropolitan areas, cities, and industrial centers;

''(ii) to serve the national defense; and

''(iii) to the maximum extent practicable, to connect at suitable border points with routes of continental importance in Canada and Mexico.

''(D) SELECTION OF ROUTES.—To the maximum extent practicable, each route of the Interstate System shall be selected by joint action of the State transportation departments of the State in which the route is located and the adjoining States, in cooperation with local and regional officials, and subject to the approval of the Secretary.

''(2) MAXIMUM MILEAGE.—The mileage of highways on the Interstate System shall not exceed 43,000 miles, exclusive of designations under paragraph (4).

''(3) MODIFICATIONS.—The Secretary may approve or require modifications to the Interstate System in a manner consistent with the policies and procedures established under this subsection.

''(4) INTERSTATE SYSTEM DESIGNATIONS.—

''(A) ADDITIONS.—If the Secretary determines that a highway on the National Highway System meets all standards of a highway on the Interstate System and that the highway is a logical addition or connection to the Interstate System, the Secretary may, upon the affirmative recommendation of the State or States in which the highway is located, designate the highway as a route on the Interstate System.

''(B) DESIGNATIONS AS FUTURE INTERSTATE SYSTEM ROUTES.—

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

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

''(iii) FAILURE TO COMPLETE CONSTRUCTION.—If a State described in clause (i) has not substantially completed the construction of a highway designated under this subparagraph by the date specified in clause (ii), the Secretary shall remove the designation of the highway as a future Interstate System route.

''(iv) EFFECT OF REMOVAL.—Removal of the designation of a highway under clause (iii) shall not preclude the Secretary from designating the highway as a route on the Interstate System under subparagraph (A) or under any other provision of law providing for addition to the Interstate System.

''(v) RETROACTIVE EFFECT.—An agreement described in clause (ii) that is entered into before August 10, 2005, shall be deemed to include the 25-year time limitation described in that clause, regardless of any earlier construction completion date in the agreement.

''(vi) REFERENCES.—No law, rule, regulation, map, document, or other record of the United States, or of any State or political subdivision of a State, shall refer to any highway designated as a future Interstate System route under this subparagraph, and no such highway shall be signed or marked, as a highway on the Interstate System, until such time as the highway—

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

''(II) has been designated as a route on the Interstate System.

''(C) FINANCIAL RESPONSIBILITY.—Except as provided in this title, the designation of a highway under this paragraph shall create no additional Federal financial responsibility with respect to the highway.

''(5) EXEMPTION OF INTERSTATE SYSTEM.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the Interstate System shall not be considered to be a historic site under section 303 of title 49 or section 138 of this title, regardless of whether the Interstate System or portions or elements of the Interstate System are listed on, or eligible for listing on, the National Register of Historic Places.

''(B) INDIVIDUAL ELEMENTS.—Subject to subparagraph (C)—

''(i) the Secretary shall determine, through the administrative process established for exempting the Interstate System from section 106 of the National Historic Preservation Act (16 U.S.C. 470f), those individual elements of the Interstate System that possess national or exceptional historic significance (such as a historic bridge or a highly significant engineering feature); and

''(ii) those elements shall be considered to be historic sites under section 303 of title 49 or section 138 of this title, as applicable.

''(C) CONSTRUCTION, MAINTENANCE, RESTORATION, AND REHABILITATION ACTIVITIES.—Subparagraph (B) does not prohibit a State

from carrying out construction, maintenance, *preservation*, restoration, or rehabilitation activities for a portion of the Interstate System referred to in subparagraph (B) upon compliance with section 303 of title 49 or section 138 of this title, as applicable, and section 106 of the National Historic Preservation Act (16 U.S.C. 470f).''.

[''(d) OPERATION OF CONVENTIONAL COMBINATION VEHICLES ON THE NATIONAL HIGHWAY SYSTEM.—

''(1) DEFINITION OF CONVENTIONAL COMBINATION VEHICLES.—In this subsection, the term 'conventional combination vehicles' means—

''(A) truck-tractor or semi-trailer combinations with semi-trailers up to 53 feet in length and 102 inches in width;

''(B) truck-tractor, semi-trailer, or trailer combinations with each semi-trailer and trailer up to 28.5 feet in length and 102 inches in width; and

''(C) drive-away saddlemount combinations, not to exceed 97 feet in overall length, with up to 3 truck tractors, with or without a full mount, towed by a truck tractor.

''(2) NATIONAL NETWORK.—The National Network designated under the Surface Transportation Assistance Act of 1982 (Public Law 97–424; 96 Stat. 2119) is repealed.

''(3) OPERATION OF CONVENTIONAL COMBINATION VEHICLES.—

''(A) REQUIREMENT.—Conventional combination vehicles shall be permitted to operate in all States on all segments of the National Highway System other than segments—

''(i) that were open to traffic on the date of enactment of the MAP–21; and

''(ii) on which all nonpassenger commercial motor vehicles are banned on the date of enactment of the MAP-21.

''(B) RESTRICTIONS.—A State may request temporary or permanent restrictions on the operation of conventional combination vehicles, subject to approval by the Secretary, based on safety considerations, geometric constraints, work zones, weather, or traffic management requirements of special events or emergencies.

''(C) REASONABLE ACCESS.—Conventional combination vehicles shall be given reasonable access, by the most reasonable, practicable, and safe route available, subject to review by the Secretary—

''(i) between the National Highway System and facilities for food, fuel, and rest within 1 mile of the National Highway System; and

''(ii) to terminal locations for the unloading and loading of cargo.''.

(b) CONFORMING AMENDMENTS.—]

(b) INCLUSION OF CERTAIN ROUTE SEGMENTS ON INTERSTATE SYSTEM.—

(1) IN GENERAL.—Section 1105(e)(5)(A) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2032; 109 Stat. 597) is amended by striking ''and subsections (c)(18) and (c)(20)'' and inserting '', in subsections (c)(18) and (c)(20), and in subparagraphs (A)(iii) and (B) of subsection (c)(26)''.

(2) ROUTE DESIGNATION.—Section 1105(e)(5)(C)(i) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2032; 109 Stat. 598) is amended by adding at the end the following: ''The routes referred to subparagraphs (A)(iii) and (B)(i) of subsection (c)(26) are designated as Interstate Route I-11.''.

(c) CONFORMING AMENDMENTS.—

(1) ANALYSIS.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 103 and inserting the following:

''103. National highway system.''.

(2) SECTION 113.—Section 113 of title 23, United States Code, is amended—

(A) in subsection (a) by striking ''the Federal-aid systems'' and inserting ''Federal-aid highways''; and

(B) in subsection (b), in the first sentence, by striking ''of the Federal-aid systems'' and inserting ''Federal-aid highway''.

(3) SECTION 123.—Section 123(a) of title 23, United States Code, is amended in the first sentence by striking ''Federal-aid system'' and inserting ''Federal-aid highway''.

(4) SECTION 217.—Section 217(b) of title 23, United States Code, is amended in the subsection heading by striking ''NATIONAL HIGHWAY SYSTEM'' and inserting ''NATIONAL HIGHWAY PERFORMANCE PROGRAM''.

(5) SECTION 304.—Section 304 of title 23, United States Code, is amended in the first sentence by striking ''the Federal-aid highway systems'' and inserting ''Federal-aid highways''.

(6) SECTION 317.—Section 317(d) of title 23, United States Code is amended by striking ''system'' and inserting ''highway''.

SEC. 1105. APPORTIONMENT.

(a) IN GENERAL.—Section 104 of title 23, United States Code, is amended to read as follows:

''§ 104. Apportionment

''(a) ADMINISTRATIVE EXPENSES.—

''(1) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to be made available to the Secretary for administrative expenses of the Federal Highway Administration $480,000,000 for each of fiscal years 2012 and 2013.

''(2) PURPOSES.—The amounts authorized to be appropriated by this subsection shall be used—

''(A) to administer the provisions of law to be funded from appropriations for the Federal-aid highway program and programs authorized under chapter 2;

''(B) to make transfers of such sums as the Secretary determines to be appropriate to the Appalachian Regional Commission for administrative activities associated with the Appalachian development highway system; and

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

''(3) AVAILABILITY.—The amounts made available under paragraph (1) shall remain available until expended.

''(b) DIVISION OF STATE APPORTIONMENTS AMONG PROGRAMS.—The Secretary shall distribute the amount apportioned to a State for a fiscal year under subsection (c) among the national highway performance program, the transportation mobility program, the highway safety improvement program, the congestion mitigation and air quality improvement program, and the national freight program, and to carry out section 134 as follows:

''(1) NATIONAL HIGHWAY PERFORMANCE PROGRAM.—For the national highway performance program, 58 percent of the amount remaining after distributing amounts under paragraphs (4) and (6).

''(2) TRANSPORTATION MOBILITY PROGRAM.—For the transportation mobility program, 29.3 percent of the amount remaining after distributing amounts under paragraphs (4) and (6).

''(3) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—For the highway safety improvement program, 7 percent of the amount remaining after distributing amounts under paragraphs (4) and (6).

''(4) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—For the congestion mitigation and air quality improvement program, an amount determined by multiplying the amount determined for the State under subsection (c) by the proportion that—

''(A) the amount apportioned to the State for the congestion mitigation and air quality improvement program for fiscal year 2009, plus 10 percent of the amount apportioned to the State for the surface transportation program for that fiscal year; bears to

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

''(5) NATIONAL FREIGHT PROGRAM.—For the national freight program, 5.7 percent of the amount remaining after distributing amounts under paragraphs (4) and (6).

''(6) METROPOLITAN PLANNING.—To carry out section 134, an amount determined by multiplying the amount determined for the State under subsection (c) by the proportion that—

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

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

''(c) CALCULATION OF STATE AMOUNTS.—

''(1) STATE SHARE.—The amount for each State of combined apportionments for the national highway performance program under section 119, the transportation mobility program under section 133, the highway safety improvement program under section 148, the congestion mitigation and air quality improvement program under section 149, the national freight program under section 167, and to carry out section 134 shall be determined as follows:

''(A) INITIAL AMOUNT.—The initial amount for each State shall be determined by multiplying the total amount available for apportionment by the share for each State which shall be equal to the proportion that—

''(i) the amount of apportionments and allocations that the State received for fiscal years 2005 through 2009; bears to

''(ii) the amount of those apportionments and allocations received by all States for those fiscal years.

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

''(2) STATE APPORTIONMENT.—On October 1 of each fiscal year, the Secretary shall apportion the sum authorized to be appropriated for expenditure on the national highway performance program under section 119, the transportation mobility program under section 133, the highway safety improvement program under section 148, the congestion mitigation and air quality improvement program under section 149, the national freight program under section 167, and to carry out section 134 in accordance with paragraph (1).

''(d) METROPOLITAN PLANNING.—

''(1) USE OF AMOUNTS.—

''(A) USE.—

''(i) IN GENERAL.—Except as provided in clause (ii), the amounts apportioned to a State under subsection (b)(6) shall be made available by the State to the metropolitan planning organizations responsible for carrying out section 134 in the State.

''(ii) STATES RECEIVING MINIMUM APPORTIONMENT.—A State that received the minimum

apportionment for use in carrying out section 134 for fiscal year 2009 may, subject to the approval of the Secretary, use the funds apportioned under subsection (b)(6) to fund transportation planning outside of urbanized areas.

''(B) UNUSED FUNDS.—Any funds that are not used to carry out section 134 may be made available by a metropolitan planning organization to the State to fund activities under section 135.

''(2) DISTRIBUTION OF AMOUNTS WITHIN STATES.—

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

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

''(ii) takes into consideration, at a minimum, population, status of planning, attainment of air quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out section 134 and other applicable requirements of Federal law.

''(B) REIMBURSEMENT.—Not later than [10 days] *15 business days* after the date of receipt by a State of a request for reimbursement of expenditures made by a metropolitan planning organization for carrying out section 134, the State shall reimburse, from amounts distributed under this paragraph to the metropolitan planning organization by the State, the metropolitan planning organization for those expenditures.

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

''(e) CERTIFICATION OF APPORTIONMENTS.—

''(1) IN GENERAL.—The Secretary shall—

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

''(B) to permit the States to develop adequate plans for the use of amounts apportioned under this section, advise each State of the amount that will be apportioned to the State under this section for a fiscal year not later than 90 days before the beginning of the fiscal year for which the sums to be apportioned are authorized.

''(2) NOTICE TO STATES.—If the Secretary has not made an apportionment under this section for a fiscal year beginning after September 30, 1998, by not later than the date that is the twenty-first day of that fiscal year, the Secretary shall submit, by not later than that date, to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, a written statement of the reason for not making the apportionment in a timely manner.

''(3) APPORTIONMENT CALCULATIONS.—

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

''(B) PROHIBITION ON USE OF FUNDS TO HIRE CONTRACTORS.—None of the funds made available under this title shall be used to hire contractors to calculate the apportionments of funds to States.

''(f) TRANSFER OF HIGHWAY AND TRANSIT FUNDS.—

''(1) TRANSFER OF HIGHWAY FUNDS FOR TRANSIT PROJECTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), amounts made available for transit projects or transportation planning under this title may be transferred to and administered by the Secretary in accordance with chapter 53 of title 49.

''(B) NON-FEDERAL SHARE.—The provisions of this title relating to the non-Federal share shall apply to the amounts transferred under subparagraph (A).

''(2) TRANSFER OF TRANSIT FUNDS FOR HIGHWAY PROJECTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), amounts made available for highway projects or transportation planning under chapter 53 of title 49 may be transferred to and administered by the Secretary in accordance with this title.

''(B) NON-FEDERAL SHARE.—The provisions of chapter 53 of title 49 relating to the non-Federal share shall apply to amounts transferred under subparagraph (A).

''(3) TRANSFER OF FUNDS AMONG STATES OR TO FEDERAL HIGHWAY ADMINISTRATION.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Secretary may, at the request of a State, transfer amounts apportioned or allocated under this title to the State to another State, or to the Federal Highway Administration, for the purpose of funding 1 or more projects that are eligible for assistance with amounts so apportioned or allocated.

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

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

''(4) TRANSFER OF OBLIGATION AUTHORITY.—Obligation authority for amounts transferred under this subsection shall be transferred in the same manner and amount as the amounts for the projects [that are transferred under this subsection.] *that are transferred under this section.*''

''(g) REPORT TO CONGRESS.—For each fiscal year, the Secretary shall make available to the public, in a user-friendly format via the Internet, a report that describes—

''(1) the amount obligated, by each State, for Federal-aid highways and highway safety construction programs during the preceding fiscal year;

''(2) the balance, as of the last day of the preceding fiscal year, of the unobligated apportionment of each State by fiscal year under this section;

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

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

''(A) program;

''(B) funding category of subcategory;

''(C) type of improvement;

''(D) State; and

''(E) sub-State geographical area, including urbanized and rural areas, on the basis of the population of each such area.''.

(b) CONFORMING AMENDMENT.—Section 146(a) of title 23, United States Code, is amended by striking ''sections 104(b)(1) and 104(b)(3)'' and inserting ''section 104(b)(2)''.

SEC. 1106. NATIONAL HIGHWAY PERFORMANCE PROGRAM.

(a) IN GENERAL.—Section 119 of title 23, United States Code, is amended to read as follows:

''§ 119. National highway performance program

''(a) ESTABLISHMENT.—The Secretary shall establish and implement a national highway performance program under this section.

''(b) PURPOSES.—The purposes of the national highway performance program shall be—

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

[''(2) to ensure that investments of Federal-aid funds in highway infrastructure are directed to achievement of established national performance goals for infrastructure condition and performance.]

''(2) to ensure that investments of Federal-aid funds in highway construction are directed to support progress toward the achievement of performance targets for infrastructure condition and performance.

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

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

''(1) a project, or is part of a program of projects, supporting progress toward the achievement of national performance goals for improving infrastructure condition, safety, mobility, or freight movement on the National Highway System and consistent with sections 134 and 135; and

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

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

''(B) Construction, replacement (including replacement with fill material), rehabilitation, preservation, and protection (including scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events) of bridges on the National Highway System.

''(C) Construction, replacement (including replacement with fill material), rehabilitation, preservation, and protection (including impact protection measures, security countermeasures, and protection against extreme events) of tunnels on the National Highway System.

''(D) Inspection and evaluation, as described in section 144, of bridges and tunnels on the National Highway System, and inspection and evaluation of other highway infrastructure assets on the National Highway System, including signs and sign structures, earth retaining walls, and drainage structures.

''(E) Training of bridge and tunnel inspectors, as described in section 144.

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

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

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

''(ii) the construction or improvements will [enhance the level of service] *reduce*

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

''(iii) the construction or improvements are more cost-effective, as determined by benefit-cost analysis, than an improvement to the fully access-controlled highway described in clause (i).

''(H) Bicycle transportation and pedestrian walkways in accordance with section 217.

''(I) Highway safety improvements for segments of the National Highway System.

''(J) Capital and operating costs for traffic and traveler information monitoring, management, and control facilities and programs.

''(K) Development and implementation of a State asset management plan for the National Highway System in accordance with this section, including data collection, maintenance, and integration and the cost associated with obtaining, updating, and licensing software and equipment required for risk-based asset management and performance-based management.

''(L) Infrastructure-based intelligent transportation systems capital improvements.

''(M) Environmental restoration and pollution abatement in accordance with section 328.

''(N) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329.

''(O) In accordance with all applicable Federal law (including regulations), participation in natural habitat and wetlands mitigation efforts relating to projects funded under this title, which may include participation in natural habitat and wetlands mitigation banks, contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands, and development of statewide and regional natural habitat and wetlands conservation and mitigation plans, including any such banks, efforts, and plans developed in accordance with applicable Federal law (including regulations), on the conditions that—

''(i) contributions to those mitigation efforts may—

''(I) take place concurrent with or in advance of project construction; and

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

''(ii) with respect to participation in a natural habitat or wetland mitigation effort relating to a project funded under this title that has an impact that occurs within the service area of a mitigation bank, preference is given, to the maximum extent practicable, to the use of the mitigation bank if the bank contains sufficient available credits to offset the impact and the bank is approved in accordance with applicable Federal law (including regulations).

''(e) LIMITATION ON NEW CAPACITY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the maximum amount that a State may obligate under this section for projects under subsection (d)(2)(G) and that is attributable to the portion of the cost of any project undertaken to expand the capacity of eligible facilities on the National Highway System, in a case in which the new capacity consists of 1 or more new travel lanes that are not high-occupancy vehicle lanes, shall not, in total, exceed 40 percent of the combined apportionments of a State under section 104(b)(1) for the most recent 3 consecutive fiscal years.

''(2) EXCEPTION.—Paragraph (1) shall not apply to a project for the construction of auxiliary lanes *and turning lanes* or widening of a bridge during rehabilitation or replacement to meet current geometric, construction, and structural standards for the types and volumes of projected traffic over the design life of the project.

''(f) STATE PERFORMANCE MANAGEMENT.—

''(1) IN GENERAL.—A State shall develop a risk-based asset management plan for the National Highway System [based on a process defined by the Secretary to guide effective investment decisions] to improve or preserve asset condition and system performance.

''(2) PERFORMANCE DRIVEN PLAN.—A State asset management plan shall include strategies leading to a program of projects that would make progress toward achievement of the State targets for asset condition and performance of the National Highway System in accordance with paragraph (5) [and, to the maximum extent practicable, reflect the] *and supporting the progress toward the achievement of the* national goals identified in section 150.

''(3) PLAN CONTENTS.—A State asset management plan shall, at a minimum, be in a form that the Secretary determines to be appropriate and include—

''(A) a summary listing of the [highway infrastructure] *pavement and bridge* assets on the National Highway System in the State, including a description of the condition of those assets;

''(B) asset management objectives and measures;

''(C) performance gap identification;

''(D) lifecycle cost and risk management analysis;

''(E) a financial plan; and

''(F) investment strategies.

[''(4) STANDARDS AND MEASURES.—Not later than 18 months after the date of enactment of the MAP–21, the Secretary shall, by regulation and in consultation with State departments of transportation and other stakeholders, establish—

''(A) minimum standards for States to use in developing and operating pavement management systems and bridge management systems;

''(B) measures for States to use to assess—

''(i) the condition of pavements on the Interstate system;

''(ii) the condition of pavements on the National Highway System (excluding the Interstate);

''(iii) the condition of bridges on the National Highway System;

''(iv) the performance of the Interstate System; and

''(v) the performance of the National Highway System (excluding the Interstate System);

''(C) the data elements that are necessary to collect and maintain data, and a standardized process for collection and sharing of data with appropriate governmental entities at the Federal, State, and local levels (including metropolitan planning organizations), to carry out paragraph (5); and

''(D) minimum levels for—

''(i) the condition of pavement on the Interstate System; and

''(ii) the condition of bridges on the National Highway System.]

''(4) STANDARDS AND MEASURES.—

''(A) IN GENERAL.—Subject to subparagraph (B), not later than 18 months after the date of enactment of the MAP–21, the Secretary shall, in consultation with State departments of transportation and other stakeholders, establish—

''(i) minimum standards for States to use in developing and operating pavement management systems and bridge management systems;

''(ii) measures for States to use to assess—

''(I) the condition of pavements on the Interstate system;

''(II) the condition of pavements on the National Highway System (excluding the Interstate);

''(III) the condition of bridges on the National Highway System;

''(IV) the performance of the Interstate System; and

''(V) the performance of the National Highway System (excluding the Interstate System);

''(iii) the data elements that are necessary to collect and maintain data, and a standardized process for collection and sharing of data with appropriate governmental entities at the Federal, State, and local levels (including metropolitan planning organizations), to carry out paragraph (5); and

''(iv) minimum levels for—

''(I) the condition of pavement on the Interstate System; and

''(II) the condition of bridges on the National Highway System.

''(B) STATE PARTICIPATION.—In carrying out subparagraph (A), the Secretary shall—

''(i) provide States not less than 90 days to comment on any regulation proposed by the Secretary under that subparagraph; and

''(ii) take into consideration any comments of the States relating to a proposed regulation received during that comment period.

''(5) STATE PERFORMANCE TARGETS.—

''(A) ESTABLISHMENT OF TARGETS.—Not later than 1 year after the date on which the Secretary promulgates *final* regulations under paragraph (4), each State, in consultation with metropolitan planning organizations, shall establish targets that address each of the performance measures identified in paragraph (4)(B).

''(B) PERIODIC UPDATES.—Each State shall periodically update the targets established under subparagraph (A).

''(6) REQUIREMENT FOR PLAN.—To obligate funding apportioned under section 104(b)(1), each State shall have in effect—

''(A) a risk-based asset management plan for the National Highway System in accordance with this section, developed through a process defined and approved by the Secretary; and

''(B) State targets that address the performance measures identified in paragraph (4)(B).

''(7) CERTIFICATION OF PLAN DEVELOPMENT PROCESS.—

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

''(i) review the process; and

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

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

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

''(C) OPPORTUNITY TO CURE.—If the Secretary denies certification under subparagraph (A), the Secretary shall provide the State with—

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

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

''(8) PERFORMANCE REPORTS.—

''(A) IN GENERAL.—Not later than 4 years after the date of enactment of the MAP–21

and biennially thereafter, a State shall submit to the Secretary a report that describes—

''(i) the condition and performance of the National Highway System in the State;

''(ii) progress in achieving State targets for each of the performance measures for the National Highway System; and

''(iii) the effectiveness of the investment strategy documented in the State asset management plan for the National Highway System.

''(B) FAILURE TO ACHIEVE TARGETS.—A State that does not achieve or make significant progress toward achieving the targets of the State for performance measures described in subparagraph (A)(ii) for 2 consecutive reports submitted under this paragraph shall include in the next report submitted a description of the actions the State will undertake to achieve the targets.

''(9) PROCESS.—Not later than 18 months after the date of enactment of the MAP–21, the Secretary shall, by regulation and in consultation with State departments of transportation, establish the process to develop the State asset management plan described in paragraph (1) and establish the standards and measures described in paragraph (4).

''(g) INTERSTATE SYSTEM AND NHS BRIDGE CONDITIONS.—

''(1) CONDITION OF INTERSTATE SYSTEM.—

''(A) PENALTY.—If, during 2 consecutive reporting periods, the condition of the Interstate System, *excluding bridges on the Interstate System,* in a State falls below the minimum condition level established by the Secretary under subsection (f)(4)(D), the State shall be required, during the following fiscal year—

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

''(ii) to transfer, from the amounts apportioned to the State under section 104(b)(2) to the apportionment of the State under section 104(b)(1), an amount equal to 10 percent of the amount of funds apportioned to the State for fiscal year 2009 under the Interstate maintenance program for the purposes described in this section (as in effect on the day before the date of enactment of the MAP–21).

''(B) RESTORATION.—The obligation requirement for the Interstate System in a State required by subparagraph (A) for a fiscal year shall remain in effect for each subsequent fiscal year until such time as the condition of the Interstate System in the State exceeds the minimum condition level established by the Secretary *under subsection (f)(4)(D).*

''(2) CONDITION OF NHS BRIDGES.—

''(A) PENALTY.—If, during 2 consecutive reporting periods, the condition of bridges on the National Highway System in a State falls below the minimum condition level established by the Secretary under subsection (f)(4)(D), the State shall be required, during the following fiscal year—

[''(i) to obligate, from the amounts apportioned to the State under section 104(b)(1), an amount for bridges on the National Highway System that is not less than 50 percent of the amount of funds apportioned to the State for fiscal year 2009 under the highway bridge program for the purposes described in section 144 (as in effect on the day before the date of enactment of the MAP–21), except that the amount reserved under this clause shall be increased by 2 percent over the amount reserved in the previous fiscal year for each year after fiscal year 2013; and]

''(i) to obligate, from the amounts apportioned to the State under section 104(b)(1), an amount for bridges on the National Highway System that is not less than 50 percent of the amount of funds apportioned to the State for fiscal year 2009 under the highway bridge program for the purposes described in section 144 (as in effect on the day before the date of enactment of the MAP–21), except that for each year after fiscal year 2013, the amount required to be obligated under this clause shall be increased by 2 percent over the amount required to be obligated in the previous fiscal year; and

''(ii) to transfer, from the amounts apportioned to the State under section 104(b)(2) to the apportionment of the State under section 104(b)(1), an amount equal to 10 percent of the amount of funds apportioned to the State for fiscal year 2009 under the highway bridge program for the purposes described in section 144 (as in effect on the day before the date of enactment of the MAP–21).

''(B) RESTORATION.—The obligation requirement for bridges on the National Highway System in a State required by subparagraph (A) for a fiscal year shall remain in effect for each subsequent fiscal year until such time as the condition of bridges on the National Highway System in the State exceeds the minimum condition level established by the Secretary *under subsection (f)(4)(D).*''.

(b) TRANSITION PERIOD.—

(1) IN GENERAL.—Except as provided in paragraph (2), until such date as a State has in effect an approved asset management plan and has established performance targets as described in section 119 of title 23, United States Code, that will contribute to achieving the national goals for the condition and performance of the National Highway System, but not later than [15] *18* months after the date on which the Secretary promulgates *final* regulations required under section 119(f)(4) of that title, the Secretary shall approve obligations of funds apportioned to a State to carry out the national highway performance program under section 119 of that title, for projects that otherwise meet the requirements of that section.

(2) EXTENSION.—The Secretary may extend the transition period for a State under paragraph (1) if the Secretary determines that the State has made a good faith effort to establish an asset management plan and performance targets referred to in that paragraph.

(c) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 119 and inserting the following:

''119. National highway performance program.''.

SEC. 1107. EMERGENCY RELIEF.

Section 125 of title 23, United States Code, is amended to read as follows:

''§ 125. Emergency relief

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

''(1) a natural disaster over a wide area, such as by a flood, hurricane, tidal wave, earthquake, severe storm, or landslide; or

''(2) catastrophic failure from any external cause.

''(b) RESTRICTION ON ELIGIBILITY.—

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

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

''(A) that has been permanently closed to all vehicular traffic by the State or responsible local official because of imminent danger of collapse due to a structural deficiency or physical deterioration; or

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

''(c) FUNDING.—

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

''(2) LIMITATIONS.—The limitations referred to in paragraph (1) are that—

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

''(i) remain available until expended; and

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

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

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

''(d) ELIGIBILITY.—

''(1) IN GENERAL.—The Secretary may expend funds from the emergency fund authorized by this section only for the repair or reconstruction of highways on Federal-aid highways in accordance with this chapter, except that—

''(A) no funds shall be so expended unless an emergency has been declared by the Governor of the State with concurrence by the Secretary, unless the President has declared the emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) for which concurrence of the Secretary is not required; and

''(B) the Secretary has received an application from the State transportation department that includes a comprehensive list of all eligible project sites and repair costs by not later than 2 years after the natural disaster or catastrophic failure.

''(2) COST LIMITATION.—

''(A) DEFINITION OF COMPARABLE FACILITY.—In this paragraph, the term 'comparable facility' means a facility that meets the current geometric and construction standards required for a facility of comparable capacity and character to the destroyed facility,

except a bridge facility which may be constructed for the type and volume of traffic that the bridge will carry over its design life.

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

''(3) DEBRIS REMOVAL.—The costs of debris removal shall be an eligible expense only for events not eligible for assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

''(4) TERRITORIES.—The total obligations for projects under this section for any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not exceed $20,000,000.

''(5) SUBSTITUTE TRAFFIC.—Notwithstanding any other provision of this section, actual and necessary costs of maintenance and operation of ferryboats or additional transit service providing temporary substitute highway traffic service, less the amount of fares charged for comparable service, may be expended from the emergency fund authorized by this section for Federal-aid highways.

''(e) TRIBAL TRANSPORTATION FACILITIES, FEDERAL LANDS TRANSPORTATION FACILITIES, AND PUBLIC ROADS ON FEDERAL LANDS.—

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

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

''(3) REIMBURSEMENT.—

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

''(B) TRANSFERS.—With respect to reimbursements described in subparagraph (A)—

''(i) those reimbursements to Federal agencies and Indian tribal governments shall be transferred to the account from which the expenditure was made, or to a similar account that remains available for obligation; and

''(ii) the budget authority associated with the expenditure shall be restored to the agency from which the authority was derived and shall be available for obligation until the end of the fiscal year following the year in which the transfer occurs.

''(f) TREATMENT OF TERRITORIES.—For purposes of this section, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be considered to be States and parts of the United States, and the chief executive officer of each such territory shall be considered to be a Governor of a State.''.

SEC. 1108. TRANSPORTATION MOBILITY PROGRAM.

(a) IN GENERAL.—Section 133 of title 23, United States Code, is amended to read as follows:

''§ 133. Transportation mobility program

''(a) ESTABLISHMENT.—The Secretary shall establish and implement a transportation mobility program under this section.

''(b) PURPOSE.—The purpose of the transportation mobility program shall be to assist States and localities in improving the conditions and performance on Federal-aid highways and on bridges on any public road.

''(c) ELIGIBLE PROJECTS.—Funds apportioned under section 104(b)(2) to carry out the transportation mobility program may be obligated for any of following purposes:

''(1) Construction, reconstruction, rehabilitation, resurfacing, restoration, preservation, or operational improvements for highways, including construction of designated routes of the Appalachian development highway system.

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

''(3) Construction of a new bridge or tunnel on a new location on a highway, including any such construction necessary to accommodate other transportation modes.

''(4) Inspection and evaluation (within the meaning of section 144) of bridges and tunnels on public roads of all functional classifications and inspection and evaluation of other highway infrastructure assets, including signs and sign structures, retaining walls, and drainage structures.

''(5) Training of bridge and tunnel inspectors (within the meaning of section 144).

''(6) Capital costs for transit projects eligible for assistance under chapter 53 of title 49, including vehicles and facilities, whether publicly or privately owned, that are used to provide intercity passenger service by bus.

''(7) Carpool projects, fringe and corridor parking facilities and programs, including electric vehicle infrastructure in accordance with section 137, bicycle transportation and pedestrian walkways in accordance with section 217, and the modification of public sidewalks to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

''(8) Highway and transit safety infrastructure improvements and programs, installation of safety barriers and nets on bridges, hazard eliminations, projects to mitigate hazards caused by wildlife, and railway-highway grade crossings.

''(9) Highway and transit research and development and technology transfer programs.

''(10) Capital and operating costs for traffic and traveler information monitoring, management, and control facilities and programs, including truck stop electrification systems.

''(11) Projects and strategies designed to support congestion pricing, including electronic toll collection and travel demand management strategies and programs.

''(12) Surface transportation planning.

''(13) Transportation enhancement activities.

''(14) Recreational trails projects eligible for funding under section 206.

''(15) Construction of ferry boats and ferry terminal facilities eligible for funding under section 129(c).

''(16) Border infrastructure projects eligible for funding under section 1303 of the SAFETEA-LU (Public Law 109–59).

''(17) Projects associated with National Scenic Byways, All-American Roads, and America's Byways eligible for funding under section 162.

''(18) Truck parking facilities eligible for funding under section 1401 of the MAP–21.

''(19) Safe routes to school projects eligible for funding under section 1404 of the SAFETEA–LU (23 U.S.C. 402 note; Public Law 109–59).

''(20) Transportation control measures described in section 108(f)(1)(A) of the Clean Air Act (42 U.S.C. 7408(f)(1)(A)), other than section 108(f)(1)(A)(xvi) of that Act.

''(21) Development and implementation of a State asset management plan for the National Highway System in accordance with section 119, including data collection, maintenance, and integration and the costs associated with obtaining, updating, and licensing software and equipment required for risk-based asset management and performance-based management, and for similar activities relating to the development and implementation of a performance-based management [system] *program* for other public roads.

''(22) In accordance with all applicable Federal law (including regulations), participation in natural habitat and wetlands mitigation efforts relating to projects funded under this title, which may include participation in natural habitat and wetlands mitigation banks, contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands, and development of statewide and regional natural habitat and wetlands conservation and mitigation plans, including any such banks, efforts, and plans developed in accordance with applicable Federal law (including regulations), on the conditions that—

''(A) contributions to those mitigation efforts may—

''(i) take place concurrent with or in advance of project construction; and

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

''(B) with respect to participation in a natural habitat or wetland mitigation effort relating to a project funded under this title that has an impact that occurs within the service area of a mitigation bank, preference is given, to the maximum extent practicable, to the use of the mitigation bank if the bank contains sufficient available credits to offset the impact and the bank is approved in accordance with applicable Federal law (including regulations).

''(23) Infrastructure-based intelligent transportation systems capital improvements.

''(24) Environmental restoration and pollution abatement in accordance with section 328.

''(25) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329.

''(26) Improvements to a freight railroad, marine highway, or intermodal facility, but only to the extent that the Secretary concurs with the State that—

''(A) the project will make significant improvement to freight movements on the national freight network;

''(B) the public benefit of the project exceeds the Federal investment; and

''(C) the project provides a better return than a highway project on a segment of the primary freight network, except that a State may not obligate in excess of 5 percent of funds apportioned to the State under section 104(b)(2) to carry out this section for that purpose.

''(27) Maintenance of and improvements to all public roads, including non-State-owned public roads and roads on tribal land—

''(A) that are located within 10 miles of the international border between the United States and Canada or Mexico; and

''(B) on which federally owned vehicles comprise more than 50 percent of the traffic.

''(28) Construction, reconstruction, resurfacing, restoration, rehabilitation, and preservation of, and operational improvements for, any public road if—

''(A) the public road, and the highway project to be carried out with respect to the public road, are in the same corridor as, and in proximity to—

''(i) a fully access-controlled highway designated as a part of the National Highway System; or

''(ii) in areas with a population of less than 200,000, a federal-aid highway designated as part of the National Highway System;

''(B) the construction or improvements will enhance the level of service on the highway described in subparagraph (A) and improve regional traffic flow; and

''(C) the construction or improvements are more cost-effective, as determined by benefit-cost analysis, than an improvement to the highway described in subparagraph (A).

''(d) ALLOCATIONS OF APPORTIONED FUNDS TO AREAS BASED ON POPULATION.—

''(1) CALCULATION.—Of the funds apportioned to a State under section 104(b)(2)—

''(A) 50 percent for a fiscal year shall be obligated under this section, in proportion to their relative shares of the population of the State—

''(i) in urbanized areas of the State with an urbanized area population of over 200,000;

''(ii) in areas of the State other than urban areas with a population greater than 5,000; and

''(iii) in other areas of the State; and

''(B) 50 percent may be obligated in any area of the State.

''(2) METROPOLITAN AREAS.—Funds attributed to an urbanized area under subparagraph (A)(i) may be obligated in the metropolitan area established under section 134 that encompasses the urbanized area.

''(3) DISTRIBUTION AMONG URBANIZED AREAS OF OVER 200,000 POPULATION.—

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

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

''(e) LOCATION OF PROJECTS.—Except as provided in subsection (g) and for projects described in paragraphs (2), (4), (7), (8), (13), (14), and (19) of subsection (c), transportation mobility program projects may not be undertaken on roads functionally classified as local or rural minor collectors.

''(f) APPLICABILITY OF PLANNING REQUIREMENTS.—Programming and expenditure of funds for projects under this section shall be consistent with sections 134 and 135.

''(g) BRIDGES NOT ON FEDERAL-AID HIGHWAYS.—

''(1) DEFINITION OF OFF-SYSTEM BRIDGE.—The term 'off-system bridge' means a highway bridge located on a public road, other than a bridge on a Federal-aid highway.

''(2) SPECIAL RULE.—

[''(A) PENALTY.—If the total deck area of deficient off-system bridges in a State increases for the 2 most recent consecutive years, the State shall be required, during the following fiscal year, to obligate for the improvement of deficient off-system bridges from the amounts apportioned to the State under section 104(b)(2) an amount that is not less than 110 percent of the amount of funds required to be obligated by the State for off-system bridges for fiscal year 2009 under section 144(f)(2), as in effect on the day before the date of enactment of the MAP–21, except that the amount reserved under this subparagraph shall be increased by 2 percent over the amount reserved in the previous fiscal year for each year after fiscal year 2013.]

''(A) PENALTY.—If the total deck area of deficient off-system bridges in a State increases for the 2 most recent consecutive years, the State shall be required, during the following fiscal year, to obligate for the improvement of deficient off-system bridges from the amounts apportioned to the State under section 104(b)(2) an amount that is not less than 110 percent of the amount of funds required to be obligated by the State for off-system bridges for fiscal year 2009 under section 144(f)(2), as in effect on the day before the date of enactment of the MAP–21, except that for each year after fiscal year 2013, the amount required to be obligated under this subparagraph shall be increased by 2 percent over the amount required to be obligated in the previous fiscal year.

''(B) RESTORATION.—The obligation requirement for off-system bridges in a State required by subparagraph (A) for a fiscal year shall remain in effect for each subsequent fiscal year until such time as the total deck area of deficient off-system bridges in the State has decreased to the level it was in the State for the fiscal year prior to the establishment of the obligation requirement for the State under subparagraph (A).

''(3) CREDIT FOR BRIDGES NOT ON FEDERAL-AID HIGHWAYS.—Notwithstanding any other provision of law, with respect to any project not on a Federal-aid highway for the replacement of a bridge or rehabilitation of a bridge that is wholly funded from State and local sources, is eligible for Federal funds under this section, is noncontroversial, is certified by the State to have been carried out in accordance with all standards applicable to such projects under this section, and is determined by the Secretary upon completion to be no longer a deficient bridge—

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

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

''(h) ADMINISTRATION.—

''(1) SUBMISSION OF PROJECT AGREEMENT.—For each fiscal year, each State shall submit a project agreement that—

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

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

''(2) REQUEST FOR ADJUSTMENTS OF AMOUNTS.—Each State shall request from the Secretary such adjustments to the amount of obligations referred to in paragraph (1)(B) as the State determines to be necessary.

''(3) EFFECT OF APPROVAL BY THE SECRETARY.—Approval by the Secretary of a project agreement under paragraph (1) shall be deemed a contractual obligation of the United States to pay transportation mobility program funds made available under this title.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 133 and inserting the following:

''133. Transportation mobility program.''.

SEC. 1109. WORKFORCE DEVELOPMENT.

(a) ON-THE-JOB TRAINING.—Section 140(b) of title 23, United States Code, is amended—

(1) by striking ''Whenever apportionments are made under section 104(b)(3),'' and inserting ''From administrative funds made available under section 104(a),''; and

(2) by striking ''the surface transportation program under section 104(b) and the bridge program under section 144'' and inserting ''the transportation mobility program under section 104(b)''.

(b) DISADVANTAGED BUSINESS ENTERPRISE.—Section 140(c) of title 23, United States Code, is amended by striking ''Whenever apportionments are made under section 104(b)(3),'' and inserting ''From administrative funds made available under section 104(a),''.

SEC. 1110. HIGHWAY USE TAX EVASION PROJECTS.

Section 143 of title 23, United States Code, is amended—

(1) in subsection (b)—

(A) by striking paragraph (2) and inserting the following:

''(2) FUNDING.—

''(A) IN GENERAL.—From administrative funds made available under section 104(a), the Secretary shall deduct such sums as are necessary, not to exceed $10,000,000 for [each fiscal year] *each of fiscal years 2012 and 2013*, to carry out this section.

''(B) ALLOCATION OF FUNDS.—Funds made available to carry out this section may be allocated to the Internal Revenue Service and the States at the discretion of the Secretary, except that of funds so made available for each fiscal year, $2,000,000 shall be available only to carry out intergovernmental enforcement efforts, including research and training.''; and

(B) in paragraph (8)—

(i) in the paragraph heading by striking ''SURFACE TRANSPORTATION PROGRAM'' and inserting ''TRANSPORTATION MOBILITY PROGRAM''; and

(ii) by striking ''section 104(b)(3)'' and inserting ''section 104(b)(2)''; and

(2) in subsection (c)(3) by striking ''for each of fiscal years 2005 through 2009,'' and inserting ''for each fiscal year,''.

SEC. 1111. NATIONAL BRIDGE AND TUNNEL INVENTORY AND INSPECTION STANDARDS.

(a) IN GENERAL.—Section 144 of title 23, United States Code, is amended to read as follows:

''§ 144. National bridge and tunnel inventory and inspection standards

''(a) FINDINGS AND DECLARATIONS.—

''(1) FINDINGS.—Congress finds that—

''(A) the condition of the bridges of the United States has improved since the date of enactment of the Transportation Equity Act for the 21st Century (Public Law 105–178; 112 Stat. 107), yet continued improvement to bridge conditions is essential to protect the safety of the traveling public and allow for the efficient movement of people and goods on which the economy of the United States relies; and

''(B) the systematic preventative maintenance of bridges, and replacement and rehabilitation of deficient bridges, should be undertaken through an overall asset management approach to transportation investment.

''(2) DECLARATIONS.—Congress declares that it is in the vital interest of the United States—

''(A) to inventory, inspect, and improve the condition of the highway bridges and tunnels of the United States;

''(B) to use a data-driven, risk-based approach and cost-effective strategy for systematic preventative maintenance, replacement, and rehabilitation of highway bridges and tunnels to ensure safety and extended service life;

''(C) to use performance-based bridge management systems to assist States in making timely investments;

''(D) to ensure accountability and link performance outcomes to investment decisions; and

''(E) to ensure connectivity and access for residents of rural areas of the United States through strategic investments in National Highway System bridges and bridges on all public roads.

''(b) NATIONAL BRIDGE AND TUNNEL INVENTORIES.—

''(1) IN GENERAL.—The Secretary, in consultation with the States, shall—

''(A) inventory all highway bridges on public roads that are bridges over waterways, other topographical barriers, other highways, and railroads;

''(B) classify the bridges according to serviceability, safety, and essentiality for public use, including the potential impacts to emergency evacuation routes and to regional and national freight and passenger mobility if the serviceability of the bridge is restricted or diminished; and

''(C) based on that classification, assign each a risk-based priority for systematic preventative maintenance, replacement, or rehabilitation.

''(2) TRIBALLY OWNED AND FEDERALLY OWNED BRIDGES.—As part of the activities carried out under paragraph (1), the Secretary, in consultation with the Secretaries of appropriate Federal agencies, shall—

''(A) inventory all tribally owned and Federally owned highway bridges that are open to the public, over waterways, other topographical barriers, other highways, and railroads;

''(B) classify the bridges according to serviceability, safety, and essentiality for public use; and

''(C) based on the classification, assign each a risk-based priority for systematic preventative maintenance, replacement, or rehabilitation.

''(3) TUNNELS.—The Secretary shall establish a national inventory of highway tunnels reflecting the findings of the most recent highway tunnel inspections conducted by States under this section.

''(c) GENERAL BRIDGE AUTHORITY.—

''(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of law, the General Bridge Act of 1946 (33 U.S.C. 525 et seq.) shall apply to bridges authorized to be replaced, in whole or in part, by this title.

''(2) EXCEPTION.—Section 502(b) of the General Bridge Act of 1946 (33 U.S.C. 525(b)) and section 9 of the Act of March 3, 1899 (33 U.S.C. 401), shall not apply to any bridge constructed, reconstructed, rehabilitated, or replaced with assistance under this title, if the bridge is over waters that—

''(A) are not used and are not susceptible to use in the natural condition of the bridge or by reasonable improvement as a means to transport interstate or foreign commerce; and

''(B) are—

''(i) not tidal; or

''(ii) if tidal, used only by recreational boating, fishing, and other small vessels that are less than 21 feet in length.

''(d) INVENTORY UPDATES AND REPORTS.—

''(1) IN GENERAL.—The Secretary shall—

''(A) annually revise the inventories authorized by subsection (b); and

''(B) submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the inventories.

''(2) INSPECTION REPORT.—Not later than 1 year after the date of enactment of the MAP–21, each State and appropriate Federal agency shall report element level data to the Secretary, as each bridge is inspected pursuant to this section, for all highway bridges on the National Highway System.

''(3) GUIDANCE.—The Secretary shall provide guidance to States and Federal agencies for implementation of this subsection, *while respecting the existing inspection schedule of each State*.

''(4) BRIDGES NOT ON NATIONAL HIGHWAY SYSTEM.—The Secretary shall—

''(A) conduct a study on the benefits, cost-effectiveness, and feasibility of requiring element-level data collection for bridges not on the National Highway System; and

''(B) submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the study.

''(e) BRIDGES WITHOUT TAXING POWERS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, any bridge that is owned and operated by an agency that does not have taxing powers and whose functions include operating a federally assisted public transit system subsidized by toll revenues shall be eligible for assistance under this title, but the amount of such assistance shall in no event exceed the cumulative amount which such agency has expended for capital and operating costs to subsidize such transit system.

''(2) INSUFFICIENT ASSETS.—Before authorizing an expenditure of funds under this subsection, the Secretary shall determine that the applicant agency has insufficient reserves, surpluses, and projected revenues (over and above those required for bridge and transit capital and operating costs) to fund the necessary bridge replacement or rehabilitation project.

''(3) CREDITING OF NON-FEDERAL FUNDS.—Any non-Federal funds expended for the seismic retrofit of the bridge may be credited toward the non-Federal share required as a condition of receipt of any Federal funds for seismic retrofit of the bridge made available after the date of the expenditure.

''(f) REPLACEMENT OF DESTROYED BRIDGES AND FERRY BOAT SERVICE.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, a State may use the funds apportioned under section 104(b)(2) to construct any bridge that replaces—

''(A) any low water crossing (regardless of the length of the low water crossing);

''(B) any bridge that was destroyed prior to January 1, 1965;

''(C) any ferry that was in existence on January 1, 1984; or

''(D) any road bridge that is rendered obsolete as a result of a Corps of Engineers flood control or channelization project and is not rebuilt with funds from the Corps of Engineers.

''(2) FEDERAL SHARE.—The Federal share payable on any bridge construction carried out under paragraph (1) shall be 80 percent of the cost of the construction.

''(g) HISTORIC BRIDGES.—

''(1) DEFINITION OF HISTORIC BRIDGE.—In this subsection, the term 'historic bridge' means any bridge that is listed on, or eligible for listing on, the National Register of Historic Places.

''(2) COORDINATION.—The Secretary shall, in cooperation with the States, encourage the retention, rehabilitation, adaptive reuse, and future study of historic bridges.

''(3) STATE INVENTORY.—The Secretary shall require each State to complete an inventory of all bridges on and off Federal-aid highways to determine the historic significance of the bridges.

''(4) ELIGIBILITY.—

''(A) IN GENERAL.—Subject to subparagraph (B), reasonable costs associated with actions to preserve, or reduce the impact of a project under this chapter on, the historic integrity of a historic bridge shall be eligible as reimbursable project costs under section 133 if the load capacity and safety features of the historic bridge are adequate to serve the intended use for the life of the historic bridge.

''(B) BRIDGES NOT USED FOR VEHICLE TRAFFIC.—In the case of a historic bridge that is no longer used for motorized vehicular traffic, the costs eligible as reimbursable project costs pursuant to this chapter shall not exceed the estimated cost of demolition of the historic bridge.

''(5) PRESERVATION.—Any State that proposes to demolish a historic bridge for a replacement project with funds made available to carry out this section shall first make the historic bridge available for donation to a State, locality, or responsible private entity if the State, locality, or responsible entity enters into an agreement—

''(A) to maintain the bridge and the features that give the historic bridge its historic significance; and

''(B) to assume all future legal and financial responsibility for the historic bridge, which may include an agreement to hold the State transportation department harmless in any liability action.

''(6) COSTS INCURRED.—

''(A) IN GENERAL.—Costs incurred by the State to preserve a historic bridge (including funds made available to the State, locality, or private entity to enable it to accept the bridge) shall be eligible as reimbursable project costs under this chapter in an amount not to exceed the cost of demolition.

''(B) ADDITIONAL FUNDING.—Any bridge preserved pursuant to this paragraph shall not be eligible for any other funds authorized pursuant to this title.

''(h) NATIONAL BRIDGE AND TUNNEL INSPECTION STANDARDS.—

''(1) REQUIREMENT.—

''(A) IN GENERAL.—The Secretary shall establish and maintain inspection standards for the proper inspection and evaluation of all highway bridges and tunnels for safety and serviceability.

''(B) UNIFORMITY.—The standards under this subsection shall be designed to ensure uniformity of the inspections and evaluations.

''(2) MINIMUM REQUIREMENTS OF INSPECTION STANDARDS.—The standards established under paragraph (1) shall, at a minimum—

''(A) specify, in detail, the method by which the inspections shall be carried out by the States, Federal agencies, and tribal governments;

''(B) establish the maximum time period between inspections;

''(C) establish the qualifications for those charged with carrying out the inspections;

''(D) require each State, Federal agency, and tribal government to maintain and make available to the Secretary on request—

''(i) written reports on the results of highway bridge and tunnel inspections and notations of any action taken pursuant to the findings of the inspections; and

''(ii) current inventory data for all highway bridges and tunnels reflecting the findings of the most recent highway bridge and tunnel inspections conducted; and

''(E) establish a procedure for national certification of highway bridge inspectors and tunnel inspectors.

''(3) STATE COMPLIANCE WITH INSPECTION STANDARDS.—The Secretary shall, at a minimum—

''(A) establish, in consultation with the States, and interested and knowledgeable private organizations and individuals, procedures to conduct reviews of State compliance with—

''(i) the standards established under this subsection; and

''(ii) the calculation or reevaluation of bridge load ratings; and

''(B) establish, in consultation with the States, and interested and knowledgeable private organizations and individuals, procedures for States to follow in reporting to the Secretary—

''(i) critical findings relating to structural or safety-related deficiencies of highway bridges; and

''(ii) monitoring activities and corrective actions taken in response to a critical finding.

''(4) REVIEWS OF STATE COMPLIANCE.—

''(A) IN GENERAL.—The Secretary shall annually review State compliance with the standards established under this section.

''(B) NONCOMPLIANCE.—If an annual review in accordance with subparagraph (A) identifies noncompliance by a State, the Secretary shall—

''(i) issue a report detailing the issues of the noncompliance by December 31 of the calendar year in which the review was made; and

''(ii) provide the State an opportunity to address the noncompliance by—

''(I) developing a corrective action plan to remedy the noncompliance; or

''(II) resolving the issues of noncompliance not later than 45 days after the date of notification.

''(5) PENALTY FOR NONCOMPLIANCE.—

''(A) IN GENERAL.—If a State fails to satisfy the requirements of paragraph (4)(B) by August 1 of the calendar year following the year of a finding of noncompliance, the Secretary shall, on October 1 of that year, and each year thereafter as may be necessary, require the State to dedicate funds apportioned to the State under sections 119 and 133 after the date of enactment of the MAP–21 to correct the noncompliance with the minimum inspection standards established under this subsection.

''(B) AMOUNT.—The amount of the funds to be directed to correcting noncompliance in accordance with subparagraph (A) shall—

''(i) be determined by the State based on an analysis of the actions needed to address the noncompliance; and

''(ii) require approval by the Secretary.

''(6) UPDATE OF STANDARDS.—Not later than 3 years after the date of enactment of the MAP–21, the Secretary shall update inspection standards to cover—

''(A) the methodology, training, and qualifications for inspectors; and

''(B) the frequency of inspection.

''(7) RISK-BASED APPROACH.—In carrying out the revisions required by paragraph (6), the Secretary shall consider a risk-based approach to determining the frequency of bridge inspections.

''(i) TRAINING PROGRAM FOR BRIDGE AND TUNNEL INSPECTORS.—

''(1) IN GENERAL.—The Secretary, in cooperation with the State transportation departments, shall maintain a program designed to train appropriate personnel to carry out highway bridge and tunnel inspections.

''(2) REVISIONS.—The training program shall be revised from time to time to take into account new and improved techniques.

''(j) AVAILABILITY OF FUNDS.—To carry out this section, the Secretary may use funds made available under sections 104(a), 119, 133, and 503.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 144 and inserting the following:

''144. National bridge and tunnel inventory and inspection standards.''.

SEC. 1112. HIGHWAY SAFETY IMPROVEMENT PROGRAM.

Section 148 of title 23, United States Code, is amended to read as follows:

''§ 148. Highway safety improvement program

''(a) DEFINITIONS.—In this section, the following definitions apply:

''(1) HIGH RISK RURAL ROAD.—The term 'high risk rural road' means any roadway functionally classified as a rural major or minor collector or a rural local road with significant safety risks, as defined by a State in accordance with an updated State strategic highway safety plan.

''(2) HIGHWAY BASEMAP.—The term 'highway basemap' means a representation of all public roads that can be used to geolocate attribute data on a roadway.

''(3) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term 'highway safety improvement program' means projects, activities, plans, and reports carried out under this section.

''(4) HIGHWAY SAFETY IMPROVEMENT PROJECT.—

''(A) IN GENERAL.—The term 'highway safety improvement project' means strategies, activities, and projects on a public road that are consistent with a State strategic highway safety plan and—

''(i) correct or improve a hazardous road location or feature; or

''(ii) address a highway safety problem.

''(B) INCLUSIONS.—The term 'highway safety improvement project' includes, but is not limited to, a project for 1 or more of the following:

''(i) An intersection safety improvement.

''(ii) Pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition).

''(iii) Installation of rumble strips or another warning device, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists and pedestrians, including persons with disabilities.

''(iv) Installation of a skid-resistant surface at an intersection or other location with a high frequency of crashes.

''(v) An improvement for pedestrian or bicyclist safety or safety of persons with disabilities.

''(vi) Construction and improvement of a railway-highway grade crossing safety feature, including installation of protective devices.

''(vii) The conduct of a model traffic enforcement activity at a railway-highway crossing.

''(viii) Construction of a traffic calming feature.

''(ix) Elimination of a roadside hazard.

''(x) Installation, replacement, and other improvement of highway signage and pavement markings, or a project to maintain minimum levels of retroreflectivity, that addresses a highway safety problem consistent with a State strategic highway safety plan.

''(xi) Installation of a priority control system for emergency vehicles at signalized intersections.

''(xii) Installation of a traffic control or other warning device at a location with high crash potential.

''(xiii) Transportation safety planning.

''(xiv) Collection, analysis, and improvement of safety data.

''(xv) Planning integrated interoperable emergency communications equipment, operational activities, or traffic enforcement activities (including police assistance) relating to work zone safety.

''(xvi) Installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of road users and workers), and crash attenuators.

''(xvii) The addition or retrofitting of structures or other measures to eliminate or reduce crashes involving vehicles and wildlife.

''(xviii) Installation of yellow-green signs and signals at pedestrian and bicycle crossings and in school zones.

''(xix) Construction and operational improvements on high risk rural roads.

''(xx) Geometric improvements to a road for safety purposes that improve safety.

''(xxi) A road safety audit.

''(xxii) Roadway safety infrastructure improvements consistent with the recommendations included in the publication of the Federal Highway Administration entitled 'Highway Design Handbook for Older Drivers and Pedestrians' (FHWA-RD-01-103), dated May 2001 or as subsequently revised and updated.

''(xxiii) Truck parking facilities eligible for funding under section 1401 of the MAP–21.

''(xxiv) Systemic safety improvements.

''(5) MODEL INVENTORY OF ROADWAY ELEMENTS.—The term 'model inventory of roadway elements' means the listing and standardized coding by the Federal Highway Administration of roadway and traffic data elements critical to safety management, analysis, and decisionmaking.

''(6) PROJECT TO MAINTAIN MINIMUM LEVELS OF RETROREFLECTIVITY.—The term 'project to maintain minimum levels of retroreflectivity' means a project that is designed to maintain a highway sign or pavement marking retroreflectivity at or above the minimum levels prescribed in Federal or State regulations.

''(7) ROAD SAFETY AUDIT.—The term 'road safety audit' means a formal safety performance examination of an existing or future road or intersection by an independent multidisciplinary audit team.

''(8) ROAD USERS.—The term 'road user' means a motorist, passenger, public transportation operator or user, truck driver, bicyclist, motorcyclist, or pedestrian, including a person with disabilities.

''(9) SAFETY DATA.—

''(A) IN GENERAL.—The term 'safety data' means crash, roadway, and traffic data on a public road.

''(B) INCLUSION.—The term 'safety data' includes, in the case of a railway-highway grade crossing, the characteristics of highway and train traffic, licensing, and vehicle data.

''(10) SAFETY PROJECT UNDER ANY OTHER SECTION.—

''(A) IN GENERAL.—The term 'safety project under any other section' means a project carried out for the purpose of safety under any other section of this title.

''(B) INCLUSION.—The term 'safety project under any other section' includes—

''(i) a project consistent with the State strategic highway safety plan that promotes the awareness of the public and educates the

public concerning highway safety matters (including motorcycle safety);

''(ii) a project to enforce highway safety laws; and

''(iii) a project to provide infrastructure and infrastructure-related equipment to support emergency services.

''(11) STATE HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term 'State highway safety improvement program' means a program of highway safety improvement projects, activities, plans and reports carried out as part of the Statewide transportation improvement program under section 135(g).

''(12) STATE STRATEGIC HIGHWAY SAFETY PLAN.—The term 'State strategic highway safety plan' means a comprehensive plan, based on safety data, developed by a State transportation department that—

''(A) is developed after consultation with—

''(i) a highway safety representative of the Governor of the State;

''(ii) regional transportation planning organizations and metropolitan planning organizations, if any;

''(iii) representatives of major modes of transportation;

''(iv) State and local traffic enforcement officials;

''(v) a highway-rail grade crossing safety representative of the Governor of the State;

''(vi) representatives conducting a motor carrier safety program under section 31102, 31106, or 31309 of title 49;

''(vii) motor vehicle administration agencies;

''(viii) county transportation officials; and

''(ix) other major Federal, State, tribal, and local safety stakeholders;

''(B) analyzes and makes effective use of State, regional, local, or tribal safety data;

''(C) addresses engineering, management, operation, education, enforcement, and emergency services elements (including integrated, interoperable emergency communications) of highway safety as key factors in evaluating highway projects;

''(D) considers safety needs of, and high-fatality segments of, all public roads, including non-State-owned public roads and roads on tribal land;

''(E) considers the results of State, regional, or local transportation and highway safety planning processes;

''(F) describes a program of strategies to reduce or eliminate safety hazards;

''(G) is approved by the Governor of the State or a responsible State agency;

''(H) is consistent with section 135(g); and

''(I) is updated and submitted to the Secretary for approval as required under subsection (d)(2).

''(13) SYSTEMIC SAFETY IMPROVEMENT.—The term 'systemic safety improvement' means an improvement that is widely implemented based on high-risk roadway features that are correlated with particular crash types, rather than crash frequency.

''(b) PROGRAM.—

''(1) IN GENERAL.—The Secretary shall carry out a highway safety improvement program.

''(2) PURPOSE.—The purpose of the highway safety improvement program shall be to achieve a significant reduction in traffic fatalities and serious injuries on all public roads, including non-State-owned public roads and roads on tribal land.

''(c) ELIGIBILITY.—

''(1) IN GENERAL.—To obligate funds apportioned under section 104(b)(3) to carry out this section, a State shall have in effect a State highway safety improvement program under which the State—

''(A) develops, implements, and updates a State strategic highway safety plan that identifies and analyzes highway safety problems and opportunities as provided in subsections (a)(12) and (d);

''(B) produces a program of projects or strategies to reduce identified safety problems; and

''(C) evaluates the strategic highway safety plan on a regularly recurring basis in accordance with subsection (d)(1) to ensure the accuracy of the data and priority of proposed strategies.

''(2) IDENTIFICATION AND ANALYSIS OF HIGHWAY SAFETY PROBLEMS AND OPPORTUNITIES.—As part of the State highway safety improvement program, a State shall—

''(A) have in place a [comprehensive] safety data system with the ability to perform safety problem identification and countermeasure analysis—

''(i) to improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of the safety data on all public roads, including non-State-owned public roads and roads on tribal land in the State;

''(ii) to evaluate the effectiveness of data improvement efforts;

''(iii) to link State data systems, including traffic records, with other data systems within the State;

''(iv) to improve the compatibility and interoperability of safety data with other State transportation-related data systems and the compatibility and interoperability of State safety data systems with data systems of other States and national data systems;

''(v) to enhance the ability of the Secretary to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances; and

''(vi) to improve the collection of data on nonmotorized crashes;

''(B) based on the analysis required by subparagraph (A)—

''(i) identify hazardous locations, sections, and elements (including roadside obstacles, railway-highway crossing needs, and unmarked or poorly marked roads) that constitute a danger to motorists (including motorcyclists), bicyclists, pedestrians, and other highway users;

''(ii) using such criteria as the State determines to be appropriate, establish the relative severity of those locations, in terms of crashes *(including crash rates)*, fatalities, serious injuries, traffic volume levels, and other relevant data;

''(iii) identify the number of fatalities and serious injuries on all public roads by location in the State;

''(iv) identify highway safety improvement projects on the basis of crash experience, crash potential, *crash rate,* or other data-supported means; and

''(v) consider which projects maximize opportunities to advance safety;

''(C) adopt strategic and performance-based goals that—

''(i) address traffic safety, including behavioral and infrastructure problems and opportunities on all public roads;

''(ii) focus resources on areas of greatest need; and

''(iii) are coordinated with other State highway safety programs;

''(D) advance the capabilities of the State for safety data collection, analysis, and integration in a manner that—

''(i) complements the State highway safety program under chapter 4 and the commercial vehicle safety plan under section 31102 of title 49;

''(ii) includes all public roads, including public non-State-owned roads and roads on tribal land;

''(iii) identifies hazardous locations, sections, and elements on all public roads that constitute a danger to motorists (including motorcyclists), bicyclists, pedestrians, persons with disabilities, and other highway users;

''(iv) includes a means of identifying the relative severity of hazardous locations described in clause (iii) in terms of [crashes,] *crashes (including crash rate),* serious injuries, fatalities, and traffic volume levels; and

''(v) improves the ability of the State to identify the number of fatalities and serious injuries on all public roads in the State with a breakdown by functional classification and ownership in the State;

''(E)(i) determine priorities for the correction of hazardous road locations, sections, and elements (including railway-highway crossing improvements), as identified through safety data analysis;

''(ii) identify opportunities for preventing the development of such hazardous conditions; and

''(iii) establish and implement a schedule of highway safety improvement projects for hazard correction and hazard prevention; and

''(F)(i) establish an evaluation process to analyze and assess results achieved by highway safety improvement projects carried out in accordance with procedures and criteria established by this section; and

''(ii) use the information obtained under clause (i) in setting priorities for highway safety improvement projects.

''(d) UPDATES TO STRATEGIC HIGHWAY SAFETY PLANS.—

''(1) ESTABLISHMENT OF REQUIREMENTS.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of the MAP–21, the Secretary shall establish requirements for regularly recurring State updates of strategic highway safety plans.

''(B) CONTENTS OF UPDATED STRATEGIC HIGHWAY SAFETY PLANS.—In establishing requirements under this subsection, the Secretary shall ensure that States take into consideration, with respect to updated strategic highway safety plans—

''(i) the findings of road safety audits;

''(ii) the locations of fatalities and serious injuries;

''(iii) the locations that do not have an empirical history of fatalities and serious injuries, but possess risk factors for potential crashes;

''(iv) rural roads, including all public roads, commensurate with fatality data;

''(v) motor vehicle crashes that include fatalities or serious injuries to pedestrians and bicyclists;

''(vi) the cost-effectiveness of improvements;

''(vii) improvements to rail-highway grade crossings; and

''(viii) safety on all public roads, including non-State-owned public roads and roads on tribal land.

''(2) APPROVAL OF UPDATED STRATEGIC HIGHWAY SAFETY PLANS.—

''(A) IN GENERAL.—Each State shall—

''(i) update the strategic highway safety plans of the State in accordance with the requirements established by the Secretary under this subsection; and

''(ii) submit the updated plans to the Secretary, along with a detailed description of the process used to update the plan.

''(B) REQUIREMENTS FOR APPROVAL.—The Secretary shall not approve the process for an updated strategic highway safety plan unless—

''(i) the updated strategic highway safety plan is consistent with the requirements of this subsection and subsection (a)(12); and

''(ii) the process used is consistent with the requirements of this subsection.

''(3) PENALTY FOR FAILURE TO HAVE AN APPROVED UPDATED STRATEGIC HIGHWAY SAFETY PLAN.—If a State does not have an updated strategic highway safety plan with a process approved by the Secretary by August 1 of the

fiscal year beginning after the date of establishment of the requirements under paragraph (1)—

''(A) the State shall not be eligible to receive any additional limitation pursuant to the redistribution of the limitation on obligations for Federal-aid highway and highway safety construction programs that occurs after August 1 for each succeeding fiscal year until the fiscal year during which the plan is approved; and

''(B) the Secretary shall, on October 1 of each fiscal year thereafter, transfer from funds apportioned to the State under section 104(b)(2) an amount equal to 10 percent of the funds so apportioned for the fiscal year for use under the highway safety improvement program under this section to the apportionment of the State under section 104(b)(3) until the fiscal year in which the plan is approved.

''(e) ELIGIBLE PROJECTS.—

''(1) IN GENERAL.—Funds apportioned to the State under section 104(b)(3) may be obligated to carry out—

''(A) any highway safety improvement project on any public road or publicly owned bicycle or pedestrian pathway or trail; or

''(B) as provided in subsection (f), other safety projects.

''(2) USE OF OTHER FUNDING FOR SAFETY.—

''(A) EFFECT OF SECTION.—Nothing in this section prohibits the use of funds made available under other provisions of this title for highway safety improvement projects.

''(B) USE OF OTHER FUNDS.—States are encouraged to address the full scope of the safety needs and opportunities of the States by using funds made available under other provisions of this title (except a provision that specifically prohibits that use).

''(f) FLEXIBLE FUNDING FOR STATES WITH A STRATEGIC HIGHWAY SAFETY PLAN.—

''(1) IN GENERAL.—To further the implementation of a State strategic highway safety plan, a State may use up to 10 percent of the amount of funds apportioned to the State under section 104(b)(3) for a fiscal year to carry out safety projects under any other section as provided in the State strategic highway safety plan if the State certifies that—

''(A) the State has met needs in the State relating to railway-highway crossings for the preceding fiscal year; and

''(B) the funds are being used for the most effective projects to make progress toward achieving the safety performance targets of the State.

''(2) OTHER TRANSPORTATION AND HIGHWAY SAFETY PLANS.—Nothing in this subsection requires a State to revise any State process, plan, or program in effect on the date of enactment of the MAP–21.

''(g) DATA IMPROVEMENT.—

''(1) DEFINITION OF DATA IMPROVEMENT ACTIVITIES.—In this subsection:

''(A) IN GENERAL.—The term 'data improvement activities' means a project or activity to further the capacity of a State to make more informed and effective safety infrastructure investment decisions.

''(B) INCLUSIONS.—The term 'data improvement activities' includes a project or activity—

''(i) to create, update, or enhance a highway basemap of all public roads in a State;

''(ii) to collect safety data, including data identified as part of the model inventory of roadway elements, for creation of or use on a highway basemap of all public roads in a State;

''(iii) to store and maintain safety data in an electronic manner;

''(iv) to develop analytical processes for safety data elements;

''(v) to acquire and implement roadway safety analysis tools; and

''(vi) to support the collection, maintenance, and sharing of safety data on all public roads and related systems associated with the analytical usage of that data.

''(2) APPORTIONMENT.—Of the funds apportioned to a State under section 104(b)(3) for a fiscal year—

''(A) not less than 8 percent of the funds apportioned for each of fiscal years 2012 through 2013 shall be available only for data improvement activities under this subsection; and

''(B) not less than 4 percent of the funds apportioned for fiscal year 2014 and each fiscal year thereafter shall be available only for data improvement activities under this subsection.

''(3) SPECIAL RULE.—A State may use funds apportioned to the State pursuant to this subsection for any project eligible under this section if the State demonstrates to the satisfaction of the Secretary that the State has met all of the State needs for data collection to support the State strategic highway safety plan and sufficiently addressed the data improvement activities described in paragraph (1).

''(4) MODEL INVENTORY OF ROADWAY ELEMENTS.—The Secretary shall—

''(A) establish a subset of the model inventory of roadway elements that are useful for the inventory of roadway safety; and

''(B) ensure that States adopt and use the subset to improve data collection.

''(h) PERFORMANCE MEASURES AND TARGETS FOR STATE HIGHWAY SAFETY IMPROVEMENT PROGRAMS.—

''(1) ESTABLISHMENT OF PERFORMANCE MEASURES.—Not later than 1 year after the date of enactment of the MAP–21, the Secretary shall issue guidance to States on the establishment, collection, and reporting of performance measures that reflect—

''(A) serious injuries and fatalities per vehicle mile traveled;

''(B) serious injuries and fatalities per capita; and

''(C) the number of serious injuries and fatalities

''(2) ESTABLISHMENT OF STATE PERFORMANCE TARGETS.—Not later than 1 year after the Secretary has issued guidance to States on the establishment, collection, and reporting of performance measures, each State shall set performance targets that reflect—

''(A) serious injuries and fatalities per vehicle mile traveled;

''(B) serious injuries and fatalities per capita; and

''(C) the number of serious injuries and fatalities.

''(i) SPECIAL RULES.—

''(1) HIGH-RISK RURAL ROAD SAFETY.—If the fatality rate on rural roads in a State increases over the most recent 2-year period for which data are available, that State shall be required to obligate in the next fiscal year *for projects* on high risk rural roads an amount equal to at least 200 percent of the amount of funds the State received for fiscal year 2009 for high risk rural roads under subsection (f) of this section, as in effect on the day before the date of enactment of the MAP–21.

[''(2) RAIL-HIGHWAY GRADE CROSSINGS.—If the fatality rate at highway grade crossings in a State increases over the most recent 2-year period for which data are available, that State shall be required to obligate in the next fiscal year on rail-highway grade crossings an amount equal to 120 percent of the amount of funds the State received for fiscal year 2009 for rail-highway grade crossings under section 130(f) (as in effect on the day before the date of enactment of the MAP–21).**]**

''(2) RAIL-HIGHWAY GRADE CROSSINGS.—If the average number of fatalities at rail-highway grade crossings in a State over the most recent 2-year period for which data are available increases over the average number of fatalities during the preceding 2-year period, that State shall be required to obligate in the next fiscal year for projects on rail-highway grade crossings an amount equal to 120 percent of the amount of funds the State received for fiscal year 2009 for rail-highway grade crossings under section 130(f) (as in effect on the day before the date of enactment of the MAP–21).

''(j) REPORTS.—

''(1) IN GENERAL.—A State shall submit to the Secretary a report that—

''(A) describes the progress being made to achieve the performance targets established under subsection (h);

''(B) describes progress being made to implement highway safety improvement projects under this section;

''(C) assesses the effectiveness of those improvements; and

''(D) describes the extent to which the improvements funded under this section have contributed to reducing—

''(i) the number and rate of fatalities on all public roads with, to the maximum extent practicable, a breakdown by functional classification and ownership in the State;

''(ii) the number and rate of serious injuries on all public roads with, to the maximum extent practicable, a breakdown by functional classification and ownership in the State; and

''(iii) the occurrences of fatalities and serious injuries at railway-highway crossings.

''(2) CONTENTS; SCHEDULE.—The Secretary shall establish the content and schedule for the submission of the report under paragraph (1).

''(3) TRANSPARENCY.—The Secretary shall make strategic highway safety plans submitted under subsection (d) and reports submitted under this subsection available to the public through—

''(A) the website of the Department; and

''(B) such other means as the Secretary determines to be appropriate.

''(4) DISCOVERY AND ADMISSION INTO EVIDENCE OF CERTAIN REPORTS, SURVEYS, AND INFORMATION.—Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for any purpose relating to this section, shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location identified or addressed in the reports, surveys, schedules, lists, or other data.

''(k) STATE PERFORMANCE TARGETS.—If the Secretary determines that a State has not met or made significant progress toward meeting the performance targets of the State established under subsection (h) by the date that is 2 years after the date of the establishment of the performance targets, the State shall—

''(1) use obligation authority equal to the apportionment of the State for the prior year under section 104(b)(3) only for highway safety improvement projects under this section until the Secretary determines that the State has met or made significant progress toward meeting the performance targets of the State; and

''(2) submit annually to the Secretary, until the Secretary determines that the State has met or made significant progress toward meeting the performance targets of the State, an implementation plan that—

''(A) identifies roadway features that constitute a hazard to road users;

''(B) identifies highway safety improvement projects on the basis of crash experience, crash potential, or other data-supported means;

''(C) describes how highway safety improvement program funds will be allocated, including projects, activities, and strategies to be implemented;

''(D) describes how the proposed projects, activities, and strategies funded under the State highway safety improvement program will allow the State to make progress toward achieving the safety performance targets of the State; and

''(E) describes the actions the State will undertake to meet the performance targets of the State.

''(l) FEDERAL SHARE OF HIGHWAY SAFETY IMPROVEMENT PROJECTS.—Except as provided in sections 120 and 130, the Federal share of the cost of a highway safety improvement project carried out with funds apportioned to a State under section 104(b)(3) shall be 90 percent.''.

SEC. 1113. CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.

Section 149 of title 23, United States Code, is amended to read as follows:

''§ 149. Congestion mitigation and air quality improvement program

''(a) ESTABLISHMENT.—The Secretary shall establish and implement a congestion mitigation and air quality improvement program in accordance with this section.

''(b) ELIGIBLE PROJECTS.—

''(1) IN GENERAL.—Except as provided in subsection (c), a State may obligate funds apportioned to the State for the congestion mitigation and air quality improvement program under section 104(b)(4) that are not reserved under subsection (l) only for a transportation project or program if the project or program is for an area in the State that is or was designated as a nonattainment area for ozone, carbon monoxide, or particulate matter under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) and classified pursuant to section 181(a), 186(a), 188(a), or 188(b) of the Clean Air Act (42 U.S.C. 7511(a), 7512(a), 7513(a), or 7513(b)) or is or was designated as a nonattainment area under section 107(d) of that Act after December 31, 1997, or is required to prepare, and file with the Administrator of the Environmental Protection Agency, maintenance plans under the Clean Air Act (42 U.S.C. 7401 et seq.); and

''(A)(i)(I) if the Secretary, after consultation with the Administrator determines, on the basis of information published by the Environmental Protection Agency pursuant to subparagraph (A) of section 108(f)(1) of the Clean Air Act (other than clause (xvi) of that subparagraph) (42 U.S.C. 7408(f)(1)) that the project or program is likely to contribute to—

''(aa) the attainment of a national ambient air quality standard; or

''(bb) the maintenance of a national ambient air quality standard in a maintenance area; and

''(II) there exists a high level of effectiveness in reducing air pollution, in cases of projects or programs where sufficient information is available in the database established pursuant to subsection (h) to determine the relative effectiveness of such projects or programs; or

''(ii) in any case in which such information is not available, if the Secretary, after such consultation, determines that the project or program is part of a program, method, or strategy described in such section 108(f)(1)(A);

''(B) if the project or program is included in a State implementation plan that has been approved pursuant to the Clean Air Act and the project will have air quality benefits;

''(C) to establish or operate a traffic monitoring, management, and control facility or program, including [advanced] truck stop electrification systems, if the Secretary, after consultation with the Administrator, determines that the facility or program is likely to contribute to the attainment of a national ambient air quality standard;

''(D) if the program or project improves traffic flow, including projects to improve signalization, construct high-occupancy vehicle lanes, improve intersections, add turning lanes, improve transportation systems management and operations that mitigate congestion and improve air quality, and implement intelligent transportation system strategies and such other projects that are eligible for assistance under this section on the day before the date of enactment of the MAP–21, including programs or projects to improve incident and emergency response or improve mobility, such as through real-time traffic, transit, and multimodal traveler information;

''(E) if the project or program involves the purchase of integrated, interoperable emergency communications equipment;

''(F) if the project or program is for—

''(i) the purchase of diesel retrofits that are—

''(I) for motor vehicles (as defined in section 216 of the Clean Air Act (42 U.S.C. 7550)); or

''(II) verified or certified technologies included in the list published pursuant to subsection (f)(2), as in effect on the day before the date of enactment of the MAP–21, for nonroad vehicles and nonroad engines (as defined in section 216 of the Clean Air Act (42 U.S.C. 7550)) that are used in construction projects that are—

''(aa) located in nonattainment or maintenance areas for ozone, PM_{10}, or $PM_{2.5}$ (as defined under the Clean Air Act (42 U.S.C. 7401 et seq.)); and

''(bb) funded, in whole or in part, under this title; or

''(ii) the conduct of outreach activities that are designed to provide information and technical assistance to the owners and operators of diesel equipment and vehicles regarding the purchase and installation of diesel retrofits;

''(G) if the project or program shifts traffic demand to nonpeak hours or other transportation modes, increases vehicle occupancy rates, or otherwise reduces demand for roads through such means as telecommuting, ridesharing, carsharing, alternative work hours, and pricing; or

''(H) if the Secretary, after consultation with the Administrator, determines that the project or program is likely to contribute to the attainment of a national ambient air quality standard, whether through reductions in vehicle miles traveled, fuel consumption, or through other factors.

''(2) LIMITATIONS.—Funds apportioned to a State under section 104(b)(4) and not reserved under subsection (l) may not be obligated for a project that will result in the construction of new capacity available to single-occupant vehicles unless the project consists of a high-occupancy vehicle facility available to single-occupant vehicles only at other than peak travel times or such use by single-occupant vehicles at peak travel times is subject to a toll.

''(c) STATES FLEXIBILITY.—

''(1) STATES WITHOUT A NONATTAINMENT AREA.—If a State does not have, and never has had, a nonattainment area designated under the Clean Air Act (42 U.S.C. 7401 et seq.) for ozone, carbon monoxide, or $PM_{2.5}$, the State may use funds apportioned to the State under section 104(b)(4) (excluding the amount of funds reserved under subsection (l)) for any project in the State that—

''(A) would otherwise be eligible under subsection (b) as if the project were carried out in a nonattainment or maintenance area; or

''(B) is eligible under the transportation mobility program under section 133.

''(2) STATES WITH A NONATTAINMENT AREA.—

''(A) IN GENERAL.—If a State has a nonattainment area or maintenance area and received funds in fiscal year 2009 under section 104(b)(2)(D), as in effect on the day before the date of enactment of the MAP–21, above the amount of funds that the State would have received based on the nonattainment and maintenance area population of the State under subparagraphs (B) and (C) of section 104(b)(2), as in effect on the day before the date of enactment of the MAP–21, the State may use for any project that is eligible under the transportation mobility program under section 133 an amount of funds apportioned to such State under section 104(b)(4) (excluding the amount of funds reserved under subsection (l)) that is equal to the product obtained by multiplying—

''(i) [the apportioned amount] *the amount apportioned* to such State under section 104(b)(4) (excluding the amount of funds reserved under subsection (l)); by

''(ii) the ratio calculated under paragraph (B).

''(B) RATIO.—For purposes of this paragraph, the ratio shall be calculated as—

''(i) the amount for fiscal year 2009 such State was permitted by section 149(c)(2), as in effect on the day before the date of enactment of the MAP–21, to obligate in any area of the State for projects eligible under section 133, as in effect on the day before the date of enactment of the MAP–21; bears to

''(ii) the total apportionment to such State for fiscal year 2009 under section 104(b)(2), as in effect on the day before the date of enactment of the MAP–21.

''(3) CHANGES IN DESIGNATION.—If a new nonattainment area is designated or a previously designated nonattainment area is redesignated as an attainment area in a State under the Clean Air Act (42 U.S.C. 7401 et seq.), the Secretary shall modify the amount such State is permitted to obligate in any area of the State for projects eligible under section 133.

''(d) APPLICABILITY OF PLANNING REQUIREMENTS.—Programming and expenditure of funds for projects under this section shall be consistent with the requirements of sections 134 and 135.

''(e) PARTNERSHIPS WITH NONGOVERNMENTAL ENTITIES.—

''(1) IN GENERAL.—Notwithstanding any other provision of this title and in accordance with this subsection, a metropolitan planning organization, State transportation department, or other project sponsor may enter into an agreement with any public, private, or nonprofit entity to cooperatively implement any project carried out with funds apportioned under section 104(b)(4).

''(2) FORMS OF PARTICIPATION BY ENTITIES.—Participation by an entity under paragraph (1) may consist of—

''(A) ownership or operation of any land, facility, vehicle, or other physical asset associated with the project;

''(B) cost sharing of any project expense;

''(C) carrying out of administration, construction management, project management, project operation, or any other management or operational duty associated with the project; and

''(D) any other form of participation approved by the Secretary.

''(3) ALLOCATION TO ENTITIES.—A State may allocate funds apportioned under section 104(b)(4) to an entity described in paragraph (1).

''(4) ALTERNATIVE FUEL PROJECTS.—In the case of a project that will provide for the use of alternative fuels by privately owned vehicles or vehicle fleets, activities eligible for funding under this subsection—

''(A) may include the costs of vehicle refueling infrastructure, including infrastructure that would support the development, production, and use of emerging technologies that reduce emissions of air pollutants from motor vehicles, and other capital investments associated with the project;

''(B) shall include only the incremental cost of an alternative fueled vehicle, as compared to a conventionally fueled vehicle, that would otherwise be borne by a private party; and

''(C) shall apply other governmental financial purchase contributions in the calculation of net incremental cost.

''(5) PROHIBITION ON FEDERAL PARTICIPATION WITH RESPECT TO REQUIRED ACTIVITIES.—A Federal participation payment under this subsection may not be made to an entity to fund an obligation imposed under the Clean Air Act (42 U.S.C. 7401 et seq.) or any other Federal law.

''(f) PRIORITY CONSIDERATION.—States and metropolitan planning organizations shall give priority in areas designated as nonattainment or maintenance for $PM_{2.5}$ under the Clean Air Act (42 U.S.C. 7401 et seq.) in distributing funds received for congestion mitigation and air quality projects and programs from apportionments under section 104(b)(4) not required to be reserved under subsection (l) to projects that are proven to reduce $PM_{2.5}$, including diesel retrofits.

''(g) INTERAGENCY CONSULTATION.—The Secretary shall encourage States and metropolitan planning organizations to consult with State and local air quality agencies in nonattainment and maintenance areas on the estimated emission reductions from proposed congestion mitigation and air quality improvement programs and projects.

''(h) EVALUATION AND ASSESSMENT OF PROJECTS.—

''(1) DATABASE.—

''(A) IN GENERAL.—Using appropriate assessments of projects funded under the congestion mitigation and air quality program and results from other research, the Secretary shall maintain and disseminate a cumulative database describing the impacts of the projects, including specific information about each project, such as the project name, location, sponsor, cost, and, to the extent already measured by the project sponsor, cost-effectiveness, based on reductions in congestion and emissions.

''(B) AVAILABILITY.—The database shall be published or otherwise made readily available by the Secretary in electronically accessible format and means, such as the Internet, for public review.

''(2) COST EFFECTIVENESS.—

''(A) IN GENERAL.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall evaluate projects on a periodic basis and develop a table or other similar medium that illustrates the cost-effectiveness of a range of project types eligible for funding under this section as to how the projects mitigate congestion and improve air quality.

''(B) CONTENTS.—The table described in subparagraph (A) shall show measures of cost-effectiveness, such as dollars per ton of emissions reduced, and assess those measures over a variety of timeframes to capture impacts on the planning timeframes outlined in section 134.

''(C) USE OF TABLE.—States and metropolitan planning organizations shall consider the information in the table when selecting projects or developing performance plans under subsection (k).

''(i) OPTIONAL PROGRAMMATIC ELIGIBILITY.—

''(1) IN GENERAL.—At the discretion of a metropolitan planning organization, a technical assessment of a selected program of projects may be conducted through modeling or other means to demonstrate the emissions reduction projection required under this section.

''(2) APPLICABILITY.—If an assessment described in paragraph (1) successfully demonstrates an emissions reduction, all projects included in such assessment shall be eligible for obligation under this section without further demonstration of emissions reduction of individual projects included in such assessment.

''(j) SUBALLOCATION TO NONATTAINMENT AND MAINTENANCE AREAS.—

''(1) IN GENERAL.—An amount equal to 50 percent of the amount of funds apportioned to each State under section 104(b)(4) (excluding the amount of funds reserved under subsection (l)) shall be suballocated for projects within each area designated as nonattainment or maintenance for the pollutants described in subsection (b).

''(2) DISTRIBUTION OF FUNDS.—The distribution within any State of funds required to be suballocated under paragraph (1) to each nonattainment or maintenance area shall be in accordance with a formula developed by each State and approved by the Secretary, which shall consider the population of each such nonattainment or maintenance area and shall be weighted by the severity of pollution in the manner described in paragraph (6).

''(3) PROJECT SELECTION.—Projects under this subsection shall be selected by a State and shall be consistent with the requirements of sections 134 and 135.

''(4) PRIORITY FOR USE OF SUBALLOCATED FUNDS IN $PM_{2.5}$ AREAS.—

''(A) IN GENERAL.—An amount equal to 50 percent of the funds suballocated under paragraph (1) for a nonattainment or maintenance area that are based all or in part on the weighted population of such area in fine particulate matter nonattainment shall be obligated to projects that reduce such fine particulate matter emissions in such area, including diesel retrofits.

''(B) CONSTRUCTION EQUIPMENT.—An amount equal to 30 percent of the funds required to be set aside under subparagraph (A) shall be obligated to carry out the objectives of section 330.

''(C) OBLIGATION PROCESS.—[Each]

''*(i) IN GENERAL.—Each* State or metropolitan planning organization required to obligate funds in accordance with this paragraph shall develop a process to provide funding directly to eligible entities (as defined under section 330) in order to achieve the objectives of such section.

''*(ii) OBLIGATION.—A State may obligate suballocated funds designated under this paragraph without regard to any process or other requirement established under this section.*

''(5) FUNDS NOT SUBALLOCATED.—Except as provided in subsection (c), funds apportioned to a State under section 104(b)(4) (excluding the amount of funds reserved under subsection (l)) and not suballocated under paragraph (1) shall be made available to such State for programming in any nonattainment or maintenance area in the State.

''(6) FACTORS FOR CALCULATION OF SUBALLOCATION.—

''(A) IN GENERAL.—For the purposes of paragraph (2), each State shall weight the population of each such nonattainment or maintenance area by a factor of—

''(i) 1.0 if, at the time of the apportionment, the area is a maintenance area for ozone or carbon monoxide;

''(ii) 1.0 if, at the time of the apportionment, the area is classified as a marginal ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.);

''(iii) 1.1 if, at the time of the apportionment, the area is classified as a moderate ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.);

''(iv) 1.2 if, at the time of the apportionment, the area is classified as a serious ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.);

''(v) 1.3 if, at the time of the apportionment, the area is classified as a severe ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.);

''(vi) 1.5 if, at the time of the apportionment, the area is classified as an extreme ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.);

''(vii) 1.0 if, at the time of the apportionment, the area is not a nonattainment or maintenance area for ozone as described in section 149(b), but is designated under section 107 of the Clean Air Act (42 U.S.C. 7407) as a nonattainment area for carbon monoxide;

''(viii) 1.0 if, at the time of the apportionment, the area is designated as nonattainment for ozone under section 107 of the Clean Air Act (42 U.S.C. 7407); or

''(ix) 1.2 if, at the time of the apportionment, the area is not a nonattainment or maintenance area as described in section 149(b) for ozone, but is designated as a nonattainment or maintenance area for fine particulate matter, 2.5 micrometers or less, under section 107 of the Clean Air Act (42 U.S.C. 7407).

''(B) OTHER FACTORS.—If, in addition to being designated as a nonattainment or maintenance area for ozone as described in section 149(b), any county within the area was also designated under section 107 of the Clean Air Act (42 U.S.C. 7407) as a nonattainment or maintenance area for carbon monoxide, or was designated under section 107 of the Clean Air Act (42 U.S.C. 7407) as a nonattainment or maintenance area for particulate matter, 2.5 micrometers or less, or both, the weighted nonattainment or maintenance area population of the county, as determined under clauses (i) through (vi), or clause (viii), of subparagraph (A), shall be further multiplied by a factor of 1.2, or a second further factor of 1.2 if the area is designated as a nonattainment or maintenance area for both carbon monoxide and particulate matter, 2.5 micrometers or less.

''(7) EXCEPTIONS FOR CERTAIN STATES.—

''(A) A State without a nonattainment or maintenance area shall not be subject to the requirements of this subsection.

''(B) The amount of funds required to be set aside under paragraph (1) in a State that received a minimum apportionment for fiscal year 2009 under section 104(b)(2)(D), as in effect on the day before the date of enactment of the MAP–21, shall be based on the amount of funds such State would otherwise have been apportioned under section 104(b)(4) (excluding the amount of funds reserved under subsection (l)) but for the minimum apportionment in fiscal year 2009.

''(k) PERFORMANCE PLAN.—

''(1) IN GENERAL.—Each tier I metropolitan planning organization (as defined in section 134) representing a nonattainment or maintenance area shall develop a performance plan that—

''(A) includes an area baseline level for traffic congestion and on-road mobile source emissions for which the area is in nonattainment or maintenance;

''(B) identifies air quality and traffic congestion reduction target levels based on measures established by the Secretary; and

''(C) includes a description of projects identified for funding under this section and a description of how such projects will contribute to achieving emission and traffic congestion reduction targets.

''(2) UPDATED PLANS.—

''(A) IN GENERAL.—Performance plans shall be updated on the schedule required under paragraph (3).

''(B) CONTENTS.—An updated plan shall include a separate report that assesses the progress of the program of projects under the previous plan in achieving the air quality and traffic congestion targets of the previous plan.

''(3) RULEMAKING.—Not later than 18 months after the date of enactment of the MAP–21, the Secretary shall promulgate regulations to implement this subsection that identify performance measures for traffic congestion and on-road mobile source emissions, timelines for performance plans, and requirements under this section for assessing the implementation of projects carried out under this section.

''(1) ADDITIONAL ACTIVITIES.—

''(1) RESERVATION OF FUNDS.—Of the funds apportioned to a State under section 104(b)(4), a State shall reserve the amount of funds attributable to the inclusion of the 10 percent of surface transportation program funds apportioned to such State for fiscal year 2009 in the formula under section 104(b)(4) for projects under this subsection.

''(2) ELIGIBLE PROJECTS.—A State may obligate the funds reserved under this subsection for any of the following projects or activities:

''(A) Transportation enhancements, as defined in section 101.

''(B) The recreational trails program under section 206.

''(C) The safe routes to school program under section 1404 of the SAFETEA-LU (23 U.S.C. 402 note; Public Law 109–59).

[''(D) Planning, designing, or constructing boulevards, main streets, and other roadways, including—

''(i) redesign of an underused highway, particularly a highway that is no longer a principal route after construction of a bypass or Interstate System route, into a boulevard or main street that includes multiple forms of transportation;

''(ii) new street construction that enhances multimodal connectivity and includes public transportation, pedestrian walkways, or bicycle infrastructure;

''(iii) redesign of a street to enhance connectivity and increase the efficiency of network performance that includes public transportation, pedestrian walkways, or bicycle infrastructure;

''(iv) redesign of a highway to support public transportation, including transit-only lanes and priority signalization for transit; or

''(v) construction of high-occupancy vehicle lanes and congestion reduction activities that increase the efficiency of the existing road network.

''(E) Providing transportation choices, including—

''(i) on-road and off-road trail facilities for pedestrians, bicyclists, and other nonmotorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting, and other safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

''(ii) the planning, design, and construction of infrastructure-related projects and systems that will provide safe routes for nondrivers, including children, older adults, and individuals with disabilities, to access daily needs;

''(iii) activities for safety and education for pedestrians and bicyclists and to encourage walking and bicycling, including efforts to encourage walking and bicycling to school and community centers;

''(iv) conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other nonmotorized transportation users; and

''(v) carpool, vanpool, and car share projects.**]**

''(D) Planning, designing, or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways.

''(3) FLEXIBILITY OF EXCESS RESERVED FUNDING.—Beginning in the second fiscal year after the date of enactment of the MAP–21, if on August 1 of that fiscal year the unobligated balance of available funds apportioned to a State under section 104(b)(4) and reserved by a State under this subsection exceeds 150 percent of such reserved amount in such fiscal year, the State may thereafter obligate the amount of excess funds for any activity—

''(A) that is eligible to receive funding under this subsection; or

''(B) for which the Secretary has approved the obligation of funds for any State under this section.

''(4) PROVISION OF ADEQUATE DATA, MODELING, AND SUPPORT.—In any case in which a State requests reasonable technical support or otherwise requests data (including planning models and other modeling), clarification, or guidance regarding the content of any final rule or applicable regulation material to State actions under this section, the Secretary and any other agency shall provide that support, clarification, or guidance in a timely manner.

''**[**(4)**]***(5)* TREATMENT OF PROJECTS.—Notwithstanding any other provision of law, projects funded under this subsection shall be treated as projects on a Federal-aid system under this chapter.''.

SEC. 1114. TERRITORIAL AND PUERTO RICO HIGHWAY PROGRAM.

(a) IN GENERAL.—Section 165 of title 23, United States Code, is amended to read as follows:

''§ 165. Territorial and Puerto Rico highway program

''(a) DIVISION OF FUNDS.—Of funds made available in a fiscal year for the territorial and Puerto Rico highway program—

''(1) 75 percent shall be for the Puerto Rico highway program under subsection (b); and

''(2) 25 percent shall be for the territorial highway program under subsection (c).

''(b) PUERTO RICO HIGHWAY PROGRAM.—

''(1) IN GENERAL.—The Secretary shall allocate funds made available to carry out this subsection to the Commonwealth of Puerto Rico to carry out a highway program in the Commonwealth.

''(2) TREATMENT OF FUNDS.—Amounts made available to carry out this subsection for a fiscal year shall be administered as follows:

''(A) APPORTIONMENT.—

''(i) IN GENERAL.—For the purpose of imposing any penalty under this title or title 49, the amounts shall be treated as being apportioned to Puerto Rico under sections 104(b) and 144 (as in effect for fiscal year 1997) for each program funded under those sections in an amount determined by multiplying—

''(I) the aggregate of the amounts for the fiscal year; by

''(II) the proportion that—

''(aa) the amount of funds apportioned to Puerto Rico for each such program for fiscal year 1997; bears to

''(bb) the total amount of funds apportioned to Puerto Rico for all such programs for fiscal year 1997.

''(ii) EXCEPTION.—Funds identified under clause (i) as having been apportioned for the national highway system, the surface transportation program, and the Interstate maintenance program shall be deemed to have been apportioned 50 percent for the national highway performance program and 50 percent *for* the transportation mobility program for purposes of imposing such penalties.

''(B) PENALTY.—The amounts treated as being apportioned to Puerto Rico under each section referred to in subparagraph (A) shall be deemed to be required to be apportioned to Puerto Rico under that section for purposes of the imposition of any penalty under this title or title 49.

''(C) ELIGIBLE USES OF FUNDS.—Of amounts allocated to Puerto Rico for the Puerto Rico Highway Program for a fiscal year—

''(i) at least 50 percent shall be available only for purposes eligible under section 119;

''(ii) at least 25 percent shall be available only for purposes eligible under section 148; and

''(iii) any remaining funds may be obligated for activities eligible under chapter 1.

''(3) EFFECT ON APPORTIONMENTS.—Except as otherwise specifically provided, Puerto Rico shall not be eligible to receive funds apportioned to States under this title.

''(c) TERRITORIAL HIGHWAY PROGRAM.—

''(1) TERRITORY DEFINED.—In this subsection, the term 'territory' means any of the following territories of the United States:

''(A) American Samoa.

''(B) The Commonwealth of the Northern Mariana Islands.

''(C) Guam.

''(D) The United States Virgin Islands.

''(2) PROGRAM.—

''(A) IN GENERAL.—Recognizing the mutual benefits that will accrue to the territories and the United States from the improvement of highways in the territories, the Secretary may carry out a program to assist each government of a territory in the construction and improvement of a system of arterial and collector highways, and necessary inter-island connectors, that is—

''(i) designated by the Governor or chief executive officer of each territory; and

''(ii) approved by the Secretary.

''(B) FEDERAL SHARE.—The Federal share of Federal financial assistance provided to territories under this subsection shall be in accordance with section 120(g).

''(3) TECHNICAL ASSISTANCE.—

''(A) IN GENERAL.—To continue a long-range highway development program, the Secretary may provide technical assistance to the governments of the territories to enable the territories, on a continuing basis—

''(i) to engage in highway planning;

''(ii) to conduct environmental evaluations;

''(iii) to administer right-of-way acquisition and relocation assistance programs; and

''(iv) to design, construct, operate, and maintain a system of arterial and collector highways, including necessary inter-island connectors.

''(B) FORM AND TERMS OF ASSISTANCE.—Technical assistance provided under subparagraph (A), and the terms for the sharing of information among territories receiving the technical assistance, shall be included in the agreement required by paragraph (5).

''(4) NONAPPLICABILITY OF CERTAIN PROVISIONS.—

''(A) IN GENERAL.—Except to the extent that provisions of this chapter are determined by the Secretary to be inconsistent with the needs of the territories and the intent of this subsection, this chapter (other

than provisions of this chapter relating to the apportionment and allocation of funds) shall apply to funds made available under this subsection.

''(B) APPLICABLE PROVISIONS.—The agreement required by paragraph (5) for each territory shall identify the sections of this chapter that are applicable to that territory and the extent of the applicability of those sections.

''(5) AGREEMENT.—

''(A) IN GENERAL.—Except as provided in subparagraph (D), none of the funds made available under this subsection shall be available for obligation or expenditure with respect to any territory until the chief executive officer of the territory has entered into an agreement (including an agreement entered into under section 215 as in effect on the day before the enactment of this section) with the Secretary providing that the government of the territory shall—

''(i) implement the program in accordance with applicable provisions of this chapter and paragraph (4);

''(ii) design and construct a system of arterial and collector highways, including necessary inter-island connectors, in accordance with standards that are—

''(I) appropriate for each territory; and

''(II) approved by the Secretary;

''(iii) provide for the maintenance of facilities constructed or operated under this subsection in a condition to adequately serve the needs of present and future traffic; and

''(iv) implement standards for traffic operations and uniform traffic control devices that are approved by the Secretary.

''(B) TECHNICAL ASSISTANCE.—The agreement required by subparagraph (A) shall—

''(i) specify the kind of technical assistance to be provided under the program;

''(ii) include appropriate provisions regarding information sharing among the territories; and

''(iii) delineate the oversight role and responsibilities of the territories and the Secretary.

''(C) REVIEW AND REVISION OF AGREEMENT.—The agreement entered into under subparagraph (A) shall be reevaluated and, as necessary, revised, at least every 2 years.

''(D) EXISTING AGREEMENTS.—With respect to an agreement under this subsection or an agreement entered into under section 215 of this title as in effect on the day before the date of enactment of this subsection—

''(i) the agreement shall continue in force until replaced by an agreement entered into in accordance with subparagraph (A); and

''(ii) amounts made available under this subsection under the existing agreement shall be available for obligation or expenditure so long as the agreement, or the existing agreement entered into under subparagraph (A), is in effect.

''(6) ELIGIBLE USES OF FUNDS.—

''(A) IN GENERAL.—Funds made available under this subsection may be used only for the following projects and activities carried out in a territory:

''(i) Eligible transportation mobility program projects described in section 133(c).

''(ii) Cost-effective, preventive maintenance consistent with section 116(d).

''(iii) Ferry boats, terminal facilities, and approaches, in accordance with subsections (b) and (c) of section 129.

''(iv) Engineering and economic surveys and investigations for the planning, and the financing, of future highway programs.

''(v) Studies of the economy, safety, and convenience of highway use.

''(vi) The regulation and equitable taxation of highway use.

''(vii) Such research and development as are necessary in connection with the planning, design, and maintenance of the highway system.

''(B) PROHIBITION ON USE OF FUNDS FOR ROUTINE MAINTENANCE.—None of the funds made available under this subsection shall be obligated or expended for routine maintenance.

''(7) LOCATION OF PROJECTS.—Territorial highway program projects (other than those described in paragraphs (2), (4), (7), (8), (14), and (19) of section 133(c)) may not be undertaken on roads functionally classified as local.''.

(b) CONFORMING AMENDMENTS.—

(1) CLERICAL AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 165 and inserting the following:

''165. Territorial and Puerto Rico highway program.''.

(2) OBSOLETE TEXT.—Section 215 of that title, and the item relating to that section in the analysis for chapter 2, are repealed.

SEC. 1115. NATIONAL FREIGHT PROGRAM.

(a) IN GENERAL.—Chapter 1 of title 23, United States Code, is amended by adding at the end the following:

''§ 167. National freight program

''(a) NATIONAL FREIGHT PROGRAM.—It is the policy of the United States to improve the condition and performance of the national freight network to ensure that the national freight network provides the foundation for the United States to compete in the global economy and achieve each goal described in subsection (b).

''(b) GOALS.—The goals of the national freight program are—

''(1) to invest in infrastructure improvements and to implement operational improvements that—

''(A) strengthen the contribution of the national freight network to the economic competitiveness of the United States;

''(B) reduce congestion; and

''(C) increase productivity, particularly for domestic industries and businesses that create high-value jobs;

''(2) to reduce the environmental impacts of freight movement on the national freight network;

''(3) to improve the safety, security, and resilience of freight transportation;

''(4) to improve the state of good repair of the national freight network;

''(5) to use advanced technology to improve the safety and efficiency of the national freight network;

''(6) to incorporate concepts of performance, innovation, competition, and accountability into the operation and maintenance of the national freight network; and

''(7) to improve the economic efficiency of the national freight network.

''(c) ESTABLISHMENT OF PROGRAM.—

''(1) IN GENERAL.—The Secretary shall establish and implement a national freight program in accordance with this section to strategically direct Federal resources toward improved system performance for efficient movement of freight on highways, including national highway system freight intermodal connectors and aerotropolis transportation systems.

''(2) NETWORK COMPONENTS.—The national freight network shall consist of—

''(A) the primary freight network, as designated by the Secretary under subsection (f) (referred to in this section as the 'primary freight network') as most critical to the movement of freight;

''(B) the portions of the Interstate System not designated as part of the primary freight network; and

''(C) critical rural freight corridors established under subsection (g).

''(d) USE OF APPORTIONED FUNDS.—

''(1) PROJECTS ON THE NATIONAL FREIGHT NETWORK.—At a minimum, following designation of the primary freight network under subsection (f), a State shall obligate funds apportioned under section 104(b)(5) to improve the movement of freight on the national freight network.

''(2) LOCATION OF PROJECTS.—A project carried out using funds apportioned under paragraph (1) shall be located—

''(A) on the primary freight network as described under subsection (f);

''(B) on a portion of the Interstate System not designated as primary freight network;

''(C) on roads off of the Interstate System or primary freight network, if that use of funds will provide—

''(i) a more significant improvement to freight movement on the Interstate System or the primary freight network; [or]

''(ii) critical freight access to the Interstate System or the primary freight network; *or*

''(iii) mitigation of the congestion impacts from freight movement;

''(D) on a national highway system freight intermodal connector;

''(E) on critical rural freight corridors, as designated under subsection (g) (except that not more than 20 percent of the total anticipated apportionment of a State under section 104(b)(5) during fiscal years 2012 and 2013 may be used for projects on critical rural freight corridors); or

''(F) within the boundaries of public and private intermodal facilities, but shall only include surface infrastructure necessary to facilitate direct intermodal interchange, transfer, and access into and out of the facility.

''(3) PRIMARY FREIGHT NETWORK FUNDING.—Beginning for each fiscal year after the Secretary designates the primary freight network, a State shall obligate from funds apportioned under section 104(b)(5) for the primary freight network the lesser of—

''(A) an amount equal to the product obtained by multiplying—

''(i) an amount equal to 110 percent of the apportionment of the State for the fiscal year under section 104(b)(5); and

''(ii) the proportion that—

''(I) the total designated primary freight network mileage of the State; bears to

''(II) the sum of the designated primary freight network mileage of the State and the total Interstate system mileage of the State that is not designated as part of the primary freight network; or

''(B) an amount equal to the total apportionment of the State under section 104(b)(5).

''(e) ELIGIBILITY.—

''(1) ELIGIBLE PROJECTS.—To be eligible for funding under this section, a project shall demonstrate the improvement made by the project to the efficient movement of freight on the national freight network.

''(2) FREIGHT RAIL AND MARITIME PROJECTS.—

''(A) IN GENERAL.—A State may obligate an amount equal to not more than 10 percent of the total apportionment to the State under section 104(b)(5) over the period of fiscal years 2012 and 2013 for public or private freight rail or maritime projects.

''(B) ELIGIBILITY.—For a State to be eligible to obligate funds in the manner described in subparagraph (A), the Secretary shall concur with the State that—

''(i) the project for which the State seeks to obligate funds under this paragraph would *make freight rail improvements to enhance cross-border commerce within 5 miles of the international border between the United States and Canada or Mexico or* make significant improvement to freight movements on the national freight network; and

''(ii) the public benefit of the project—

''(I) exceeds the Federal investment; and

''(II) provides a better return than a highway project on a segment of the primary freight network.

''(3) ELIGIBLE PROJECT COSTS.—A State may obligate funds apportioned to the State under section 104(b)(5) for the national freight program for any of the following costs of an eligible project:

''(A) Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities.

''(B) Construction, reconstruction, rehabilitation, acquisition of real property (including land relating to the project and improvements to land), construction contingencies, acquisition of equipment, and operational improvements directly relating to improving system performance, including but not limited to any segment of the primary freight network that falls below the minimum level established pursuant to section 119(f).

''(C) Intelligent transportation systems and other technology to improve the flow of freight.

''(D) Efforts to reduce the environmental impacts of freight movement on the national freight network.

''(E) Environmental mitigation.

''(F) Railway-highway grade separation.

''(G) Geometric improvements to interchanges and ramps.

''(H) Truck-only lanes.

''(I) Climbing and runaway truck lanes.

''(J) Adding or widening of shoulders.

''(K) Truck parking facilities eligible for funding under section 1401 of the MAP–21.

''(L) Real-time traffic, truck parking, roadway condition, and multimodal transportation information systems.

''(M) Electronic screening and credentialing systems *for vehicles*, including weigh-in-motion truck inspection technologies.

''(N) Traffic signal optimization including synchronized and adaptive signals.

''(O) Work zone management and information systems.

''(P) Highway ramp metering.

''(Q) Electronic cargo and border security technologies that improve truck freight movement.

''(R) Intelligent transportation systems that would increase truck freight efficiencies inside the boundaries of intermodal facilities.

''(S) Any other activities to improve the flow of freight on the national freight network.

''(4) OTHER ELIGIBLE COSTS.—In addition to eligible project costs, a State may use funds apportioned under section 104(b)(5) for the necessary costs of conducting analyses and data collection to comply with subsection (i) or diesel retrofits or alternative fuel projects defined under section 149 for class 8 vehicles.

''(5) ELIGIBLE PROJECT COSTS PRIOR TO DESIGNATION OF THE PRIMARY FREIGHT NETWORK.—Prior to the date of designation of the primary freight network, a State may obligate funds apportioned to the State under section 104(b)(5) to improve freight movement on the Interstate System for—

''(A) construction, reconstruction, resurfacing, restoration, and rehabilitation of segments of the Interstate System;

''(B) operational improvements for segments of the Interstate System;

''(C) construction of, and operational improvements for, a Federal-aid highway not on the Interstate System, and construction of a transit project eligible for assistance under chapter 53 of title 49, United States Code, if—

''(i) the highway or transit project is in the same corridor as, and in proximity to a highway designated as a part of, the Interstate System;

''(ii) the construction or improvements would improve the level of service on the Interstate System described in subparagraph (A) and improve freight traffic flow; and

''(iii) the construction or improvements are more cost-effective for freight movement than an improvement to the Interstate System described in subparagraph (A);

''(D) highway safety improvements for segments of the Interstate System;

''(E) transportation planning in accordance with sections 134 and 135;

''(F) the costs of conducting analysis and data collection to comply with this section;

''(G) truck parking facilities eligible for funding under section 1401 of the MAP–21;

''(H) infrastructure-based intelligent transportation systems capital improvements;

''(I) environmental restoration and pollution abatement in accordance with section 328; and

''(J) in accordance with all applicable Federal law (including regulations), participation in natural habitat and wetlands mitigation efforts relating to projects funded under this title, which may include participation in natural habitat and wetlands mitigation banks, contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands, and development of statewide and regional natural habitat and wetlands conservation and mitigation plans, including any such banks, efforts, and plans developed in accordance with applicable Federal law (including regulations), on the conditions that—

''(i) contributions to those mitigation efforts may—

''(I) take place concurrent with or in advance of project construction; and

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

''(ii) with respect to participation in a natural habitat or wetland mitigation effort relating to a project funded under this title that has an impact that occurs within the service area of a mitigation bank, preference is given, to the maximum extent practicable, to the use of the mitigation bank if the bank contains sufficient available credits to offset the impact and the bank is approved in accordance with applicable Federal law (including regulations).

''(f) DESIGNATION OF PRIMARY FREIGHT NETWORK.—

''(1) INITIAL DESIGNATION OF PRIMARY FREIGHT NETWORK.—

''(A) DESIGNATION.—Not later than 1 year after the date of enactment of this section, the Secretary shall designate a primary freight network—

''(i) based on an inventory of national freight volume conducted by the Administrator of the Federal Highway Administration, in consultation with stakeholders, including system users [and transport providers], *transport providers, and States;* and

''(ii) that shall be comprised of not more than 27,000 centerline miles of existing roadways that are most critical to the movement of freight.

''(B) FACTORS FOR DESIGNATION.—In designating the primary freight network, the Secretary shall consider—

''(i) the origins and destinations of freight movement in the United States;

''(ii) the total freight tonnage moved by all modes of transportation;

''(iii) the percentage of annual average daily truck traffic in the annual average daily traffic on principal arterials;

''(iv) the annual average daily truck traffic on principal arterials;

''(v) land and maritime ports of entry;

''(vi) population centers; and

''(vii) network connectivity.

''(2) ADDITIONAL MILES ON PRIMARY FREIGHT NETWORK.—In addition to the miles initially designated under paragraph (1), the Secretary may increase the number of miles designated as part of the primary freight network by not more than 3,000 additional centerline miles of roadways (which may include existing or planned roads) critical to future efficient movement of goods on the primary freight network.

''(3) REDESIGNATION OF PRIMARY FREIGHT NETWORK.—During calendar year 2015 and every 10 years thereafter, using the designation factors described in paragraph (1), the Secretary shall redesignate the primary freight network (including additional mileage described in subsection (f)(2)).

''(g) CRITICAL RURAL FREIGHT CORRIDORS.—A State may designate a road within the borders of the State as a critical rural freight corridor if the road—

''(1) is a rural principal arterial roadway and has a minimum of 25 percent of the annual average daily traffic of the road measured in passenger vehicle equivalent units from trucks (FHWA vehicle class 8 to 13); or

''(2) connects the primary freight [network] network, *a roadway described in paragraph (1),* or Interstate System to facilities that handle more than—

''(A) 50,000 20-foot equivalent units per year; or

''(B) 500,000 tons per year of bulk commodities.

''(h) NATIONAL FREIGHT STRATEGIC PLAN.—

''(1) INITIAL DEVELOPMENT OF NATIONAL FREIGHT STRATEGIC PLAN.—Not later than 3 years after the date of enactment of this section, the Secretary shall, in consultation with appropriate public and private transportation stakeholders, develop and post on the Department of Transportation public website a national freight strategic plan that shall include—

''(A) an assessment of the condition and performance of the national freight network;

''(B) an identification of highway bottlenecks on the national freight network that create significant freight congestion problems;

''(C) forecasts of freight volumes for the 20-year period beginning in the year during which the plan is issued;

''(D) an identification of major trade gateways and national freight corridors that connect major population centers, trade gateways, and other major freight generators for current and forecasted traffic and freight volumes, the identification of which shall be revised, as appropriate, in subsequent plans;

''(E) an assessment of statutory, regulatory, technological, institutional, financial, and other barriers to improved freight transportation performance (including opportunities for overcoming the barriers);

''(F) best practices for improving the performance of the national freight network;

''(G) best practices to mitigate the impacts of freight movement on communities;

''(H) a process for addressing multistate projects and encouraging jurisdictions to collaborate; and

''(I) strategies to improve maritime, freight rail, and freight intermodal connectivity.

''(2) UPDATES TO NATIONAL FREIGHT STRATEGIC PLAN.—Not later than 5 years after the date of completion of the first national freight strategic plan under paragraph (1), and every 5 years thereafter, the Secretary shall update and repost on the Department of Transportation public website a revised national freight strategic plan.

''(i) FREIGHT PERFORMANCE TARGETS.—

''(1) RULEMAKING.—Not later than 2 years after the date of enactment of this section, the Secretary, in consultation with State departments of transportation and other appropriate public and private transportation stakeholders, shall publish a rulemaking that establishes [quantifiable] performance measures for freight movement on the primary freight network.

''(2) STATE TARGETS AND REPORTING.—Not later than 1 year after the date on which the Secretary publishes the rulemaking under paragraph (1), each State shall—

''(A) develop and periodically update State performance targets for freight movement on the primary freight network—

''(i) in consultation with appropriate public and private stakeholders; and

''(ii) using measures determined by the Secretary; and

''(B) for every 2-year period, submit to the Secretary a report that contains a description of—

''(i) the progress of the State toward meeting the targets; and

''(ii) the ways in which the State is addressing congestion at freight bottlenecks within the State.

''(3) COMPLIANCE.—

''(A) PERFORMANCE TARGETS.—To obligate funding apportioned under section 104(b)(5), each State shall develop performance targets in accordance with paragraph (2).

''(B) DETERMINATION OF SECRETARY.—If the Secretary determines that a State has not met or made significant progress toward meeting the performance targets of the State by the date that is 2 years after the date of establishment of the performance targets, until the date on which the Secretary determines that the State has met (or has made significant progress towards meeting) the State performance targets, the State shall submit to the Secretary, on a biennial basis, a freight performance improvement plan that includes—

''(i) an identification of significant freight system trends, needs, and issues within the State;

''(ii) a description of the freight policies and strategies that will guide the freight-related transportation investments of the State;

''(iii) an inventory of freight bottlenecks within the State and a description of the ways in which the State is allocating funds to improve those bottlenecks; and

''(iv) a description of the actions the State will undertake to meet the performance targets of the State.

''(j) FREIGHT TRANSPORTATION CONDITIONS AND PERFORMANCE REPORTS.—Not later than 2 years after the date of enactment of this section, and biennially thereafter, the Secretary shall prepare a report that contains a description of the conditions and performance of the national freight network in the United States.

''(k) TRANSPORTATION INVESTMENT DATA AND PLANNING TOOLS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary shall—

''(A) begin development of new tools and improvement of existing tools or improve existing tools to support an outcome-oriented, performance-based approach to evaluate proposed freight-related and other transportation projects, including—

''(i) methodologies for systematic analysis of benefits and costs;

''(ii) tools for ensuring that the evaluation of freight-related and other transportation projects could consider safety, economic competitiveness, environmental sustainability, and system condition in the project selection process; and

''(iii) other elements to assist in effective transportation planning;

''(B) identify transportation-related model data elements to support a broad range of evaluation methods and techniques to assist in making transportation investment decisions; and

''(C) at a minimum, in consultation with other relevant Federal agencies, consider any improvements to existing freight flow data collection efforts that could reduce identified freight data gaps and deficiencies and help improve forecasts of freight transportation demand.

''(2) CONSULTATION.—The Secretary shall consult with Federal, State, and other stakeholders to develop, improve, and implement the tools and collect the data in paragraph (1).

''(l) DEFINITION OF AEROTROPOLIS TRANSPORTATION SYSTEM.—For the purposes of this section, the term 'aerotropolis transportation system' means a planned and coordinated multimodal freight and passenger transportation network that, as determined by the Secretary, provides efficient, cost-effective, sustainable, and intermodal connectivity to a defined region of economic significance centered around a major airport.

''(m) TREATMENT OF PROJECTS.—Notwithstanding any other provision of law, projects funded under this section shall be treated as projects on a Federal-aid [system] *highway* under this chapter.''.

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

''167. National freight program.''.

SEC. 1116. FEDERAL LANDS AND TRIBAL TRANSPORTATION PROGRAMS.

(a) IN GENERAL.—Chapter 2 of title 23, United States Code, is amended by striking sections 201 through 204 and inserting the following:

''§ 201. Federal lands and tribal transportation programs

''(a) PURPOSE.—Recognizing the need for all public Federal and tribal transportation facilities to be treated under uniform policies similar to the policies that apply to Federal-aid highways and other public transportation facilities, the Secretary of Transportation, in collaboration with the Secretaries of the appropriate Federal land management agencies, shall coordinate a uniform policy for all public Federal and tribal transportation facilities that shall apply to Federal lands transportation facilities, tribal transportation facilities, and Federal lands access transportation facilities.

''(b) AVAILABILITY OF FUNDS.—

''(1) AVAILABILITY.—Funds authorized for the tribal transportation program, the Federal lands transportation program, and the Federal lands access program shall be available for contract upon apportionment, or on October 1 of the fiscal year for which the funds were authorized if no apportionment is required.

''(2) AMOUNT REMAINING.—Any amount remaining unexpended for a period of 3 years after the close of the fiscal year for which the funds were authorized shall lapse.

''(3) OBLIGATIONS.—The Secretary of the department responsible for the administration of funds under this subsection may incur obligations, approve projects, and enter into contracts under such authorizations, which shall be considered to be contractual obligations of the United States for the payment of the cost thereof, the funds of which shall be considered to have been expended when obligated.

''(4) EXPENDITURE.—

''(A) IN GENERAL.—Any funds authorized for any fiscal year after the date of enactment of this section under the Federal lands transportation program, the Federal lands access program, and the tribal transportation program shall be considered to have been expended if a sum equal to the total of the sums authorized for the fiscal year and previous fiscal years have been obligated.

''(B) CREDITED FUNDS.—Any funds described in subparagraph (A) that are released by payment of final voucher or modification of project authorizations shall be—

''(i) credited to the balance of unobligated authorizations; and

''(ii) immediately available for expenditure.

''(5) APPLICABILITY.—This section shall not apply to funds authorized before the date of enactment of this paragraph.

''(6) CONTRACTUAL OBLIGATION.—

''(A) IN GENERAL.—Notwithstanding any other provision of law (including regulations), the authorization by the Secretary, or the Secretary of the appropriate Federal land management agency if the agency is the contracting office, of engineering and related work for the development, design, and acquisition associated with a construction project, whether performed by contract or agreement authorized by law, or the approval by the Secretary of plans, specifications, and estimates for construction of a project, shall be considered to constitute a contractual obligation of the Federal Government to pay the total eligible cost of—

''(i) any project funded under this title; and

''(ii) any project funded pursuant to agreements authorized by this title or any other title.

''(B) EFFECT.—Nothing in this paragraph—

''(i) affects the application of the Federal share associated with the project being undertaken under this section; or

''(ii) modifies the point of obligation associated with Federal salaries and expenses.

''(7) FEDERAL SHARE.—

''(A) TRIBAL AND FEDERAL LANDS TRANSPORTATION PROGRAM.—The Federal share of the cost of a project carried out under the Federal lands transportation program or the tribal transportation program shall be 100 percent.

''(B) FEDERAL LANDS ACCESS PROGRAM.—The Federal share of the cost of a project carried out under the Federal lands access program shall be determined in accordance with section 120.

''(c) TRANSPORTATION PLANNING.—

''(1) TRANSPORTATION PLANNING PROCEDURES.—In consultation with the Secretary of each appropriate Federal land management agency, the Secretary shall implement transportation planning procedures for Federal lands and tribal transportation facilities that are consistent with the planning processes required under sections 134 and 135.

''(2) APPROVAL OF TRANSPORTATION IMPROVEMENT PROGRAM.—The transportation improvement program developed as a part of the transportation planning process under this section shall be approved by the Secretary.

''(3) INCLUSION IN OTHER PLANS.—Each regionally significant tribal transportation program, Federal lands transportation program, and Federal lands access program project shall be—

''(A) developed in cooperation with State and metropolitan planning organizations; and

''(B) included in appropriate tribal transportation program plans, Federal lands transportation program plans, Federal lands access program plans, State and metropolitan plans, and transportation improvement programs.

''(4) INCLUSION IN STATE PROGRAMS.—The approved tribal transportation program,

Federal lands transportation program, and Federal lands access program transportation improvement programs shall be included in appropriate State and metropolitan planning organization plans and programs without further action on the transportation improvement program.

''(5) ASSET MANAGEMENT.—The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, implement safety, bridge, pavement, and congestion management systems for facilities funded under the tribal transportation program and the Federal lands transportation program in support of asset management.

''(6) DATA COLLECTION.—

''(A) DATA COLLECTION.—The Secretaries of the appropriate Federal land management agencies shall collect and report data necessary to implement the Federal lands transportation program, the Federal lands access program, and the tribal transportation program, including—

''(i) inventory and condition information on Federal lands transportation facilities and tribal transportation facilities; and

''(ii) bridge inspection and inventory information on any Federal bridge open to the public.

''(B) STANDARDS.—The Secretary, in coordination with the Secretaries of the appropriate Federal land management agencies, shall define the collection and reporting data standards.

''(7) ADMINISTRATIVE EXPENSES.—To implement the activities described in this subsection, including direct support of transportation planning activities among Federal land management agencies, the Secretary may use not more than 5 percent for each fiscal year of the funds authorized for programs under sections 203 and 204.

''(d) REIMBURSABLE AGREEMENTS.—In carrying out work under reimbursable agreements with any State, local, or tribal government under this title, the Secretary—

''(1) may, without regard to any other provision of law (including regulations), record obligations against accounts receivable from the entity; and

''(2) shall credit amounts received from the entity to the appropriate account, which shall occur not later than 90 days after the date of the original request by the Secretary for payment.

''(e) TRANSFERS.—

''(1) IN GENERAL.—To enable the efficient use of funds made available for the Federal lands transportation program and the Federal lands access program, the funds may be transferred by the Secretary within and between each program with the concurrence of, as appropriate—

''(A) the Secretary;

''(B) the affected Secretaries of the respective Federal land management agencies;

''(C) State departments of transportation; and

''(D) local government agencies.

''(2) CREDIT.—The funds described in paragraph (1) shall be credited back to the loaning entity with funds that are currently available for obligation at the time of the credit.

''§ 202. Tribal transportation program

''(a) USE OF FUNDS.—

''(1) IN GENERAL.—Funds made available under the tribal transportation program shall be used by the Secretary of Transportation and the Secretary of the Interior to pay the costs of—

''(A)(i) transportation planning, research, maintenance, engineering, rehabilitation, restoration, construction, and reconstruction of tribal transportation facilities;

''(ii) adjacent vehicular parking areas;

''(iii) interpretive signage;

''(iv) acquisition of necessary scenic easements and scenic or historic sites;

''(v) provisions for pedestrians and bicycles;

''(vi) environmental mitigation in or adjacent to tribal land—

''(I) to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and

''(II) to mitigate the damage to wildlife, aquatic organism passage, habitat, and ecosystem connectivity, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate;

''(vii) construction and reconstruction of roadside rest areas, including sanitary and water facilities; and

''(viii) other appropriate public road facilities as determined by the Secretary;

''(B) operation and maintenance of transit programs and facilities that are located on, or provide access to, tribal land, or are administered by a tribal government; and

''(C) any transportation project eligible for assistance under this title that is located within, or that provides access to, tribal land, or is associated with a tribal government.

''(2) CONTRACT.—In connection with an activity described in paragraph (1), the Secretary and the Secretary of the Interior may enter into a contract or other appropriate agreement with respect to the activity with—

''(A) a State (including a political subdivision of a State); or

''(B) an Indian tribe.

''(3) INDIAN LABOR.—Indian labor may be employed, in accordance with such rules and regulations as may be promulgated by the Secretary of the Interior, to carry out any construction or other activity described in paragraph (1).

''(4) FEDERAL EMPLOYMENT.—No maximum limitation on Federal employment shall be applicable to the construction or improvement of tribal transportation facilities.

''(5) FUNDS FOR CONSTRUCTION AND IMPROVEMENT.—All funds made available for the construction and improvement of tribal transportation facilities shall be administered in conformity with regulations and agreements jointly approved by the Secretary and the Secretary of the Interior.

''(6) ADMINISTRATIVE EXPENSES.—

''(A) IN GENERAL.—Of the funds authorized to be appropriated for the tribal transportation program, not more than 6 percent may be used by the Secretary or the Secretary of the Interior for program management and oversight and project-related administrative expenses.

''(B) RESERVATION OF FUNDS.—The Secretary of the Interior may reserve amounts from administrative funds of the Bureau of Indian Affairs that are associated with the tribal transportation program to fund tribal technical assistance centers under section 504(b).

''(7) MAINTENANCE.—

''(A) USE OF FUNDS.—Notwithstanding any other provision of this title, of the amount of funds allocated to an Indian tribe from the tribal transportation program, for the purpose of maintenance (excluding road sealing, which shall not be subject to any limitation), the Secretary shall not use an amount more than the greater of—

''(i) an amount equal to 25 percent; or

''(ii) $500,000.

''(B) RESPONSIBILITY OF BUREAU OF INDIAN AFFAIRS AND SECRETARY OF THE INTERIOR.—

''(i) BUREAU OF INDIAN AFFAIRS.—The Bureau of Indian Affairs shall retain primary responsibility, including annual funding request responsibility, for Bureau of Indian Affairs road maintenance programs on Indian reservations.

''(ii) SECRETARY OF THE INTERIOR.—The Secretary of the Interior shall ensure that funding made available under this subsection for maintenance of tribal transportation facilities for each fiscal year is supplementary to, and not in lieu of, any obligation of funds by the Bureau of Indian Affairs for road maintenance programs on Indian reservations.

''(C) TRIBAL-STATE ROAD MAINTENANCE AGREEMENTS.—

''(i) IN GENERAL.—An Indian tribe and a State may enter into a road maintenance agreement under which an Indian tribe shall assume the responsibility of the State for—

''(I) tribal transportation facilities; and

''(II) roads providing access to tribal transportation facilities.

''(ii) REQUIREMENTS.—Agreements entered into under clause (i) shall—

''(I) be negotiated between the State and the Indian tribe; and

''(II) not require the approval of the Secretary.

''(8) COOPERATION.—

''(A) IN GENERAL.—The cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement.

''(B) FUNDS RECEIVED.—Any funds received from a State, county, or local subdivision shall be credited to appropriations available for the tribal transportation program.

''(9) COMPETITIVE BIDDING.—

''(A) CONSTRUCTION.—

''(i) IN GENERAL.—Subject to clause (ii) and subparagraph (B), construction of each project shall be performed by contract awarded by competitive bidding.

''(ii) EXCEPTION.—Clause (i) shall not apply if the Secretary or the Secretary of the Interior affirmatively finds that, under the circumstances relating to the project, a different method is in the public interest.

''(B) APPLICABILITY.—Notwithstanding subparagraph (A), section 23 of the Act of June 25, 1910 (25 U.S.C. 47) and section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) shall apply to all funds administered by the Secretary of the Interior that are appropriated for the construction and improvement of tribal transportation facilities.

''(b) FUNDS DISTRIBUTION.—

''(1) NATIONAL TRIBAL TRANSPORTATION FACILITY INVENTORY.—

''(A) IN GENERAL.—The Secretary of the Interior, in cooperation with the Secretary, shall maintain a comprehensive national inventory of tribal transportation facilities that are eligible for assistance under the tribal transportation program.

''(B) TRANSPORTATION FACILITIES INCLUDED IN THE INVENTORY.—For purposes of identifying the tribal transportation system and determining the relative transportation needs among Indian tribes, the Secretary shall include, at a minimum, transportation facilities that are eligible for assistance under the tribal transportation program that an Indian tribe has requested, including facilities that—

''(i) were included in the Bureau of Indian Affairs system inventory prior to October 1, 2004;

''(ii) are owned by an Indian tribal government;

''(iii) are owned by the Bureau of Indian Affairs;

''(iv) were constructed or reconstructed with funds from the Highway Account of the Transportation Trust Fund under the Indian reservation roads program since 1983;

''(v) are public roads or bridges within the exterior boundary of Indian reservations, Alaska Native villages, and other recognized

Indian communities (including communities in former Indian reservations in the State of Oklahoma) in which the majority of residents are American Indians or Alaska Natives; [or]

''*(vi) are public roads within or providing access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government, or Indian or Alaska Native villages, groups, or communities in which Indians and Alaska Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians; or*

''[(vi)]*(vii)* are primary access routes proposed by tribal governments, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal terminals, such as airports, harbors, or boat landings.

''(C) LIMITATION ON PRIMARY ACCESS ROUTES.—For purposes of this paragraph, a proposed primary access route is the shortest practicable route connecting 2 points of the proposed route.

''(D) ADDITIONAL FACILITIES.—Nothing in this paragraph precludes the Secretary from including additional transportation facilities that are eligible for funding under the tribal transportation program in the inventory used for the national funding allocation if such additional facilities are included in the inventory in a uniform and consistent manner nationally.

''(E) BRIDGES.—All bridges in the inventory shall be recorded in the national bridge inventory administered by the Secretary under section 144.

''(2) REGULATIONS.—Notwithstanding sections 563(a) and 565(a) of title 5, the Secretary of the Interior shall maintain any regulations governing the tribal transportation program.

''(3) BASIS FOR FUNDING FORMULA.—

''(A) BASIS.—

''(i) IN GENERAL.—After making the set asides authorized under subsections (a)(6), (c), (d), and (e) on October 1 of each fiscal year, the Secretary shall distribute the remainder authorized to be appropriated for the tribal transportation program under this section among Indian tribes as follows:

''(I) For fiscal year 2012—

[''(aa) 50 percent, equal to the ratio that the amount allocated to each tribe for fiscal year 2011 bears to the total amount allocated to all tribes for that fiscal year; and]

''*(aa) 50 percent, equal to the ratio that the amount allocated to each tribe as a tribal share for fiscal year 2011 bears to the total tribal share amount allocated to all tribes for that fiscal year; and*

''(bb) the remainder using tribal shares as described in subparagraphs (B) and (C).

''(II) For fiscal year 2013 and thereafter, using tribal shares as described in subparagraphs (B) and (C).

''(ii) TRIBAL HIGH PRIORITY PROJECTS.—The High Priority Projects program as included in the Tribal Transportation Allocation Methodology of part 170 of title 25, Code of Federal Regulations (as in effect on the date of enactment of the MAP–21), shall not continue in effect.

''(B) TRIBAL SHARES.—Tribal shares under this program shall be determined using the national tribal transportation facility inventory as calculated for fiscal year 2012, and the most recent data on American Indian and Alaska Native population within each Indian tribe's American Indian/Alaska Native Reservation or Statistical Area, as computed under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.), in the following manner:

''(i) 20 percent in the ratio that the total eligible lane mileage in each tribe bears to the total eligible lane mileage of all American Indians and Alaskan Natives. For the purposes of this calculation—

''(I) eligible lane mileage shall be computed based on the inventory described in paragraph (1), using only facilities included in the inventory described in clause (i), (ii), or (iii) of paragraph (1)(B); and

''(II) paved roads and gravel surfaced roads are deemed to equal 2 lane miles per mile of inventory, and earth surfaced roads and unimproved roads shall be deemed to equal 1 lane mile per mile of inventory.

''(ii) 40 percent in the ratio that the total population in each tribe bears to the total population of all American Indians and Alaskan Natives.

''(iii) 40 percent shall be divided equally among each Bureau of Indian Affairs region for distribution of tribal shares as follows:

''(I) ¼ of 1 percent shall be distributed equally among Indian tribes with populations of 1 to 25.

''(II) ¾ of 1 percent shall be distributed equally among Indian tribes with populations of 26 to 100.

''(III) 3¾ percent shall be distributed equally among Indian tribes with populations of 101 to 1,000.

''(IV) 20 percent shall be distributed equally among Indian tribes with populations of 1,001 to 10,000.

''(V) 74¾ percent shall be distributed equally among Indian tribes with populations of 10,001 to 60,000 where 3 or more Indian tribes occupy this category in a single Bureau of Indian Affairs region, and Bureau of Indian Affairs regions containing less than 3 Indian tribes in this category shall receive funding in accordance with subclause (IV) and clause (iv).

''(VI) ½ of 1 percent shall be distributed equally among Indian tribes with populations of 60,001 or more.

''(iv) For a Bureau of Indian Affairs region that has no Indian tribes meeting the population criteria under 1 or more of subclauses (I) through (VI) of clause (iii), the region shall redistribute any funds subject to such clause or clauses among any such clauses for which the region has Indian tribes meeting such criteria proportionally in accordance with the percentages listed in such clauses until such funds are completely distributed.

''(C) TRIBAL SUPPLEMENTAL FUNDING.—

''(i) TRIBAL SUPPLEMENTAL FUNDING AMOUNT.—Of funds made available for each fiscal year for the tribal transportation program, the Secretary shall set aside the following amount for a tribal supplemental program:

''(I) If the amount made available for the tribal transportation program is less than or equal to $275,000,000, 10 percent of such amount.

''(II) If the amount made available for the tribal transportation program exceeds $275,000,000—

''(aa) $27,500,000; plus

''(bb) 12.5 percent of the amount made available for the tribal transportation program in excess of $275,000,000.

''(ii) TRIBAL SUPPLEMENTAL ALLOCATION.—The Secretary shall distribute tribal supplemental funds as follows:

''(I) DISTRIBUTION AMONG REGIONS.—Of the amounts set aside under clause (i), the Secretary shall distribute to each region of the Bureau of Indian Affairs a share of tribal supplemental funds in proportion to the regional total of tribal shares based on the cumulative tribal shares of all Indian tribes within such region under subparagraph (B).

''(II) DISTRIBUTION WITHIN A REGION.—Of the amount that a region receives under subclause (I), the Secretary shall distribute tribal supplemental funding among Indian tribes within such region as follows:

''(aa) TRIBAL SUPPLEMENTAL AMOUNTS.—The Secretary shall determine—

''(AA) which such Indian tribes would be entitled under subparagraph (A) to receive in a fiscal year less funding than they would receive in fiscal year 2011 pursuant to the Tribal Transportation Allocation Methodology described in subpart C of part 170 of title 25, Code of Federal Regulations (as in effect on the date of enactment of the MAP–21); and

''(BB) the combined amount that such Indian tribes would be entitled to receive in fiscal year 2011 pursuant to such Tribal Transportation Allocation Methodology in excess of the amount that they would be entitled to receive in the fiscal year under subparagraph (B); and

''(bb) Subject to subclause (III), distribute to each Indian tribe that meets the criteria described in item (aa)(AA) a share of funding under this subparagraph in proportion to the share of the combined amount determined under item (aa)(BB) attributable to such Indian tribe.

''(III) CEILING.—An Indian tribe may not receive under subclause (II) and based on its tribal share under subparagraph (A) a combined amount that exceeds the amount that such Indian tribe would be entitled to receive in fiscal year 2011 pursuant to the Tribal Transportation Allocation Methodology described in subpart C of part 170 of title 25, Code of Federal Regulations (as in effect on the date of enactment of the MAP–21).

''(IV) OTHER AMOUNTS.—If the amount made available for a region under subclause (I) exceeds the amount distributed among Indian tribes within that region under subclause (II), the Secretary shall distribute the remainder of such region's funding under such subclause among all Indian tribes in that region in proportion to the combined amount that each such Indian tribe received under subparagraph (A) and subclauses (I), (II), and (III).

''(4) TRANSFERRED FUNDS.—

''(A) IN GENERAL.—Not later than 30 days after the date on which funds are made available to the Secretary of the Interior under this paragraph, the funds shall be distributed to, and made available for immediate use by, eligible Indian tribes, in accordance with the formula for distribution of funds under the tribal transportation program.

''(B) USE OF FUNDS.—Notwithstanding any other provision of this section, funds made available to Indian tribes for tribal transportation facilities shall be expended on projects identified in a transportation improvement program approved by the Secretary.

''(5) HEALTH AND SAFETY ASSURANCES.—Notwithstanding any other provision of law, an Indian tribal government may approve plans, specifications, and estimates and commence road and bridge construction with funds made available from the tribal transportation program through a contract or agreement under Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), if the Indian tribal government—

''(A) provides assurances in the contract or agreement that the construction will meet or exceed applicable health and safety standards;

''(B) obtains the advance review of the plans and specifications from a State-licensed civil engineer that has certified that the plans and specifications meet or exceed the applicable health and safety standards; and

''(C) provides a copy of the certification under subparagraph (A) to the Deputy Assistant Secretary for Tribal Government Affairs, Department of Transportation, or the Assistant Secretary for Indian Affairs, Department of the Interior, as appropriate.

''(6) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.—

''(A) IN GENERAL.—Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available through the Secretary of the Interior under this chapter and section 125(e) for tribal transportation facilities to pay for the costs of programs, services, functions, and activities, or portions of programs, services, functions, or activities, that are specifically or functionally related to the cost of planning, research, engineering, and construction of any tribal transportation facility shall be made available, upon request of the Indian tribal government, to the Indian tribal government for contracts and agreements for such planning, research, engineering, and construction in accordance with Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

''(B) EXCLUSION OF AGENCY PARTICIPATION.—All funds, including contract support costs, for programs, functions, services, or activities, or portions of programs, services, functions, or activities, including supportive administrative functions that are otherwise contractible to which subparagraph (A) applies, shall be paid in accordance with subparagraph (A), without regard to the organizational level at which the Department of the Interior has previously carried out such programs, functions, services, or activities.

''(7) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.—

''(A) IN GENERAL.—Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available through the Secretary of the Interior to an Indian tribal government under this chapter for a tribal transportation facility program or project shall be made available, on the request of the Indian tribal government, to the Indian tribal government for use in carrying out, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), contracts and agreements for the planning, research, design, engineering, construction, and maintenance relating to the program or project.

''(B) EXCLUSION OF AGENCY PARTICIPATION.—In accordance with subparagraph (A), all funds, including contract support costs, for a program or project to which subparagraph (A) applies shall be paid to the Indian tribal government without regard to the organizational level at which the Department of the Interior has previously carried out, or the Department of Transportation has previously carried out under the tribal transportation program, the programs, functions, services, or activities involved.

''(C) CONSORTIA.—Two or more Indian tribes that are otherwise eligible to participate in a program or project to which this chapter applies may form a consortium to be considered as a single Indian tribe for the purpose of participating in the project under this section.

''(D) SECRETARY AS SIGNATORY.—Notwithstanding any other provision of law, the Secretary is authorized to enter into a funding agreement with an Indian tribal government to carry out a tribal transportation facility program or project under subparagraph (A) that is located on an Indian reservation or provides access to the reservation or a community of the Indian tribe.

''(E) FUNDING.—The amount an Indian tribal government receives for a program or project under subparagraph (A) shall equal the sum of the funding that the Indian tribal government would otherwise receive for the program or project in accordance with the funding formula established under this subsection and such additional amounts as the Secretary determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project.

''(F) ELIGIBILITY.—

''(i) IN GENERAL.—Subject to clause (ii) and the approval of the Secretary, funds may be made available under subparagraph (A) to an Indian tribal government for a program or project in a fiscal year only if the Indian tribal government requesting such funds demonstrates to the satisfaction of the Secretary financial stability and financial management capability during the 3 fiscal years immediately preceding the fiscal year for which the request is being made.

''(ii) CONSIDERATIONS.—An Indian tribal government that had no uncorrected significant and material audit exceptions in the required annual audit of the contracts or self-governance funding agreements made by the Indian tribe with any Federal agency under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) during the 3-fiscal year period referred in clause (i) shall be conclusive evidence of the financial stability and financial management capability of the Indian tribe for purposes of clause (i).

''(G) ASSUMPTION OF FUNCTIONS AND DUTIES.—An Indian tribal government receiving funding under subparagraph (A) for a program or project shall assume all functions and duties that the Secretary of the Interior would have performed with respect to a program or project under this chapter, other than those functions and duties that inherently cannot be legally transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

''(H) POWERS.—An Indian tribal government receiving funding under subparagraph (A) for a program or project shall have all powers that the Secretary of the Interior would have exercised in administering the funds transferred to the Indian tribal government for such program or project under this section if the funds had not been transferred, except to the extent that such powers are powers that inherently cannot be legally transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

''(I) DISPUTE RESOLUTION.—In the event of a disagreement between the Secretary or the Secretary of the Interior and an Indian tribe over whether a particular function, duty, or power may be lawfully transferred to the Indian tribe under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Indian tribe shall have the right to pursue all alternative dispute resolution and appeal procedures authorized by that Act, including regulations issued to carry out the Act.

''(J) TERMINATION OF CONTRACT OR AGREEMENT.—On the date of the termination of a contract or agreement under this section by an Indian tribal government, the Secretary shall transfer all funds that would have been allocated to the Indian tribal government under the contract or agreement to the Secretary of the Interior to provide continued transportation services in accordance with applicable law.

''(c) PLANNING.—

''(1) IN GENERAL.—For each fiscal year, not more than 2 percent of the funds made available for the tribal transportation program shall be allocated among Indian tribal governments that apply for transportation planning pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

''(2) REQUIREMENT.—An Indian tribal government, in cooperation with the Secretary of the Interior and, as appropriate, with a State, local government, or metropolitan planning organization, shall carry out a transportation planning process in accordance with section 201(c).

''(3) SELECTION AND APPROVAL OF PROJECTS.—A project funded under this section shall be—

''(A) selected by the Indian tribal government from the transportation improvement program; and

''(B) subject to the approval of the Secretary of the Interior and the Secretary.

''(d) TRIBAL TRANSPORTATION FACILITY BRIDGES.—

''(1) NATIONWIDE PRIORITY PROGRAM.—The Secretary shall maintain a nationwide priority program for improving deficient bridges eligible for the tribal transportation program.

''(2) FUNDING.—Before making any distribution under subsection (b), the Secretary shall set aside not more than 2 percent of the funds made available under the tribal transportation program for each fiscal year to be allocated—

''(A) to carry out any planning, design, engineering, preconstruction, construction, and inspection of a project to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing composition; or

''(B) to implement any countermeasure for deficient tribal transportation facility bridges, including multiple-pipe culverts.

''(3) ELIGIBLE BRIDGES.—To be eligible to receive funding under this subsection, a bridge described in paragraph (1) shall—

''(A) have an opening of not less than 20 feet;

''(B) be classified as a tribal transportation facility; and

''(C) be structurally deficient or functionally obsolete.

''(4) APPROVAL REQUIREMENT.—The Secretary may make funds available under this subsection for preliminary engineering, construction, and construction engineering activities after approval of required documentation and verification of eligibility in accordance with this title.

''(e) SAFETY.—

''(1) FUNDING.—Before making any distribution under subsection (b), the Secretary shall set aside not more than 2 percent of the funds made available under the tribal transportation program for each fiscal year to be allocated based on an identification and analysis of highway safety issues and opportunities on tribal land, as determined by the Secretary, on application of the Indian tribal governments for eligible projects described in section 148(a)(4).

''(2) PROJECT SELECTION.—An Indian tribal government, in cooperation with the Secretary of the Interior and, as appropriate, with a State, local government, or metropolitan planning organization, shall select projects from the transportation improvement program, subject to the approval of the Secretary and the Secretary of the Interior.

''(f) FEDERAL-AID ELIGIBLE PROJECTS.—Before approving as a project on a tribal transportation facility any project eligible for funds apportioned under section 104 in a State, the Secretary shall, for projects on tribal transportation facilities, determine that the obligation of funds for the project is supplementary to and not in lieu of the obligation of a fair and equitable share of funds apportioned to the State under section 104.

"§ 203. Federal lands transportation program

''(a) USE OF FUNDS.—

''(1) IN GENERAL.—Funds made available under the Federal lands transportation program shall be used by the Secretary of Transportation and the Secretary of the appropriate Federal land management agency to pay the costs of—

''(A) program administration, transportation planning, research, preventive maintenance, engineering, rehabilitation, restoration, construction, and reconstruction of Federal lands transportation facilities, and—

''(i) adjacent vehicular parking areas;

''(ii) acquisition of necessary scenic easements and scenic or historic sites;

''(iii) provision for pedestrians and bicycles;

''(iv) environmental mitigation in or adjacent to Federal land open to the public—

''(I) to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and

''(II) to mitigate the damage to wildlife, aquatic organism passage, habitat, and ecosystem connectivity, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate;

''(v) construction and reconstruction of roadside rest areas, including sanitary and water facilities;

''(vi) congestion mitigation; and

''(vii) other appropriate public road facilities, as determined by the Secretary;

''(B) operation and maintenance of transit facilities; and

''(C) any transportation project eligible for assistance under this title that is on a public road within or adjacent to, or that provides access to, Federal lands open to the public.

''(2) CONTRACT.—In connection with an activity described in paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency may enter into a contract or other appropriate agreement with respect to the activity with—

''(A) a State (including a political subdivision of a State); or

''(B) an Indian tribe.

''(3) ADMINISTRATION.—All appropriations for the construction and improvement of Federal lands transportation facilities shall be administered in conformity with regulations and agreements jointly approved by the Secretary and the Secretary of the appropriate Federal land managing agency.

''(4) COOPERATION.—

''(A) IN GENERAL.—The cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement.

''(B) FUNDS RECEIVED.—Any funds received from a State, county, or local subdivision shall be credited to appropriations available for the class of Federal lands transportation facilities to which the funds were contributed.

''(5) COMPETITIVE BIDDING.—

''(A) IN GENERAL.—Subject to subparagraph (B), construction of each project shall be performed by contract awarded by competitive bidding.

''(B) EXCEPTION.—Subparagraph (A) shall not apply if the Secretary or the Secretary of the appropriate Federal land management agency affirmatively finds that, under the circumstances relating to the project, a different method is in the public interest.

''(b) AGENCY PROGRAM DISTRIBUTIONS.—

''(1) IN GENERAL.—On October 1, 2011, and on October 1 of each fiscal year thereafter, the Secretary shall allocate the sums authorized to be appropriated for the fiscal year for the Federal lands transportation program on the basis of applications of need, as determined by the Secretary—

''(A) in consultation with the Secretaries of the applicable Federal land management agencies; and

''(B) in coordination with the transportation plans required under section 201 of the respective transportation systems of—

''(i) the National Park Service;

''(ii) the Forest Service;

''(iii) the United States Fish and Wildlife Service;

''(iv) the Corps of Engineers; and

''(v) the Bureau of Land Management.

''(2) APPLICATIONS.—

''(A) REQUIREMENTS.—Each application submitted by a Federal land management agency shall include proposed programs at various potential funding levels, as defined by the Secretary following collaborative discussions with applicable Federal land management agencies.

''(B) CONSIDERATION BY SECRETARY.—In evaluating an application submitted under subparagraph (A), the Secretary shall consider the extent to which the programs support—

''(i) the transportation goals of—

''(I) a state of good repair of transportation facilities;

''(II) a reduction of bridge deficiencies, and

''(III) an improvement of safety;

''(ii) high-use Federal recreational sites or Federal economic generators; and

''(iii) the resource and asset management goals of the Secretary of the respective Federal land management agency.

''(C) PERMISSIVE CONTENTS.—Applications may include proposed programs the duration of which extend over a multiple-year period to support long-term transportation planning and resource management initiatives.

''(c) NATIONAL FEDERAL LANDS TRANSPORTATION FACILITY INVENTORY.—

''(1) IN GENERAL.—The Secretaries of the appropriate Federal land management agencies, in cooperation with the Secretary, shall maintain a comprehensive national inventory of public Federal lands transportation facilities.

''(2) TRANSPORTATION FACILITIES INCLUDED IN THE INVENTORIES.—To identify the Federal lands transportation system and determine the relative transportation needs among Federal land management agencies, the inventories shall include, at a minimum, facilities that—

''(A) provide access to high-use Federal recreation sites or Federal economic generators, as determined by the Secretary in coordination with the respective Secretaries of the appropriate Federal land management agencies; and

''(B) are owned by 1 of the following agencies:

''(i) The National Park Service.

''(ii) The Forest Service.

''(iii) The United States Fish and Wildlife Service.

''(iv) The Bureau of Land Management.

''(v) The Corps of Engineers.

''(3) AVAILABILITY.—The inventories shall be made available to the Secretary.

''(4) UPDATES.—The Secretaries of the appropriate Federal land management agencies shall update the inventories of the appropriate Federal land management agencies, as determined by the Secretary after collaborative discussions with the Secretaries of the appropriate Federal land management agencies.

''(5) REVIEW.—A decision to add or remove a facility from the inventory shall not be considered a Federal action for purposes of review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(d) BICYCLE SAFETY.—The Secretary of the appropriate Federal land management agency shall prohibit the use of bicycles on each federally owned road that has a speed limit of 30 miles per hour or greater and an adjacent paved path for use by bicycles within 100 yards of the road.

"§ 204. Federal lands access program

''(a) USE OF FUNDS.—

''(1) IN GENERAL.—Funds made available under the Federal lands access program shall be used by the Secretary of Transportation and the Secretary of the appropriate Federal land management agency to pay the cost of—

''(A) transportation planning, research, engineering, preventive maintenance, rehabilitation, restoration, construction, and reconstruction of Federal lands access transportation facilities located on or adjacent to, or that provide access to, Federal land, and—

''(i) adjacent vehicular parking areas;

''(ii) acquisition of necessary scenic easements and scenic or historic sites;

''(iii) provisions for pedestrians and bicycles;

''(iv) environmental mitigation in or adjacent to Federal land—

''(I) to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and

''(II) to mitigate the damage to wildlife, aquatic organism passage, habitat, and ecosystem connectivity, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate;

''(v) construction and reconstruction of roadside rest areas, including sanitary and water facilities; and

''(vi) other appropriate public road facilities, as determined by the Secretary;

''(B) operation and maintenance of transit facilities; and

''(C) any transportation project eligible for assistance under this title that is within or adjacent to, or that provides access to, Federal land.

''(2) CONTRACT.—In connection with an activity described in paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency may enter into a contract or other appropriate agreement with respect to the activity with—

''(A) a State (including a political subdivision of a State); or

''(B) an Indian tribe.

''(3) ADMINISTRATION.—All appropriations for the construction and improvement of Federal lands access transportation facilities shall be administered in conformity with regulations and agreements approved by the Secretary.

''(4) COOPERATION.—

''(A) IN GENERAL.—The cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement.

''(B) FUNDS RECEIVED.—Any funds received from a State, county, or local subdivision for a Federal lands access transportation facility project shall be credited to appropriations available under the Federal lands access program.

''(5) COMPETITIVE BIDDING.—

''(A) IN GENERAL.—Subject to subparagraph (B), construction of each project shall be performed by contract awarded by competitive bidding.

''(B) EXCEPTION.—Subparagraph (A) shall not apply if the Secretary or the Secretary of the appropriate Federal land management agency affirmatively finds that, under the circumstances relating to the project, a different method is in the public interest.

''(b) PROGRAM DISTRIBUTIONS.—

''(1) IN GENERAL.—Funding made available to carry out the Federal lands access program shall be allocated among those States that have Federal land, in accordance with the following formula:

''(A) 80 percent of the available funding for use in those States that contain at least 1 ½

percent of the total public land in the United States managed by the agencies described in paragraph (2), to be distributed as follows:

''(i) 30 percent in the ratio that—

''(I) recreational visitation within each such State; bears to

''(II) the recreational visitation within all such States.

''(ii) 5 percent in the ratio that—

''(I) the Federal land area within each such State; bears to

''(II) the Federal land area in all such States.

''(iii) 55 percent in the ratio that—

''(I) the Federal public road miles within each such State; bears to

''(II) the Federal public road miles in all such States.

''(iv) 10 percent in the ratio that—

''(I) the number of Federal public bridges within each such State; bears to

''(II) the number of Federal public bridges in all such States.

''(B) 20 percent of the available funding for use in those States that do not contain at least 1 ½ percent of the total public land in the United States managed by the agencies described in paragraph (2), to be distributed as follows:

''(i) 30 percent in the ratio that—

''(I) recreational visitation within each such State; bears to

''(II) the recreational visitation within all such States.

''(ii) 5 percent in the ratio that—

''(I) the Federal land area within each such State; bears to

''(II) the Federal land area in all such States.

''(iii) 55 percent in the ratio that—

''(I) the Federal public road miles within each such State; bears to

''(II) the Federal public road miles in all such States.

''(iv) 10 percent in the ratio that—

''(I) the number of Federal public bridges within each such State; bears to

''(II) the number of Federal public bridges in all such States.

''(2) DATA SOURCE.—Data necessary to distribute funding under paragraph (1) shall be provided by the following Federal land management agencies:

''(A) The National Park Service.

''(B) The Forest Service.

''(C) The United States Fish and Wildlife Service.

''(D) The Bureau of Land Management.

''(E) The Corps of Engineers.

''(c) PROGRAMMING DECISIONS COMMITTEE.—

''(1) IN GENERAL.—Programming decisions shall be made within each State by a committee comprised of—

''(A) a representative of the Federal Highway Administration;

''(B) a representative of the State Department of Transportation; and

''(C) a representative of any appropriate political subdivision of the State.

''(2) CONSULTATION REQUIREMENT.—The committee described in paragraph (1) shall consult with each applicable Federal agency in each State before any joint discussion or final programming decision.

''(3) PROJECT PREFERENCE.—In making a programming decision under paragraph (1), the committee shall give preference to projects that provide access to, are adjacent to, or are located within high-use Federal recreation sites or Federal economic generators, as identified by the Secretaries of the appropriate Federal land management agencies.''.

(b) PUBLIC LANDS DEVELOPMENT ROADS AND TRAILS.—Section 214 of title 23, United States Code, is repealed.

(c) CONFORMING AMENDMENTS.—

(1) CHAPTER 2 ANALYSIS.—The analysis for chapter 2 of title 23, United States Code, is amended:

(A) By striking the items relating to sections 201 through 204 and inserting the following:

''201. Federal lands and tribal transportation programs.
''202. Tribal transportation program.
''203. Federal lands transportation program.
''204. Federal lands access program.''.

(B) By striking the item relating to section 214.

(2) DEFINITION.—Section 138(a) of title 23, United States Code, is amended in the third sentence by striking ''park road or parkway under section 204 of this title'' and inserting ''Federal lands transportation facility''.

(3) RULES, REGULATIONS, AND RECOMMENDATIONS.—Section 315 of title 23, United States Code, is amended by striking ''204(f)'' and inserting ''202(a)(5), 203(a)(3),''.

SEC. 1117. ALASKA HIGHWAY.

Section 218 of title 23, United States Code, is amended to read as follows:

''§ 218. Alaska Highway

''(a) DEFINITION OF ALASKA MARINE HIGHWAY SYSTEM.—In this section, the term 'Alaska Marine Highway System' includes each existing or planned transportation facility and equipment in the State of Alaska relating to the ferry system of the State, including the lease, purchase, or construction of vessels, terminals, docks, floats, ramps, staging areas, parking lots, bridges, and approaches thereto, and necessary roads.

''(b) AUTHORIZATION OF SECRETARY.—

''(1) IN GENERAL.—Recognizing the benefits that will accrue to the State of Alaska and to the United States from the reconstruction of the Alaska Highway from the Alaskan border to Haines Junction in Canada and the Haines Cutoff Highway from Haines Junction in Canada to Haines, the Secretary is authorized, upon agreement with the State of Alaska, to expend on such highway or the Alaska Marine Highway System any Federal-aid highway funds apportioned to the State of Alaska under this title to provide for necessary reconstruction of such highway.

''(2) LIMITATION.—No expenditures shall be made for the construction of the portion of the highways that are in located in Canada until the date on which an agreement has been reached by the Government of Canada and the Government of the United States, which shall provide in part, that the Canadian Government—

''(A) will provide, without participation of funds authorized under this title, all necessary right-of-way for the construction of the highways;

''(B) will not impose any highway toll, or permit any toll to be charged for the use of the highways by vehicles or persons;

''(C) will not levy or assess, directly or indirectly, any fee, tax, or other charge for the use of the highways by vehicles or persons from the United States that does not apply equally to vehicles or persons of Canada;

''(D) will continue to grant reciprocal recognition of vehicle registration and drivers' licenses in accordance with agreements between the United States and Canada; and

''(E) will maintain the highways after the date of completion of the highways in proper condition adequately to serve the needs of present and future traffic.

''(c) SUPERVISION OF SECRETARY.—The survey and construction work undertaken in Canada pursuant to this section shall be under the general supervision of the Secretary.''.

SEC. 1118. PROJECTS OF NATIONAL AND REGIONAL SIGNIFICANCE.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program in accordance with this section to provide grants for projects of national and regional significance.

(b) PURPOSE OF PROGRAM.—The purpose of the projects of national and regional significance program shall be to fund critical high-cost surface transportation infrastructure projects that are difficult to complete with existing Federal, State, local, and private funds and that will—

(1) generate national and regional economic benefits and increase global economic competitiveness;

(2) reduce congestion and its impacts;

(3) improve roadways vital to national energy security;

(4) improve movement of freight and people; and

(5) improve transportation safety.

(c) DEFINITIONS.—In this section:

(1) ELIGIBLE APPLICANT.—The term ''eligible applicant'' means a State department of transportation or a group of State departments of transportation, a local government, a tribal government or consortium of tribal governments, a transit agency, a port authority, a metropolitan planning organization, other political subdivisions of State or local governments, or a multi-State or multi-jurisdictional group of the aforementioned entities.

(2) ELIGIBLE PROJECT.—The term ''eligible project'' means a surface transportation project or a program of integrated surface transportation projects closely related in the function they perform that—

(A) is a capital project or projects—

(i) eligible for Federal financial assistance under title 23, United States Code, or under chapter 53 of title 49, United States Code; or

(ii) for surface transportation infrastructure to facilitate intermodal interchange, transfer, and access into and out of intermodal facilities, including ports; and

(B) has eligible project costs that are reasonably anticipated to equal or exceed the lesser of—

(i) $500,000,000;

(ii) for a project located in a single State, **[60]** *30* percent of the amount of Federal-aid highway funds apportioned for the most recently completed fiscal year to the State; or

(iii) for a project located in more than 1 State, 75 percent of the amount of Federal-aid highway funds apportioned for the most recently completed fiscal year to the State *in which the project is located* that has the largest apportionment.

(3) ELIGIBLE PROJECT COSTS.—The term ''eligible project costs'' means the costs of—

(A) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities;

(B) construction, reconstruction, rehabilitation, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, acquisition of equipment directly related to improving system performance, and operational improvements; and

(C) all financing costs, including subsidy costs under the Transportation Infrastructure Finance and Innovation Act program.

(d) SOLICITATIONS AND APPLICATIONS.—

(1) GRANT SOLICITATIONS.—The Secretary shall establish criteria for project evaluation and conduct a transparent and competitive national solicitation process to select projects for funding to carry out the purposes of this section.

(2) APPLICATIONS.—

(A) IN GENERAL.—An eligible applicant seeking a grant under this section for an eligible project shall submit an application to

the Secretary in such form and in accordance with such requirements as the Secretary shall establish.

(B) CONTENTS.—An application under this subsection shall, at a minimum, include data on current system performance and estimated system improvements that will result from completion of the eligible project, including projections for 2, 7, and 15 years after completion.

(C) RESUBMISSION OF APPLICATIONS.—An eligible applicant whose project is not selected by the Secretary may resubmit an application in any subsequent solicitation.

(e) CRITERIA FOR PROJECT EVALUATION AND SELECTION.—

(1) IN GENERAL.—The Secretary may select a project only if the Secretary determines that the project—

(A) will significantly improve the performance of the national surface transportation network, nationally or regionally;

(B) is based on the results of preliminary engineering;

(C) cannot be readily and efficiently completed without Federal support from this program;

(D) is justified based on the ability of the project—

(i) to generate national economic benefits that reasonably exceed its costs, including increased access to jobs, labor, and other critical economic inputs;

(ii) to reduce long-term congestion, including impacts in the State, region, and Nation, and increase speed, reliability, and accessibility of the movement of people or freight; and

(iii) to improve transportation safety, including reducing transportation accidents, [injuries,] *and serious injuries* and fatalities; and

(E) is supported by an acceptable degree of non-Federal financial commitments, including evidence of stable and dependable financing sources to construct, maintain, and operate the infrastructure facility.

(2) ADDITIONAL CONSIDERATIONS.—In evaluating a project under this section, in addition to the criteria in paragraph (1), the Secretary shall consider the extent to which the project—

(A) leverages Federal investment by encouraging non-Federal contributions to the project, including contributions from public-private partnerships;

(B) is able to begin construction within 18 months of being selected;

(C) incorporates innovative project delivery and financing where practical;

(D) stimulates collaboration between States and among State and local governments;

(E) helps maintain or protect the environment;

(F) improves roadways vital to national energy security;

(G) uses innovative technologies, including intelligent transportation systems, that enhance the efficiency of the project; and

(H) contributes to an equitable geographic distribution of funds *under this section* and an appropriate balance in addressing the needs of urban and rural communities.

(f) GRANT REQUIREMENTS.—

(1) IN GENERAL.—A grant for a project under this section shall be subject to the following requirements:

(A) A qualifying highway project eligible for funding under title 23, United States Code, or public transportation project eligible under chapter 53 of title 49, United States Code, shall comply with all applicable requirements of such title or chapter except that, if the project contains elements or activities that are not eligible for funding under such title or chapter but are eligible for funding under this section, the elements or activities shall comply with the requirements described in subparagraph (B).

(B) A qualifying surface transportation project not eligible under title 23, United States Code, or chapter 53 of title 49, United States Code, shall comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code, [section 10a-d of title 41, United States Code], and such other terms, conditions, and requirements as the Secretary determines are necessary and appropriate for the type of project.

(2) DETERMINATION OF APPLICABLE MODAL REQUIREMENTS.—In the event that a project has cross-modal components, the Secretary shall have the discretion to designate the requirements that shall apply to the project based on predominant components.

(3) OTHER TERMS AND CONDITIONS.—The Secretary shall require that all grants under this section be subject to all terms, conditions, and requirements that the Secretary decides are necessary or appropriate for purposes of this section, including requirements for the disposition of net increases in value of real property resulting from the project assisted under this section.

[(g) FEDERAL SHARE OF PROJECT COST.—The Federal share of funds under this section for the project shall be up to 50 percent of the project cost. Other eligible Federal transportation funds may be used by the project sponsor up to an additional 30 percent of the project costs. If a project is to construct or improve a privately owned facility or would primarily benefit a private entity, the Federal share shall be the lesser of 50 percent of the total project cost or the quantified public benefit of the project. The Secretary may allow costs incurred prior to project approval to be used as a credit toward the non-Federal share of the cost of the project. Such costs must be adequately documented, necessary, reasonable and allocable to the current phase of the project and such costs may not be included as a cost or used to meet cost sharing or matching requirements of any other federally financed project.]

(g) FEDERAL SHARE OF PROJECT COST.—

(1) IN GENERAL.—If a project funded under this section is to construct or improve a privately owned facility or would primarily benefit a private entity, the Federal share shall be the lesser of 50 percent of the total project cost or the quantified public benefit of the project. For all other projects funded under this section—

(A) the Federal share of funds under this section shall be up to 50 percent of the project cost; and

(B) the project sponsor may use other eligible Federal transportation funds to cover up to an additional 30 percent of the project costs.

(2) PRE-APPROVAL COSTS.—The Secretary may allow costs incurred prior to project approval to be used as a credit toward the non-Federal share of the cost of the project. Such costs must be adequately documented, necessary, reasonable, and allocable to the current phase of the project and such costs may not be included as a cost or used to meet cost-sharing or matching requirements of any other federally-financed project.

(h) REPORT TO THE SECRETARY.—For each project funded under this section, the project sponsor shall reassess system performance and report to the Secretary 2, 7, and 15 years after completion of the project to assess if the project outcomes have met pre-construction projections.

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, to remain available until expended, $1,000,000,000 for fiscal year 2013.

(j) TREATMENT OF PROJECTS.—Notwithstanding any other provision of law, projects funded under this section shall be treated as projects on a Federal-aid **system** *highway* under chapter 1 of title 23, United States Code.

Subtitle B—Performance Management

SEC. 1201. METROPOLITAN TRANSPORTATION PLANNING.

Section 134 of title 23, United States Code, is amended to read as follows:

"§ 134. Metropolitan transportation planning

''(a) POLICY.—It is in the national interest—

''(1) to encourage and promote the safe, cost-effective, and efficient management, operation, and development of surface transportation systems that will serve efficiently the mobility needs of individuals and freight, reduce transportation-related fatalities and *serious* injuries, and foster economic growth and development within and between States and urbanized areas, while fitting the needs and complexity of individual communities, maximizing value for taxpayers, leveraging cooperative investments, and minimizing transportation-related fuel consumption and air pollution through the metropolitan and statewide transportation planning processes identified in this title;

''(2) to encourage the continued improvement, evolution, and coordination of the metropolitan and statewide transportation planning processes by and among metropolitan planning organizations, State departments of transportation, regional planning organizations, interstate partnerships, and public transit and intercity service operators as guided by the planning factors identified in subsection (h) of this section and section 135(d);

''(3) to encourage and promote transportation needs and decisions that are integrated with other planning needs and priorities; and

''(4) to maximize the effectiveness of transportation investments.

''(b) DEFINITIONS.—In this section and section 135, the following definitions apply:

''(1) EXISTING MPO.—The term 'existing MPO' mens a metropolitan planning organization that was designated as a metropolitan planning organization on the day before the date of enactment of the MAP–21.

''(2) LOCAL OFFICIAL.—The term 'local official' means any elected or appointed official of general purpose local government with responsibility for transportation in a designated area.

''(3) MAINTENANCE AREA.—The term 'maintenance area' means an area that was designated as an air quality nonattainment area, but was later redesignated by the Administrator of the Environmental Protection Agency as an air quality attainment area, under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

''(4) METROPOLITAN PLANNING AREA.—The term 'metropolitan planning area' means a geographical area determined by agreement between the metropolitan planning organization for the area and the applicable Governor under subsection (c).

''(5) METROPOLITAN PLANNING ORGANIZATION.—The term 'metropolitan planning organization' means the policy board of an organization established pursuant to subsection (c).

''(6) METROPOLITAN TRANSPORTATION PLAN.—The term 'metropolitan transportation plan' means a plan developed by a metropolitan planning organization under subsection (i).

''(7) NONATTAINMENT AREA.—The term 'nonattainment area' has the meaning given the term in section 171 of the Clean Air Act (42 U.S.C. 7501).

''(8) NONMETROPOLITAN AREA.—

''(A) IN GENERAL.—The term 'nonmetropolitan area' means a geographical area outside the boundaries of a designated metropolitan planning area.

''(B) INCLUSIONS.—The term 'nonmetropolitan area' includes small urbanized and nonurbanized areas.

[''(9) NONMETROPOLITAN PLANNING ORGANIZATION.—

''(A) IN GENERAL.—The term 'nonmetropolitan planning organization' means an organization designated by a State to enhance the planning, coordination, and implementation of statewide transportation plans and programs in a nonmetropolitan area, with an emphasis on addressing the needs of nonmetropolitan areas of the State.

''(B) INCLUSION.—The term 'nonmetropolitan planning organization' includes a rural planning organization.**]**

''(9) NONMETROPOLITAN PLANNING ORGANIZATION.—The term 'nonmetropolitan planning organization' means an organization that—

''(A) was designated as a metropolitan planning organization as of the day before the date of enactment of the MAP-21; and

''(B) is not designated as a tier I or tier II metropolitan planning organization.

''(10) REGIONALLY SIGNIFICANT.—The term 'regionally significant', with respect to a transportation project, program, service, or strategy, means a project, program, service, or strategy that—

''(A) serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, and major planned developments); and

''(B) would normally be included in the modeling of a transportation network of a metropolitan area.

''(11) RURAL PLANNING ORGANIZATION.—The term 'rural planning organization' means an organization that—

''(A) was designated as a metropolitan planning organization as of the day before the date of enactment of the MAP-21; and

''(B) is not designated as a tier I or tier II metropolitan planning organization.

''**[**(11)**]***(12)* STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—The term 'statewide transportation improvement program' means a statewide transportation improvement program developed by a State under section 135(g).

''**[**(12)**]***(13)* STATEWIDE TRANSPORTATION PLAN.—The term 'statewide transportation plan' means a plan developed by a State under section 135(f).

''**[**(13)**]***(14)* TRANSPORTATION IMPROVEMENT PROGRAM.—The term 'transportation improvement program' means a program developed by a metropolitan planning organization under subsection (j).

''**[**(14)**]***(15)* URBANIZED AREA.—The term 'urbanized area' means a geographical area with a population of 50,000 or more individuals, as determined by the Bureau of the Census.

''(c) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

''(1) IN GENERAL.—To carry out the metropolitan transportation planning process under this section, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 200,000 individuals—

''(A) by agreement between the applicable Governor and local officials that, in the aggregate, represent at least 75 percent of the affected population (including the largest incorporated city (based on population), as determined by the Bureau of the Census); or

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

''(2) SMALL URBANIZED AREAS.—To carry out the metropolitan transportation planning process under this section, a metropolitan planning organization may be designated for any urbanized area with a population of more than 50,000, but less than 200,000, individuals—

''(A) by agreement between the applicable Governor and local officials that, in the aggregate, represent at least 75 percent of the affected population (including the largest incorporated city (based on population), as determined by the Bureau of the Census); and

''(B) with the consent of the Secretary, based on a finding that the resulting metropolitan planning organization has met the minimum requirements under subsection (e)(4)(B).

''(3) STRUCTURE.—Effective beginning on the date of designation or redesignation under this subsection, a metropolitan planning organization shall consist of—

''(A) elected local officials in the relevant metropolitan area;

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

''(C) appropriate State officials.

''(4) EFFECT OF SUBSECTION.—Nothing in this subsection interferes with any authority under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities—

''(A) to develop the metropolitan transportation plans and transportation improvement programs for adoption by a metropolitan planning organization; or

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

''(5) CONTINUING DESIGNATION.—A designation of a metropolitan planning organization under this subsection or any other provision of law—

''(A) for an urbanized area with a population of 200,000 or more individuals shall remain in effect—

''(i) for the period during which the structure of the existing MPO complies with the requirements of paragraph (1); or

''(ii) until the date on which the existing MPO is redesignated under paragraph (7); and

''(B) for an urbanized area with a population of less than 200,000 individuals, shall be terminated on the date that is 3 years after the date on which the Secretary promulgates a regulation pursuant to subsection (e)(4)(B)(i), unless reaffirmed by the existing MPO and the applicable Governor and approved by the Secretary, on the basis of meeting the minimum requirements established by the regulation.

''(6) EXTENSION.—

''(A) IN GENERAL.—If the applicable Governor, acting on behalf of a metropolitan planning organization for an urbanized area with a population of less than 200,000 that would otherwise be terminated under paragraph (5)(B), requests a probationary continuation before the termination of the metropolitan planning organization, the Secretary shall—

''(i) delay the termination of the metropolitan planning organization under paragraph (5)(B) for a period of 1 year; and

''(ii) provide additional technical assistance to all metropolitan planning organizations provided an extension under this paragraph to assist the metropolitan planning organization in meeting the minimum requirements under subsection (e)(4)(B)(i).

''(B) DESIGNATION AS TIER II MPO.—If the Secretary determines the metropolitan planning organization has met the minimum requirements under subsection (e)(4)(B)(i) before the final termination date, the metropolitan planning organization shall be designated as a tier II MPO.

''(7) REDESIGNATION.—The designation of a metropolitan planning organization under this subsection shall remain in effect until the date on which the metropolitan planning organization is redesignated, as appropriate, in accordance with the requirements of this subsection pursuant to an agreement between—

''(A) the applicable Governor; and

''(B) affected local officials who, in the aggregate, represent at least 75 percent of the existing metropolitan planning area population (including the largest incorporated city (based on population), as determined by the Bureau of the Census).

''(8) DESIGNATION OF MULTIPLE MPOS.—

''(A) IN GENERAL.—More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the applicable Governor and an existing MPO determine that the size and complexity of the existing metropolitan planning area make the designation of more than 1 metropolitan planning organization for the metropolitan planning area appropriate.

''(B) SERVICE JURISDICTIONS.—If more than 1 metropolitan planning organization is designated for an existing metropolitan planning area under subparagraph (A), the existing metropolitan planning area shall be split into multiple metropolitan planning areas, each of which shall be served by the existing MPO or a new metropolitan planning organization.

''(C) TIER DESIGNATION.—The tier designation of each metropolitan planning organization subject to a designation under this paragraph shall be determined based on the size of each respective metropolitan planning area, in accordance with subsection (e)(4).

''(d) METROPOLITAN PLANNING AREA BOUNDARIES.—

''(1) IN GENERAL.—For purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the applicable metropolitan planning organization and the Governor of the State in which the metropolitan planning area is located.

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

''(A) shall encompass at least the relevant existing urbanized area and any contiguous area expected to become urbanized within a 20-year forecast period under the applicable metropolitan transportation plan; and

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

''(3) IDENTIFICATION OF NEW URBANIZED AREAS.—The designation by the Bureau of the Census of a new urbanized area within the boundaries of an existing metropolitan planning area shall not require the redesignation of the relevant existing MPO.

''(4) NONATTAINMENT AND MAINTENANCE AREAS.—

''(A) EXISTING METROPOLITAN PLANNING AREAS.—

''(i) IN GENERAL.—Except as provided in clause (ii), notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area or maintenance area as of the date of enactment of the MAP–21, the boundaries of the existing metropolitan planning area as of that date of enactment shall remain in force and effect.

''(ii) EXCEPTION.—Notwithstanding clause (i), the boundaries of an existing metropolitan planning area described in that clause may be adjusted by agreement of the applicable Governor and the affected metropolitan planning organizations in accordance with subsection (c)(5).

''(B) NEW METROPOLITAN PLANNING AREAS.—In the case of an urbanized area designated as a nonattainment area or maintenance area after the date of enactment of the MAP–21, the boundaries of the applicable metropolitan planning area—

''(i) shall be established in accordance with subsection (c)(1);

''(ii) shall encompass the areas described in paragraph (2)(A);

''(iii) may encompass the areas described in paragraph (2)(B); and

''(iv) may address any appropriate nonattainment area or maintenance area.

''(e) REQUIREMENTS.—

''(1) DEVELOPMENT OF PLANS AND TIPS.—To accomplish the policy objectives described in subsection (a), each metropolitan planning organization, in cooperation with the applicable State and public transportation operators, shall develop metropolitan transportation plans and transportation improvement programs for metropolitan planning areas of the State through a performance-driven, outcome-based approach to metropolitan transportation planning consistent with subsection (h)(2).

''(2) CONTENTS.—The metropolitan transportation plans and transportation improvement programs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation) that will function as—

''(A) an intermodal transportation system for the metropolitan planning area; and

''(B) an integral part of an intermodal transportation system for the applicable State and the United States.

''(3) PROCESS OF DEVELOPMENT.—The process for developing metropolitan transportation plans and transportation improvement programs shall—

''(A) provide for consideration of all modes of transportation; and

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

''(4) TIERING.—

''(A) TIER I MPOS.—

''(i) IN GENERAL.—A metropolitan planning organization shall be designated as a tier I MPO if—

''(I) as certified by the Governor of each applicable State, the metropolitan planning organization operates within, and primarily serves, a metropolitan planning area with a population of 1,000,000 or more individuals, as calculated according to the most recent decennial census; and

''(II) the Secretary determines the metropolitan planning organization—

''(aa) meets the minimum technical requirements under clause (iv); and

''(bb) not later than 2 years after the date of enactment of the MAP–21, will fully implement the processes described in subsections (h) though (j).

''(ii) ABSENCE OF DESIGNATION.—In the absence of designation as a tier I MPO under clause (i), a metropolitan planning organization shall operate as a tier II MPO until the date on which the Secretary determines the metropolitan planning organization can meet the minimum technical requirements under clause (iv).

''(iii) REDESIGNATION AS TIER I.—A metropolitan planning organization operating within a metropolitan planning area with a population of less than 1,000,000, but more than 200,000, individuals and primarily within urbanized areas with populations of more than 200,000 individuals, as calculated according to the most recent decennial census, that is designated as a tier II MPO under subparagraph (B) may request, with the support of the applicable Governor, a redesignation as a tier I MPO on a determination by the Secretary that the metropolitan planning organization has met the minimum technical requirements under clause (iv).

''(iv) MINIMUM TECHNICAL REQUIREMENTS.—Not later than 1 year after the date of enactment of the MAP–21, the Secretary shall publish a regulation that establishes the minimum technical requirements necessary for a metropolitan planning organization to be designated as a tier I MPO, including, at a minimum, modeling, data, staffing, and other technical requirements.

''(B) TIER II MPOS.—

''(i) IN GENERAL.—Not later than 1 year after the date of enactment of the MAP–21, the Secretary shall publish a regulation that establishes minimum requirements necessary for a metropolitan planning organization to be designated as a tier II MPO.

''(ii) REQUIREMENTS.—The minimum requirements established under clause (i) shall—

''(I) ensure that each metropolitan planning organization has the capabilities necessary to develop the metropolitan transportation plan and transportation improvement program under this section; and

''(II) include—

''(aa) only the staff resources necessary to operate the metropolitan planning organization; and

''(bb) a requirement that the metropolitan planning organization has the technical capacity to conduct the modeling necessary to fulfill the requirements of this section, except that in cases in which a metropolitan planning organization has a formal agreement with a State to conduct the modeling on behalf of the metropolitan planning organization, the metropolitan planning organization shall be exempt from the technical capacity requirement.

''(iii) INCLUSION.—A metropolitan planning organization operating primarily within an urbanized area with a population of more than 200,000 individuals, as calculated according to the most recent decennial census, and that does not qualify as a tier I MPO under subparagraph (A)(i), shall—

''(I) be designated as a tier II MPO; and

''(II) follow the processes under subsection (k).

''(C) SMALL URBANIZED AREAS.—

''(i) IN GENERAL.—Not later than 2 years after the date of publication of the regulation under subparagraph (B)(i), any existing MPO operating primarily within an urbanized area with a population of fewer than 200,000, but more than 50,000, individuals (as determined before the date of enactment of the MAP–21), with the support of the applicable Governor, may request designation as a tier II MPO on a determination by the Secretary that the metropolitan planning organization has met the minimum requirements under subparagraph (B)(i).

''(ii) ABSENCE OF DESIGNATION.—A metropolitan planning organization that is the subject of a negative determination of the Secretary under clause (i) shall submit to the State in which the metropolitan planning organization is located, or to a planning organization designated by the State, by not later than 180 days after the date on which a notice of the negative determination is received, a 6-month plan that includes a description of a method—

''(I) to transfer the responsibilities of the metropolitan planning organization to the State; and

''(II) to dissolve the metropolitan planning organization.

''(iii) ACTION ON DISSOLUTION.—On submission of a plan under clause (ii), the metropolitan planning area served by the applicable metropolitan planning organization shall—

''(I) continue to receive metropolitan transportation planning funds until the earlier of—

''(aa) the date of dissolution of the metropolitan planning organization; and

''(bb) the date that is 4 years after the date of enactment of the MAP–21; and

''(II) be treated by the State as a nonmetropolitan area for purposes of this title.

''(D) CONSOLIDATION.—

''(i) IN GENERAL.—Metropolitan planning organizations operating within contiguous or adjacent urbanized areas may elect to consolidate in order to meet the population thresholds required to achieve designation as a tier I or tier II MPO under this paragraph.

''(ii) EFFECT OF SUBSECTION.—Nothing in this subsection requires or prevents consolidation among multiple metropolitan planning organizations located within a single urbanized area.

''(f) COORDINATION IN MULTISTATE AREAS.—

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

''(2) COORDINATION ALONG DESIGNATED TRANSPORTATION CORRIDORS.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire designated transportation corridor.

''(3) COORDINATION WITH INTERSTATE COMPACTS.—The Secretary shall encourage metropolitan planning organizations to take into consideration, during the development of metropolitan transportation plans and transportation improvement programs, any relevant transportation studies concerning planning for regional transportation (including high-speed and intercity rail corridor studies, commuter rail corridor studies, intermodal terminals, and interstate highways) in support of freight, intercity, or multistate area projects and services that have been developed pursuant to interstate compacts or agreements, or by organizations established under section 135.

''(g) ENGAGEMENT IN METROPOLITAN TRANSPORTATION PLAN AND TIP DEVELOPMENT.—

''(1) NONATTAINMENT AND MAINTENANCE AREAS.—If more than 1 metropolitan planning organization has authority within a metropolitan area, nonattainment area, or maintenance area, each metropolitan planning organization shall consult with each other metropolitan planning organization designated for the metropolitan area, nonattainment area, or maintenance area and the State in the development of metropolitan transportation plans and transportation improvement programs under this section.

''(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE METROPOLITAN PLANNING AREAS.—If a transportation improvement project funded under this title or chapter 53 of title 49 is located within the boundaries of more than 1 metropolitan planning area, the affected metropolitan planning organizations shall coordinate metropolitan transportation plans and transportation improvement programs regarding the project.

''(3) COORDINATION OF ADJACENT PLANNING ORGANIZATIONS.—

''(A) IN GENERAL.—A metropolitan planning organization that is adjacent or located in reasonably close proximity to another metropolitan planning organization shall coordinate with that metropolitan planning organization with respect to planning processes, including preparation of metropolitan

transportation plans and transportation improvement programs, to the maximum extent practicable.

''(B) NONMETROPOLITAN PLANNING ORGANIZATIONS.—A metropolitan planning organization that is adjacent or located in reasonably close proximity to a nonmetropolitan planning organization shall consult with that nonmetropolitan planning organization with respect to planning processes, to the maximum extent practicable.

''(4) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.—

''(A) IN GENERAL.—The Secretary shall encourage each metropolitan planning organization to cooperate with Federal, tribal, State, and local officers and entities responsible for other types of planning activities that are affected by transportation in the relevant area (including planned growth, economic development, infrastructure services, housing, other public services, environmental protection, airport operations, high-speed and intercity passenger rail, freight rail, port access, and freight movements), to the maximum extent practicable, to ensure that the metropolitan transportation planning process, metropolitan transportation plans, and transportation improvement programs are developed in cooperation with other related planning activities in the area.

''(B) INCLUSION.—Cooperation under subparagraph (A) shall include the design and delivery of transportation services within the metropolitan area that are provided by—

''(i) recipients of assistance under sections 202, 203, and 204;

''(ii) recipients of assistance under chapter 53 of title 49;

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

''(iv) sponsors of regionally significant programs, projects, and services that are related to transportation and receive assistance from any public or private source.

''(5) COORDINATION OF OTHER FEDERALLY REQUIRED PLANNING PROGRAMS.—The Secretary shall encourage each metropolitan planning organization to coordinate, to the maximum extent practicable, the development of metropolitan transportation plans and transportation improvement programs with other relevant federally required planning programs.

''(h) SCOPE OF PLANNING PROCESS.—

''(1) IN GENERAL.—The metropolitan transportation planning process for a metropolitan planning area under this section shall provide for consideration of projects and strategies that will—

''(A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

''(B) increase the safety of the transportation system for motorized and nonmotorized users;

''(C) increase the security of the transportation system for motorized and nonmotorized users;

''(D) increase the accessibility and mobility of individuals and freight;

''(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

''(F) enhance the integration and connectivity of the transportation system, across and between modes, for individuals and freight;

''(G) increase efficient system management and operation; and

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

''(2) PERFORMANCE-BASED APPROACH.—

''(A) IN GENERAL.—The metropolitan transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decision-making to support the national goals described in section 150(b).

''(B) PERFORMANCE TARGETS.—

''(i) IN GENERAL.—Each metropolitan planning organization shall establish performance targets that address the performance measures described in sections 119(f), 148(h), 149(k), *where applicable,* and 167(i) to use in tracking attainment of critical outcomes for the region of the metropolitan planning organization.

''(ii) COORDINATION.—Selection of performance targets by a metropolitan planning organization shall be coordinated with the relevant State to ensure consistency, to the maximum extent practicable.

''(C) TIMING.—Each metropolitan planning organization shall establish the performance targets under subparagraph (B) not later than 90 days after the date of establishment by the relevant State of performance targets pursuant to sections 119(f), 148(h), 149(k), *where applicable,* and 167(i).

''(D) INTEGRATION OF OTHER PERFORMANCE-BASED PLANS.—A metropolitan planning organization shall integrate in the metropolitan transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets [described in this paragraph into other] *described in other* State plans and processes required as part of a performance-based program, including plans such as—

''(i) the State National Highway System asset management plan;

''(ii) the State strategic highway safety plan;

''(iii) the congestion mitigation and air quality performance [plan] *plan, where applicable*;

''(iv) the national freight strategic plan; and

''(v) the statewide transportation plan.

''(E) USE OF PERFORMANCE MEASURES AND TARGETS.—The performance measures and targets established under this paragraph shall be used, at a minimum, by the relevant metropolitan planning organization as the basis for development of policies, programs, and investment priorities reflected in the metropolitan transportation plan and transportation improvement program.

''(3) FAILURE TO CONSIDER FACTORS.—The failure to take into consideration 1 or more of the factors specified in paragraphs (1) and (2) shall not be subject to review by any court under this title, chapter 53 of title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a metropolitan transportation plan, a transportation improvement program, a project or strategy, or the certification of a planning process.

''(4) PARTICIPATION BY INTERESTED PARTIES.—

''(A) IN GENERAL.—Each metropolitan planning organization shall provide to affected individuals, public agencies, and other interested parties notice and a reasonable opportunity to comment on the metropolitan transportation plan and transportation improvement program and any relevant scenarios.

''(B) METHODS.—In carrying out subparagraph (A), the metropolitan planning organization shall, to the maximum extent practicable—

''(i) develop the metropolitan transportation plan and transportation improvement program in consultation with interested parties, as appropriate, including by the formation of advisory groups representative of the community and interested parties that participate in the development of the metropolitan transportation plan and transportation improvement program;

''(ii) hold any public meetings at times and locations that are, as applicable—

''(I) convenient; and

''(II) in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

''(iii) employ visualization techniques to describe metropolitan transportation plans and transportation improvement programs; and

''(iv) make public information available in appropriate electronically accessible formats and means, such as the Internet, to afford reasonable opportunity for consideration of public information under subparagraph (A).

''(i) DEVELOPMENT OF METROPOLITAN TRANSPORTATION PLAN.—

''(1) DEVELOPMENT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), not later than 5 years after the date of enactment of the MAP–21, and not less frequently than once every 5 years thereafter, each metropolitan planning organization shall prepare and update, respectively, a metropolitan transportation plan for the relevant metropolitan planning area in accordance with this section.

''(B) EXCEPTIONS.—A metropolitan planning organization shall prepare or update, as appropriate, the metropolitan transportation plan not less frequently than once every 4 years if the metropolitan planning organization is operating within—

''(i) a nonattainment area; or

''(ii) a maintenance area.

''(2) OTHER REQUIREMENTS.—A metropolitan transportation plan under this section shall—

''(A) be in a form that the Secretary determines to be appropriate;

''(B) have a term of not less than 20 years; and

''(C) contain, at a minimum—

''(i) an identification of the existing transportation infrastructure, including highways, local streets and roads, bicycle and pedestrian facilities, transit facilities and services, commuter rail facilities and services, high-speed and intercity passenger rail facilities and services, freight facilities (including freight railroad and port facilities), multimodal and intermodal facilities, and intermodal connectors that, evaluated in the aggregate, function as an integrated metropolitan transportation system;

''(ii) a description of the performance measures and performance targets used in assessing the existing and future performance of the transportation system in accordance with subsection (h)(2);

''(iii) a description of the current and projected future usage of the transportation system, including a projection based on a preferred scenario, and further including, to the extent practicable, an identification of existing or planned transportation rights-of-way, corridors, facilities, and related real properties;

''(iv) a system performance report evaluating the existing and future condition and performance of the transportation system with respect to the performance targets described in subsection (h)(2) and updates in subsequent system performance reports, including—

''(I) progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports;

''(II) an accounting of the performance of the metropolitan planning organization on

outlay of obligated project funds and delivery of projects that have reached substantial completion in relation to—

''(aa) the projects included in the transportation improvement program; and

''(bb) the projects that have been removed from the previous transportation improvement program; and

''(III) when appropriate, an analysis of how the preferred scenario has improved the conditions and performance of the transportation system and how changes in local policies, investments, and growth have impacted the costs necessary to achieve the identified performance targets;

''(v) recommended strategies and investments for improving system performance over the planning horizon, including transportation systems management and operations strategies, maintenance strategies, demand management strategies, asset management strategies, capacity and enhancement investments, State and local economic development and land use improvements, intelligent transportation systems deployment, and technology adoption strategies, as determined by the projected support of the performance targets described in subsection (h)(2);

''(vi) recommended strategies and investments to improve and integrate disability-related access to transportation infrastructure, including strategies and investments based on a preferred scenario, when appropriate;

''(vii) investment priorities for using projected available and proposed revenues over the short- and long-term stages of the planning horizon, in accordance with the financial plan required under paragraph (4);

''(viii) a description of interstate compacts entered into in order to promote coordinated transportation planning in multistate areas, if applicable;

''(ix) an optional illustrative list of projects containing investments that—

''(I) are not included in the metropolitan transportation plan; but

''(II) would be so included if resources in addition to the resources identified in the financial plan under paragraph (4) were available;

''(x) a discussion (developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies) of types of potential environmental and stormwater mitigation activities and potential areas to carry out those activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the metropolitan transportation plan; and

''(xi) recommended strategies and investments, including those developed by the State as part of interstate compacts, agreements, or organizations, that support intercity transportation.

[''(3) SCENARIO DEVELOPMENT.—When preparing the metropolitan transportation plan, the metropolitan planning organization may, while fitting the needs and complexity of their community, develop multiple scenarios for consideration as a part of the development of the metropolitan transportation plan, in accordance with the following:

''(A) The scenarios—

''(i) shall include potential regional investment strategies for the planning horizon;

''(ii) shall include assumed distribution of population and employment;

''(iii) may include a scenario that, to the maximum extent practicable, maintains baseline conditions for the performance measures identified in subsection (h)(2);

''(iv) may include a scenario that improves the baseline conditions for as many of the performance measures under subsection (h)(2) as possible;

''(v) may include a revenue constrained scenario based on total revenues reasonable expected to be available over the 20-year planning period and assumed population and employment; and

''(vi) may include estimated costs and potential revenues available to support each scenario.

''(B) In addition to the performance measures identified in subsection (h)(2), scenarios developed under this paragraph may be evaluated using locally developed metrics for the following categories:

''(i) Congestion and mobility, including transportation use by mode.

''(ii) Freight movement.

''(iii) Safety.

''(iv) Efficiency and costs to taxpayers.]

''(3) SCENARIO DEVELOPMENT.—

''(A) IN GENERAL.—When preparing the metropolitan transportation plan, the metropolitan planning organization may, while fitting the needs and complexity of its community, develop multiple scenarios for consideration as a part of the development of the metropolitan transportation plan, in accordance with subparagraph (B).

''(B) COMPONENTS OF SCENARIOS.—The scenarios—

''(i) shall include potential regional investment strategies for the planning horizon;

''(ii) shall include an assumed distribution of population and employment;

''(iii) may include a scenario that, to the maximum extent practicable, maintains baseline conditions for the performance measures identified in subsection (h)(2);

''(iv) may include a scenario that improves the baseline conditions for as many of the performance measures under subsection (h)(2) as possible;

''(v) shall be revenue constrained based on the total revenues expected to be available over the forecast period of the plan; and

''(vi) may include estimated costs and potential revenues available to support each scenario.

''(C) METRICS.—In addition to the performance measures identified in subsection (h)(2), scenarios developed under this paragraph may be evaluated using locally-developed metrics for the following categories:

''(i) Congestion and mobility, including transportation use by mode.

''(ii) Freight movement.

''(iii) Safety.

''(iv) Efficiency and costs to taxpayers.

''(4) FINANCIAL PLAN.—A financial plan referred to in paragraph (2)(C)(vii) shall—

''(A) be prepared by each metropolitan planning organization to support the metropolitan transportation plan; and

''(B) contain a description of each of the following:

''(i) Projected resource requirements for implementing projects, strategies, and services recommended in the metropolitan transportation plan, including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from Federal, State, local, and private sources, and innovative financing techniques to finance projects and programs.

''(ii) The projected difference between costs and revenues, and strategies for securing additional new revenue (such as by capture of some of the economic value created by any new investment).

''(iii) Estimates of future funds, to be developed cooperatively by the metropolitan planning organization, any public transportation agency, and the State, that are reasonably expected to be available to support the investment priorities recommended in the metropolitan transportation plan.

''(iv) Each applicable project only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(5) COORDINATION WITH CLEAN AIR ACT AGENCIES.—The metropolitan planning organization for any metropolitan area that is a nonattainment area or maintenance area shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act (42 U.S.C. 7401 et seq.).

''(6) PUBLICATION.—On approval by the relevant metropolitan planning organization, a metropolitan transportation plan involving Federal participation shall be, at such times and in such manner as the Secretary shall require—

''(A) published or otherwise made readily available by the metropolitan planning organization for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the Internet; and

''(B) submitted for informational purposes to the applicable Governor.

''(7) CONSULTATION.—

''(A) IN GENERAL.—In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with Federal, tribal, State, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a metropolitan transportation plan.

''(B) ISSUES.—The consultation under subparagraph (A) shall involve, as available, consideration of—

''(i) metropolitan transportation plans with Federal, tribal, State, and local conservation plans or maps; and

''(ii) inventories of natural or historic resources.

''(8) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (4), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the metropolitan transportation plan under paragraph (2)(C)(ix).

''(j) TRANSPORTATION IMPROVEMENT PROGRAM.—

''(1) DEVELOPMENT.—

''(A) IN GENERAL.—In cooperation with the applicable State and any affected public transportation operator, the metropolitan planning organization designated for a metropolitan area shall develop a transportation improvement program for the metropolitan planning area that—

''(i) contains projects consistent with the current metropolitan transportation plan;

''(ii) reflects the investment priorities established in the current metropolitan transportation plan; and

''(iii) once implemented, will make significant progress toward achieving the targets established under subsection (h)(2).

''(B) OPPORTUNITY FOR PARTICIPATION.—In developing the transportation improvement program, the metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties, in accordance with subsection (h)(4).

''(C) UPDATING AND APPROVAL.—The transportation improvement program shall be—

''(i) updated not less frequently than once every 4 years, on a cycle compatible with the development of the relevant statewide transportation improvement program under section 135; and

''(ii) approved by the applicable Governor.

''(2) CONTENTS.—

''(A) PRIORITY LIST.—The transportation improvement program shall include a priority list of proposed federally supported projects and strategies to be carried out during the 4-year period beginning on the date of adoption of the transportation improvement program, and each 4-year period thereafter, using existing and reasonably available revenues in accordance with the financial plan under paragraph (3).

''(B) DESCRIPTIONS.—Each project described in the transportation improvement program shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project and the effect that the project or project phase will have in addressing the targets described in subsection (h)(2).

''(C) PERFORMANCE TARGET ACHIEVEMENT.—The transportation improvement program shall include, to the maximum extent practicable, a description of the anticipated effect of the transportation improvement program on attainment of the performance targets established in the metropolitan transportation plan, linking investment priorities to those performance targets.

''(D) ILLUSTRATIVE LIST OF PROJECTS.—In developing a transportation improvement program, an optional illustrative list of projects may be prepared containing additional investment priorities that—

''(i) are not included in the transportation improvement program; but

''(ii) would be so included if resources in addition to the resources identified in the financial plan under paragraph (3) were available.

''(3) FINANCIAL PLAN.—A financial plan referred to in paragraph (2)(D)(ii) shall—

''(A) be prepared by each metropolitan planning organization to support the transportation improvement program; and

''(B) contain a description of each of the following:

''(i) Projected resource requirements for implementing projects, strategies, and services recommended in the transportation improvement program, including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from Federal, State, local, and private sources, and innovative financing techniques to finance projects and programs.

''(ii) The projected difference between costs and revenues, and strategies for securing additional new revenue (such as by capture of some of the economic value created by any new investment).

''(iii) Estimates of future funds, to be developed cooperatively by the metropolitan planning organization, any public transportation agency, and the State, that are reasonably expected to be available to support the investment priorities recommended in the transportation improvement program.

''(iv) Each applicable project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(4) INCLUDED PROJECTS.—

''(A) PROJECTS UNDER THIS TITLE AND CHAPTER 53 OF TITLE 49.—A transportation improvement program developed under this subsection for a metropolitan area shall include a description of the projects within the area that are proposed for funding under chapter 1 of this title and chapter 53 of title 49.

''(B) PROJECTS UNDER CHAPTER 2.—

''(i) REGIONALLY SIGNIFICANT.—Each regionally significant project proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

''(ii) NONREGIONALLY SIGNIFICANT.—A description of each project proposed for funding under chapter 2 that is not determined to be regionally significant shall be contained in 1 line item or identified individually in the transportation improvement program.

''(5) OPPORTUNITY FOR PARTICIPATION.—Before approving a transportation improvement program, a metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the transportation improvement program, in accordance with subsection (h)(4).

''(6) SELECTION OF PROJECTS.—

''(A) IN GENERAL.—Each tier I MPO and tier II MPO shall select projects carried out within the boundaries of the applicable metropolitan planning area from the transportation improvement program, in consultation with the relevant State and on concurrence of the affected facility owner, for funds apportioned to the State under section 104(b)(2) and suballocated to the metropolitan planning area under section 133(d).

''(B) CMAQ PROJECTS.—Each tier I MPO shall select projects carried out within the boundaries of the applicable metropolitan planning area from the transportation improvement program, in consultation with the relevant State and on concurrence of the affected facility owner, for funds apportioned to the State under section 104(b)(4) and suballocated to the metropolitan planning area under section 149(j).

''(C) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, approval by the Secretary shall not be required to carry out a project included in a transportation improvement program in place of another project in the transportation improvement program.

''(7) PUBLICATION.—

''(A) IN GENERAL.—A transportation improvement program shall be published or otherwise made readily available by the applicable metropolitan planning organization for public review in electronically accessible formats and means, such as the Internet.

''(B) ANNUAL LIST OF PROJECTS.—An annual list of projects, including investments in pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation, for which Federal funds have been obligated during the preceding fiscal year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and metropolitan planning organization in electronically accessible formats and means, such as the Internet, in a manner that is consistent with the categories identified in the relevant transportation improvement program.

''(k) PLANNING REQUIREMENTS FOR TIER II MPOS.—

''(1) IN GENERAL.—The Secretary may provide for the performance-based development of a metropolitan transportation plan and transportation improvement program for the metropolitan planning area of a tier II MPO, as the Secretary determines to be appropriate, taking into account—

''(A) the complexity of transportation needs in the area; and

''(B) the technical capacity of the metropolitan planning organization.

''(2) EVALUATION OF PERFORMANCE-BASED PLANNING.—In reviewing a tier II MPO under subsection (m), the Secretary shall take into consideration the effectiveness of the tier II MPO in implementing and maintaining a performance-based planning process that—

''(A) addresses the targets described in subsection (h)(2); and

''(B) demonstrates progress on the achievement of those targets.

''(l) CERTIFICATION.—

''(1) IN GENERAL.—The Secretary shall—

''(A) ensure that the metropolitan transportation planning process of a metropolitan planning organization is being carried out in accordance with applicable Federal law; and

''(B) subject to paragraph (2), certify, not less frequently than once every 4 years, that the requirements of subparagraph (A) are met with respect to the metropolitan transportation planning process.

''(2) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make a certification under paragraph (1)(B) if—

''(A) the metropolitan transportation planning process complies with the requirements of this section and other applicable Federal law; and

''(B) a transportation improvement program for the metropolitan planning area has been approved by the relevant metropolitan planning organization and Governor.

''(3) DELEGATION OF AUTHORITY.—The Secretary may—

''(A) delegate to the appropriate State fact-finding authority regarding the certification of a tier II MPO under this subsection; and

''(B) make the certification under paragraph (1) in consultation with the State.

''(4) EFFECT OF FAILURE TO CERTIFY.—

''(A) WITHHOLDING OF PROJECT FUNDS.—If a metropolitan transportation planning process of a metropolitan planning organization is not certified under paragraph (1), the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the metropolitan planning organization for projects funded under this title and chapter 53 of title 49.

''(B) RESTORATION OF WITHHELD FUNDS.—Any funds withheld under subparagraph (A) shall be restored to the metropolitan planning area on the date of certification of the metropolitan transportation planning process by the Secretary.

''(5) PUBLIC INVOLVEMENT.—In making a determination regarding certification under this subsection, the Secretary shall provide for public involvement appropriate to the metropolitan planning area under review.

''(m) PERFORMANCE-BASED PLANNING PROCESSES EVALUATION.—

''(1) IN GENERAL.—The Secretary shall establish criteria to evaluate the effectiveness of the performance-based planning processes of metropolitan planning organizations under this section, taking into consideration the following:

''(A) The extent to which the metropolitan planning organization has achieved, or is currently making substantial progress toward achieving, the targets specified in subsection (h)(2), taking into account whether the metropolitan planning organization developed meaningful performance targets.

''(B) The extent to which the metropolitan planning organization has used proven best practices that help ensure transportation investment that is efficient and cost-effective.

''(C) The extent to which the metropolitan planning organization—

''(i) has developed an investment process that relies on public input and awareness to ensure that investments are transparent and accountable; and

''(ii) provides regular reports allowing the public to access the information being collected in a format that allows the public to meaningfully assess the performance of the metropolitan planning organization.

''(2) REPORT.—

''(A) IN GENERAL.—Not later than 5 years after the date of enactment of the MAP–21, the Secretary shall submit to Congress a report evaluating—

''(i) the overall effectiveness of performance-based planning as a tool for guiding transportation investments; and

''(ii) the effectiveness of the performance-based planning process of each metropolitan planning organization under this section.

''(B) PUBLICATION.—The report under subparagraph (A) shall be published or otherwise made available in electronically accessible formats and means, including on the Internet.

''(n) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this title or chapter 53 of title 49, Federal funds may not be advanced in any metropolitan planning area classified as a nonattainment area or maintenance area for any highway project that will result in a significant increase in the carrying capacity for single-occupant vehicles, unless the owner or operator of the project demonstrates that the project will achieve or make substantial progress toward achieving the targets described in subsection (h)(2).

''(2) APPLICABILITY.—This subsection applies to any nonattainment area or maintenance area within the boundaries of a metropolitan planning area, as determined under subsection (c).

''(o) EFFECT OF SECTION.—Nothing in this section provides to any metropolitan planning organization the authority to impose any legal requirement on any transportation facility, provider, or project not subject to the requirements of this title or chapter 53 of title 49.

''(p) FUNDING.—Funds apportioned under section 104(b)(6) of this title and set aside under section 5305(g) of title 49 shall be available to carry out this section.

''(q) CONTINUATION OF CURRENT REVIEW PRACTICE.—

''(1) IN GENERAL.—In consideration of the factors described in paragraph (2), any decision by the Secretary concerning a metropolitan transportation plan or transportation improvement program shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(2) DESCRIPTION OF FACTORS.—The factors referred to in paragraph (1) are that—

''(A) metropolitan transportation plans and transportation improvement programs are subject to a reasonable opportunity for public comment;

''(B) the projects included in metropolitan transportation plans and transportation improvement programs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

''(C) decisions by the Secretary concerning metropolitan transportation plans and transportation improvement programs have not been reviewed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) as of January 1, 1997.

''(r) SCHEDULE FOR IMPLEMENTATION.—The Secretary shall issue guidance on a schedule for implementation of the changes made by this section, taking into consideration the established planning update cycle for metropolitan planning organizations. The Secretary shall not require a metropolitan planning organization to deviate from its established planning update cycle to implement changes made by this section. Metropolitan planning organizations shall reflect changes made to their transportation plan or transportation improvement program updates by 2 years after the date of issuance of guidance by the Secretary.''.

SEC. 1202. STATEWIDE AND NONMETROPOLITAN TRANSPORTATION PLANNING.

(a) IN GENERAL.—Section 135 of title 23, United States Code, is amended to read as follows:

''§ 135. Statewide and nonmetropolitan transportation planning

''(a) STATEWIDE TRANSPORTATION PLANS AND STIPS.—

''(1) DEVELOPMENT.—

''(A) IN GENERAL.—To accomplish the policy objectives described in section 134(a), each State shall develop a statewide transportation plan and a statewide transportation improvement program for all areas of the State in accordance with this section.

''(B) INCORPORATION OF METROPOLITAN TRANSPORTATION PLANS AND TIPS.—Each State shall incorporate in the statewide transportation plan and statewide transportation improvement program, without change or by reference, the metropolitan transportation plans and transportation improvement programs, respectively, for each metropolitan planning area in the State.

''(C) NONMETROPOLITAN AREAS.—Each State shall [coordinate] *consult* with local officials in small urbanized and nonurbanized areas of the State in preparing the nonmetropolitan portions of statewide transportation plans and statewide transportation improvement programs.

''(2) CONTENTS.—The statewide transportation plan and statewide transportation improvement program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation) that will function as—

''(A) an intermodal transportation system for the State; and

''(B) an integral part of an intermodal transportation system for the United States.

''(3) PROCESS.—The process for developing the statewide transportation plan and statewide transportation improvement program shall—

''(A) provide for consideration of all modes of transportation; and

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

[''(b) COORDINATION.—

''(1) IN GENERAL.—Each State shall—

''(A) coordinate planning carried out under this section with—

''(i) the transportation planning activities carried out under section 134 for metropolitan areas of the State; and

''(ii) statewide trade and economic development planning activities and related multistate planning efforts;

''(B) coordinate planning carried out under this section with the transportation planning activities carried out by each nonmetropolitan planning organization in the State, as applicable; and

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

''(b) COORDINATION AND CONSULTATION.—

''(1) IN GENERAL.—Each State shall—

''(A) coordinate planning carried out under this section with—

''(i) the transportation planning activities carried out under section 134 for metropolitan areas of the State; and

''(ii) statewide trade and economic development planning activities and related multistate planning efforts;

''(B) coordinate planning carried out under this section with the transportation planning activities carried out by each nonmetropolitan planning organization in the State, as applicable;

''(C) consult on planning carried out under this section with the transportation planning activities carried out by each rural planning organization in the State, as applicable; and

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

''(2) MULTISTATE AREAS.—

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

''(B) COORDINATION ALONG DESIGNATED TRANSPORTATION CORRIDORS.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate transportation corridor to provide coordinated transportation planning for the entire designated corridor.

''(C) INTERSTATE COMPACTS.—For purposes of this section, any 2 or more States—

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

''(ii) may establish such agencies (joint or otherwise) as the States determine to be appropriate for ensuring the effectiveness of the agreements and compacts; and

''(iii) are encouraged to enter into such compacts, agreements, or organizations as are appropriate to develop planning documents in support of intercity or multistate area projects, facilities, and services, the relevant components of which shall be reflected in statewide transportation improvement programs and statewide transportation plans.

''(D) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal any interstate compact or agreement entered into under this subsection is expressly reserved.

''(c) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.—

''(1) IN GENERAL.—The Secretary shall encourage each State to cooperate with Federal, tribal, State, and local officers and entities responsible for other types of planning activities that are affected by transportation in the relevant area (including planned growth, economic development, infrastructure services, housing, other public services, environmental protection, airport operations, high-speed and intercity passenger rail, freight rail, port access, and freight movements), to the maximum extent practicable, to ensure that the statewide and nonmetropolitan planning process, statewide transportation plans, and statewide transportation improvement programs are developed with due consideration for other related planning activities in the State.

''(2) INCLUSION.—Cooperation under paragraph (1) shall include the design and delivery of transportation services within the State that are provided by—

''(A) recipients of assistance under sections 202, 203, and 204;

''(B) recipients of assistance under chapter 53 of title 49;

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

''(D) sponsors of regionally significant programs, projects, and services that are related to transportation and receive assistance from any public or private source.

''(d) SCOPE OF PLANNING PROCESS.—

''(1) IN GENERAL.—The statewide transportation planning process for a State under this section shall provide for consideration of projects, strategies, and services that will—

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

''(B) increase the safety of the transportation system for motorized and nonmotorized users;

''(C) increase the security of the transportation system for motorized and nonmotorized users;

''(D) increase the accessibility and mobility of individuals and freight;

''(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

''(F) enhance the integration and connectivity of the transportation system, across and between modes, for individuals and freight;

''(G) increase efficient system management and operation; and

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

''(2) PERFORMANCE-BASED APPROACH.—

''(A) IN GENERAL.—The statewide transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decision-making to support the national goals described in section 150(b).

''(B) PERFORMANCE TARGETS.—

''(i) IN GENERAL.—Each State shall establish performance targets that address the performance measures described in sections 119(f), 148(h), ❚149(k),❚ and 167(i) to use in tracking attainment of critical outcomes for the region of the State.

''(ii) COORDINATION.—Selection of performance targets by a State shall be coordinated with relevant metropolitan planning organizations to ensure consistency, to the maximum extent practicable.

''(C) INTEGRATION OF OTHER PERFORMANCE-BASED PLANS.—A State shall integrate into the statewide transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in this paragraph in other State plans and processes required as part of a performance-based program, including plans such as—

''(i) the State National Highway System asset management plan;

''(ii) the State strategic highway safety plan; *and*

❚''(iii) the congestion mitigation and air quality performance plan; and

''(iv)❚*(iii)* the national freight strategic plan.

''(D) USE OF PERFORMANCE MEASURES AND TARGETS.—The performance measures and targets established under this paragraph shall be used, at a minimum, by a State as the basis for development of policies, programs, and investment priorities reflected in the statewide transportation plan and statewide transportation improvement program.

''(3) FAILURE TO CONSIDER FACTORS.—The failure to take into consideration 1 or more of the factors specified in paragraphs (1) and (2) shall not be subject to review by any court under this title, chapter 53 of title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a statewide transportation plan, a statewide transportation improvement program, a project or strategy, or the certification of a planning process.

''(4) PARTICIPATION BY INTERESTED PARTIES.—

''(A) IN GENERAL.—Each State shall provide to affected individuals, public agencies, and other interested parties notice and a reasonable opportunity to comment on the statewide transportation plan and statewide transportation improvement program.

''(B) METHODS.—In carrying out subparagraph (A), the State shall, to the maximum extent practicable—

''(i) develop the statewide transportation plan and statewide transportation improvement program in consultation with interested parties, as appropriate, including by the formation of advisory groups representative of the State and interested parties that participate in the development of the statewide transportation plan and statewide transportation improvement program;

''(ii) hold any public meetings at times and locations that are, as applicable—

''(I) convenient; and

''(II) in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

''(iii) employ visualization techniques to describe statewide transportation plans and statewide transportation improvement programs; and

''(iv) make public information available in appropriate electronically accessible formats and means, such as the Internet, to afford reasonable opportunity for consideration of public information under subparagraph (A).

''(e) COORDINATION AND CONSULTATION.—

''(1) METROPOLITAN AREAS.—

''(A) IN GENERAL.—Each State shall develop a statewide transportation plan and statewide transportation improvement program for each metropolitan area in the State by incorporating, without change or by reference, at a minimum, as prepared by each metropolitan planning organization designated for the metropolitan area under section 134—

''(i) all regionally significant projects to be carried out during the 10-year period beginning on the effective date of the relevant existing metropolitan transportation plan; and

''(ii) all projects to be carried out during the 4-year period beginning on the effective date of the relevant transportation improvement program.

''(B) PROJECTED COSTS.—Each metropolitan planning organization shall provide to each applicable State a description of the projected costs of implementing the projects included in the metropolitan transportation plan of the metropolitan planning organization for purposes of long-range financial planning and fiscal constraint.

''(2) NONMETROPOLITAN AREAS.—With respect to nonmetropolitan areas in a State, the statewide transportation plan and statewide transportation improvement program of the State shall be developed in ❚coordination❚ *consultation* with affected nonmetropolitan local officials with responsibility for transportation.

''(3) INDIAN TRIBAL AREAS.—With respect to each area of a State under the jurisdiction of an Indian tribe, the statewide transportation plan and statewide transportation improvement program of the State shall be developed in consultation with—

''(A) the tribal government; and

''(B) the Secretary of the Interior.

''(4) FEDERAL LAND MANAGEMENT AGENCIES.—With respect to each area of a State under the jurisdiction of a Federal land management agency, the statewide transportation plan and statewide transportation improvement program of the State shall be developed in consultation with the relevant Federal land management agency.

''(5) CONSULTATION, COMPARISON, AND CONSIDERATION.—

''(A) IN GENERAL.—A statewide transportation plan shall be developed, as appropriate, in consultation with Federal, tribal, State, and local agencies responsible for land use management, natural resources, infrastructure permitting, environmental protection, conservation, and historic preservation.

''(B) COMPARISON AND CONSIDERATION.—Consultation under subparagraph (A) shall involve the comparison of statewide transportation plans to, as available—

''(i) Federal, tribal, State, and local conservation plans or maps; and

''(ii) inventories of natural or historic resources.

''(f) STATEWIDE TRANSPORTATION PLAN.—

''(1) DEVELOPMENT.—

''(A) IN GENERAL.—Each State shall develop a statewide transportation plan, the forecast period of which shall be not less than 20 years for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State.

''(B) INITIAL PERIOD.—A statewide transportation plan shall include, at a minimum, for the first 10-year period of the statewide transportation plan, the identification of existing and future transportation facilities that will function as an integrated statewide transportation system, giving emphasis to those facilities that serve important national, statewide, and regional transportation functions.

''(C) SUBSEQUENT PERIOD.—For the second 10-year period of the statewide transportation plan (referred to in this subsection as the 'outer years period'), a statewide transportation plan—

''(i) may include identification of future transportation facilities; and

''(ii) shall describe the policies and strategies that provide for the development and implementation of the intermodal transportation system of the State.

''(D) OTHER REQUIREMENTS.—A statewide transportation plan shall—

''(i) include, for the 20-year period covered by the statewide transportation plan, a description of—

''(I) the projected aggregate cost of projects anticipated by a State to be implemented; and

''(II) the revenues necessary to support the projects;

''(ii) include, in such form as the Secretary determines to be appropriate, a description of—

''(I) the existing transportation infrastructure, including an identification of highways, local streets and roads, bicycle and pedestrian facilities, transit facilities and services, commuter rail facilities and services, high-speed and intercity passenger rail facilities and services, freight facilities (including freight railroad and port facilities), multimodal and intermodal facilities, and intermodal connectors that, evaluated in the aggregate, function as an integrated transportation system;

''(II) the performance measures and performance targets used in assessing the existing and future performance of the transportation system described in subsection (d)(2);

''(III) the current and projected future usage of the transportation system, including, to the maximum extent practicable, an identification of existing or planned transportation rights-of-way, corridors, facilities, and related real properties;

''(IV) a system performance report evaluating the existing and future condition and performance of the transportation system with respect to the performance targets described in subsection (d)(2) and updates to subsequent system performance reports, including—

''(aa) progress achieved by the State in meeting performance targets, as compared to system performance recorded in previous reports; and

''(bb) an accounting of the performance by the State on outlay of obligated project

funds and delivery of projects that have reached substantial completion, in relation to the projects currently on the statewide transportation improvement program and those projects that have been removed from the previous statewide transportation improvement program;

''(V) recommended strategies and investments for improving system performance over the planning horizon, including transportation systems management and operations strategies, maintenance strategies, demand management strategies, asset management strategies, capacity and enhancement investments, land use improvements, intelligent transportation systems deployment and technology adoption strategies as determined by the projected support of targets described in subsection (d)(2);

''(VI) recommended strategies and investments to improve and integrate disability-related access to transportation infrastructure;

''(VII) investment priorities for using projected available and proposed revenues over the short- and long-term stages of the planning horizon, in accordance with the financial plan required under paragraph (2);

''(VIII) a description of interstate compacts entered into in order to promote coordinated transportation planning in multistate areas, if applicable;

''(IX) an optional illustrative list of projects containing investments that—

''(aa) are not included in the statewide transportation plan; but

''(bb) would be so included if resources in addition to the resources identified in the financial plan under paragraph (2) were available;

''(X) a discussion (developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies) of types of potential environmental and stormwater mitigation activities and potential areas to carry out those activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the statewide transportation plan; and

''(XI) recommended strategies and investments, including those developed by the State as part of interstate compacts, agreements, or organizations, that support intercity transportation; and

''(iii) be updated by the State not less frequently than once every 5 years.

''(2) FINANCIAL PLAN.—A financial plan referred to in paragraph (1)(D)(ii)(VII) shall—

''(A) be prepared by each State to support the statewide transportation plan; and

''(B) contain a description of each of the following:

''(i) Projected resource requirements during the 20-year planning horizon for implementing projects, strategies, and services recommended in the statewide transportation plan, including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from Federal, State, local, and private sources, and innovative financing techniques to finance projects and programs.

''(ii) The projected difference between costs and revenues, and strategies for securing additional new revenue (such as by capture of some of the economic value created by any new investment).

''(iii) Estimates of future funds, to be developed cooperatively by the State, any public transportation agency, and relevant metropolitan planning organizations, that are reasonably expected to be available to support the investment priorities recommended in the statewide transportation plan.

''(iv) Each applicable project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(v) For the outer years period of the statewide transportation plan, a description of the aggregate cost ranges or bands, subject to the condition that any future funding source shall be reasonably expected to be available to support the projected cost ranges or bands.

''(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—For any nonmetropolitan area that is a nonattainment area or maintenance area, the State shall coordinate the development of the statewide transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act (42 U.S.C. 7401 et seq.).

''(4) PUBLICATION.—A statewide transportation plan involving Federal and non-Federal participation programs, projects, and strategies shall be published or otherwise made readily available by the State for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the Internet, in such manner as the Secretary shall require.

''(5) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (2), a State shall not be required to select any project from the illustrative list of additional projects included in the statewide transportation plan under paragraph (1)(D)(ii)(IX).

''(6) USE OF POLICY PLANS.—Notwithstanding any other provision of this section, a State that has in effect, as of the date of enactment of the MAP-21, a statewide transportation plan that follows a policy plan approach—

''(A) may, for 4 years after the date of enactment of the MAP–21, continue to use a policy plan approach to the statewide transportation plan; and

''(B) shall be subject to the requirements of this subsection only to the extent that such requirements were applicable under this section (as in effect on the day before the date of enactment of the MAP-21).

''(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAMS.—

''(1) DEVELOPMENT.—

''(A) IN GENERAL.—In [cooperation] *consultation* with nonmetropolitan officials with responsibility for transportation and affected public transportation operators, the State shall develop a statewide transportation improvement program for the State that—

''(i) includes projects consistent with the statewide transportation plan;

''(ii) reflects the investment priorities established in the statewide transportation plan; and

''(iii) once implemented, makes significant progress toward achieving the targets described in subsection (d)(2).

''(B) OPPORTUNITY FOR PARTICIPATION.—In developing a statewide transportation improvement program, the State, in cooperation with affected public transportation operators, shall provide an opportunity for participation by interested parties in the development of the statewide transportation improvement program, in accordance with subsection (e).

''(C) OTHER REQUIREMENTS.—

''(i) IN GENERAL.—A statewide transportation improvement program shall—

''(I) cover a period of not less than 4 years; and

''(II) be updated not less frequently than once every 4 years, or more frequently, as the Governor determines to be appropriate.

''(ii) INCORPORATION OF TIPS.—A statewide transportation improvement program shall incorporate any relevant transportation improvement program developed by a metropolitan planning organization under section 134, without change.

''(iii) PROJECTS.—Each project included in a statewide transportation improvement program shall be—

''(I) consistent with the statewide transportation plan developed under this section for the State;

''(II) identical to a project or phase of a project described in a relevant transportation improvement program; and

''(III) for any project located in a nonattainment area or maintenance area, carried out in accordance with the applicable State air quality implementation plan developed under the Clean Air Act (42 U.S.C. 7401 et seq.).

''(2) CONTENTS.—

''(A) PRIORITY LIST.—A statewide transportation improvement program shall include a priority list of proposed federally supported projects and strategies, to be carried out during the 4-year period beginning on the date of adoption of the statewide transportation improvement program, and during each 4-year period thereafter, using existing and reasonably available revenues in accordance with the financial plan under paragraph (3).

''(B) DESCRIPTIONS.—Each project or phase of a project included in a statewide transportation improvement program shall include sufficient descriptive material (such as type of work, termini, length, estimated completion date, and other similar factors) to identify—

''(i) the project or project phase; and

''(ii) the effect that the project or project phase will have in addressing the targets described in subsection (d)(2).

''(C) PERFORMANCE TARGET ACHIEVEMENT.—A statewide transportation improvement program shall include, to the maximum extent practicable, a discussion of the anticipated effect of the statewide transportation improvement program toward achieving the performance targets established in the statewide transportation plan, linking investment priorities to those performance targets.

''(D) ILLUSTRATIVE LIST OF PROJECTS.—An optional illustrative list of projects may be prepared containing additional investment priorities that—

''(i) are not included in the statewide transportation improvement program; but

''(ii) would be so included if resources in addition to the resources identified in the financial plan under paragraph (3) were available.

''(3) FINANCIAL PLAN.—A financial plan referred to in paragraph (2)(A) shall—

''(A) be prepared by each State to support the statewide transportation improvement program; and

''(B) contain a description of each of the following:

''(i) Projected resource requirements for implementing projects, strategies, and services recommended in the statewide transportation improvement program, including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from Federal, State, local, and private sources, and innovative financing techniques to finance projects and programs.

''(ii) The projected difference between costs and revenues, and strategies for securing additional new revenue (such as by capture of some of the economic value created by any new investment).

''(iii) Estimates of future funds, to be developed cooperatively by the State and relevant metropolitan planning organizations and public transportation agencies, that are reasonably expected to be available to support the investment priorities recommended

in the statewide transportation improvement program.

''(iv) Each applicable project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(4) INCLUDED PROJECTS.—

''(A) PROJECTS UNDER THIS TITLE AND CHAPTER 53 OF TITLE 49.—A statewide transportation improvement program developed under this subsection for a State shall include the projects within the State that are proposed for funding under chapter 1 of this title and chapter 53 of title 49.

''(B) PROJECTS UNDER CHAPTER 2.—

''(i) REGIONALLY SIGNIFICANT.—Each regionally significant project proposed for funding under chapter 2 shall be identified individually in the statewide transportation improvement program.

''(ii) NONREGIONALLY SIGNIFICANT.—A description of each project proposed for funding under chapter 2 that is not determined to be regionally significant shall be contained in 1 line item or identified individually in the statewide transportation improvement program.

''(5) PUBLICATION.—

''(A) IN GENERAL.—A statewide transportation improvement program shall be published or otherwise made readily available by the State for public review in electronically accessible formats and means, such as the Internet.

''(B) ANNUAL LIST OF PROJECTS.—An annual list of projects, including investments in pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation, for which Federal funds have been obligated during the preceding fiscal year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and relevant metropolitan planning organizations in electronically accessible formats and means, such as the Internet, in a manner that is consistent with the categories identified in the relevant statewide transportation improvement program.

''(6) PROJECT SELECTION FOR URBANIZED AREAS WITH POPULATIONS OF FEWER THAN 200,000 NOT REPRESENTED BY DESIGNATED MPOS.—Projects carried out in urbanized areas with populations of fewer than 200,000 individuals, and that are not represented by designated metropolitan planning organizations, shall be selected, from the approved statewide transportation improvement program (including projects carried out on the National Highway System and other projects carried out under this title or under sections 5310 and 5311 of title 49) by the State, in cooperation with the affected nonmetropolitan planning organization, if any exists, and in consultation with the affected nonmetropolitan area local officials with responsibility for transportation.

''(7) APPROVAL BY SECRETARY.—

''(A) IN GENERAL.—Not less frequently than once every 4 years, a statewide transportation improvement program developed under this subsection shall be reviewed and approved by the Secretary, based on the current planning finding of the Secretary under subparagraph (B).

''(B) PLANNING FINDING.—The Secretary shall make a planning finding referred to in subparagraph (A) not less frequently than once every 5 years regarding whether the transportation planning process through which statewide transportation plans and statewide transportation improvement programs are developed is consistent with this section and section 134.

''(8) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, approval by the Secretary shall not be required to carry out a project included in an approved statewide transportation improvement program in place of another project in the statewide transportation improvement program.

''(h) CERTIFICATION.—

''(1) IN GENERAL.—The Secretary shall—

''(A) ensure that the statewide transportation planning process of a State is being carried out in accordance with applicable Federal law; and

''(B) subject to paragraph (2), certify, not less frequently than once every 5 years, that the requirements of subparagraph (A) are met with respect to the statewide transportation planning process.

''(2) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make a certification under paragraph (1)(B) if—

''(A) the statewide transportation planning process complies with the requirements of this section and other applicable Federal law; and

''(B) a statewide transportation improvement program for the State has been approved by the Governor of the State.

''(3) EFFECT OF FAILURE TO CERTIFY.—

''(A) WITHHOLDING OF PROJECT FUNDS.—If a statewide transportation planning process of a State is not certified under paragraph (1), the Secretary may withhold up to 20 percent of the funds attributable to the State for projects funded under this title and chapter 53 of title 49.

''(B) RESTORATION OF WITHHELD FUNDS.—Any funds withheld under subparagraph (A) shall be restored to the State on the date of certification of the statewide transportation planning process by the Secretary.

''(4) PUBLIC INVOLVEMENT.—In making a determination regarding certification under this subsection, the Secretary shall provide for public involvement appropriate to the State under review.

''(i) PERFORMANCE-BASED PLANNING PROCESSES EVALUATION.—

''(1) IN GENERAL.—The Secretary shall establish criteria to evaluate the effectiveness of the performance-based planning processes of States, taking into consideration the following:

''(A) The extent to which the State has achieved, or is currently making substantial progress toward achieving, the targets described in subsection (d)(2), taking into account whether the State developed meaningful performance targets.

''(B) The extent to which the State has used proven best practices that help ensure transportation investment that is efficient and cost-effective.

''(C) The extent to which the State—

''(i) has developed an investment process that relies on public input and awareness to ensure that investments are transparent and accountable; and

''(ii) provides regular reports allowing the public to access the information being collected in a format that allows the public to meaningfully assess the performance of the State.

''(2) REPORT.—

''(A) IN GENERAL.—Not later than 5 years after the date of enactment of the MAP–21, the Secretary shall submit to Congress a report evaluating—

''(i) the overall effectiveness of performance-based planning as a tool for guiding transportation investments; and

''(ii) the effectiveness of the performance-based planning process of each State.

''(B) PUBLICATION.—The report under subparagraph (A) shall be published or otherwise made available in electronically accessible formats and means, including on the Internet.

''(j) FUNDING.—Funds apportioned under section 104(b)(6) of this title and set aside under section 5305(g) of title 49 shall be available to carry out this section.

''(k) CONTINUATION OF CURRENT REVIEW PRACTICE.—

''(1) IN GENERAL.—In consideration of the factors described in paragraph (2), any decision by the Secretary concerning a statewide transportation plan or statewide transportation improvement program shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(2) DESCRIPTION OF FACTORS.—The factors referred to in paragraph (1) are that—

''(A) statewide transportation plans and statewide transportation improvement programs are subject to a reasonable opportunity for public comment;

''(B) the projects included in statewide transportation plans and statewide transportation improvement programs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

''(C) decisions by the Secretary concerning statewide transportation plans and statewide transportation improvement programs have not been reviewed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) as of January 1, 1997.

''(l) SCHEDULE FOR IMPLEMENTATION.—The Secretary shall issue guidance on a schedule for implementation of the changes made by this section, taking into consideration the established planning update cycle for States. The Secretary shall not require a State to deviate from its established planning update cycle to implement changes made by this section. States shall reflect changes made to their transportation plan or transportation improvement program updates by 2 years after the date of issuance of guidance by the Secretary.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 135 and inserting the following:

''135. Statewide and nonmetropolitan transportation planning.''.

SEC. 1203. NATIONAL GOALS.

(a) IN GENERAL.—Section 150 of title 23, United States Code, is amended to read as follows:

''§ 150. National goals

''(a) DECLARATION OF POLICY.—Performance management will transform the Federal-aid highway program and provide a means to the most efficient investment of Federal transportation funds by refocusing on national transportation goals, increasing the accountability and transparency of the Federal-aid highway program, and improving project decisionmaking through performance-based planning and programming.

''(b) NATIONAL GOALS.—It is in the interest of the United States to focus the Federal-aid highway program on the following national goals:

''(1) SAFETY.—To achieve a significant reduction in traffic fatalities and serious injuries on all public roads.

''(2) INFRASTRUCTURE CONDITION.—To maintain the highway infrastructure asset system in a state of good repair.

''(3) SYSTEM RELIABILITY.—To improve the efficiency of the surface transportation system.

''(4) FREIGHT MOVEMENT AND ECONOMIC VITALITY.—To improve the national freight network, strengthen the ability of rural communities to access national and international trade markets, and support regional economic development.

''(5) ENVIRONMENTAL SUSTAINABILITY.—To enhance the performance of the transportation system while protecting and enhancing the natural environment.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code,

is amended by striking the item relating to section 150 and inserting the following:

''150. National goals.''.

Subtitle C—Acceleration of Project Delivery

SEC. 1301. PROJECT DELIVERY INITIATIVE.

(a) DECLARATION OF POLICY.—It is the policy of the United States that—

(1) it is in the national interest for the Department, State departments of transportation, transit agencies, and all other recipients of Federal transportation funds—

(A) to accelerate project delivery and reduce costs; and

(B) to ensure that the planning, design, engineering, construction, and financing of transportation projects is done in an efficient and effective manner, promoting accountability for public investments and encouraging greater private sector involvement in project financing and delivery while enhancing safety and protecting the environment;

(2) delay in the delivery of transportation projects increases project costs, harms the economy of the United States, and impedes the travel of the people of the United States and the shipment of goods for the conduct of commerce; and

(3) the Secretary shall identify and promote the deployment of innovation aimed at reducing the time and money required to deliver transportation projects while enhancing safety and protecting the environment.

(b) ESTABLISHMENT OF INITIATIVE.—

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

(2) PURPOSES.—The purposes of the project delivery initiative shall be—

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

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

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

(3) ADVANCING THE USE OF BEST PRACTICES.—

(A) IN GENERAL.—In carrying out the initiative under this section, the Secretary shall identify and advance best practices to reduce delivery time and project costs, from planning through construction, for transportation projects and programs of projects regardless of mode and project size.

(B) ADMINISTRATION.—To advance the use of best practices, the Secretary shall—

(i) engage interested parties, affected communities, resource agencies, and other stakeholders to gather information regarding opportunities for accelerating project delivery and reducing costs;

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

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

(iv) provide technical assistance to assist transportation stakeholders in the use of flexibility authority to resolve project delays and accelerate project delivery if feasible.

(4) IMPLEMENTATION OF ACCELERATED PROJECT DELIVERY.—The Secretary shall ensure that the provisions of this subtitle designed to accelerate project delivery are fully implemented, including—

(A) expanding eligibility of early acquisition of property prior to completion of environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) allowing the use of the construction manager or general contractor method of contracting in the Federal-aid highway system; and

(C) establishing a demonstration program to streamline the relocation process by permitting a lump-sum payment for acquisition and relocation if elected by the displaced occupant.

SEC. 1302. CLARIFIED ELIGIBILITY FOR EARLY ACQUISITION ACTIVITIES PRIOR TO COMPLETION OF NEPA REVIEW.

(a) IN GENERAL.—The acquisition of real property in anticipation of a federally assisted or approved surface transportation project that may use the property shall not be prohibited prior to the completion of reviews of the surface transportation project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if the acquisition does not—

(1) have an adverse environmental effect; or

(2)(A) limit the choice of reasonable alternatives for the proposed project; or

(B) prevent the lead agency from making an impartial decision as to whether to select an alternative that is being considered during the environmental review process.

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

(1) in the section heading by inserting ''**interests**'' after ''**real property**'';

(2) in subsection (a) by inserting ''interests'' after ''real property'' each place it appears; and

(3) in subsection (c)—

(A) in the subsection heading by striking ''RIGHTS-OF-WAY'' and inserting ''REAL PROPERTY INTERESTS'';

(B) in paragraph (1)—

(i) in the matter preceding subparagraph (A) by inserting ''at any time'' after ''may be used''; and

(ii) in subparagraph (A)—

(I) by striking ''rights-of-way'' the first place it appears and inserting ''real property interests''; and

(II) by striking '', if the rights-of-way are subsequently incorporated into a project eligible for surface transportation program funds''; and

(C) by striking paragraph (2) and inserting the following:

''(2) TERMS AND CONDITIONS.—

''(A) ACQUISITION OF REAL PROPERTY INTERESTS.—

''(i) IN GENERAL.—Subject to the other provisions of this section, prior to completion of the review process for the project required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), a public authority may carry out acquisition of real property interests that may be used for a project.

''(ii) REQUIREMENTS.—An acquisition under clause (i) may be authorized by project agreement and is eligible for Federal-aid reimbursement as a project expense if the Secretary finds that the acquisition—

''(I) will not cause any significant adverse environmental impact;

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

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

''(IV) is consistent with the State transportation planning process under section 135;

''(V) complies with other applicable Federal laws (including regulations);

''(VI) will be acquired through negotiation, without the threat of condemnation; and

''(VII) will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

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

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

''(D) OTHER CONDITIONS.—The Secretary may establish such other conditions or restrictions on acquisitions as the Secretary determines to be appropriate.''.

SEC. 1303. EFFICIENCIES IN CONTRACTING.

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

''(4) CONSTRUCTION MANAGER; GENERAL CONTRACTOR.—

''(A) PROCEDURE.—

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

''(ii) PRECONSTRUCTION PHASE.—In the preconstruction phase of a contract under this subparagraph, the construction manager shall provide the contracting agency with advice relating to scheduling, work sequencing, cost engineering, constructability, cost estimating, and risk identification.

''(iii) AGREEMENT TO PRICE.—

''(I) IN GENERAL.—Prior to the start of the second phase of a contract under this subparagraph, the owner and the construction manager may agree to a price for the construction of the project or a portion of the project.

''(II) RESULT.—If an agreement is reached, the construction manager shall become the general contractor for the construction of the project at the negotiated schedule and price.

''(B) SELECTION.—A contract shall be awarded to a construction manager or general contractor under this paragraph using a competitive selection process under which the contract is awarded on the basis of—

''(i) qualifications;

''(ii) experience;

''(iii) best value; or

''(iv) any other combination of factors considered appropriate by the contracting agency.

''(C) TIMING.—

''(i) IN GENERAL.—Prior to the completion of the environmental review process required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), a contracting agency may issue requests for proposals, proceed with the award of the first phase of construction manager or general contractor contract, and issue notices to proceed with preliminary design, to the extent that those actions do not limit any reasonable range of alternatives.

''(ii) NEPA PROCESS.—

''(I) IN GENERAL.—A contracting agency shall not proceed with the award of the second phase, and shall not proceed, or permit any consultant or contractor to proceed, with final design or construction until completion of the environmental review process

required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

''(II) REQUIREMENT.—The Secretary shall require that a contract include appropriate provisions to ensure achievement of the objectives of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) and compliance with other applicable Federal laws and regulations occurs.

''(iii) SECRETARIAL APPROVAL.—Prior to authorizing construction activities, the Secretary shall approve—

''(I) the estimate of the contracting agency for the entire project; and

''(II) any price agreement with the general contractor for the project or a portion of the project.

''(iv) TERMINATION PROVISION.—The Secretary shall require a contract to include an appropriate termination provision in the event that a no-build alternative is selected.''.

(b) REGULATIONS.—The Secretary shall promulgate such regulations as are necessary to carry out the amendment made by subsection (a).

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

SEC. 1304. INNOVATIVE PROJECT DELIVERY METHODS.

(a) DECLARATION OF POLICY.—

(1) IN GENERAL.—Congress declares that it is in the national interest to promote the use of innovative technologies and practices that increase the efficiency of construction of, improve the safety of, and extend the service life of highways and bridges.

(2) INCLUSIONS.—The innovative technologies and practices described in paragraph (1) include state-of-the-art intelligent transportation system technologies, elevated performance standards, and new highway construction business practices that improve highway safety and quality, accelerate project delivery, and reduce congestion related to highway construction.

(b) FEDERAL SHARE.—Section 120(c) of title 23, United States Code, is amended by adding at the end the following:

''(3) INNOVATIVE PROJECT DELIVERY.—

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

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

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

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

''(iv) reduces congestion related to highway construction.

''(B) EXAMPLES.—Projects, programs, and activities described in subparagraph (A) may include the use of—

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

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

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

''(iv) intelligent compaction equipment; or

''(v) contractual provisions that offer a contractor an incentive payment for early completion of the project, program, or activity, subject to the condition that the incentives are accounted for in the financial plan of the project, when applicable.

''(C) LIMITATIONS.—

''(i) IN GENERAL.—In each fiscal year, a State may use the authority under subparagraph (A) for up to 10 percent of the combined apportionments of the State under paragraphs (1), (2), and (5) of section 104(b).

''(ii) FEDERAL SHARE INCREASE.—The Federal share payable on account of a project or activity described in subparagraph (A) may be increased by up to 5 percent of the total project cost.''.

SEC. 1305. ASSISTANCE TO AFFECTED STATE AND FEDERAL AGENCIES.

Section 139(j) of title 23, United States Code, is amended by adding at the end the following:

''(6) MEMORANDUM OF UNDERSTANDING.—Prior to providing funds approved by the Secretary for dedicated staffing at an affected Federal agency under paragraphs (1) and (2), the affected Federal agency and the State agency shall enter into a memorandum of understanding that establishes the projects and priorities to be addressed by the use of the funds.''.

SEC. 1306. APPLICATION OF CATEGORICAL EXCLUSIONS FOR MULTIMODAL PROJECTS.

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

''§ 304. Application of categorical exclusions for multimodal projects

''(a) DEFINITIONS.—In this section:

''(1) COOPERATING AUTHORITY.—The term 'cooperating authority' means a Department of Transportation operating authority that is not the lead authority.

''(2) LEAD AUTHORITY.—The term 'lead authority' means a Department of Transportation operating administration or secretarial office that—

''(A) is the lead authority over a proposed multimodal project; and

''(B) has determined that the components of the project that fall under the modal expertise of the lead authority—

''(i) satisfy the conditions for a categorical exclusion under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) implementing regulations or procedures of the lead authority; and

''(ii) do not require the preparation of an environmental assessment or an environmental impact statement under that Act.

''(3) MULTIMODAL PROJECT.—The term 'multimodal project' has the meaning given the term in section 139(a) of title 23.

''(b) EXERCISE OF AUTHORITIES.—The authorities granted in this section may be exercised for a multimodal project, class of projects, or program of projects that are carried out under this title.

''(c) APPLICATION OF CATEGORICAL EXCLUSIONS FOR MULTIMODAL PROJECTS.—When considering the environmental impacts of a proposed multimodal project, a lead authority may apply a categorical exclusion designated under the implementing regulations or procedures of a cooperating authority for other components of the project, on the conditions that—

''(1) the multimodal project is funded under 1 grant agreement administered by the lead authority;

''(2) the multimodal project has components that require the expertise of a cooperating authority to assess the environmental impacts of the components;

''(3) the component of the project to be covered by the categorical exclusion of the cooperating authority has independent utility;

''(4) the cooperating authority, in consultation with the lead authority, follows National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) implementing regulations or procedures and determines that a categorical exclusion under that Act applies to the components; and

''(5) the lead authority has determined that—

''(A) the project, using the categorical exclusions of the lead and cooperating authorities, does not individually or cumulatively have a significant impact on the environment; and

''(B) extraordinary circumstances do not exist that merit further analysis and documentation in an environmental impact statement or environmental assessment required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(d) MODAL COOPERATION.—

''(1) IN GENERAL.—A cooperating authority shall provide modal expertise to a lead authority with administrative authority over a multimodal project on such aspects of the project in which the cooperating authority has expertise.

''(2) USE OF CATEGORICAL EXCLUSION.—In a case described in paragraph (1), the 1 or more categorical exclusions of a cooperating authority may be applied by the lead authority once the cooperating authority reviews the project on behalf of the lead authority and determines the project satisfies the conditions for a categorical exclusion under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) implementing regulations or procedures of the cooperating authority and this section.''.

(b) CONFORMING AMENDMENT.—The item relating to section 304 in the analysis for title 49, United States Code, is amended to read as follows:

''304. Application of categorical exclusions for multimodal projects.''.

SEC. 1307. STATE ASSUMPTION OF RESPONSIBILITIES FOR CATEGORICAL EXCLUSIONS.

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

[(1) in subsection (c) by striking paragraph (3) and inserting the following:

''(3) SOVEREIGN IMMUNITY.—By executing an agreement with the Secretary and assuming the responsibilities of the Secretary under this section, the State waives the sovereign immunity of the State under the 11th Amendment of the Constitution from suit in Federal court and expressly consents to accept the jurisdiction of the Federal courts with respect to any action relating to the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.'';**]**

[(2)**]***(1)* by striking subsection (d) and inserting the following:

''(d) TERMINATION.—

''(1) TERMINATION BY THE SECRETARY.—The Secretary may terminate any assumption of responsibility under a memorandum of understanding on a determination that the State is not adequately carrying out the responsibilities assigned to the State.

''(2) TERMINATION BY THE STATE.—The State may terminate the participation of the State in the program at any time by providing to the Secretary a notice by not later

than the date that is 90 days before the date of termination, and subject to such terms and conditions as the Secretary may provide.''; and

[(3)]*(2)* by adding at the end the following:

''(f) LEGAL FEES.—A State assuming the responsibilities of the Secretary under this section for a specific project may use funds apportioned to the State under section 104(b)(2) for attorneys fees directly attributable to eligible activities associated with the project.''.

SEC. 1308. SURFACE TRANSPORTATION PROJECT DELIVERY PROGRAM.

(a) IN GENERAL.—Section 327 of title 23, United States Code, is amended—

(1) in the section heading by striking ''pilot'';

(2) in subsection (a)—

(A) in paragraph (1) by striking ''pilot''; and

(B) in paragraph (2)—

(i) in subparagraph (B) by striking clause (ii) and inserting the following:

''(ii) the Secretary may not assign—

''(I) any responsibility imposed on the Secretary by section 134 or 135; or

''(II) responsibility for any conformity determination required under section 176 of the Clean Air Act (42 U.S.C. 7506).''; and

(ii) by adding at the end the following:

[''(F) SOVEREIGN IMMUNITY.—By executing an agreement with the Secretary and assuming the responsibilities of the Secretary under this section, the State waives the sovereign immunity of the State under the 11th Amendment of the Constitution from suit in Federal court and expressly consents to accept the jurisdiction of the Federal courts with respect to any action relating to the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.]

''[(G)]*(F)* LEGAL FEES.—A State assuming the responsibilities of the Secretary under this section for a specific project may use funds apportioned to the State under section 104(b)(2) for attorneys fees directly attributable to eligible activities associated with the project.'';

(3) in subsection (b)—

(A) by striking paragraph (1);

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively; and

(C) in subparagraph (A) of paragraph (3) (as so redesignated) by striking ''(2)'' and inserting ''(1)'';

(4) in subsection (c)—

(A) in paragraph (3)(D) by striking the period at the end and inserting a semicolon; and

(B) by adding at the end the following:

''(4) require the State to provide to the Secretary any information the Secretary considers necessary to ensure that the State is adequately carrying out the responsibilities assigned to the State;

''(5) require the Secretary—

''(A) after a period of 5 years, to evaluate the ability of the State to carry out the responsibility assumed under this section;

''(B) if the Secretary determines that the State is not ready to effectively carry out the responsibilities the State has assumed, to reevaluate the readiness of the State every 3 years, or at such other frequency as the Secretary considers appropriate, after the initial 5-year evaluation, until the State is ready to assume the responsibilities on a permanent basis; and

''(C) once the Secretary determines that the State is ready to permanently assume the responsibilities of the Secretary, not to require any further evaluations; and

''(6) require the State to provide the Secretary with any information, including regular written reports, as the Secretary may require in conducting evaluations under paragraph (5).'';

(5) by striking subsection (g);

(6) by redesignating subsections (h) and (i) as subsections (g) and (h), respectively; and

(7) in subsection (h) (as so redesignated)—

(A) by striking paragraph (1);

(B) by redesignating paragraph (2) as paragraph (1); and

(C) by inserting after paragraph (1) (as so redesignated) the following:

''(2) TERMINATION BY THE STATE.—The State may terminate the participation of the State in the program at any time by providing to the Secretary a notice by not later than the date that is 90 days before the date of termination, and subject to such terms and conditions as the Secretary may provide.''.

(b) CONFORMING AMENDMENT.—The item relating to section 327 in the analysis of title 23, United States Code, is amended to read as follows:

''327. Surface transportation project delivery program.''.

SEC. 1309. CATEGORICAL EXCLUSION FOR PROJECTS WITHIN THE RIGHT-OF-WAY.

(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary shall publish a notice of proposed rulemaking for a categorical exclusion that meets the definitions (as in effect on that date) of section 1508.4 of title 40, Code of Federal Regulations, and section 771.117 of title 23, Code of Federal Regulations, for a project (as defined in section 101(a) of title 23, United States Code)—

(1) that is located solely within the right-of-way of an existing highway, such as new turn lanes and bus pull-offs;

(2) that does not include the addition of a through lane or new interchange; and

(3) for which the project sponsor demonstrates that the project—

(A) is intended to improve safety, alleviate congestion, or improve air quality; or

(B) would improve or maintain pavement or structural conditions or achieve a state of good repair.

(b) NOTICE.—Not later than 60 days after the date of enactment of this Act, the Secretary shall publish a notice of proposed rulemaking to further define and implement subsection (a) within subsection (c) or (d) of section 771.117 of title 23, Code of Federal Regulations (as in effect on the date of enactment of the MAP–21).

SEC. 1310. PROGRAMMATIC AGREEMENTS AND ADDITIONAL CATEGORICAL EXCLUSIONS.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall—

(1) survey the use by the Department of Transportation of categorical exclusions in transportation projects since 2005;

(2) publish a review of the survey that includes a description of—

(A) the types of actions categorically excluded; and

(B) any requests previously received by the Secretary for new categorical exclusions; and

(3) solicit requests from State departments of transportation, transit authorities, metropolitan planning organizations, or other government agencies for new categorical exclusions.

(b) NEW CATEGORICAL EXCLUSIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall publish a notice of proposed rulemaking to propose new categorical exclusions received by the Secretary under subsection (a), to the extent that the categorical exclusions meet the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations and section 771.117(a) of title 23, Code of Federal Regulations (as those regulations are in effect on the date of the notice).

(c) ADDITIONAL ACTIONS.—The Secretary shall issue a proposed rulemaking to move the following types of actions from subsection (d) of section 771.117 of title 23, Code of Federal Regulations (as in effect on the date of enactment of this Act), to subsection (c) of that section, to the extent that such movement complies with the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this Act):

(1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing).

(2) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting.

(3) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings.

(d) PROGRAMMATIC AGREEMENTS.—

(1) IN GENERAL.—The Secretary shall seek opportunities to enter into programmatic agreements with the States that establish efficient administrative procedures for carrying out environmental and other required project reviews.

(2) INCLUSIONS.—Programmatic agreements authorized under paragraph (1) may include agreements that allow a State to determine on behalf of the Federal Highway Administration whether a project is categorically excluded from the preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) DETERMINATIONS.—An agreement described in paragraph (2) may include determinations by the Secretary of the types of projects categorically excluded (consistent with section 1508.4 of title 40, Code of Federal Regulations) in the State in addition to the types listed in subsections (c) and (d) of section 771.117 of title 23, Code of Federal Regulations (as in effect on the date of enactment of this Act).

SEC. 1311. ACCELERATED DECISIONMAKING IN ENVIRONMENTAL REVIEWS.

(a) IN GENERAL.—When preparing a final environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), if the lead agency makes changes in response to comments that are minor and are confined to factual corrections or explanations of why the comments do not warrant further agency response, the lead agency may write on errata sheets attached to the statement instead of rewriting the draft statement, on the condition that the errata sheets—

(1) cite the sources, authorities, or reasons that support the position of the agency; and

(2) if appropriate, indicate the circumstances that would trigger agency reappraisal or further response.

(b) INCORPORATION.—To the maximum extent practicable, the lead agency shall expeditiously develop a single document that consists of a final environmental impact statement and a record of decision unless—

(1) the final environmental impact statement makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or

(2) there are significant new circumstances or information relevant to environmental concerns and that bear on the proposed action or the impacts of the proposed action.

SEC. 1312. MEMORANDA OF AGENCY AGREEMENTS FOR EARLY COORDINATION.

(a) IN GENERAL.—It is the sense of Congress that—

(1) the Secretary and other Federal agencies with relevant jurisdiction in the environmental review process should cooperate with each other and other agencies on environmental review and project delivery activities at the earliest practicable time to avoid delays and duplication of effort later in the process, head off potential conflicts, and ensure that planning and project development decisions reflect environmental values; and

(2) such cooperation should include the development of policies and the designation of staff that advise planning agencies or project sponsors of studies or other information foreseeably required for later Federal action and early consultation with appropriate State and local agencies and Indian tribes.

(b) TECHNICAL ASSISTANCE.—If requested at any time by a State or local planning agency, the Secretary and other Federal agencies with relevant jurisdiction in the environmental review process, shall, to the extent practicable and appropriate, as determined by the agencies, provide technical assistance to the State or local planning agency on accomplishing the early coordination activities described in subsection (d).

(c) MEMORANDUM OF AGENCY AGREEMENT.—If requested at any time by a State or local planning agency, the lead agency, in consultation with other Federal agencies with relevant jurisdiction in the environmental review process, may establish memoranda of agreement with the project sponsor, State, and local governments and other appropriate entities to accomplish the early coordination activities described in subsection (d).

(d) EARLY COORDINATION ACTIVITIES.—Early coordination activities shall include, to the maximum extent practicable, the following:

(1) Technical assistance on identifying potential impacts and mitigation issues in an integrated fashion.

(2) The potential appropriateness of using planning products and decisions in later environmental reviews.

(3) The identification and elimination from detailed study in the environmental review process of the issues that are not significant or that have been covered by prior environmental reviews.

(4) The identification of other environmental review and consultation requirements so that the lead and cooperating agencies may prepare, as appropriate, other required analyses and studies concurrently with planning activities.

(5) The identification by agencies with jurisdiction over any permits related to the project of any and all relevant information that will reasonably be required for the project.

(6) The reduction of duplication between requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and State and local planning and environmental review requirements, unless the agencies are specifically barred from doing so by applicable law.

(7) Timelines for the completion of agency actions during the planning and environmental review processes.

(8) Other appropriate factors.

SEC. 1313. ACCELERATED DECISIONMAKING.

Section 139(h) of title 23, United States Code, is amended by striking paragraph (4) and inserting the following:

''(4) INTERIM DECISION ON ACHIEVING ACCELERATED DECISIONMAKING.—

''(A) IN GENERAL.—Not later than 30 days after the close of the public comment period on a draft environmental impact statement, the Secretary may convene a meeting with the project sponsor, lead agency, resource agencies, and any relevant State agencies to ensure that all parties are on schedule to meet deadlines for decisions to be made regarding the project.

''(B) DEADLINES.—The deadlines referred to in subparagraph (A) shall be those established under subsection (g), or any other deadlines established by the lead agency, in consultation with the project sponsor and other relevant agencies.

''(C) FAILURE TO ASSURE.—If the relevant agencies cannot provide reasonable assurances that the deadlines described in subparagraph (B) will be met, the Secretary may initiate the issue resolution and referral process described under paragraph (5) and before the completion of the record of decision.

''(5) ACCELERATED ISSUE RESOLUTION AND REFERRAL.—

''(A) AGENCY ISSUE RESOLUTION MEETING.—

''(i) IN GENERAL.—A Federal agency of jurisdiction, project sponsor, or the Governor of a State in which a project is located may request an issue resolution meeting to be conducted by the lead agency.

''(ii) ACTION BY LEAD AGENCY.—The lead agency shall convene an issue resolution meeting under clause (i) with the relevant participating agencies and the project sponsor, including the Governor only if the meeting was requested by the Governor, to resolve issues that could—

''(I) delay completion of the environmental review process; or

''(II) result in denial of any approvals required for the project under applicable laws.

''(iii) DATE.—A meeting requested under this subparagraph shall be held by not later than 21 days after the date of receipt of the request for the meeting, unless the lead agency determines that there is good cause to extend the time for the meeting.

''(iv) NOTIFICATION.—On receipt of a request for a meeting under this subparagraph, the lead agency shall notify all relevant participating agencies of the request, including the issue to be resolved, and the date for the meeting.

''(v) DISPUTES.—If a relevant participating agency with jurisdiction over an approval required for a project under applicable law determines that the relevant information necessary to resolve the issue has not been obtained and could not have been obtained within a reasonable time, but the lead agency disagrees, the resolution of the dispute shall be forwarded to the heads of the relevant agencies for resolution.

''(vi) CONVENTION BY LEAD AGENCY.—A lead agency may convene an issue resolution meeting under this subsection at any time without the request of the Federal agency of jurisdiction, project sponsor, or the Governor of a State.

''(B) ELEVATION OF ISSUE RESOLUTION.—

''(i) IN GENERAL.—If issue resolution is not achieved by not later than 30 days after the date of a relevant meeting under subparagraph (A), the Secretary shall notify the lead agency, the heads of the relevant participating agencies, and the project sponsor (including the Governor only if the initial issue resolution meeting request came from the Governor) that an issue resolution meeting will be convened.

''(ii) REQUIREMENTS.—The Secretary shall identify the issues to be addressed at the meeting and convene the meeting not later than 30 days after the date of issuance of the notice.

''(C) REFERRAL OF ISSUE RESOLUTION.—

''(i) REFERRAL TO COUNCIL ON ENVIRONMENTAL QUALITY.—

''(I) IN GENERAL.—If resolution is not achieved by not later than 30 days after the date of an issue resolution meeting under subparagraph (B), the Secretary shall refer the matter to the Council on Environmental Quality.

''(II) MEETING.—Not later than 30 days after the date of receipt of a referral from the Secretary under subclause (I), the Council on Environmental Quality shall hold an issue resolution meeting with the lead agency, the heads of relevant participating agencies, and the project sponsor (including the Governor only if an initial request for an issue resolution meeting came from the Governor).

''(ii) REFERRAL TO THE PRESIDENT.—If a resolution is not achieved by not later than 30 days after the date of the meeting convened by the Council on Environmental Quality under clause (i)(II), the Secretary shall refer the matter directly to the President.

''(6) FINANCIAL TRANSFER PROVISIONS.—

''(A) IN GENERAL.—A Federal agency of jurisdiction over an approval required for a project under applicable laws shall complete any required approval on an expeditious basis using the shortest existing applicable process.

''(B) FAILURE TO DECIDE.—

''(i) IN GENERAL.—If an agency described in subparagraph (A) fails to render a decision under any Federal law relating to a project that requires the preparation of an environmental impact statement or environmental assessment, including the issuance or denial of a permit, license, or other approval by the date described in clause (ii), the agency shall transfer from the applicable office of the head of the agency, or equivalent office to which the authority for rendering the decision has been delegated by law, to the agency or division charged with rendering a decision regarding the application, by not later than 1 day after the applicable date under clause (ii), and once each week thereafter until a final decision is rendered, subject to subparagraph (C)—

''(I) $20,000 for any project for which an annual financial plan under section 106(i) is required; or

''(II) $10,000 for any other project requiring preparation of an environmental assessment or environmental impact statement.

''(ii) DESCRIPTION OF DATE.—The date referred to in clause (i) is the later of—

''(I) the date that is 180 days after the date on which an application for the permit, license, or approval is complete; and

''(II) the date that is 180 days after the date on which the Federal lead agency issues a decision on the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(C) LIMITATIONS.—

''(i) IN GENERAL.—No transfer of funds under subparagraph (B) relating to an individual project shall exceed, in any fiscal year, an amount equal to 1 percent of the funds made available for the applicable agency office.

''(ii) FAILURE TO DECIDE.—The total amount transferred in a fiscal year as a result of a failure by an agency to make a decision by an applicable deadline shall not exceed an amount equal to 5 percent of the funds made available for the applicable agency office for that fiscal year.

''(D) TREATMENT.—The transferred funds shall only be available to the agency or division charged with rendering the decision as additional resources, pursuant to subparagraph (F).

''(E) NO FAULT OF AGENCY.—A transfer of funds under this paragraph shall not be made if the agency responsible for rendering the decision certifies that—

''(i) the agency has not received necessary information or approvals from another entity, such as the project sponsor, in a manner that affects the ability of the agency to meet

any requirements under State, local, or Federal law; or

''(ii) significant new information or circumstances, including a major modification to an aspect of the project, requires additional analysis for the agency to make a decision on the project application.

''(F) TREATMENT OF FUNDS.—

''(i) IN GENERAL.—Funds transferred under this paragraph shall supplement resources available to the agency or division charged with making a decision for the purpose of expediting permit reviews.

''(ii) AVAILABILITY.—Funds transferred under this paragraph shall be available for use or obligation for the same period that the funds were originally authorized or appropriated, plus 1 additional fiscal year.

''(iii) LIMITATION.—The Federal agency with jurisdiction for the decision that has transferred the funds pursuant to this paragraph shall not reprogram funds to the office of the head of the agency, or equivalent office, to reimburse that office for the loss of the funds.

''(G) AUDITS.—In any fiscal year in which any Federal agency transfers funds pursuant to this paragraph, the Inspector General of that agency shall—

''(i) conduct an audit to assess compliance with the requirements of this paragraph; and

''(ii) not later than 120 days after the end of the fiscal year during which the transfer occurred, submit to the Committee on Environment and Public Works of the Senate and any other appropriate congressional committees a report describing the reasons why the transfers were levied, including allocations of resources.

''(H) EFFECT OF PARAGRAPH.—Nothing in this paragraph affects or limits the application of, or obligation to comply with, any Federal, State, local, or tribal law.

''(I) AUTHORITY FOR INTRA-AGENCY TRANSFER OF FUNDS.—The requirement provided under this paragraph for a Federal agency to transfer or reallocate funds of the Federal agency in accordance with subparagraph (B)(i)—

''(i) shall be treated by the Federal agency as a requirement and authority consistent with any applicable original law establishing and authorizing the agency; but

''(ii) does not provide to the Federal agency the authority to require or determine the intra-agency transfer or reallocation of funds that are provided to or are within any other Federal agency.

''(7) EXPEDIENT DECISIONS AND REVIEWS.—To ensure that Federal environmental decisions and reviews are expeditiously made—

''(A) adequate resources made available under this title shall be devoted to ensuring that applicable environmental reviews under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) are completed on an expeditious basis and that the shortest existing applicable process under that Act is implemented; and

''(B) the President shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, not less frequently than once every 120 days after the date of enactment of the MAP–21, a report on the status and progress of the following projects and activities funded under this title with respect to compliance with applicable requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.):

''(i) Projects and activities required to prepare an annual financial plan under section 106(i).

''(ii) A sample of not less than 5 percent of the projects requiring preparation of an environmental impact statement or environmental assessment in each State.''.

SEC. 1314. ENVIRONMENTAL PROCEDURES INITIATIVE.

(a) ESTABLISHMENT.—For grant programs under which funds are distributed by formula by the Department of Transportation, the Secretary shall establish an initiative to review and develop consistent procedures for environmental permitting and procurement requirements.

(b) REPORT.—The Secretary shall publish the results of the initiative described in subsection (a) in an electronically accessible format.

SEC. 1315. ALTERNATIVE RELOCATION PAYMENT DEMONSTRATION PROGRAM.

(a) PAYMENT DEMONSTRATION PROGRAM.—

(1) IN GENERAL.—Except as otherwise provided in this section, for the purpose of identifying improvements in the timeliness of providing relocation assistance to persons displaced by Federal or federally assisted programs and projects, the Secretary may allow not more than 5 States to participate in an alternative relocation payment demonstration program under which payments to displaced persons eligible for relocation assistance pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) (including implementing regulations), are calculated based on reasonable estimates and paid in advance of the physical displacement of the displaced person.

(2) TIMING OF PAYMENTS.—Relocation assistance payments for projects carried out under an approved State demonstration program may be provided to the displaced person at the same time as payments of just compensation for real property acquired for the program or project of the State.

(3) COMBINING OF PAYMENTS.—Payments for relocation and just compensation may be combined into a single unallocated amount.

(b) CRITERIA.—

(1) IN GENERAL.—After public notice and an opportunity to comment, the Secretary shall adopt criteria for carrying out the alternative relocation payment demonstration program.

(2) CONDITIONS.—

(A) IN GENERAL.—Conditions for State participation in the demonstration program shall include the conditions described in subparagraphs (B) through (E).

(B) MEMORANDUM OF AGREEMENT.—A State wishing to participate in the demonstration program shall be required to enter into a memorandum of agreement with the Secretary that includes provisions relating to—

(i) the selection of projects or programs within the State to which the alternative relocation payment process will be applied;

(ii) program and project-level monitoring;

(iii) performance measurement;

(iv) reporting; and

(v) the circumstances under which the Secretary may terminate the demonstration program of the State before the end of the program term.

(C) TERM OF DEMONSTRATION PROGRAM.—Except as provided in subparagraph (B)(v), the demonstration program of the State may continue for up to 3 years after the date on which the Secretary executes the memorandum of agreement.

(D) DISPLACED PERSONS.—

(i) IN GENERAL.—Displaced persons affected by a project included in the demonstration program of the State shall be informed in writing in a format that is clear and easily understandable that the relocation payments that the displaced persons receive under the demonstration program may be higher or lower than the amount that the displaced persons would receive under the standard relocation assistance process.

(ii) ALTERNATIVE PROCESS.—Displaced persons shall be informed—

(I) of the right of the displaced persons not to participate in the demonstration program; and

(II) that the alternative relocation payment process can be used only if the displaced person agrees in writing.

(iii) ASSISTANCE.—The displacing agency shall provide any displaced person who elects not to participate in the demonstration program with relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) (including implementing regulations).

(E) OTHER DISPLACEMENTS.—

(i) IN GENERAL.—If other Federal agencies plan displacements in or adjacent to a demonstration program project area within the same time period as the project acquisition and relocation actions of the demonstration program, the Secretary shall adopt measures to protect against inconsistent treatment of displaced persons.

(ii) INCLUSION.—Measures described in clause (i) may include a determination that the demonstration program authority may not be used on a particular project.

(c) REPORT.—

(1) IN GENERAL.—The Secretary shall submit to Congress—

(A) at least every 18 months after the date of enactment of this Act, a report on the progress and results of the demonstration program; and

(B) not later than 1 year after all State demonstration programs have ended, a final report.

(2) REQUIREMENTS.—The final report shall include an evaluation by the Secretary of the merits of the alternative relocation payment demonstration program, including the effects of the demonstration program on—

(A) displaced persons and the protections afforded to displaced persons by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.);

(B) the efficiency of the delivery of Federal-aid highway projects and overall effects on the Federal-aid highway program; and

(C) the achievement of the purposes of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(d) LIMITATION.—The authority of this section may be used only on projects funded under title 23, United States Code, in cases in which the funds are administered by the Federal Highway Administration.

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

SEC. 1316. REVIEW OF FEDERAL PROJECT AND PROGRAM DELIVERY.

(a) COMPLETION TIME ASSESSMENTS AND REPORTS.—

(1) IN GENERAL.—For projects funded under title 23, United States Code, the Secretary shall compare—

(A)(i) the completion times of categorical exclusions, environmental assessments, and environmental impact statements initiated after calendar year 2005; to

(ii) the completion times of categorical exclusions, environmental assessments, and environmental impact statements initiated during a period prior to calendar year 2005; and

(B)(i) the completion times of categorical exclusions, environmental assessments, and environmental impact statements initiated during the period beginning on January 1, 2005, and ending on the date of enactment of this Act; to

(ii) the completion times of categorical exclusions, environmental assessments, and environmental impact statements initiated after the date of enactment of this Act.

(2) REPORT.—The Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report—

(A) not later than 1 year after the date of enactment of this Act that—

(i) describes the results of the review conducted under paragraph (1)(A); and

(ii) identifies any change in the timing for completions, including the reasons for any such change and the reasons for delays in excess of 5 years; and

(B) not later than 5 years after the date of enactment of this Act that—

(i) describes the results of the review conducted under paragraph (1)(B); and

(ii) identifies any change in the timing for completions, including the reasons for any such change and the reasons for delays in excess of 5 years.

(b) ADDITIONAL REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the types and justification for the additional categorical exclusions granted under the authority provided under sections 1309 and 1310.

(c) GAO REPORT.—The Comptroller General of the United States shall—

(1) assess the reforms carried out under sections 1301 through 1315 (including the amendments made by those sections); and

(2) not later than 5 years after the date of enactment of this Act, submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that describes the results of the assessment.

(d) INSPECTOR GENERAL REPORT.—The Inspector General of the Department of Transportation shall—

(1) assess the reforms carried out under sections 1301 through 1315 (including the amendments made by those sections); and

(2) submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate—

(A) not later than 2 years after the date of enactment of this Act, an initial report of the findings of the Inspector General; and

(B) not later than 4 years after the date of enactment of this Act, a final report of the findings.

Subtitle D—Highway Safety

SEC. 1401. JASON'S LAW.

(a) IN GENERAL.—It is the sense of Congress that it is a national priority to address projects under this section for the shortage of long-term parking for commercial motor vehicles on the National Highway System to improve the safety of motorized and nonmotorized users and for commercial motor vehicle operators.

(b) ELIGIBLE PROJECTS.—Eligible projects under this section are those that—

(1) serve the National Highway System; and

(2) may include the following:

(A) Constructing safety rest areas (as defined in section 120(c) of title 23, United States Code) that include parking for commercial motor vehicles.

(B) Constructing commercial motor vehicle parking facilities adjacent to commercial truck stops and travel plazas.

(C) Opening existing facilities to commercial motor vehicle parking, including inspection and weigh stations and park-and-ride facilities.

(D) Promoting the availability of publicly or privately provided commercial motor vehicle parking on the National Highway System using intelligent transportation systems and other means.

(E) Constructing turnouts along the National Highway System for commercial motor vehicles.

(F) Making capital improvements to public commercial motor vehicle parking facilities currently closed on a seasonal basis to allow the facilities to remain open year-round.

(G) Improving the geometric design of interchanges on the National Highway System to improve access to commercial motor vehicle parking facilities.

(c) SURVEY AND COMPARATIVE ASSESSMENT.—

(1) IN GENERAL.—The Secretary, in consultation with relevant State motor carrier safety personnel, shall conduct a survey regarding the availability of parking facilities within each State—

(A) to evaluate the capability of the State to provide adequate parking and rest facilities for motor carriers engaged in interstate motor carrier service;

(B) to assess the volume of motor carrier traffic through the State; and

(C) to develop a system of metrics to measure the adequacy of parking facilities in the State.

(2) RESULTS.—The results of the survey under paragraph (1) shall be made available to the public on the website of the Department of Transportation.

(3) PERIODIC UPDATES.—The Secretary shall periodically update the survey under this subsection.

(d) TREATMENT OF PROJECTS.—Notwithstanding any other provision of law, projects funded through the authority provided under this section shall be treated as projects on a Federal-aid system under chapter 1 of title 23, United States Code.

SEC. 1402. OPEN CONTAINER REQUIREMENTS.

Section 154(c) of title 23, United States Code, is amended—

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

''(2) FISCAL YEAR 2012 AND THEREAFTER.—

''(A) RESERVATION OF FUNDS.—On October 1, 2011, and each October 1 thereafter, if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall reserve an amount equal to 2.5 percent of the funds to be apportioned to the State on that date under each of paragraphs (1) and (2) of section 104(b) until the State certifies to the Secretary the means by which the State will use those reserved funds in accordance with subparagraphs (A) and (B) of paragraph (1) and paragraph (3).

''(B) TRANSFER OF FUNDS.—As soon as practicable after the date of receipt of a certification from a State under subparagraph (A), the Secretary shall—

''(i) transfer the reserved funds identified by the State for use as described in subparagraphs (A) and (B) of paragraph (1) to the apportionment of the State under section 402; and

''(ii) release the reserved funds identified by the State as described in paragraph (3).'';

(2) by striking paragraph (3) and inserting the following:

''(3) USE FOR HIGHWAY SAFETY IMPROVEMENT PROGRAM.—

''(A) IN GENERAL.—A State may elect to use all or a portion of the funds transferred under paragraph (2) for activities eligible under section 148.

''(B) STATE DEPARTMENTS OF TRANSPORTATION.—If the State makes an election under subparagraph (A), the funds shall be transferred to the department of transportation of the State, which shall be responsible for the administration of the funds.'';

and

(3) by striking paragraph (5) and inserting the following:

''(5) DERIVATION OF AMOUNT TO BE TRANSFERRED.—The amount to be transferred under paragraph (2) may be derived from the following:

''(A) The apportionment of the State under section 104(b)(1).

''(B) The apportionment of the State under section 104(b)(2).''.

SEC. 1403. MINIMUM PENALTIES FOR REPEAT OFFENDERS FOR DRIVING WHILE INTOXICATED OR DRIVING UNDER THE INFLUENCE.

(a) DEFINITIONS.—Section 164(a) of title 23, United States Code, is amended—

(1) by striking paragraph (3);

(2) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively; and

(3) in paragraph (4) (as so redesignated) by striking subparagraph (A) and inserting the following:

''(A) receive—

''(i) a suspension of all driving privileges for not less than 1 year; or

''(ii) a suspension of unlimited driving privileges for 1 year, allowing for the reinstatement of limited driving privileges subject to restrictions and limited exemptions as established by State law, if an ignition interlock device is installed for not less than 1 year on each of the motor vehicles owned or operated, or both, by the individual;''.

(b) TRANSFER OF FUNDS.—Section 164(b) of title 23, United States Code, is amended—

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

''(2) FISCAL YEAR 2012 AND THEREAFTER.—

''(A) RESERVATION OF FUNDS.—On October 1, 2011, and each October 1 thereafter, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall reserve an amount equal to 6 percent of the funds to be apportioned to the State on that date under each of paragraphs (1) and (2) of section 104(b) until the State certifies to the Secretary the means by which the States will use those reserved funds among the uses authorized under subparagraphs (A) and (B) of paragraph (1), and paragraph (3).

''(B) TRANSFER OF FUNDS.—As soon as practicable after the date of receipt of a certification from a State under subparagraph (A), the Secretary shall—

''(i) transfer the reserved funds identified by the State for use as described in subparagraphs (A) and (B) of paragraph (1) to the apportionment of the State under section 402; and

''(ii) release the reserved funds identified by the State as described in paragraph (3).'';

(2) by striking paragraph (3) and inserting the following:

''(3) USE FOR HIGHWAY SAFETY IMPROVEMENT PROGRAM.—

''(A) IN GENERAL.—A State may elect to use all or a portion of the funds transferred under paragraph (2) for activities eligible under section 148.

''(B) STATE DEPARTMENTS OF TRANSPORTATION.—If the State makes an election under subparagraph (A), the funds shall be transferred to the department of transportation of the State, which shall be responsible for the administration of the funds.'';

and

(3) by striking paragraph (5) and inserting the following:

''(5) DERIVATION OF AMOUNT TO BE TRANSFERRED.—The amount to be transferred under paragraph (2) may be derived from the following:

''(A) The apportionment of the State under section 104(b)(1).

''(B) The apportionment of the State under section 104(b)(2).''.

SEC. 1404. ADJUSTMENTS TO PENALTY PROVISIONS.

(a) VEHICLE WEIGHT LIMITATIONS.—Section 127(a)(1) of title 23, United States Code, is amended by striking ''No funds shall be apportioned in any fiscal year under section 104(b)(1) of this title to any State which'' and inserting ''The Secretary shall withhold 50 percent of the apportionment of a State under section 104(b)(1) in any fiscal year in which the State''.

(b) CONTROL OF JUNKYARDS.—Section 136 of title 23, United States Code, is amended—

(1) in subsection (b), in the first sentence—

(A) by striking ''10 per centum'' and inserting ''7 percent''; and

(B) by striking ''section 104 of this title'' and inserting ''paragraphs (1) through (5) of section 104(b)''; and

(2) by adding at the end the following:

''(n) For purposes of this section, the terms 'primary system' and 'Federal-aid primary system' mean any highway that is on the National Highway System, which includes the Interstate Highway System.''.

(c) ENFORCEMENT OF VEHICLE SIZE AND WEIGHT LAWS.—Section 141(b)(2) of title 23, United States Code, is amended—

(1) by striking ''10 per centum'' and inserting ''7 percent''; and

(2) by striking ''section 104 of this title'' and inserting ''paragraphs (1) through (5) of section 104(b)''.

(d) PROOF OF PAYMENT OF THE HEAVY VEHICLE USE TAX.—Section 141(c) of title 23, United States Code, is amended—

(1) by striking ''section 104(b)(4)'' each place it appears and inserting ''section 104(b)(1)''; and

(2) in the first sentence by striking ''25 per centum'' and inserting '' 8 percent''.

(e) USE OF SAFETY BELTS.—Section 153(h) of title 23, United States Code, is amended—

(1) by striking paragraph (1);

(2) by redesignating paragraph (2) as paragraph (1);

(3) in paragraph (1) (as so redesignated)—

(A) by striking the paragraph heading and inserting ''PRIOR TO FISCAL YEAR 2012''; and

(B) by inserting ''and before October 1, 2011,'' after ''September 30, 1994,''; and

(4) by inserting after paragraph (1) (as so redesignated) the following:

''(2) FISCAL YEAR 2012 AND THEREAFTER.—If, at any time in a fiscal year beginning after September 30, 2011, a State does not have in effect a law described in subsection (a)(2), the Secretary shall transfer an amount equal to 2 percent of the funds apportioned to the State for the succeeding fiscal year under each of paragraphs (1) through (3) of section 104(b) to the apportionment of the State under section 402.''.

(f) NATIONAL MINIMUM DRINKING AGE.—Section 158(a)(1) of title 23, United States Code, is amended—

(1) by striking ''The Secretary'' and inserting the following:

''(A) FISCAL YEARS BEFORE 2012.—The Secretary''; and

(2) by adding at the end the following:

''(B) FISCAL YEAR 2012 AND THEREAFTER.—For fiscal year 2012 and each fiscal year thereafter, the amount to be withheld under this section shall be an amount equal to 8 percent of the amount apportioned to the noncompliant State, as described in subparagraph (A), under paragraphs (1) and (2) of section 104(b).''.

(g) DRUG OFFENDERS.—Section 159 of title 23, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraph (1);

(B) by redesignating paragraph (2) as paragraph (1);

(C) in paragraph (1) (as so redesignated) by striking ''(including any amounts withheld under paragraph (1))''; and

(D) by inserting after paragraph (1) (as so redesignated) the following:

''(2) FISCAL YEAR 2012 AND THEREAFTER.—The Secretary shall withhold an amount equal to 8 percent of the amount required to be apportioned to any State under each of paragraphs (1) and (2) of section 104(b) on the first day of each fiscal year beginning after September 30, 2011, if the State fails to meet the requirements of paragraph (3) on the first day of the fiscal year.''; and

(2) by striking subsection (b) and inserting the following:

''(b) EFFECT OF NONCOMPLIANCE.—No funds withheld under this section from apportionments to any State shall be available for apportionment to that State.''.

(h) ZERO TOLERANCE BLOOD ALCOHOL CONCENTRATION FOR MINORS.—Section 161(a) of title 23, United States Code, is amended—

(1) by striking paragraph (1);

(2) by redesignating paragraph (2) as paragraph (1);

(3) in paragraph (1) (as so redesignated)—

(A) by striking the paragraph heading and inserting ''PRIOR TO FISCAL YEAR 2012''; and

(B) by inserting ''through fiscal year 2011'' after ''each fiscal year thereafter''; and

(4) by inserting after paragraph (1) (as so redesignated) the following:

''(2) FISCAL YEAR 2012 AND THEREAFTER.—The Secretary shall withhold an amount equal to 8 percent of the amount required to be apportioned to any State under each of paragraphs (1) and (2) of section 104(b) on October 1, 2011, and on October 1 of each fiscal year thereafter, if the State does not meet the requirement of paragraph (3) on that date.''.

(i) OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS.—Section 163(e) of title 23, United States Code, is amended by striking paragraphs (1) and (2) and inserting the following:

''(1) FISCAL YEARS 2007 THROUGH 2011.—On October 1, 2006, and October 1 of each fiscal year thereafter through fiscal year 2011, if a State has not enacted or is not enforcing a law described in subsection (a), the Secretary shall withhold an amount equal to 8 percent of the amounts to be apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b).

''(2) FISCAL YEAR 2012 AND THEREAFTER.—On October 1, 2011, and October 1 of each fiscal year thereafter, if a State has not enacted or is not enforcing a law described in subsection (a), the Secretary shall withhold an amount equal to 6 percent of the amounts to be apportioned to the State on that date under each of paragraphs (1) and (2) of section 104(b).''.

(j) COMMERCIAL DRIVER'S LICENSE.—Section 31314 of title 49, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

''(c) PENALTIES IMPOSED IN FISCAL YEAR 2012 AND THEREAFTER.—Effective beginning on October 1, 2011—

''(1) the penalty for the first instance of noncompliance by a State under this section shall be not more than an amount equal to 4 percent of funds required to be apportioned to the noncompliant State under paragraphs (1) and (2) of section 104(b) of title 23; and

''(2) the penalty for subsequent instances of noncompliance shall be not more than an amount equal to 8 percent of funds required to be apportioned to the noncompliant State under paragraphs (1) and (2) of section 104(b) of title 23.''.

SEC. 1405. HIGHWAY WORKER SAFETY.

[(a) T5Positive Protective Devices.]—Not later than 60 days after the date of enactment of this Act, the Secretary shall modify section 630.1108(a) of title 23, Code of Federal Regulations (as in effect on the date of enactment of this Act), to ensure that—

(1) at a minimum, positive protective measures are used to separate workers on highway construction projects from motorized traffic in all work zones conducted under traffic in areas that offer workers no means of escape (such as tunnels and bridges), unless an engineering study determines otherwise;

(2) temporary longitudinal traffic barriers are used to protect workers on highway construction projects in long-duration stationary work zones when the project design speed is anticipated to be high and the nature of the work requires workers to be within 1 lane-width from the edge of a live travel lane, unless—

(A) an analysis by the project sponsor determines otherwise; or

(B) the project is outside of an urbanized area and the annual average daily traffic load of the applicable road is less than 100 vehicles per hour; and

(3) when positive protective devices are necessary for highway construction projects, those devices are paid for on a unit-pay basis, unless doing so would create a conflict with innovative contracting approaches, such as design-build or some performance-based contracts under which the contractor is paid to assume a certain risk allocation and payment is generally made on a lump-sum basis.

[(b) TURNOUT GEAR.—Notwithstanding sections 6D.03 and 6E.02 of the Manual on Uniform Traffic Control Devices dated 2009 (as in effect on the date of enactment of this Act), any firefighter engaged in any type of operation while working within the right-of-way of a Federal-aid highway may optionally wear for compliance retroreflective turnout gear that is specified and regulated by other organizations, such as the gear specified in National Fire Protection Association standards 1971 through 2007 (as in effect on that date of enactment), in lieu of apparel meeting the requirements under ANSI/ISEA 107–2004 or ANSI/ISEA 207–2006 (as in effect on that date).]

Subtitle E—Miscellaneous

SEC. 1501. PROGRAM EFFICIENCIES.

The first sentence of section 102(b) of title 23, United States Code, is amended by striking ''made available for such engineering'' and inserting ''reimbursed for the preliminary engineering''.

SEC. 1502. PROJECT APPROVAL AND OVERSIGHT.

Section 106 of title 23, United States Code, is amended—

(1) in subsection (a)(2) by inserting ''recipient'' before ''formalizing'';

(2) in subsection (c)—

(A) in paragraph (1)—

(i) in the heading, by striking ''NON-INTERSTATE''; and

(ii) by striking ''but not on the Interstate System''; and

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

''(4) LIMITATION ON INTERSTATE PROJECTS.—

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

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

(3) in subsection (e)—

(A) in paragraph (1)—

(i) in subparagraph (A)—

(I) in the matter preceding clause (i)—

(aa) by striking ''concept'' and inserting ''planning''; and

(bb) by striking ''multidisciplined'' and inserting ''multidisciplinary''; and

(II) by striking clause (i) and inserting the following:

''(i) providing the needed functions and achieving the established commitments (including environmental, community, and agency commitments) safely, reliably, and at the lowest overall lifecycle cost;''; and

(ii) in subparagraph (B) by striking clause (ii) and inserting the following:

''(ii) refining or redesigning, as appropriate, the project using different technologies, materials, or methods so as to accomplish the purpose, functions, and established commitments (including environmental, community, and agency commitments) of the project.'';

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A) by striking ''or other cost-reduction analysis'';

(ii) in subparagraph (A) by striking ''Federal-aid system'' and inserting ''National Highway System receiving Federal assistance''; and

(iii) in subparagraph (B) by inserting ''on the National Highway System receiving Federal assistance'' after ''a bridge project''; and

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

''(4) REQUIREMENTS.—

''(A) VALUE ENGINEERING PROGRAM.—The State shall develop and carry out a value engineering program that—

''(i) establishes and documents value engineering program policies and procedures;

''(ii) ensures that the required value engineering analysis is conducted before completing the final design of a project;

''(iii) ensures that the value engineering analysis that is conducted, and the recommendations developed and implemented for each project, are documented in a final value engineering report; and

''(iv) monitors, evaluates, and annually submits to the Secretary a report that describes the results of the value analyses that are conducted and the recommendations implemented for each of the projects described in paragraph (2) that are completed in the State.

''(B) BRIDGE PROJECTS.—The value engineering analysis for a bridge project under paragraph (2) shall—

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

''(ii) be evaluated by the State—

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

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

(4) in subsection (g)(4) by adding at the end the following:

''(C) FUNDING.—

''(i) IN GENERAL.—Subject to project approval by the Secretary, a State may obligate funds apportioned to the State under section 104(b)(2) for carrying out the responsibilities of the State under subparagraph (A).

''(ii) ELIGIBLE ACTIVITIES.—Activities eligible for assistance under this subparagraph include—

''(I) State administration of subgrants; and

''(II) State oversight of subrecipients.

''(iii) ANNUAL WORK PLAN.—To receive the funding flexibility made available under this subparagraph, the State shall submit to the Secretary an annual work plan identifying activities to be carried out under this subparagraph during the applicable year.

''(iv) FEDERAL SHARE.—The Federal share of the cost of activities carried out under this subparagraph shall be 100 percent.''; and

(5) in subsection (h)—

(A) in paragraph (1)(B) by inserting '', including a phasing plan when applicable'' after ''financial plan''; and

(B) by striking paragraph (3) and inserting the following:

''(3) FINANCIAL PLAN.—A financial plan—

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

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

''(C) may include a phasing plan that identifies fundable incremental improvements or phases that will address the purpose and the need of the project in the short term in the event there are insufficient financial resources to complete the entire project. If a phasing plan is adopted for a project pursuant to this section, the project shall be deemed to satisfy the fiscal constraint requirements in the statewide and metropolitan planning requirements in sections 134 and 135.''.

SEC. 1503. STANDARDS.

(a) PRACTICAL DESIGN.—Section 109 of title 23, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1) by striking ''and'' at the end;

(B) in paragraph (2) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(3) utilize, when appropriate, practical design solutions, as defined in this section, to ensure that transportation needs are met and that funds available for transportation projects are used efficiently.'';

(2) in subsection (c)—

(A) in paragraph (1), in the matter preceding subparagraph (A)—

(i) by striking '', reconstruction, resurfacing (except for maintenance resurfacing), restoration, or rehabilitation'' and inserting ''or reconstruction''; and

(ii) by striking ''may take into account'' and inserting ''shall consider'';

(B) in paragraph (2)—

(i) in the first sentence of the matter preceding subparagraph (A) by striking ''may'' and inserting ''shall'';

(ii) in subparagraph (C) by striking ''and'' at the end;

(iii) by redesignating subparagraph (D) as subparagraph (F); and

(iv) by inserting after subparagraph (C) the following:

''(D) the publication entitled 'Highway Safety Manual' of the American Association of State Highway and Transportation Officials;

''(E) the publication entitled 'A Guide for Achieving Flexibility in Highway Design, 1st Edition', published by the American Association of State Highway and Transportation Officials; and'';

(3) in subsection (f) by inserting ''pedestrian walkways,'' after ''bikeways,'';

(4) in subsection (m) by inserting '', safe, and continuous'' after ''for a reasonable'';

(5) in subsection (q) by striking ''consistent with the operative safety management system established in accordance with section 303 or in accordance with'' inserting ''that is in accordance with a State's strategic highway safety plan and included on'';

(6) by adding at the end the following:

''(r) DEFINITION.—In this section, the term 'practical design solution' means a collaborative interdisciplinary approach that results in a transportation project that fits its physical setting, preserves safety, and balances costs with the necessary scope and project delivery needs of the project, as well as with scenic, aesthetic, historic, and environmental resources.''.

(b) ADDITIONAL STANDARDS.—Section 109 of title 23, United States Code (as amended by subsection (a)(6)), is amended by adding at the end the following:

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

SEC. 1504. CONSTRUCTION.

Section 114 of title 23, United States Code, is amended—

(1) in subsection (b)—

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

''(1) LIMITATION ON CONVICT LABOR.—Convict labor shall not be used in construction of Federal-aid highways or portions of Federal-aid highways unless the labor is performed by convicts who are on parole, supervised release, or probation.''; and

(B) in paragraph (3) by inserting ''in existence during that period'' after ''located on a Federal-aid system''; and

(2) in subsection (c)—

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

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

(B) in paragraph (3)(C) by striking ''highway or portion of a highway located on a Federal-aid system'' and inserting ''Federal-aid highway or portion of a Federal-aid highway''.

SEC. 1505. MAINTENANCE.

Section 116 of title 23, United States Code, is amended—

(1) in subsection (a)—

(A) in the first sentence, by inserting ''or other direct recipient'' before ''to maintain''; and

(B) by striking the second sentence;

(2) by striking subsection (b) and inserting the following:

''(b) AGREEMENT.—In any State in which the State transportation department or other direct recipient is without legal authority to maintain a project described in subsection (a), the transportation department or direct recipient shall enter into a formal agreement with the appropriate officials of the county or municipality in which the project is located providing for the maintenance of the project.''; and

(3) in the first sentence of subsection (c) by inserting ''or other direct recipient'' after ''State transportation department''.

SEC. 1506. FEDERAL SHARE PAYABLE.

Section 120 of title 23, United States Code, is amended—

(1) in the first sentence of subsection (c)(1)—

(A) by inserting ''maintaining minimum levels of retroreflectivity of highway signs or pavement markings,'' after ''traffic control signalization,'';

(B) by inserting ''shoulder and centerline rumble strips and stripes,'' after ''pavement marking,''; and

(C) by striking ''Federal-aid systems'' and inserting ''Federal-aid programs'';

(2) in subsection (e)—

(A) in the first sentence—

(i) in the matter preceding paragraph (1) by striking ''on such highway'' and inserting ''on the system''; [and]

(ii) in paragraph (1) by striking ''within 180 days after the actual occurrence of the natural disaster or catastrophic failure may amount to 100 percent of the costs thereof'' and inserting '', beginning for fiscal year 2012, in such time period as the Secretary, in consultation with the Governor of the impacted State, determines to be appropriate within 270 days after the occurrence of the natural disaster or catastrophic failure, taking into consideration any delay in the ability of the State to access damaged facilities to evaluate damage and the cost of repair, may be, in the discretion of the Secretary, up to 100 percent if the eligible expenses incurred by the State due to the natural disaster or catastrophic failure exceeds the annual apportionment of the State under section 104 for the fiscal year in which the disaster or failure occurred''; and

[(ii)]*(iii)* in paragraph (2) by striking ''forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads'' and inserting ''Federal land transportation facilities and tribal transportation facilities''; and

(B) by striking the second and third sentences;

(3) by striking subsection (g) and redesignating subsections (h) through (l) as subsections (g) through (k), respectively;

(4) in subsection (i)(1)(A) (as redesignated by paragraph (3)) by striking ''and the Appalachian development highway system program under section 14501 of title 40''; and

(5) by striking subsections (j) and (k) (as redesignated by paragraph (3)) and inserting the following:

''(j) USE OF FEDERAL AGENCY FUNDS.—Notwithstanding any other provision of law, any Federal funds other than those made available under this title and title 49, United States Code, may be used to pay the non-Federal share of the cost of any transportation project that is within, adjacent to, or provides access to Federal land, the Federal share of which is funded under this title or chapter 53 of title 49.

''(k) USE OF FEDERAL LAND AND TRIBAL TRANSPORTATION FUNDS.—Notwithstanding any other provision of law, the funds authorized to be appropriated to carry out the tribal transportation program under section 202 and the Federal lands transportation program under section 203 may be used to pay the non-Federal share of the cost of any project that is funded under this title or chapter 53 of title 49 and that provides access to or within Federal or tribal land.''.

SEC. 1507. TRANSFERABILITY OF FEDERAL-AID HIGHWAY FUNDS.

(a) IN GENERAL.—Section 126 of title 23, United States Code, is amended to read as follows:

''§ 126. Transferability of Federal-aid highway funds

''(a) IN GENERAL.—Notwithstanding any other provision of law, subject to subsection (b), a State may transfer from an apportionment under section 104(b) not to exceed 20 percent of the amount apportioned for the fiscal year to any other apportionment of the State under that section.

''(b) APPLICATION TO CERTAIN SET-ASIDES.—Funds that are subject to sections 104(d) and 133(d) shall not be transferred under this section.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 126 and inserting the following:

''126. Transferability of Federal-aid highway funds.''.

SEC. 1508. SPECIAL PERMITS DURING PERIODS OF NATIONAL EMERGENCY.

Section 127 of title 23, United States Code, is amended by inserting at the end the following:

''(i) SPECIAL PERMITS DURING PERIODS OF NATIONAL EMERGENCY.—

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

''(A) the President has declared the emergency to be a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);

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

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

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

SEC. 1509. ELECTRIC VEHICLE CHARGING STATIONS.

(a) FRINGE AND CORRIDOR PARKING FACILITIES.—Section 137 of title 23, United States Code, is amended—

(1) in subsection (a) by inserting after the second sentence the following: ''The addition of electric vehicle charging stations to new or previously funded parking facilities shall be eligible for funding under this section.''; and

(2) in subsection (f)(1)—

(A) by striking ''104(b)(4)'' and inserting ''104(b)(1)''; and

(B) by inserting ''including the addition of electric vehicle charging stations,'' after ''new facilities,''.

(b) PUBLIC TRANSPORTATION .—Section 142(a)(1) of title 23, United States Code, is amended by inserting ''(which may include electric vehicle charging stations)'' after ''corridor parking facilities''.

SEC. 1510. HOV FACILITIES.

Section 166 of title 23, United States Code, is amended—

(1) in subsection (b)(5)—

(A) in subparagraph (A) by striking ''Before September 30, 2009, the'' and inserting ''The''; and

(B) in subparagraph (B) by striking ''Before September 30, 2009, the'' and inserting ''The''; and

(2) in subsection (d)(1)—

(A) in the matter preceding subparagraph (A)—

(i) by striking ''in a fiscal year shall certify'' and inserting ''shall submit to the Secretary a report demonstrating that the facility is not already degraded, and that the presence of the vehicles will not cause the facility to become degraded, and certify''; and

(ii) by striking ''in the fiscal year'';

(B) in subparagraph (A) by inserting ''and submitting to the Secretary annual reports of those impacts'' after ''adjacent highways'';

(C) in subparagraph (C) by striking ''if the presence of the vehicles has degraded the operation of the facility'' and inserting ''whenever the operation of the facility is degraded''; and

(D) by adding at the end the following:

''(D) MAINTENANCE OF OPERATING PERFORMANCE.—A facility that has become degraded shall be brought back into compliance with the minimum average operating speed performance standard by not later than 180 days after the date on which the degradation is identified through changes to operation, including the following:

''(i) Increase the occupancy requirement for HOVs.

''(ii) Increase the toll charged for vehicles allowed under subsection (b) to reduce demand.

''(iii) Charge tolls to any class of vehicle allowed under subsection (b) that is not already subject to a toll.

''(iv) Limit or discontinue allowing vehicles under subsection (b).

''(v) Increase the available capacity of the HOV facility.

''(E) COMPLIANCE.—If the State fails to bring a facility into compliance under subparagraph (D), the Secretary shall subject the State to appropriate program sanctions under section 1.36 of title 23, Code of Federal Regulations (or successor regulations), until the performance is no longer degraded.''.

SEC. 1511. CONSTRUCTION EQUIPMENT AND VEHICLES.

(a) IN GENERAL.—Chapter 3 of title 23, United States Code, is amended by adding at the end the following:

''SEC. 330. CONSTRUCTION EQUIPMENT AND VEHICLES.

''(a) IN GENERAL.—In accordance with the obligation process established pursuant to section 149(j)(4), a State shall expend amounts required to be obligated for this section to install [and employ] diesel emission control technology on covered equipment, with an engine that does not meet [any particulate matter emission standards] *current model year new engine standards for* $PM_{2.5}$ for the applicable engine power group issued by the Environmental Protection Agency, on a covered highway project within a $PM_{2.5}$ nonattainment or maintenance area.

''(b) DEFINITIONS.—In this section, the following definitions apply:

''(1) COVERED EQUIPMENT.—The term 'covered [construction] equipment' means any [off-road] *nonroad* diesel equipment or on-road diesel equipment that is operated on a covered highway construction project for not less than 80 hours over the life of the project.

''(2) COVERED HIGHWAY CONSTRUCTION PROJECT.—The term 'covered highway construction project' means a highway construction project carried out under this title or any other Federal law which is funded in whole or in part with Federal funds.

''(3) DIESEL EMISSION CONTROL TECHNOLOGY.—The term 'diesel emission control technology' means a technology that—

''(A) is—

''(i) a diesel exhaust control technology;

''(ii) a diesel engine upgrade;

''(iii) a diesel engine repower; or

''(iv) an idle reduction control technology; [and]

''(B) reduces $PM_{2.5}$ emissions from covered equipment by—

''(i) not less than 85 percent control of any emission of particulate matter; or

''(ii) the maximum achievable reduction of any emission of particulate matter*; and*

''(C) is installed on and operated with the covered equipment while the equipment is operated on a covered highway construction project and that remains operational on the covered equipment for the useful life of the control technology or equipment.

''(4) ELIGIBLE ENTITY.—The term 'eligible entity' means an entity *(including a subcontractor of the entity)* that has entered into a prime contract or agreement with a State to carry out a covered highway construction project.

''(5) [OFF-ROAD] *NONROAD* DIESEL EQUIPMENT.—

''(A) IN GENERAL.—The term '[off-road] *nonroad* diesel equipment' means a vehicle, including covered equipment, that is—

''(i) powered by a nonroad diesel engine of not less than 50 horsepower; and

''(ii) not intended for highway use.

''(B) INCLUSIONS.—The term '[off-road] *nonroad* diesel equipment' includes a backhoe, bulldozer, compressor, crane, excavator, generator, and similar equipment.

''(C) EXCLUSIONS.—The term '[off-road] *nonroad* diesel equipment' does not include a locomotive or marine vessel.

''(6) ON-ROAD DIESEL EQUIPMENT.—The term 'on-road diesel equipment' means any self-propelled vehicle that—

''(A) operates on diesel fuel;

''(B) is designed to transport persons or property on a street or highway; and

''(C) has a gross vehicle weight rating of at least 14,000 pounds.

''(7) $PM_{2.5}$ NONATTAINMENT OR MAINTENANCE AREA.—The term '$PM_{2.5}$ nonattainment or maintenance area' means a nonattainment or maintenance area designated under section 107(d)(6) of the Clean Air Act (42 U.S.C. 7407(d)(6)).

''(c) CRITERIA ELIGIBLE ACTIVITIES.—

''(1) DIESEL EXHAUST CONTROL TECHNOLOGY.—For a diesel exhaust control technology, the technology shall be—

''(A) installed on a diesel engine or vehicle;

''(B) included in the list of verified or certified technologies for non-road vehicles and non-road engines (as defined in section 216 of the Clean Air Act (42 U.S.C. 7550)) published pursuant to subsection (f)(2) of section 149, as in effect on the day before the date of enactment of the MAP-21; and

''(C) certified by the installer as having been installed in accordance with the specifications included on the list referred to in [subclause (II)] *subparagraph (B)* for achieving a reduction in $PM_{2.5}$.

''(2) DIESEL ENGINE UPGRADE.—For a diesel engine upgrade, the upgrade shall be performed on an engine that is—

''(A) rebuilt using new components that collectively appear as a system in the list of verified or certified technologies for non-road vehicles and non-road engines (as defined in section 216 of the Clean Air Act (42 U.S.C. 7550)) published pursuant to subsection (f)(2) of section 149, as in effect on the day before the date of enactment of the MAP-21; and

''(B) certified by the installer to have been installed in accordance with the specifications included on the list referred to in [subclause (I)] *subparagraph (A)* for achieving a reduction in $PM_{2.5}$.

''(3) DIESEL ENGINE REPOWER.—For a diesel engine repower, the repower shall be conducted on a new or remanufactured diesel engine that is—

''(A) installed as a replacement for an engine used in the existing equipment, subject to the condition that the replaced engine is—

''(i) used for scrap;

''(ii) permanently disabled; or

''(iii) returned to the original manufacturer for remanufacture to a PM level that is at least equivalent to a Tier 2 emission standard; and

''(B) certified by the engine manufacturer as meeting the emission standards for new vehicles for the applicable engine power group established by the Environmental Protection Agency as in effect on the date on which the engine is remanufactured.

''(4) IDLE REDUCTION CONTROL TECHNOLOGY.—For an idle reduction control technology, the technology shall be—

''(A) installed on a diesel engine or vehicle;

''(B) included in the list of verified or certified technologies for non-road vehicles and non-road engines (as defined in section 216 of the Clean Air Act (42 U.S.C. 7550)) published pursuant to subsection (f)(2) of section 149, as in effect on the day before the date of enactment of the MAP-21; and

''(C) certified by the installer as having been installed in accordance with the specifications included on the list referred to in [subclause (II)] *subparagraph (B)* for achieving a reduction in $PM_{2.5}$.''.

(b) SAVINGS CLAUSE.—Nothing in this section modifies or otherwise affects any authority or restrictions established under the Clean Air Act (42 U.S.C. 7401 et seq.).

(c) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 21 years after the date of enactment of this Act, the Secretary of Transportation shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that describes the manners in which section 330 of title 23, United States Code (as added by subsection (a)) has been implemented, including the quantity of covered equipment serviced under those sections and the costs associated with servicing the covered equipment.

(2) INFORMATION FROM STATES.—The Secretary shall require States and recipients, as a condition of receiving amounts under this Act or under the provisions of any amendments made by this Act, to submit to the Secretary any information that the Secretary determines necessary to complete the report under paragraph (1).

(d) TECHNICAL AMENDMENT.—The analysis for chapter 3 of title 23, United States Code, is amended by adding at the end the following:

''330. Construction equipment and vehicles.''.

SEC. 1512. USE OF DEBRIS FROM DEMOLISHED BRIDGES AND OVERPASSES.

Section 1805(a) of the SAFETEA–LU (23 U.S.C. 144 note; 119 Stat. 1459) is amended by striking ''highway bridge replacement and rehabilitation program under section 144'' and inserting ''national highway performance program under section 119''.

SEC. 1513. EXTENSION OF PUBLIC TRANSIT VEHICLE EXEMPTION FROM AXLE WEIGHT RESTRICTIONS.

Section 1023(h)(1) of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 127 note; Public Law 102–388) is amended by striking '', for the period beginning on October 6, 1992, and ending on October 1, 2009,''.

SEC. 1514. UNIFORM RELOCATION ASSISTANCE ACT AMENDMENTS.

(a) MOVING AND RELATED EXPENSES.—Section 202 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4622) is amended—

(1) in subsection (a)(4) by striking ''$10,000'' and inserting ''$25,000, as adjusted by regulation, in accordance with section 213(d)''; and

(2) in the second sentence of subsection (c) by striking ''$20,000'' and inserting ''$40,000, as adjusted by regulation, in accordance with section 213(d)''.

(b) REPLACEMENT HOUSING FOR HOMEOWNERS.—The first sentence of section 203(a)(1) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4623(a)(1)) is amended—

(1) by striking ''$22,500'' and inserting ''$31,000, as adjusted by regulation, in accordance with 213(d),''; and

(2) by striking ''one hundred and eighty days prior to'' and inserting ''90 days before''.

(c) REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS.—Section 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4624) is amended—

(1) in the second sentence of subsection (a) by striking ''$5,250'' and inserting ''$7,200, as adjusted by regulation, in accordance with section 213(d)''; and

(2) in the second sentence of subsection (b) by striking '', except'' and all that follows through the end of the subsection and inserting a period.

(d) DUTIES OF LEAD AGENCY.—Section 213 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4633) is amended—

(1) in subsection (b)—

(A) in paragraph (2) by striking ''and'' at the end;

(B) in paragraph (3) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(4) that each Federal agency that has programs or projects requiring the acquisition of real property or causing a displacement from real property subject to the provisions of this Act shall provide to the lead agency an annual summary report the describes the activities conducted by the Federal agency.''; and

(2) by adding at the end the following:

''(d) ADJUSTMENT OF PAYMENTS.—The head of the lead agency may adjust, by regulation, the amounts of relocation payments provided under sections 202(a)(4), 202(c), 203(a), and 204(a) if the head of the lead agency determines that cost of living, inflation, or other factors indicate that the payments should be adjusted to meet the policy objectives of this Act.''.

(e) AGENCY COORDINATION.—Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is amended by inserting after section 213 (42 U.S.C. 4633) the following:

''SEC. 214. AGENCY COORDINATION.

''(a) AGENCY CAPACITY.—Each Federal agency responsible for funding or carrying out relocation and acquisition activities shall have adequately trained personnel and such other resources as are necessary to manage and oversee the relocation and acquisition program of the Federal agency in accordance with this Act.

''(b) INTERAGENCY AGREEMENTS.—Not later than 1 year after the date of enactment of this section, each Federal agency responsible for funding relocation and acquisition activities (other than the agency serving as the lead agency) shall enter into a memorandum of understanding with the lead agency that—

''(1) provides for periodic training of the personnel of the Federal agency, which in the case of a Federal agency that provides Federal financial assistance, may include personnel of any displacing agency that receives Federal financial assistance;

''(2) addresses ways in which the lead agency may provide assistance and coordination to the Federal agency relating to compliance with the Act on a program or project basis; and

''(3) addresses the funding of the training, assistance, and coordination activities provided by the lead agency, in accordance with subsection (c).

''(c) INTERAGENCY PAYMENTS.—

''(1) IN GENERAL.—For the fiscal year that begins 1 year after the date of enactment of this section, and each fiscal year thereafter, each Federal agency responsible for funding relocation and acquisition activities (other than the agency serving as the lead agency) shall transfer to the lead agency for the fiscal year, such funds as are necessary, but not less than $35,000, to support the training, assistance, and coordination activities of the lead agency described in subsection (b).

''(2) INCLUDED COSTS.—The cost to a Federal agency of providing the funds described in paragraph (1) shall be included as part of the cost of 1 or more programs or projects undertaken by the Federal agency or with Federal financial assistance that result in the displacement of persons or the acquisition of real property.''.

(f) COOPERATION WITH FEDERAL AGENCIES.—Section 308 of title 23, United States Code, is amended by striking subsection (a) and inserting the following:

''(a) AUTHORIZED ACTIVITIES.—

''(1) IN GENERAL.—The Secretary may perform, by contract or otherwise, authorized engineering or other services in connection with the survey, construction, maintenance, or improvement of highways for other Federal agencies, cooperating foreign countries, and State cooperating agencies.

''(2) INCLUSIONS.—Services authorized under paragraph (1) may include activities authorized under section 214 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

''(3) REIMBURSEMENT.—Reimbursement for services carried out under this subsection (including depreciation on engineering and road-building equipment) shall be credited to the applicable appropriation.''.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of enactment of this Act.

(2) EXCEPTION.—The amendments made by subsections (a) through (c) shall take effect 2 years after the date of enactment of this Act.

SEC. 1515. USE OF YOUTH SERVICE AND CONSERVATION CORPS.

(a) IN GENERAL.—The Secretary shall encourage the States and regional transportation planning agencies to enter into contracts and cooperative agreements with Healthy Futures Corps under section 122(a)(2) of the National and Community Service Act of 1990 (42 U.S.C. 12572(a)(2)) or qualified urban youth corps (as defined in section 106(c) of the National and Community Service Trust Act of 1993 (42 U.S.C. 12656(c)) to perform—

(1) appropriate projects eligible under sections 162, 206, and 217 of title 23, United States Code;

(2) appropriate transportation enhancement activities (as defined in section 101(a) of such title);

(3) appropriate transportation byway, trail, or bicycle and pedestrian projects under section 204 of such title; and

(4) appropriate safe routes to school projects under section 1404 of the SAFETEA–LU (23 U.S.C. 402 note; 119 Stat. 1228).

(b) REQUIREMENTS.—Under any contract or cooperative agreement entered into with a Healthy Futures Corps or qualified urban youth corps under this section, the Secretary—

(1) shall establish the amount of a living allowance or rate of pay for each participant in such corps—

(A) at such amount or rate as is required under State law in a State with such a requirement; or

(B) for corps in a State not described in subparagraph (A), at such amount or rate as determined by the Secretary, not to exceed the maximum living allowance authorized by section 140 of the National and Community Service Act of 1990 (42 U.S.C. 12594); and

(2) shall not subject such corps to the requirements of section 112 of title 23, United States Code.

SEC. 1516. CONSOLIDATION OF PROGRAMS; REPEAL OF OBSOLETE PROVISIONS.

(a) CONSOLIDATION OF PROGRAMS.—From administrative funds made available under section 104(a) of title 23, United States Code, not less than [$10,000,000 for each fiscal year] *$15,000,000 for each of fiscal years 2012 and 2013* shall be made available for the following activities:

(1) To carry out the operation lifesaver program—

(A) to provide public information and education programs to help prevent and reduce motor vehicle accidents, injuries, and fatalities; and

(B) to improve driver performance at railway-highway crossings.

(2) To operate the national work zone safety information clearinghouse authorized by section 358(b)(2) of the National Highway System Designation Act of 1995 (23 U.S.C. 401 note; 109 Stat. 625)

(3) To operate a public road safety clearinghouse in accordance with section 1411(a) of the SAFETEA–LU (23 U.S.C. 402 note; 119 Stat. 1234).

(4) To operate a bicycle and pedestrian safety clearinghouse in accordance with section 1411(b) of the SAFETEA–LU (23 U.S.C. 402 note; 119 Stat. 1234).

(5) To operate a national safe routes to school clearinghouse in accordance with section 1404(g) of the SAFETEA–LU (23 U.S.C. 402 note; 119 Stat. 1229).

(6) To provide work zone safety grants in accordance with subsections (a) and (b) of section 1409 of the SAFETEA–LU (23 U.S.C. 401 note; 119 Stat. 1232).

(7) To provide grants to prohibit racial profiling in accordance with section 1906 of the SAFETEA-LU (23 U.S.C. 402 note; 119 Stat. 1468).

(b) REPEALS.—Sections 105, 110, 117, 124, 147, 151, 155, 160, and 303 of title 23, United States Code, are repealed.

(c) CONFORMING AMENDMENTS.—

(1) TITLE ANALYSIS.—The analysis for title 23, United States Code, is amended by striking the items relating to sections 105, 110, 117, 124, 147, 152, 155, 160, and 303 of that title.

(2) SECTION 118.—Section 118 of such title is amended—

(A) in subsection (b)—

(i) by striking paragraph (1) and all that follows through the heading of paragraph (2); and

(ii) by striking ''(other than for Interstate construction)''; [and]

(B) by striking subsection (c); and

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

(3) SECTION 130.—Section 130 of such title is amended—

(A) by striking subsections (e) through (h);

(B) by redesignating subsection (i) as subsection (e);

(C) by striking subsections (j) and (k);

(D) by redesignating subsection (l) as subsection (f);

(E) in subsection (e) (as so redesignated) by striking ''this section'' [the second place it appears] *the second place it appears* and inserting ''section 104(b)(3)''; and

(F) in subsection (f) (as so redesignated) by striking paragraphs (3) and (4).

(4) SECTION 142.—Section 142 of title 23, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (1)—

(I) by striking ''motor vehicles (other than rail)'' and inserting ''buses'';

(II) by striking ''(hereafter in this section referred to as 'buses')'';

(III) by striking ''Federal-aid systems'' and inserting ''Federal-aid highways''; and

(IV) by striking ''Federal-aid system'' and inserting ''Federal-aid highway''; and

(ii) in paragraph (2)—

(I) by striking ''as a project on the the surface transportation program for''; and

(II) by striking ''section 104(b)(3)'' and inserting ''section 104(b)(2);

(B) in subsection (b) by striking ''104(b)(4)'' and inserting ''104(b)(1)'';

(C) in subsection (c)—

(i) by striking ''system'' in each place it appears and inserting ''highway''; and

(ii) by striking ''highway facilities'' and inserting ''highways eligible under the program that is the source of the funds'';

(D) in subsection (e)(2)—

(i) by striking ''Notwithstanding section 209(f)(1) of the Highway Revenue Act of 1956, the Highway Trust Fund shall be available for making expenditures to meet obligations resulting from projects authorized by subsection (a)(2) of this section and such projects'' and inserting ''Projects authorized by subsection (a)(2)''; and

(ii) striking ''on the surface transportation program'' and inserting ''under the transportation mobility program''; and

(E) in subsection (f) by striking ''exits'' and inserting ''exists''.

(5) SECTION 145.—Section 145(b) of title 23, United States Code, is amended by striking ''section 117 of this title,''.

(6) SECTION 322.—Section 322(h)(3) of title 23, United States Code, is amended by striking ''surface transportation program'' and inserting ''the transportation mobility program''.

(d) CERTAIN ALLOCATIONS.—Notwithstanding any other provision of law, any unobligated balances of amounts required to be allocated to a State by section 1307(d)(1) of the SAFETEA–LU (23 U.S.C. 322 note; 119 Stat. 1217; 122 Stat. 1577) shall instead be made available to such State for any purpose eligible under section 133(c) of title 23, United States Code.

SEC. 1517. RESCISSIONS.

(a) FISCAL YEAR 2012.—

(1) Not later than 30 days after the date of enactment of this Act, of the unobligated balances available under sections 144(f) and 320 of title 23, United States Code, section 147 of Public Law 95–599 (23 U.S.C. 144 note; 92 Stat. 2714), section 9(c) of Public Law 97–134 (95 Stat. 1702), section 149 of Public Law 100–17 (101 Stat. 181), sections 1006, 1069, 1103, 1104, 1105, 1106, 1107, 1108, 6005, 6015, and 6023 of Public Law 102–240 (105 Stat. 1914), section 1602 of Public Law 105–178 (112 Stat. 256), sections 1301, 1302, 1702, and 1934 of Public Law 109–59 (119 Stat. 1144), and of other funds apportioned to each State under chapter 1 of title 23, United States Code, prior to the date of enactment of this Act, $2,391,000,000 are permanently rescinded.

(2) In administering the rescission required under this subsection, the Secretary shall allow each State to determine the amount of the required rescission to be drawn from the programs to which the rescission applies.

(b) FISCAL YEAR 2013.—

(1) On October 1, 2012, of the unobligated balances of funds apportioned or allocated on or before that date to each State under chapter 1 of title 23, United States Code, $3,054,000,000 are permanently rescinded.

(2) Notwithstanding section 1132 of the Energy Independence and Security Act of 2007 (Public Law 110–140; 121 Stat. 1763), in administering the rescission required under this subsection, the Secretary shall allow each State to determine the amount of the required rescission to be drawn from the programs to which the rescission applies.

SEC. 1518. STATE AUTONOMY FOR CULVERT PIPE SELECTION.

Not later than 180 days after the date of enactment of this Act, the Secretary shall modify section 635.411 of title 23, Code of Federal Regulations (as in effect on the date of enactment of this Act), to ensure that States shall have the autonomy to determine culvert and storm sewer material types to be included in the construction of a project on a Federal-aid highway.

SEC. 1519. EFFECTIVE AND SIGNIFICANT PERFORMANCE MEASURES.

(a) LIMITED NUMBER OF PERFORMANCE MEASURES.—In implementing provisions of this Act (including the amendments made by this Act) and title 23, United States Code (other than chapter 4 of that title), that authorize the Secretary to develop performance measures, the Secretary shall limit the number of performance measures established to the most significant and effective measures.

(b) DIFFERENT APPROACHES FOR URBAN AND RURAL AREAS.—In the development and implementation of any performance target, a State may, as appropriate, provide for different performance targets for urbanized and rural areas.

SEC. 1520. REQUIREMENTS FOR ELIGIBLE BRIDGE PROJECTS.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE BRIDGE PROJECT.—The term ''eligible bridge project'' means a project for construction, alteration, or repair work on a bridge or overpass funded directly by, or provided other assistance through, the Federal Government.

(2) QUALIFIED TRAINING PROGRAM.—The term ''qualified training program'' means a training program that—

(A)(i) is certified by the Secretary of Labor; and

(ii) with respect to an eligible bridge project located in an area in which the Secretary of Labor determines that a training program does not exist, is registered with—

(I) the Department of Labor; or

(II) a State agency recognized by the Department of Labor for purposes of a Federal training program; or

(B) is a corrosion control, mitigation and prevention personnel training program that is offered by an organization whose standards are recognized and adopted in other Federal or State Departments of Transportation.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

(b) ELIGIBILITY REQUIREMENTS.—

(1) IN GENERAL.—Each contractor and subcontractor that carries out any aspect of an eligible bridge project described in paragraph (2) shall—

(A) before entering into the applicable contract, be certified by the Secretary or a State, in accordance with paragraph (4), as meeting the eligibility requirements described in paragraph (3); and

(B) remain certified as described in subparagraph (A) while carrying out the applicable aspect of the eligible bridge project.

(2) DESCRIPTION OF ASPECTS OF ELIGIBLE BRIDGE PROJECTS.—An aspect of an eligible bridge project referred to in paragraph (1) is—

(A) surface preparation or coating application on bridge steel of an eligible bridge project;

(B) removal of a lead-based or other hazardous coating from bridge steel of an existing eligible bridge project;

(C) shop painting of structural steel fabricated for installation on bridge steel of an eligible bridge project; and

(D) the design, application, installation, and maintenance of a cathodic protection system.

(3) REQUIREMENTS.—The eligibility requirements referred to in paragraph (1) are that a contractor or subcontractor shall—

(A) as determined by the Secretary—

(i) use corrosion mitigation and prevention methods to preserve relevant bridges and overpasses, taking into account—

(I) material selection;

(II) coating considerations;

(III) cathodic protection considerations;

(IV) design considerations for corrosion; and

(V) trained applicators;

(ii) use best practices—

(I) to prevent environmental degradation; and

(II) to ensure careful handling of all hazardous materials; and

(iii) demonstrate a history of employing industry-respected inspectors to ensure funds are used in the interest of affected taxpayers; and

(B) demonstrate a history of compliance with applicable requirements of the Occupational Safety and Health Administration, as determined by the Secretary of Labor.

(4) STATE CONSULTATION.—In determining whether to certify a contractor or subcontractor under paragraph (1)(A), a State shall consult with engineers and other experts trained in accordance with subsection (a)(2) specializing in corrosion control, mitigation, and prevention methods.

(c) OPTIONAL TRAINING PROGRAM.—As a condition of entering into a contract for an eligible bridge project, each contractor and subcontractor that performs construction, alteration, or repair work on a bridge or overpass for the eligible bridge project may provide, or make available, training, through a qualified training program, for each applicable craft or trade classification of employees that the contractor or subcontractor intends to employ to carry out aspects of eligible bridge projects as described in subsection (b)(2).

TITLE II—RESEARCH AND EDUCATION

Subtitle A—Funding

SEC. 2101. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—The following amounts are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(1) HIGHWAY RESEARCH AND DEVELOPMENT PROGRAM.—To carry out sections 503(b), *503(d)*, and 509 of title 23, United States Code, $90,000,000 for each of fiscal years 2012 and 2013.

(2) TECHNOLOGY AND INNOVATION DEPLOYMENT PROGRAM.—To carry out section 503(c) of title 23, United States Code, $90,000,000 for each of fiscal years 2012 and 2013.

(3) TRAINING AND EDUCATION.—To carry out section 504 of title 23, United States Code, $24,000,000 for each of fiscal years 2012 and 2013.

(4) INTELLIGENT TRANSPORTATION SYSTEMS PROGRAM.—To carry out sections 512 through 518 of title 23, United States Code, $100,000,000 for each of fiscal years 2012 and 2013.

(5) UNIVERSITY TRANSPORTATION CENTERS PROGRAM.—To carry out section 5505 of title 49, United States Code, $70,000,000 for each of fiscal years 2012 and 2013.

(6) BUREAU OF TRANSPORTATION STATISTICS.—To carry out chapter 65 of title 49, United States Code, $26,000,000 for each of fiscal years 2012 and 2013.

(b) APPLICABILITY OF TITLE 23, UNITED STATES CODE.—Funds authorized to be appropriated by subsection (a) shall—

(1) be available for obligation in the same manner as if those funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share of the cost of a project or activity carried out using those funds shall be 80 percent, unless otherwise expressly provided by this Act (including the amendments by this Act) or otherwise determined by the Secretary; and

(2) remain available until expended and not be transferable.

Subtitle B—Research, Technology, and Education

SEC. 2201. RESEARCH, TECHNOLOGY, AND EDUCATION.

Section 501 of title 23, United States Code, is amended—

(1) by redesignating paragraph (2) as paragraph (8);

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

''(2) INCIDENT.—The term 'incident' means a crash, natural disaster, workzone activity, special event, or other emergency road user occurrence that adversely affects or impedes the normal flow of traffic.

''(3) INNOVATION LIFECYCLE.—The term 'innovation lifecycle' means the process of innovating through—

''(A) the identification of a need;

''(B) the establishment of the scope of research to address that need;

''(C) setting an agenda;

''(D) carrying out research, development, deployment, and testing of the resulting technology or innovation; and

''(E) carrying out an evaluation of the impact of the resulting technology or innovation.

''(4) INTELLIGENT TRANSPORTATION INFRASTRUCTURE.—The term 'intelligent transportation infrastructure' means fully integrated public sector intelligent transportation system components, as defined by the Secretary.

''(5) INTELLIGENT TRANSPORTATION SYSTEM.—The terms 'intelligent transportation system' and 'ITS' mean electronics, photonics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.

''(6) NATIONAL ARCHITECTURE.—For purposes of this chapter, the term 'national architecture' means the common framework for interoperability that defines—

''(A) the functions associated with intelligent transportation system user services;

''(B) the physical entities or subsystems within which the functions reside;

''(C) the data interfaces and information flows between physical subsystems; and

''(D) the communications requirements associated with the information flows.

''(7) PROJECT.—The term 'project' means an undertaking to research, develop, or operationally test intelligent transportation systems or any other undertaking eligible for assistance under this chapter.''; and

(3) by inserting after paragraph (8) (as so redesignated) the following:

''(9) STANDARD.—The term 'standard' means a document that—

''(A) contains technical specifications or other precise criteria for intelligent transportation systems that are to be used consistently as rules, guidelines, or definitions of characteristics so as to ensure that materials, products, processes, and services are fit for the intended purposes of the materials, products, processes, and services; and

''(B) may support the national architecture and promote—

''(i) the widespread use and adoption of intelligent transportation system technology as a component of the surface transportation systems of the United States; and

''(ii) interoperability among intelligent transportation system technologies implemented throughout the States.''.

SEC. 2202. SURFACE TRANSPORTATION RESEARCH, DEVELOPMENT, AND TECHNOLOGY.

(a) SURFACE TRANSPORTATION RESEARCH, DEVELOPMENT, AND TECHNOLOGY.—Section 502 of title 23, United States Code, is amended—

(1) in the section heading by inserting ''**, DEVELOPMENT, AND TECHNOLOGY**'' after ''**SURFACE TRANSPORTATION RESEARCH**'';

(2) in subsection (a)—

(A) by redesignating paragraphs (1) through (8) as paragraphs (2) through (9), respectively;

(B) by inserting before paragraph (2) (as redesignated by subparagraph (A)) the following:

''(1) APPLICABILITY.—The research, development, and technology provisions of this section shall apply throughout this chapter.'';

(C) in paragraph (2) (as redesignated by subparagraph (A))—

(i) by inserting ''within the innovation lifecycle'' after ''activities''; and

(ii) by inserting ''marketing and communications, impact analysis,'' after ''training,'';

(D) in paragraph (3) (as redesignated by subparagraph (A))—

(i) in subparagraph (B) by striking ''supports research in which there is a clear public benefit and'' and inserting ''delivers a clear public benefit and occurs where'';

(ii) in subparagraph (C) by striking ''or'' after the semicolon;

(iii) by redesignating subparagraph (D) as subparagraph (H); and

(iv) by inserting after subparagraph (C) the following:

''(D) meets and addresses current or emerging needs;

''(E) presents the best means to align resources with multiyear plans and priorities;

''(F) ensures the coordination of highway research and technology transfer activities, including through activities performed by university transportation centers;

''(G) educates current and future transportation professionals; or'';

(E) in paragraph (4) (as redesignated by subparagraph (A)) by striking subparagraphs (B) through (D) and inserting the following:

''(B) partner with State highway agencies and other stakeholders as appropriate, including international entities, to facilitate research and technology transfer activities;

''(C) communicate the results of ongoing and completed research;

''(D) lead efforts to coordinate national emphasis areas of highway research, technology, and innovation deployment;

''(E) leverage partnerships with industry, academia, and international entities; and

''(F) conduct, facilitate, and support training and education of current and future transportation professionals.'';

(F) in paragraph (5)(C) (as redesignated by subparagraph (A)) by striking ''policy and planning'' and inserting ''all highway objectives seeking to improve the performance of the transportation system'';

(G) in paragraph (6) (as redesignated by subparagraph (A)) in the second sentence, by inserting ''tribal governments,'' after ''local governments,''; and

(H) in paragraph (8) (as redesignated by subparagraph (A))—

(i) in the first sentence, by striking ''To the maximum'' and inserting the following:

''(A) IN GENERAL.—To the maximum'';

(ii) in the second sentence, by striking ''Performance measures'' and inserting the following:

''(B) PERFORMANCE MEASURES.—Performance measures'';

(iii) in the third sentence, by striking ''All evaluations'' and inserting the following:

''(D) AVAILABILITY OF EVALUATIONS.—All evaluations under this paragraph''; and

(iv) by inserting after subparagraph (B) the following:

''(C) PROGRAM PLAN.—To the maximum extent practicable, each program pursued under this chapter shall be part of a data-driven, outcome-oriented program plan.'';

(3) in subsection (b)—

(A) in paragraph (4) by striking ''surface transportation research and technology development strategic plan developed under section 508'' and inserting ''the transportation research and development strategic plan of the Secretary'';

(B) in paragraph (5) by striking ''section'' each place it appears and inserting ''chapter'';

(C) in paragraph (6) by adding at the end the following:

''(C) TRANSFER OF AMOUNTS AMONG STATES OR TO FEDERAL HIGHWAY ADMINISTRATION.—The Secretary may, at the request of a State, transfer amounts apportioned or allocated to that State under this chapter to another State or the Federal Highway Administration to fund research, development, and technology transfer activities of mutual interest on a pooled funds basis.

''(D) TRANSFER OF OBLIGATION AUTHORITY.—Obligation authority for amounts transferred under this subsection shall be disbursed in the same manner and for the same amount as provided for the project being transferred.''; and

(D) by adding at the end the following:

''(7) PRIZE COMPETITIONS.—

''(A) IN GENERAL.—The Secretary may carry out prize competitions to award competitive prizes for surface transportation innovations that have the potential for application to the research and technology objectives and activities of the Federal Highway Administration to improve system performance.

''(B) REQUIREMENTS.—

''(i) IN GENERAL.—The Secretary shall use a competitive process for the selection of prize recipients and shall widely advertise and solicit participation in prize competitions under this paragraph.

''(ii) REGISTRATION REQUIRED.—No individual or entity shall participate in a prize competition under this paragraph unless the individual or entity has registered with the Secretary in accordance with the eligibility requirements established by the Secretary under clause (iii).

''(iii) MINIMUM REQUIREMENTS.—The Secretary shall establish eligibility requirements for participation in each prize competition under this paragraph, which, at a minimum, shall—

''(I) limit participation in the prize competition to—

''(aa) individuals who are citizens of the United States;

''(bb) entities organized or existing under the laws of the United States or of a State; and

''(cc) entities organized or existing under the laws of a foreign country, if the controlling interest, as defined by the Secretary, is held by an individual or entity described in item (aa) or (bb);

''(II) require any individual or entity that registers for a prize competition—

''(aa) to assume all risks arising from participation in the competition; and

''(bb) to waive all claims against the Federal Government for any damages arising out of participation in the competition, including all claims, whether through negligence or otherwise, except in the case of willful misconduct, for—

''(AA) injury, death, damage, or loss of property; or

''(BB) loss of revenue or profits, whether direct, indirect, or consequential; and

''(III) require any individual or entity that registers for a prize competition to waive all claims against any non-Federal entity operating or managing the prize competition, such as a private contractor managing competition activities, to the extent that the Secretary believes is necessary to protect the interests of the Federal Government.

''(C) RELATIONSHIP TO OTHER AUTHORITY.—The Secretary may exercise the authority in this section in conjunction with, or in addition to, any other authority of the Secretary to acquire, support, or stimulate innovations with the potential for application to the Federal highway research technology and education program.'';

(4) in subsection (c)—

(A) in paragraph (3)(A)—

(i) by striking ''subsection'' and inserting ''chapter''; and

(ii) by striking ''50'' and inserting ''80''; and

(B) in paragraph (4) by striking ''subsection'' and inserting ''chapter''; and

(5) by striking subsections (d) through (j).

(b) CONFORMING AMENDMENT.—The analysis for chapter 5 of title 23, United States Code, is amended by striking the item relating to section 502 and inserting the following:

''502. Surface transportation research, development, and technology.''.

SEC. 2203. RESEARCH AND TECHNOLOGY DEVELOPMENT AND DEPLOYMENT.

(a) IN GENERAL.—Section 503 of title 23, United States Code, is amended to read as follows:

''§ 503. Research and technology development and deployment

''(a) IN GENERAL.—The Secretary shall—

''(1) carry out research, development, and deployment activities that encompass the entire innovation lifecycle; and

''(2) ensure that all research carried out under this section aligns with the transportation research and development strategic plan of the Secretary.

''(b) HIGHWAY RESEARCH AND DEVELOPMENT PROGRAM.—

''(1) OBJECTIVES.—In carrying out the highway research and development program, the Secretary, to address current and emerging highway transportation needs, shall—

''(A) identify research topics;

''(B) coordinate domestic and international research and development activities;

''(C) carry out research, testing, and evaluation activities; and

''(D) provide technology transfer and technical assistance.

''(2) CONTENTS.—Research and development activities carried out under this section may include any of the following activities:

''(A) IMPROVING HIGHWAY SAFETY.—

''(i) IN GENERAL.—The Secretary shall carry out research and development activities from an integrated perspective to establish and implement systematic measures to improve highway safety.

''(ii) OBJECTIVES.—In carrying out this subparagraph the Secretary shall carry out research and development activities—

''(I) to achieve greater long-term safety gains;

''(II) to reduce the number of fatalities and serious injuries on public roads;

''(III) to fill knowledge gaps that limit the effectiveness of research;

''(IV) to support the development and implementation of State strategic highway safety plans;

''(V) to advance improvements in, and use of, performance prediction analysis for decisionmaking; and

''(VI) to expand technology transfer to partners and stakeholders.

''(iii) CONTENTS.—Research and technology activities carried out under this subparagraph may include—

''(I) safety assessments and decision-making tools;

''(II) data collection and analysis;

''(III) crash reduction projections;

''(IV) low-cost safety countermeasures;

''(V) innovative operational improvements and designs of roadway and roadside features;

''(VI) evaluation of countermeasure costs and benefits;

''(VII) development of tools for projecting impacts of safety countermeasures;

''(VIII) rural road safety measures;

''(IX) safety measures for vulnerable road users, including bicyclists and pedestrians;

''(X) safety policy studies;

''(XI) human factors studies and measures;

''(XII) safety technology deployment;

''(XIII) safety workforce professional capacity building initiatives;

''(XIV) safety program and process improvements; and

''(XV) tools and methods to enhance safety performance, including achievement of statewide safety performance targets.

''(B) IMPROVING INFRASTRUCTURE INTEGRITY.—

''(i) IN GENERAL.—The Secretary shall carry out and facilitate highway infrastructure research and development activities—

''(I) to maintain infrastructure integrity;

''(II) to meet user needs; and

''(III) to link Federal transportation investments to improvements in system performance.

''(ii) OBJECTIVES.—In carrying out this subparagraph, the Secretary shall carry out research and development activities—

''(I) to reduce the number of fatalities attributable to infrastructure design characteristics and work zones;

''(II) to improve the safety and security of highway infrastructure;

''(III) to increase the reliability of lifecycle performance predictions used in infrastructure design, construction, and management;

''(IV) to improve the ability of transportation agencies to deliver projects that meet expectations for timeliness, quality, and cost;

''(V) to reduce user delay attributable to infrastructure system performance, maintenance, rehabilitation, and construction;

''(VI) to improve highway condition and performance through increased use of design, materials, construction, and maintenance innovations;

''(VII) to reduce the lifecycle environmental impacts of highway infrastructure through innovations in design, construction, operation, preservation, and maintenance; and

''(VIII) to study vulnerabilities of the transportation system to seismic activities and extreme events and methods to reduce those vulnerabilities.

''(iii) CONTENTS.—Research and technology activities carried out under this subparagraph may include—

''(I) long-term infrastructure performance programs addressing pavements, bridges, tunnels, and other structures;

''(II) short-term and accelerated studies of infrastructure performance;

''(III) research to develop more durable infrastructure materials and systems;

''(IV) advanced infrastructure design methods;

''(V) accelerated highway construction;

''(VI) performance-based specifications;

''(VII) construction and materials quality assurance;

''(VIII) comprehensive and integrated infrastructure asset management;

''(IX) infrastructure safety assurance;

''(X) highway infrastructure security;

''(XI) sustainable infrastructure design and construction;

''(XII) infrastructure rehabilitation and preservation techniques, including techniques to rehabilitate and preserve historic infrastructure;

''(XIII) hydraulic, geotechnical, and aerodynamic aspects of infrastructure;

''(XIV) improved highway construction technologies and practices;

''(XV) improved tools, technologies, and models for infrastructure management, including assessment and monitoring of infrastructure condition;

''(XVI) studies to improve flexibility and resiliency of infrastructure systems to withstand climate variability;

''(XVII) studies of infrastructure resilience and other adaptation measures; and

''(XVIII) maintenance of seismic research activities, including research carried out in conjunction with other Federal agencies to study the vulnerability of the transportation system to seismic activity and methods to reduce that vulnerability.

''(iv) LIFECYCLE COSTS ANALYSIS STUDY.—

''(I) IN GENERAL.—In this clause, the term 'lifecycle costs analysis' means a process for evaluating the total economic worth of a usable project segment by analyzing initial costs and discounted future costs, such as maintenance, user, reconstruction, rehabilitation, restoring, and resurfacing costs, over the life of the project segment.

''(II) STUDY.—The Comptroller General shall conduct a study of the best practices for calculating lifecycle costs for federally funded highway projects. At a minimum, this study shall include a thorough literature review and a survey of current lifecycle cost practices of State departments of transportation.

''(III) CONSULTATION.—In carrying out this study, the Comptroller shall consult with, at a minimum—

''(aa) the American Association of State Highway and Transportation Officials;

''(bb) appropriate experts in the field of lifecycle cost analysis; and

''(cc) appropriate industry experts and research centers.

''(IV) REPORT.—Not later than 1 year after the date of enactment of the MAP-21, the Comptroller General shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the results of the study which shall include, but is not limited to—

''(aa) a summary of the latest research on lifecycle cost analysis; and

''(bb) recommendations on the appropriate—

''(AA) period of analysis;

''(BB) design period;

''(CC) discount rates; and

''(DD) use of actual material life and maintenance cost data.

''(C) STRENGTHENING TRANSPORTATION PLANNING AND ENVIRONMENTAL DECISIONMAKING.—

''(i) IN GENERAL.—The Secretary shall carry out research—

''(I) to improve transportation planning and environmental decisionmaking processes; and

''(II) to minimize the impact of surface transportation on the environment and quality of life.

''(ii) OBJECTIVES.—In carrying out this subparagraph the Secretary shall carry out research and development activities—

''(I) to reduce the impact of highway infrastructure and operations on the natural and human environment;

''(II) to advance improvements in environmental analyses and processes and context sensitive solutions for transportation decisionmaking;

''(III) to improve construction techniques;

''(IV) to accelerate construction to reduce congestion and related emissions;

''(V) to reduce the impact of highway runoff on the environment;

''(VI) to maintain sustainability of biological communities and ecosystems adjacent to highway corridors;

''(VII) to improve understanding and modeling of the factors that contribute to the demand for transportation;

''(VIII) to improve transportation planning decisionmaking and coordination; and

''(IX) to reduce the environmental impacts of freight movement.

''(iii) CONTENTS.—Research and technology activities carried out under this subparagraph may include—

''(I) creation of models and tools for evaluating transportation measures and transportation system designs;

''(II) congestion reduction efforts;

''(III) transportation *and economic development* planning in rural areas and small communities;

''(IV) improvement of State, local, and tribal capabilities relating to surface transportation planning and the environment;

''(V) environmental stewardship and sustainability activities;

''(VI) streamlining of project delivery processes;

''(VII) development of effective strategies and techniques to analyze and minimize impacts to the natural and human environment and provide environmentally beneficial mitigation;

''(VIII) comprehensive multinational planning;

''(IX) multistate transportation corridor planning;

''(X) improvement of transportation choices, including walking, bicycling, and linkages to public transportation;

''(XI) ecosystem sustainability;

''(XII) wildlife and plant population connectivity and interaction across and along highway corridors;

''(XIII) analysis, measurement, and reduction of air pollution from transportation sources;

''(XIV) advancement in the understanding of health impact analyses in transportation planning and project development;

''(XV) transportation planning professional development;

''(XVI) research on improving the cooperation and integration of transportation planning with other regional plans, including land use, energy, water infrastructure, *economic development*, and housing plans; and

''(XVII) reducing the environmental impacts of freight movement.

''(D) REDUCING CONGESTION, IMPROVING HIGHWAY OPERATIONS, AND ENHANCING FREIGHT PRODUCTIVITY.—

''(i) IN GENERAL.—The Secretary shall carry out research under this subparagraph with the goals of—

''(I) addressing congestion problems;

''(II) reducing the costs of congestion;

''(III) improving freight movement;

''(IV) increasing productivity; and

''(V) improving the economic competitiveness of the United States.

''(ii) OBJECTIVES.—In carrying out this subparagraph, the Secretary shall carry out research and development activities to identify, develop, and assess innovations that have the potential—

''(I) to reduce traffic congestion;

''(II) to improve freight movement; and

''(III) to reduce freight-related congestion throughout the transportation network.

''(iii) CONTENTS.—Research and technology activities carried out under this subparagraph may include—

''(I) active traffic and demand management;

''(II) acceleration of the implementation of Intelligent Transportation Systems technology;

''(III) advanced transportation concepts and analysis;

''(IV) arterial management and traffic signal operation;

''(V) congestion pricing;

''(VI) corridor management;

''(VII) emergency operations;

''(VIII) research relating to enabling technologies and applications;

''(IX) freeway management;

''(X) evaluation of enabling technologies;

''(XI) freight industry professional development;

''(XII) impacts of vehicle size and weight on congestion;

''(XIII) freight operations and technology;

''(XIV) operations and freight performance measurement and management;

''(XV) organization and planning for operations;

''(XVI) planned special events management;

''(XVII) real-time transportation information;

''(XVIII) road weather management;

''(XIX) traffic and freight data and analysis tools;

''(XX) traffic control devices;

''(XXI) traffic incident management;

''(XXII) work zone management;

''(XXIII) communication of travel, roadway, and emergency information to persons with disabilities; and

''(XXIV) research on enhanced mode choice and intermodal connectivity.

''(E) ASSESSING POLICY AND SYSTEM FINANCING ALTERNATIVES.—

''(i) IN GENERAL.—The Secretary shall carry out research and technology on emerging issues in the domestic and international transportation community from a policy perspective.

''(ii) OBJECTIVES.—Research and technology activities carried out under this subparagraph shall provide information to policy and decisionmakers on current and emerging transportation issues.

''(iii) RESEARCH ACTIVITIES.—Activities carried out under this subparagraph shall include—

''(I) the planning and integration of a coordinated program related to the possible design, interoperability, and institutional roles of future sustainable transportation revenue mechanisms;

''(II) field trials to research potential alternative revenue mechanisms, and *the Secretary* may partner with individual States, groups of States, or other entities to implement such trials; and

''(III) other activities to study new methods which preserve a user-fee structure to maintain the long-term solvency of the Highway Trust Fund.

''(iv) CONTENTS.—Research and technology activities carried out under this subparagraph may include—

''(I) highway needs and investment analysis;

''(II) *a* motor fuel tax evasion program;

''(III) advancing innovations in revenue generation, financing, and procurement for project delivery;

''(IV) improving the accuracy of project cost analyses;

''(V) highway performance measurement;

''(VI) travel demand performance measurement;

''(VII) highway finance performance measurement;

''(VIII) international technology exchange initiatives;

''(IX) infrastructure investment needs reports;

''(X) promotion of the technologies, products, and best practices of the United States; and

''(XI) establishment of partnerships among the United States, foreign agencies, and transportation experts.

''(v) FUNDING.—Of the funds authorized to carry out this subsection, no less than 50 percent shall be used to carry out clause (iii).

''(F) INFRASTRUCTURE INVESTMENT NEEDS REPORT.—

''(i) IN GENERAL.—Not later than July 31, 2012, and July 31 of every second year thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that describes estimates of the future highway and bridge needs of the United States and the backlog of current highway and bridge needs.

''(ii) COMPARISONS.—Each report under clause (i) shall include all information necessary to relate and compare the conditions and service measures used in the previous biennial reports to conditions and service measures used in the current report.

''(iii) INCLUSIONS.—Each report under clause (i) shall provide recommendations to Congress on changes to the Highway Performance Monitoring System that address—

''(I) improvements to the quality and standardization of data collection on all functional classifications of Federal-aid highways for accurate system length, lane length, and vehicle-mile of travel; and

''(II) changes to the reporting requirements authorized under section 315, to reflect recommendations under this paragraph for collection, storage, analysis, reporting, and display of data for Federal-aid highways and, to the maximum extent practical, all public roads.

''(G) EXPLORING NEXT GENERATION SOLUTIONS AND CAPITALIZING ON THE HIGHWAY RESEARCH CENTER.—

''(i) IN GENERAL.—The Secretary shall carry out research and development activities relating to exploratory advanced research—

''(I) to leverage the targeted capabilities of the Turner-Fairbank Highway Research Center to develop technologies and innovations of national importance; and

''(II) to develop potentially transformational solutions to improve the durability, efficiency, environmental impact, productivity, and safety aspects of highway and intermodal transportation systems.

''(ii) CONTENTS.—Research and technology activities carried out under this subparagraph may include—

''(I) long-term, high-risk research to improve the materials used in highway infrastructure;

''(II) exploratory research to assess the effects of transportation decisions on human health;

''(III) advanced development of surrogate measures for highway safety;

''(IV) transformational research to affect complex environmental and highway system relationships;

''(V) development of economical and environmentally sensitive designs, efficient and quality-controlled construction practices, and durable materials;

''(VI) development of advanced data acquisition techniques for system condition and performance monitoring;

''(VII) inclusive research for hour-to-hour operational decisionmaking and simulation forecasting;

''(VIII) understanding current and emerging phenomena to inform next generation transportation policy decisionmaking; and

''(IX) continued improvement and advancement of the Turner-Fairbank Highway Research Center.

''(H) ALIGNING NATIONAL CHALLENGES AND DISSEMINATING INFORMATION.—

''(i) IN GENERAL.—The Secretary shall conduct research and development activities—

''(I) to establish a nationally coordinated highway research agenda that—

''(aa) focuses on topics of national significance;

''(bb) addresses current gaps in research;

''(cc) encourages collaboration;

''(dd) reduces unnecessary duplication of effort; and

''(ee) accelerates innovation delivery; and

''(II) to provide relevant information to researchers and highway and transportation practitioners to improve the performance of the transportation system.

''(ii) CONTENTS.—Research and technology activities carried out under this subparagraph may include—

''(I) coordination, development, and implementation of a national highway research agenda;

''(II) collaboration on national emphasis areas of highway research and coordination among international, Federal, State, and university research programs;

''(III) development and delivery of research reports and innovation delivery messages;

''(IV) identification of market-ready technologies and innovations; and

''(V) provision of access to data developed under this subparagraph to the public, including researchers, stakeholders, and customers, through a publicly accessible Internet site.

''(c) TECHNOLOGY AND INNOVATION DEPLOYMENT PROGRAM.—

''(1) IN GENERAL.—The Secretary shall carry out a technology and innovation deployment program relating to all aspects of highway transportation, including planning, financing, operation, structures, materials, pavements, environment, construction, and the duration of time between project planning and project delivery, with the goals of—

''(A) significantly accelerating the adoption of innovative technologies by the surface transportation community;

''(B) providing leadership and incentives to demonstrate and promote state-of-the-art technologies, elevated performance standards, and new business practices in highway construction processes that result in improved safety, faster construction, reduced congestion from construction, and improved quality and user satisfaction;

''(C) constructing longer-lasting highways through the use of innovative technologies and practices that lead to faster construction of efficient and safe highways and bridges;

''(D) improving highway efficiency, safety, mobility, reliability, service life, environmental protection, and sustainability; and

''(E) developing and deploying new tools, techniques, and practices to accelerate the adoption of innovation in all aspects of highway transportation.

''(2) IMPLEMENTATION.—

''(A) IN GENERAL.—The Secretary shall promote, facilitate, and carry out the program established under paragraph (1) to distribute the products, technologies, tools, methods, or other findings that result from highway research and development activities, including research and development activities carried out under this chapter.

''(B) ACCELERATED INNOVATION DEPLOYMENT.—In carrying out the program established under paragraph (1), the Secretary shall—

''(i) establish and carry out demonstration programs;

''(ii) provide incentives, technical assistance, and training to researchers and developers; and

''(iii) develop improved tools and methods to accelerate the adoption of proven innovative practices and technologies as standard practices.

''(C) IMPLEMENTATION OF FUTURE STRATEGIC HIGHWAY RESEARCH PROGRAM FINDINGS AND RESULTS.—

''(i) IN GENERAL.—The Secretary, in consultation with the American Association of State Highway and Transportation Officials and the Transportation Research Board of the National Academy of Sciences, shall implement the findings and recommendations developed under the future strategic highway research program established under section 510.

''(ii) BASIS FOR FINDINGS.—The activities carried out under this subparagraph shall be based on the report submitted to Congress by the Transportation Research Board of the National Academy of Sciences under section 510(e).

''(iii) PERSONNEL.—The Secretary may use funds made available to carry out this subsection for administrative costs under this subparagraph, which funds shall be used in addition to any other funds made available for that purpose.

''(iv) FEES.—

''(I) IN GENERAL.—The Secretary may impose and collect fees to recover costs associated with special data or analysis requests relating to safety naturalistic driving databases developed under the future of strategic highway research program.

''(II) USE OF FEE AMOUNTS.—

''(aa) IN GENERAL.—Any fees collected under this clause shall be made available to the Secretary to carry out this section and shall remain available for expenditure until expended.

''(bb) SUPPLEMENT, NOT SUPPLANT.—Any fee amounts collected under this clause shall supplement, but not supplant, amounts made available to the Secretary to carry out this title.

''(d) AIR QUALITY AND CONGESTION MITIGATION MEASURE OUTCOMES ASSESSMENT RESEARCH.—

''(1) IN GENERAL.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall carry out a research program to examine the outcomes of actions funded under the congestion mitigation and air quality improvement program since the enactment of the SAFETEA-LU (Public Law 109–59).

''(2) GOALS.—The goals of the program shall include—

''(A) the assessment and documentation, through outcomes research conducted on a representative sample of cases, of—

''(i) the emission reductions achieved by federally supported surface transportation actions intended to reduce emissions or lessen traffic congestion; and

''(ii) the air quality and human health impacts of those actions, including potential unrecognized or indirect consequences, attributable to those actions;

''(B) an expanded base of empirical evidence on the air quality and human health impacts of actions described in paragraph (1); and

''(C) an increase in knowledge of—

''(i) the factors determining the air quality and human health changes associated with transportation emission reduction actions; and

''(ii) other information to more accurately understand the validity of current estimation and modeling routines and ways to improve those routines.

''(3) ADMINISTRATIVE ELEMENTS.—To carry out this subsection, the Secretary shall—

''(A) make a grant for the coordination, selection, management, and reporting of component studies to an independent scientific research organization with the necessary experience in successfully conducting accountability and other studies on mobile source air pollutants and associated health effects;

''(B) ensure that case studies are identified and conducted by teams selected through a competitive solicitation overseen by an independent committee of unbiased experts; and

''(C) ensure that all findings and reports are peer-reviewed and published in a form that presents the findings together with reviewer comments.

''(4) REPORT.—The Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

''(A) not later than 1 year after the date of enactment of the MAP–21, and for the following year, a report providing an initial scoping and plan, and status updates, respectively, for the program under this subsection; and

''(B) not later than 2 years after the date of enactment of the MAP–21, a final report that describes the findings of, and recommendations resulting from, the program under this subsection.

''(5) FUNDING.—Of the amounts made available to carry out this section, the Secretary shall make available to carry out this subsection not more than $1,000,000 for each fiscal year.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 5 of title 23, United States Code, is amended by striking the item relating to section 503 and inserting the following:

''503. Research and technology development and deployment.''.

SEC. 2204. TRAINING AND EDUCATION.

Section 504 of title 23, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2)(A) by inserting ''and the employees of any other applicable Federal agency'' before the semicolon at the end;

(B) in paragraph (3)(A)(ii)(V) by striking ''expediting'' and inserting ''reducing the amount of time required for'';

(C) by striking paragraph (4);

(D) by redesignating paragraphs (5) through (8) as paragraphs (4) through (7), respectively; and

(E) in paragraph (7) (as redesignated by subparagraph (D)) by striking ''paragraph (7)'' and inserting ''paragraph (6)'';

(2) in subsection (b) by striking paragraph (3) and inserting the following:

''(3) FEDERAL SHARE.—

''(A) LOCAL TECHNICAL ASSISTANCE CENTERS.—

''(i) IN GENERAL.—Subject to subparagraph (B), the Federal share of the cost of an activity carried out by a local technical assistance center under paragraphs (1) and (2) shall be 50 percent.

''(ii) NON-FEDERAL SHARE.—The non-Federal share of the cost of an activity described in clause (i) may consist of amounts provided to a recipient under subsection (e) or section 505, up to 100 percent of the non-Federal share.

''(B) TRIBAL TECHNICAL ASSISTANCE CENTERS.—The Federal share of the cost of an activity carried out by a tribal technical assistance center under paragraph (2)(D)(ii) shall be 100 percent.'';

(3) in subsection (c)(2)—

(A) by striking ''The Secretary'' and inserting the following:

''(A) IN GENERAL.—The Secretary'';

(B) in subparagraph (A) (as designated by subparagraph (A)) by striking ''. The program'' and inserting '', which program''; and

(C) by adding at the end the following:

''(B) USE OF AMOUNTS.—Amounts provided to institutions of higher education to carry out this paragraph shall be used to provide direct support of student expenses.'';

(4) in subsection (e)(1)—

(A) in the matter preceding subparagraph (A) by striking ''sections 104(b)(1), 104(b)(2), 104(b)(3), 104(b)(4), and 144(e)'' and inserting ''paragraphs (1) through (4) of section 104(b)'';

(B) in subparagraph (D) by striking ''and'' at the end;

(C) in subparagraph (E) by striking the period and inserting a semicolon; and

(D) by adding at the end the following:

''(F) meetings of transportation professionals that include education and professional development activities;

''(G) activities carried out by the National Highway Institute under subsection (a); and

''(H) local technical assistance programs under subsection (b).'';

(5) in subsection (f) in the heading, by striking ''PILOT'';

(6) in subsection (g)(4)(F) by striking ''excellence'' and inserting ''stewardship''; and

(7) by adding at the end the following:

[''(h) REGIONAL SURFACE WORKFORCE DEVELOPMENT CENTERS.—

''(1) IN GENERAL.—The Secretary may make grants under this section to nonprofit institutions of higher education to establish and operate 5 regional workforce development centers.

''(2) USE OF AMOUNTS.—

''(A) IN GENERAL.—Amounts made available under this subsection shall be used by a recipient to identify, promote, and advance programs and activities that provide for a skilled, technically competent surface transportation workforce, including—

''(i) programs carried out through elementary and secondary schools;

''(ii) programs carried out through community colleges; and

''(iii) technical training and apprenticeship programs that are carried out in coordination with labor organizations, employers, and other relevant stakeholders.

''(B) OPTIONAL USE.—Amounts made available under this subsection may be used to support professional development activities for inservice transportation workers.

''(3) CONSULTATION.—In carrying out this subsection, each regional workforce development center shall consult with stakeholders in the education and transportation communities, including organizations representing the interests of—

''(A) elementary and secondary schools;

''(B) institutions of higher education;

''(C) inservice transportation workers; and

''(D) transportation professionals.

''(i) CENTERS FOR SURFACE TRANSPORTATION EXCELLENCE.—]

''(h) CENTERS FOR SURFACE TRANSPORTATION EXCELLENCE.—

''(1) IN GENERAL.—The Secretary may make grants under this section to establish and maintain centers for surface transportation excellence.

''(2) GOALS.—The goals of a center referred to in paragraph (1) shall be to promote and support strategic national surface transportation programs and activities relating to the work of State departments of transportation in the areas of environment, surface transportation safety, rural safety, and project finance.''.

SEC. 2205. STATE PLANNING AND RESEARCH.

Section 505 of title 23, United States Code, is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1) by striking ''section 104 (other than sections 104(f) and 104(h)) and under section 144'' and inserting ''paragraphs (1) through (5) of section 104(b)''; and

(B) in paragraph (3) by striking ''under section 303'' and inserting '', plans, and processes under sections 119, 148, 149, and 167'';

(2) in subsection (b)—

(A) in paragraph (1) by striking ''25'' and inserting ''24''; and

(B) in paragraph (2) by striking ''75 percent of the funds described in paragraph (1)'' and inserting ''70 percent of the funds described in subsection (a)'';

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

(4) by inserting after subsection (b) the following:

''(c) IMPLEMENTATION OF FUTURE STRATEGIC HIGHWAY RESEARCH PROGRAM FINDINGS AND RESULTS.—

''(1) *FUNDS.—Not less*[Not less] than 6 percent of the funds subject to subsection (a) that are apportioned to a State for a fiscal year shall be made available to the Secretary to carry out section 503(c)(2)(C).

''(2) *TREATMENT OF FUNDS.—Funds*[Funds] expended under paragraph (1) shall not be considered to be part of the extramural budget of the agency for the purpose of section 9 of the Small Business Act (15 U.S.C. 638).''; and

(5) in paragraph (e) (as so redesignated) by striking ''section 118(b)(2)'' and inserting ''section 118(b)''.

SEC. 2206. INTERNATIONAL HIGHWAY TRANSPORTATION PROGRAM.

Section 506 of title 23, United States Code, is repealed.

SEC. 2207. SURFACE TRANSPORTATION ENVIRONMENTAL COOPERATIVE RESEARCH PROGRAM.

Section 507 of title 23, United States Code, is repealed.

SEC. 2208. NATIONAL COOPERATIVE FREIGHT RESEARCH.

Section 509(d) of title 23, United States Code, is amended by adding at the end the following:

''(6) COORDINATION OF COOPERATIVE RESEARCH.—The National Academy of Sciences shall coordinate research agendas, research project selections, and competitions across all transportation-related cooperative research programs carried out by the National Academy of Sciences to ensure program efficiency, effectiveness, and the dissemination of research findings.''.

SEC. 2209. UNIVERSITY TRANSPORTATION CENTERS PROGRAM.

(a) IN GENERAL.—Section 5505 of title 49, United States Code, is amended to read as follows:

''§ 5505. University transportation centers program

''(a) UNIVERSITY TRANSPORTATION CENTERS PROGRAM.—

''(1) ESTABLISHMENT AND OPERATION.—The Secretary shall make grants under this section to eligible nonprofit institutions of higher education to establish and operate university transportation centers.

''(2) ROLE OF CENTERS.—The role of each university transportation center referred to in paragraph (1) shall be—

''(A) to advance transportation expertise and technology in the varied disciplines that comprise the field of transportation through education, research, and technology transfer activities;

''(B) to provide for a critical transportation knowledge base outside of the Department of Transportation; and

''(C) to address critical workforce needs and educate the next generation of transportation leaders.

''(b) COMPETITIVE SELECTION PROCESS.—

''(1) APPLICATIONS.—To receive a grant under this section, a nonprofit institution of higher education shall submit to the Secretary an application that is in such form and contains such information as the Secretary may require.

''(2) GENERAL SELECTION CRITERIA.—

''(A) IN GENERAL.—Except as otherwise provided by this section, the Secretary shall award grants under this section in nonexclusive candidate topic areas established by the Secretary that address the research priorities identified in section 503 of title 23.

''(B) CRITERIA.—The Secretary, in conjunction with the Administrators of the Federal Highway Administration and the Federal Transit Administration, shall select each recipient of a grant under this section through a competitive process based on the assessment of the Secretary relating to—

''(i) the demonstrated ability of the recipient to address each specific topic area described in the research and strategic plans of the recipient;

''(ii) the demonstrated research, technology transfer, and education resources available to the recipient to carry out this section;

''(iii) the ability of the recipient to provide leadership in solving immediate and long-range national and regional transportation problems;

''(iv) the ability of the recipient to carry out research, education, and technology transfer activities that are multimodal and multidisciplinary in scope;

''(v) the demonstrated commitment of the recipient to carry out transportation workforce development programs through—

''(I) degree-granting programs;

''(II) training seminars for practicing professionals;

''(III) outreach activities to attract new entrants into the transportation field, including women, minorities, and persons from disadvantaged communities; and

''(IV) primary and secondary school transportation workforce outreach;

''(vi) the demonstrated ability of the recipient to disseminate results and spur the implementation of transportation research and education programs through national or statewide continuing education programs;

''(vii) the demonstrated commitment of the recipient to the use of peer review principles and other research best practices in the selection, management, and dissemination of research projects;

''(viii) the strategic plan submitted by the recipient describing the proposed research to be carried out by the recipient and the performance metrics to be used in assessing the performance of the recipient in meeting the stated research, technology transfer, education, and outreach goals; and

''(ix) the ability of the recipient to implement the proposed program in a cost-efficient manner, such as through cost sharing and overall reduced overhead, facilities, and administrative costs.

''(c) GRANTS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the MAP-21, the Secretary, in conjunction with the Administrators of the Federal Highway Administration and the Federal Transit Administration, shall select grant recipients under subsection (b) and make grant amounts available to the selected recipients.

''(2) TIER 1 UNIVERSITY TRANSPORTATION CENTERS.—

''(A) IN GENERAL.—For each of fiscal years 2012 and 2013 and subject to subparagraph (B), the Secretary shall provide grants to not more than 15 recipients that the Secretary determines best meet the criteria described in subsection (b)(2).

''(B) RESTRICTIONS.—

''(i) IN GENERAL.—For each fiscal year, a grant made available under this paragraph shall not exceed $3,500,000 per recipient.

''(ii) FOCUSED RESEARCH.—At least 2 of the recipients awarded a grant under this paragraph shall have expertise in, and focus research on, public transportation issues.

''(C) MATCHING REQUIREMENT.—

''(i) IN GENERAL.—As a condition of receiving a grant under this paragraph, a grant recipient shall match 100 percent of the amounts made available under the grant.

''(ii) SOURCES.—The matching amounts referred to in clause (i) may include amounts made available to the recipient under—

''(I) section 504(b) or 505 of title 23; and

''(II) subject to prior approval by the Secretary, a transportation-related grant from the National Science Foundation.

''(3) TIER 2 UNIVERSITY TRANSPORTATION CENTERS.—

''(A) IN GENERAL.—For each of fiscal years 2012 and 2013, the Secretary shall provide grants of not more than $2,000,000 each to not more than 20 recipients to carry out this section.

''(B) RESTRICTION.—A grant recipient under paragraph (2) shall not be eligible to receive a grant under this paragraph.

''(C) MATCHING REQUIREMENT.—

''(i) IN GENERAL.—As a condition of receiving a grant under this paragraph, a grant recipient shall match 50 percent of the amounts made available under the grant.

''(ii) SOURCES.—The matching amounts referred to in clause (i) may include amounts made available to the recipient under—

''(I) section 504(b) or 505 of title 23; and

''(II) subject to prior approval by the Secretary, a transportation-related grant from the National Science Foundation.

''(D) FOCUSED RESEARCH.—In awarding grants under this paragraph, consideration shall be given to minority institutions, as defined by section 365(3) of the Higher Education Act (20 U.S.C. Sec. 1067k), or consortia that include such institutions that have demonstrated an ability in transportation-related research [and for which the requirements of subparagraph]. *The requirements of subsection* (c)(3)(C) shall not apply upon demonstration of financial hardship by the applicant institution.

''(d) PROGRAM COORDINATION.—

''(1) IN GENERAL.—The Secretary shall—

''(A) coordinate the research, education, and technology transfer activities carried out by grant recipients under this section; and

''(B) disseminate the results of that research through the establishment and operation of an information clearinghouse.

''(2) ANNUAL REVIEW AND EVALUATION.—Not less frequently than annually, and consistent with the plan developed under section 508 of title 23, the Secretary shall review and evaluate the programs carried out under this section by grant recipients.

''(3) PROGRAM EVALUATION AND OVERSIGHT.—For each of fiscal years 2012 and 2013, the Secretary shall expend not more than 1½ percent of the amounts made available to the Secretary to carry out this section for any coordination, evaluation, and oversight activities of the Secretary under this section and section 5506.

''(e) LIMITATION ON AVAILABILITY OF AMOUNTS.—Amounts made available to the Secretary to carry out this section shall remain available for obligation by the Secretary for a period of 3 years after the last day of the fiscal year for which the amounts are appropriated.

''(f) INFORMATION COLLECTION.—Any survey, questionnaire, or interview that the Secretary determines to be necessary to carry out reporting requirements relating to any program assessment or evaluation activity under this section, including customer satisfaction assessments, shall not be subject to chapter 35 of title 44.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 55 of title 49, United States Code, is amended by striking the item relating to section 5505 and inserting the following:

''Sec. 5505. University transportation centers program.''.

SEC. 2210. BUREAU OF TRANSPORTATION STATISTICS.

(a) IN GENERAL.—Subtitle III of title 49, United States Code, is amended by adding at the end the following:

''CHAPTER 63—BUREAU OF TRANSPORTATION STATISTICS

''6301. [Establishment]*Definitions*.
''6302. [Director]*Bureau of Transportation Statistics*.
''6303. [Responsibilities]*Intermodal transportation database*.
''6304. National transportation library.
''6305. Advisory council on transportation statistics.
''6306. Transportation statistical collection, analysis, and dissemination.
''6307. Furnishing of information, data, or reports by Federal agencies.
[''6308. Prohibition on certain disclosures Proceeds of data product sales.
''6309. Data access.]
''[6310]*6308*. Proceeds of data product sales.
''[6311]*6309*. Information collection.
''[6312]*6310*. National transportation atlas database.
''[6313]*6311*. Limitations on statutory construction.

''[6314]*6312*. Research and development grants.
''[6315]*6313*. Transportation statistics annual report.
''[6316]*6314*. Mandatory response authority for freight data collection.

"§ 6301. Definitions.

''In this chapter, the following definitions apply:

''(1) BUREAU.—The term 'Bureau' means the Bureau of Transportation Statistics established by section 6302(a).

''(2) DEPARTMENT.—The term 'Department' means the Department of Transportation.

''(3) DIRECTOR.—The term 'Director' means the Director of the Bureau.

''(4) LIBRARY.—The term 'Library' means the National Transportation Library established by section 6304(a).

''(5) SECRETARY.—The term 'Secretary' means the Secretary of Transportation.

"§ 6302. Bureau of Transportation Statistics.

''(a) ESTABLISHMENT.—There is established in the Research and Innovative Technology Administration the Bureau of Transportation Statistics.

''(b) DIRECTOR.—

''(1) APPOINTMENT.—The Bureau shall be headed by a Director, who shall be appointed in the competitive service by the Secretary.

''(2) QUALIFICATIONS.—The Director shall be appointed from among individuals who are qualified to serve as the Director by virtue of training and experience in the collection, analysis, and use of transportation statistics.

''(3) DUTIES.—

''(A) IN GENERAL.—The Director shall—

''(i) serve as the senior advisor to the Secretary on data and statistics; and

''(ii) be responsible for carrying out the duties described in subparagraph (B).

''(B) DUTIES.—The Director shall—

''(i) ensure that the statistics compiled under clause (vi) are designed to support transportation decisionmaking by—

''(I) the Federal Government;

''(II) State and local governments;

''(III) metropolitan planning organizations;

''(IV) transportation-related associations;

''(V) the private sector, including the freight community; and

''(VI) the public;

''(ii) establish on behalf of the Secretary a program—

''(I) to effectively integrate safety data across modes; and

''(II) to address gaps in existing Department safety data programs;

''(iii) work with the operating administrations of the Department—

''(I) to establish and implement the data programs of the Bureau; and

''(II) to improve the coordination of information collection efforts with other Federal agencies;

''(iv) evaluate and update as necessary surveys and data collection methods of the Department on a continual basis to improve the accuracy and utility of transportation statistics;

''(v) encourage the standardization of data, data collection methods, and data management and storage technologies for data collected by—

''(I) the Bureau;

''(II) the operating administrations of the Department;

''(III) State and local governments;

''(IV) metropolitan planning organizations; and

''(V) private sector entities;

''(vi) collect, compile, analyze, and publish a comprehensive set of transportation statistics on the performance and impacts of the national transportation system, including statistics on—

''(I) transportation safety across all modes and intermodally;

''(II) the state of good repair of United States transportation infrastructure;

''(III) the extent, connectivity, and condition of the transportation system, building on the national transportation atlas database developed under section 6310;

''(IV) economic efficiency across the entire transportation sector;

''(V) the effects of the transportation system on global and domestic economic competitiveness;

''(VI) demographic, economic, and other variables influencing travel behavior, including choice of transportation mode and goods movement;

''(VII) transportation-related variables that influence the domestic economy and global competitiveness;

''(VIII) economic costs and impacts for passenger travel and freight movement;

''(IX) intermodal and multimodal passenger movement;

''(X) intermodal and multimodal freight movement; and

''(XI) consequences of transportation for the human and natural environment;

''(vii) build and disseminate the transportation layer of the National Spatial Data Infrastructure developed under Executive Order 12906 (59 Fed. Reg. 17671) (or a successor Executive Order), including by coordinating the development of transportation geospatial data standards, compiling intermodal geospatial data, and collecting geospatial data that is not being collected by other entities;

''(viii) issue guidelines for the collection of information by the Department that the Director determines necessary to develop transportation statistics and carry out modeling, economic assessment, and program assessment activities to ensure that the information is accurate, reliable, relevant, uniform, and in a form that permits systematic analysis by the Department;

''(ix) review and report to the Secretary on the sources and reliability of—

''(I) the statistics proposed by the heads of the operating administrations of the Department to measure outputs and outcomes as required under the Government Performance and Results Act of 1993 (Public Law 103–62;107 Stat. 285); and

''(II) at the request of the Secretary, any other data collected or statistical information published by the heads of the operating administrations of the Department; and

''(x) ensure that the statistics published under this section are readily accessible to the public.

''(c) ACCESS TO FEDERAL DATA.—In carrying out subsection (b)(3)(B)(ii), the Director shall be given access to all safety data that the Director determines necessary to carry out that subsection that is held by the Department or any other Federal agency.

"§ 6303. Intermodal transportation database

''(a) IN GENERAL.—In consultation with the Under Secretary Transportation for Policy, the Assistant Secretaries of the Department, and the heads of the operating administrations of the Department, the Director shall establish and maintain a transportation database for all modes of transportation.

''(b) USE.—The database shall be suitable for analyses carried out by the Federal Government, the States, and metropolitan planning organizations.

''(c) CONTENTS.—The database shall include—

''(1) information on the volumes and patterns of movement of goods, including local, interregional, and international movement, by all modes of transportation, intermodal combination, and relevant classification;

''(2) information on the volumes and patterns of movement of people, including local, interregional, and international movements, by all modes of transportation (including bicycle and pedestrian modes), intermodal combination, and relevant classification;

''(3) information on the location and connectivity of transportation facilities and services; and

''(4) a national accounting of expenditures and capital stocks on each mode of transportation and intermodal combination.

"§ 6304. National transportation library

''(a) PURPOSE AND ESTABLISHMENT.—To support the information management and decisionmaking needs of transportation officials at the Federal, State, and local levels, there is established in the Bureau of Transportation Statistics a National Transportation Library that shall—

''(1) be headed by an individual who is highly qualified in library and information science;

''(2) acquire, preserve, and manage transportation information and information products and services for use by the Department, other Federal agencies, and the general public;

''(3) provide reference and research assistance;

''(4) serve as a central depository for research results and technical publications of the Department;

''(5) provide a central clearinghouse for transportation data and information of the Federal Government;

''(6) serve as coordinator and policy lead for transportation information access;

''(7) provide transportation information and information products and services to—

''(A) the Department;

''(B) other Federal agencies;

''(C) public and private organizations; and

''(D) individuals, within the United States as well as internationally;

''(8) coordinate efforts among, and cooperate with, transportation libraries, information providers, and technical assistance centers, with the goal of developing a comprehensive transportation information and knowledge network that supports the activities described in section 6302(b)(3)(B); and

''(9) engage in such other activities as the Director determines to be necessary and as the resources of the Library permit.

''(b) ACCESS.—The Director shall publicize, facilitate, and promote access to the information products and services described in subsection (a), with the goal of improving the ability of the transportation community to share information and the ability of the Director to make statistics and other information readily accessible as required under section 6302(b)(3)(B)(x).

''(c) AGREEMENTS.—

''(1) IN GENERAL.—To carry out this section, the Director may enter into agreements with, provide grants to, and receive amounts from, any—

''(A) State or local government;

''(B) organization;

''(C) business; or

''(D) individual.

''(2) CONTRACTS, GRANTS, AND AGREEMENTS.—The Library may initiate and support specific information and data management, access, and exchange activities relating to the strategic goals of the Department, knowledge networking, and national and international cooperation, by entering into contracts or other agreements or providing grants.

''(3) AMOUNTS.—Any amounts received by the Library as payment for library products and services or other activities shall be made available to the Director to carry out this section and remain available until expended.

"§ 6305. Advisory council on transportation statistics

''(a) IN GENERAL.—The Director shall establish and consult with an advisory council on transportation statistics.

''(b) FUNCTION.—The function of the advisory council established under this subsection is to advise the Director on—

''(1) the quality, reliability, consistency, objectivity, and relevance of transportation statistics and analyses collected, supported, or disseminated by the Bureau and the Department; and

''(2) methods to encourage cooperation and interoperability of transportation data collected by the Bureau, the operating administrations of the Department, States, local governments, metropolitan planning organizations, and private sector entities.

''(c) MEMBERSHIP.—The advisory council shall be composed of not fewer than 9 and not more than 11 members appointed by the Director, who shall not be officers or employees of the United States.

''(d) TERMS OF APPOINTMENT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), members of the advisory council shall be appointed to staggered terms not to exceed 3 years.

''(2) ADDITIONAL TERMS.—A member may be renominated for 1 additional 3-year term.

''(3) PREVIOUS MEMBERS.—A member serving on an advisory council on transportation statistics on the day before the date of enactment of the MAP-21 shall serve until the end of the appointed term of the member.

''(e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the advisory council established under this section, except that section 14 of that Act shall not apply.

"§ 6306. Transportation statistical collection, analysis, and dissemination

''To ensure that all transportation statistical collection, analysis, and dissemination is carried out in a coordinated manner, the Director may—

''(1) use the services, equipment, records, personnel, information, and facilities of other Federal agencies, or State, local, and private agencies and instrumentalities, subject to the conditions that the applicable agency or instrumentality consents to that use;

''(2) enter into agreements with the agencies and instrumentalities described in paragraph (1) for purposes of data collection and analysis;

''(3) confer and cooperate with foreign governments, international organizations, and State, municipal, and other local agencies;

''(4) request such information, data, and reports from any Federal agency as the Director determines necessary to carry out this chapter;

''(5) encourage replication, coordination, and sharing of information among transportation agencies regarding information systems, information policy, and data; and

''(6) confer and cooperate with Federal statistical agencies as the Director determines necessary to carry out this chapter, including by entering into cooperative data sharing agreements in conformity with all laws and regulations applicable to the disclosure and use of data.

"§ 6307. Furnishing of information, data, or reports by Federal agencies

''(a) IN GENERAL.—Except as provided in subsection (b), a Federal agency requested to furnish information, data, or reports by the Director under section 6302(b)(3)(B) shall provide the information to the Director.

''(b) PROHIBITION ON CERTAIN DISCLOSURES.—

''(1) IN GENERAL.—An officer, employee, or contractor of the Bureau may not—

''(A) make any disclosure in which the data provided by an individual or organization under section 6302(b)(3)(B) can be identified;

''(B) use the information provided under section 6302(b)(3)(B) for a nonstatistical purpose; or

''(C) permit anyone other than an individual authorized by the Director to examine any individual report provided under section 6302(b)(3)(B).

''(2) COPIES OF REPORTS.—

''(A) IN GENERAL.—No department, bureau, agency, officer, or employee of the United States (except the Director in carrying out this chapter) may require, for any reason, a copy of any report that has been filed under section 6302(b)(3)(B) with the Bureau or retained by an individual respondent.

''(B) LIMITATION ON JUDICIAL PROCEEDINGS.—A copy of a report described in subparagraph (A) that has been retained by an individual respondent or filed with the Bureau or any of the employees, contractors, or agents of the Bureau—

''(i) shall be immune from legal process; and

''(ii) shall not, without the consent of the individual concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceedings.

''(C) APPLICABILITY.—This paragraph shall apply only to reports that permit information concerning an individual or organization to be reasonably determined by direct or indirect means.

''(3) INFORMING RESPONDENT OF USE OF DATA.—If the Bureau is authorized by statute to collect data or information for a nonstatistical purpose, the Director shall clearly distinguish the collection of the data or information, by rule and on the collection instrument, in a manner that informs the respondent who is requested or required to supply the data or information of the nonstatistical purpose.

''(c) TRANSPORTATION AND TRANSPORTATION-RELATED DATA ACCESS.—Except as expressly prohibited by law, the Director shall have access to any transportation and transportation-related information in the possession of any Federal agency.

"§ 6308. Proceeds of data product sales

''Notwithstanding section 3302 of title 31, amounts received by the Bureau from the sale of data products for necessary expenses incurred may be credited to the Highway Trust Fund (other than the Mass Transit Account) for the purpose of reimbursing the Bureau for those expenses.

"§ 6309. Information collection

''As the head of an independent Federal statistical agency, the Director may consult directly with the Office of Management and Budget concerning any survey, questionnaire, or interview that the Director considers necessary to carry out the statistical responsibilities of this chapter.

"§ 6310. National transportation atlas database

''(a) IN GENERAL.—The Director shall develop and maintain a national transportation atlas database that is comprised of geospatial databases that depict—

''(1) transportation networks;

''(2) flows of people, goods, vehicles, and craft over the transportation networks; and

''(3) social, economic, and environmental conditions that affect or are affected by the transportation networks.

''(b) INTERMODAL NETWORK ANALYSIS.—The databases referred to in subsection (a) shall be capable of supporting intermodal network analysis.

"§ 6311. Limitations on statutory construction

''Nothing in this chapter—

''(1) authorizes the Bureau to require any other Federal agency to collect data; or

''(2) alters or diminishes the authority of any other officer of the Department to collect and disseminate data independently.

"§ 6312. Research and development grants

''The Secretary may make grants to, or enter into cooperative agreements or contracts with, public and nonprofit private entities (including State transportation departments, metropolitan planning organizations, and institutions of higher education) for—

''(1) investigation of the subjects described in section 6302(b)(3)(B)(vi);

''(2) research and development of new methods of data collection, standardization, management, integration, dissemination, interpretation, and analysis;

''(3) demonstration programs by States, local governments, and metropolitan planning organizations to coordinate data collection, reporting, management, storage, and archiving to simplify data comparisons across jurisdictions;

''(4) development of electronic clearinghouses of transportation data and related information, as part of the Library; and

''(5) development and improvement of methods for sharing geographic data, in support of the database under section 6310 and the National Spatial Data Infrastructure developed under Executive Order 12906 (59 Fed. Reg. 17671) (or a successor Executive Order).

"§ 6313. Transportation statistics annual report

''The Director shall submit to the President and Congress a transportation statistics annual report, which shall include—

''(1) information on the progress of the Director in carrying out the duties described in section 6302(b)(3)(B);

''(2) documentation of the methods used to obtain and ensure the quality of the statistics presented in the report; and

''(3) any recommendations of the Director for improving transportation statistical information.

"§ 6314. Mandatory response authority for freight data collection.

''[(a) IN GENERAL.—An owner, official, agent, person]

''*(a) FREIGHT DATA COLLECTION.—*

''*(1) IN GENERAL.—An owner, official, agent, person* in charge, or assistant to the person in charge of [any] *a* freight corporation, company, business, institution, establishment, or organization *described in paragraph (2)* shall be fined in accordance with subsection (b) if that individual neglects or refuses, when requested by the Director or other authorized officer, employee, or contractor of the Bureau to submit data under section 6302(b)(3)(B)—

[''(1) to answer completely and correctly to the]

''*(A) to answer completely and correctly to the* best knowledge of that individual all questions relating to the corporation, company, business, institution, establishment, or other organization; or

[''(2) to make available records or statistics in]

''*(B) to make available records or statistics in* the official custody of the individual.

''*(2) DESCRIPTION OF ENTITIES.—A freight corporation, company, business, institution, establishment, or organization referred to in paragraph (1) is a corporation, company, business, institution, establishment, or organization that—*

''*(A) receives Federal funds relating to the freight program; and*

''*(B) has consented to be subject to a fine under this subsection on—*

''(i) refusal to supply any data requested; or

''(ii) failure to respond to a written request.

''(b) FINES.—

''(1) IN GENERAL.—Subject to paragraph (2), an individual described in subsection (a) shall be fined not more than $500.

''(2) WILLFUL ACTIONS.—If an individual willfully gives a false answer to a question described in subsection (a)(1), the individual shall be fined not more than $10,000.''.

(b) RULES OF CONSTRUCTION.—If the provisions of section 111 of title 49, United States Code, are transferred to chapter 63 of that title, the following rules of construction apply:

(1) For purposes of determining whether 1 provision of law supersedes another based on enactment later in time, a chapter 63 provision is deemed to have been enacted on the date of enactment of the corresponding section 111 provision.

(2) A reference to a section 111 provision, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding chapter 63 provision.

(3) A regulation, order, or other administrative action in effect under a section 111 provision continues in effect under the corresponding chapter 63 provision.

(4) An action taken or an offense committed under a section 111 provision is deemed to have been taken or committed under the corresponding chapter 63 provision.

(c) CONFORMING AMENDMENTS.—

(1) REPEAL.—Section 111 of title 49, United States Code, is repealed, and the item relating to section 111 in the analysis of chapter 1 of that title is deleted.

(2) ANALYSIS OF SUBTITLE III.—The analysis for subtitle III of title 49, United States Code, is amended by inserting after the items for chapter 61 the following:

''Chapter 63. Bureau of Transportation Statistics ..... ''.

SEC. 2211. ADMINISTRATIVE AUTHORITY.

Section 112 of title 49, United States Code, is amended by adding at the end the following:

''(f) PROMOTIONAL AUTHORITY.—Amounts authorized to be appropriated for the administration and operation of the Research and Innovative Technology Administration may be used to purchase promotional items of nominal value for use by the Administrator of the Research and Innovative Technology Administration in the recruitment of individuals and promotion of the programs of the Administration.

''(g) PROGRAM EVALUATION AND OVERSIGHT.—For each of fiscal years 2012 and 2013, the Administrator may expend not more than 1½ percent of the amounts authorized to be appropriated for the administration and operation of the Research and Innovative Technology Administration to carry out the coordination, evaluation, and oversight of the programs administered by the Administration.

''(h) COLLABORATIVE RESEARCH AND DEVELOPMENT.—

''(1) IN GENERAL.—To encourage innovative solutions to multimodal transportation problems and stimulate the deployment of new technology, the Administrator may carry out, on a cost-shared basis, collaborative research and development with—

''(A) non-Federal entities, including State and local governments, foreign governments, institutions of higher education, corporations, institutions, partnerships, sole proprietorships, and trade associations that are incorporated or established under the laws of any State;

''(B) Federal laboratories; and

''(C) other Federal agencies.

''(2) COOPERATION, GRANTS, CONTRACTS, AND AGREEMENTS.—Notwithstanding any other provision of law, the Administrator may directly initiate contracts, grants, cooperative research and development agreements (as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)), and other agreements to fund, and accept funds from, the Transportation Research Board of the National Research Council of the National Academy of Sciences, State departments of transportation, cities, counties, institutions of higher education, associations, and the agents of those entities to carry out joint transportation research and technology efforts.

''(3) FEDERAL SHARE.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Federal share of the cost of an activity carried out under paragraph (2) shall not exceed 50 percent.

''(B) EXCEPTION.—If the Secretary determines that the activity is of substantial public interest or benefit, the Secretary may approve a greater Federal share.

''(C) NON-FEDERAL SHARE.—All costs directly incurred by the non-Federal partners, including personnel, travel, facility, and hardware development costs, shall be credited toward the non-Federal share of the cost of an activity described in subparagraph (A).

''(4) USE OF TECHNOLOGY.—The research, development, or use of a technology under a contract, grant, cooperative research and development agreement, or other agreement entered into under this subsection, including the terms under which the technology may be licensed and the resulting royalties may be distributed, shall be subject to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

''(5) WAIVER OF ADVERTISING REQUIREMENTS.—Section 3709 of the Revised Statutes (41 U.S.C. 5) shall not apply to a contract, grant, or other agreement entered into under this section.''.

SEC. 2212. TRANSPORTATION RESEARCH AND DEVELOPMENT STRATEGIC PLANNING.

Section 508(a)(2) of title 23, United States Code, is amended by striking subparagraph (A) and inserting the following:

''(A) describe the primary purposes of the transportation research and development program, which shall include, at a minimum—

''(i) promoting safety;

''(ii) reducing congestion and improving mobility;

''(iii) protecting and enhancing the environment;

''(iv) preserving the existing transportation system;

''(v) improving the durability and extending the life of transportation infrastructure; and

''(vi) improving goods movement;''.

SEC. 2213. NATIONAL ELECTRONIC VEHICLE CORRIDORS AND RECHARGING INFRASTRUCTURE NETWORK.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish a stakeholder-driven process to develop a plan and map of a potential national network of electric vehicle corridors and recharging infrastructure.

(b) REQUIREMENTS.—The plan under subsection (a) shall—

(1) project the near- and long-term need for and location of electric vehicle refueling infrastructure at strategic locations across all major national highways, roads, and corridors;

(2) identify infrastructure and standardization needs for electricity providers, infrastructure providers, vehicle manufacturers, and electricity purchasers; and

(3) establish an aspirational goal of achieving strategic deployment of electric vehicle infrastructure by 2020.

(c) STAKEHOLDERS.—In developing the plan under subsection (a), the Secretary shall involve, on a voluntary basis, stakeholders that include—

(1) the heads of other Federal agencies;

(2) State and local officials;

(3) representatives of—

(A) energy utilities;

(B) the vehicles industry;

(C) the freight and shipping industry;

(D) clean technology firms;

(E) the hospitality industry;

(F) the restaurant industry; and

(G) highway rest stop vendors; and

(4) such other stakeholders as the Secretary determines to be necessary.

Subtitle C—[Funding] *Intelligent Transportation Systems Research*

SEC. 2301. USE OF FUNDS FOR ITS ACTIVITIES.

Section 513 of title 23, United States Code, is amended to read as follows:

''§ 513. Use of funds for ITS activities.

''(a) DEFINITIONS.—In this section, the following definitions apply:

''(1) ELIGIBLE ENTITY.—The term 'eligible entity' means a State or local government, tribal government, transit agency, public toll authority, metropolitan planning organization, other political subdivision of a State or local government, or a multistate or multijurisdictional group applying through a single lead applicant.

''(2) MULTIJURISDICTIONAL GROUP.—The term 'multijurisdictional group' means a combination of State governments, local governments, metropolitan planning agencies, transit agencies, or other political subdivisions of a State that—

''(A) have signed a written agreement to implement an activity that meets the grant criteria under this section; and

''(B) is comprised of at least 2 members, each of whom is an eligible entity.

''(b) PURPOSE.—The purpose of this section is to develop, administer, communicate, and promote the use of products of research, technology, and technology transfer programs.

''(c) ITS DEPLOYMENT INCENTIVES.—

''(1) IN GENERAL.—The Secretary may—

''(A) develop and implement incentives to accelerate deployment of ITS technologies and services within all funding programs authorized by the MAP-21; and

''(B) for each fiscal year, use amounts made available to the Secretary to carry out intelligent transportation systems outreach, including through the use of websites, public relations, displays, tours, and brochures.

''(2) COMPREHENSIVE PLAN.—To carry out this section, the Secretary shall develop a detailed and comprehensive plan that addresses the manner in which incentives may be adopted through the existing deployment activities carried out by surface transportation modal administrations.

''(d) SYSTEM OPERATIONS AND ITS DEPLOYMENT GRANT PROGRAM.—

''(1) ESTABLISHMENT.—The Secretary shall establish a competitive grant program to accelerate the deployment, operation, systems management, intermodal integration, and interoperability of the ITS program and ITS-enabled operational strategies—

''(A) to measure and improve the performance of the surface transportation system;

''(B) to reduce traffic congestion and the economic and environmental impacts of traffic congestion;

''(C) to minimize fatalities and injuries;

''(D) to enhance mobility of people and goods;

''(E) to improve traveler information and services; and

''(F) to optimize existing roadway capacity.

''(2) APPLICATION.—To be considered for a grant under this subsection, an eligible entity shall submit an application to the Secretary that includes—

''(A) a plan to deploy and provide for the long-term operation and maintenance of intelligent transportation systems to improve safety, efficiency, system performance, and return on investment, such as—

''(i) real-time integrated traffic, transit, and multimodal transportation information;

''(ii) advanced traffic, freight, parking, and incident management systems;

''(iii) advanced technologies to improve transit and commercial vehicle operations;

''(iv) synchronized, adaptive, and transit preferential traffic signals;

''(v) advanced infrastructure condition assessment technologies; and

''(vi) other technologies to improve system operations, including ITS applications necessary for multimodal systems integration and for achieving performance goals;

''(B) quantifiable system performance improvements, including—

''(i) reductions in traffic-related crashes, congestion, and costs;

''(ii) optimization of system efficiency; and

''(iii) improvement of access to transportation services;

''(C) quantifiable safety, mobility, and environmental benefit projections, including data driven estimates of the manner in which the project will improve the transportation system efficiency and reduce traffic congestion in the region;

''(D) a plan for partnering with the private sector, including telecommunications industries and public service utilities, public agencies (including multimodal and multijurisdictional entities), research institutions, organizations representing transportation and technology leaders, and other transportation stakeholders;

''(E) a plan to leverage and optimize existing local and regional ITS investments; and

''(F) a plan to ensure interoperability of deployed technologies with other tolling, traffic management, and intelligent transportation systems.

''(3) SELECTION.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of the MAP-21, the Secretary may provide grants to eligible entities under this section.

''(B) GEOGRAPHIC DIVERSITY.—In awarding a grant under this section, the Secretary shall ensure, to the maximum extent practicable, that grant recipients represent diverse geographical areas of the United States, including urban, suburban, and rural areas.

''(C) NON-FEDERAL SHARE.—In awarding a grant under the section, the Secretary shall give priority to grant recipients that demonstrate an ability to contribute a significant non-Federal share to the cost of carrying out the project for which the grant is received.

''(4) ELIGIBLE USES.—Projects for which grants awarded under this section may be used include—

''(A) the establishment and implementation of ITS and ITS-enabled operations strategies that improve performance in the areas of—

''(i) traffic operations;

''(ii) emergency response to surface transportation incidents;

''(iii) incident management;

''(iv) transit and commercial vehicle operations improvements;

''(v) weather event response management by State and local authorities;

''(vi) surface transportation network and facility management;

''(vii) construction and work zone management;

''(viii) traffic flow information;

''(ix) freight management; and

''(x) congestion management;

''(B) carrying out activities that support the creation of networks that link metropolitan and rural surface transportation systems into an integrated data network, capable of collecting, sharing, and archiving transportation system traffic condition and performance information;

''(C) the implementation of intelligent transportation systems and technologies that improve highway safety through information and communications systems linking vehicles, infrastructure, mobile devices, transportation users, and emergency responders;

''(D) the provision of services necessary to ensure the efficient operation and management of ITS infrastructure, including costs associated with communications, utilities, rent, hardware, software, labor, administrative costs, training, and technical services;

''(E) the provision of support for the establishment and maintenance of institutional relationships between transportation agencies, police, emergency medical services, private emergency operators, freight operators, shippers, [and public service utilities] *public service utilities,* and telecommunications providers;

''(F) carrying out multimodal and crossjurisdictional planning and deployment of regional transportation systems operations and management approaches; and

''(G) performing project evaluations to determine the costs, benefits, lessons learned, and future deployment strategies associated with the deployment of intelligent transportation systems.

''(5) REPORT TO SECRETARY.—For each fiscal year that an eligible entity receives a grant under this section, not later than 1 year after receiving that grant, each recipient shall submit a report to the Secretary that describes how the project has met the expectations projected in the deployment plan submitted with the application, including—

''(A) data on how the program has helped reduce traffic crashes, congestion, costs, and other benefits of the deployed systems;

''(B) data on the effect of measuring and improving transportation system performance through the deployment of advanced technologies;

''(C) the effectiveness of providing real-time integrated traffic, transit, and multimodal transportation information to the public that allows the public to make informed travel decisions; and

''(D) lessons learned and recommendations for future deployment strategies to optimize transportation efficiency and multimodal system performance.

''(6) REPORT TO CONGRESS.—Not later than 2 years after date on which the first grant is awarded under this section and annually thereafter for each fiscal year for which grants are awarded under this section, the Secretary shall submit to Congress a report that describes the effectiveness of the grant recipients in meeting the projected deployment plan goals, including data on how the grant program has—

''(A) reduced traffic-related fatalities and injuries;

''(B) reduced traffic congestion and improved travel time reliability;

''(C) reduced transportation-related emissions;

''(D) optimized multimodal system performance;

''(E) improved access to transportation alternatives;

''(F) provided the public with access to real-time integrated traffic, transit, and multimodal transportation information to make informed travel decisions;

''(G) provided cost savings to transportation agencies, businesses, and the traveling public; and

''(H) provided other benefits to transportation users and the general public.

''(7) ADDITIONAL GRANTS.—If the Secretary determines, based on a report submitted under paragraph (5), that a grant recipient is not complying with the established grant criteria, the Secretary may—

''(A) cease payment to the recipient of any remaining grant amounts; and

''(B) redistribute any remaining amounts to other eligible entities under this section.

''(8) NON-FEDERAL SHARE.—The Federal share of a grant under this section shall not exceed 50 percent of the cost of the project.

''(9) GRANT LIMITATION.—The Secretary may not award more than 10 percent of the amounts provided under this section to a single grant recipient in any fiscal year.

''(10) MULTIYEAR GRANTS.—Subject to availability of amounts, the Secretary may provide an eligible entity with grant amounts for a period of multiple fiscal years.

''(11) FUNDING.—Of the funds authorized to be appropriated to carry out the intelligent transportation system program under sections 512 through 518, not less than 50 percent of such funds shall be used to carry out this subsection.''.

SEC. 2302. GOALS AND PURPOSES.

(a) IN GENERAL.—Chapter 5 of title 23, United States Code, is amended by adding after section 513 the following:

''§ 514. Goals and purposes

''(a) GOALS.—The goals of the intelligent transportation system program include—

''(1) enhancement of surface transportation efficiency and facilitation of intermodalism and international trade to enable existing facilities to meet a significant portion of future transportation needs, including public access to employment, goods, and services and to reduce regulatory, financial, and other transaction costs to public agencies and system users;

''(2) achievement of national transportation safety goals, including enhancement of safe operation of motor vehicles and nonmotorized vehicles and improved emergency response to collisions, with particular emphasis on decreasing the number and severity of collisions;

''(3) protection and enhancement of the natural environment and communities affected by surface transportation, with particular emphasis on assisting State and local governments to achieve national environmental goals;

''(4) accommodation of the needs of all users of surface transportation systems, including operators of commercial motor vehicles, passenger motor vehicles, motorcycles, bicycles, and pedestrians (including individuals with disabilities); and

''(5) enhancement of national defense mobility and improvement of the ability of the United States to respond to security-related or other manmade emergencies and natural disasters.

''(b) PURPOSES.—The Secretary shall implement activities under the intelligent transportation system program, at a minimum—

''(1) to expedite, in both metropolitan and rural areas, deployment and integration of intelligent transportation systems for consumers of passenger and freight transportation;

''(2) to ensure that Federal, State, and local transportation officials have adequate knowledge of intelligent transportation systems for consideration in the transportation planning process;

''(3) to improve regional cooperation and operations planning for effective intelligent transportation system deployment;

''(4) to promote the innovative use of private resources in support of intelligent transportation system development;

''(5) to facilitate, in cooperation with the motor vehicle industry, the introduction of vehicle-based safety enhancing systems;

''(6) to support the application of intelligent transportation systems that increase the safety and efficiency of commercial motor vehicle operations;

''(7) to develop a workforce capable of developing, operating, and maintaining intelligent transportation systems;

''(8) to provide continuing support for operations and maintenance of intelligent transportation systems; and

''(9) to ensure a systems approach that includes cooperation among vehicles, infrastructure, and users.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 5 of title 23, United States Code, is amended by adding after the item relating to section 513 the following:

''514. Goals and purposes.''.

SEC. 2303. GENERAL AUTHORITIES AND REQUIREMENTS.

(a) IN GENERAL.—Chapter 5 of title 23, United States Code, is amended by adding after section 514 (as added by section 2302) the following:

''§ 515. General authorities and requirements

''(a) SCOPE.—Subject to the provisions of this chapter, the Secretary shall conduct an ongoing intelligent transportation system program—

''(1) to research, develop, and operationally test intelligent transportation systems; and

''(2) to provide technical assistance in the nationwide application of those systems as a component of the surface transportation systems of the United States.

''(b) POLICY.—Intelligent transportation system research projects and operational tests funded pursuant to this chapter shall encourage and not displace public-private partnerships or private sector investment in those tests and projects.

''(c) COOPERATION WITH GOVERNMENTAL, PRIVATE, AND EDUCATIONAL ENTITIES.—The Secretary shall carry out the intelligent transportation system program in cooperation with State and local governments and other public entities, the private sector firms of the United States, the Federal laboratories, and institutions of higher education, including historically Black colleges and universities and other minority institutions of higher education.

''(d) CONSULTATION WITH FEDERAL OFFICIALS.—In carrying out the intelligent transportation system program, the Secretary shall consult with the heads of other Federal agencies, as appropriate.

''(e) TECHNICAL ASSISTANCE, TRAINING, AND INFORMATION.—The Secretary may provide technical assistance, training, and information to State and local governments seeking to implement, operate, maintain, or evaluate intelligent transportation system technologies and services.

''(f) TRANSPORTATION PLANNING.—The Secretary may provide funding to support adequate consideration of transportation systems management and operations, including intelligent transportation systems, within metropolitan and statewide transportation planning processes.

''(g) INFORMATION CLEARINGHOUSE.—

''(1) IN GENERAL.—The Secretary shall—

''(A) maintain a repository for technical and safety data collected as a result of federally sponsored projects carried out under this chapter; and

''(B) make, on request, that information (except for proprietary information and data) readily available to all users of the repository at an appropriate cost.

''(2) AGREEMENT.—

''(A) IN GENERAL.—The Secretary may enter into an agreement with a third party for the maintenance of the repository for technical and safety data under paragraph (1)(A).

''(B) FEDERAL FINANCIAL ASSISTANCE.—If the Secretary enters into an agreement with an entity for the maintenance of the repository, the entity shall be eligible for Federal financial assistance under this section.

''(3) AVAILABILITY OF INFORMATION.—Information in the repository shall not be subject to sections 552 and 555 of title 5, United States Code.

''(h) ADVISORY COMMITTEE.—

''(1) IN GENERAL.—The Secretary shall establish an Advisory Committee to advise the Secretary on carrying out this chapter.

''(2) MEMBERSHIP.—The Advisory Committee shall have no more than 20 members, be balanced between metropolitan and rural interests, and include, at a minimum—

''(A) a representative from a State highway department;

''(B) a representative from a local highway department who is not from a metropolitan planning organization;

''(C) a representative from a State, local, or regional transit agency;

''(D) a representative from a metropolitan planning organization;

''(E) a private sector user of intelligent transportation system technologies;

''(F) an academic researcher with expertise in computer science or another information science field related to intelligent transportation systems, and who is not an expert on transportation issues;

''(G) an academic researcher who is a civil engineer;

''(H) an academic researcher who is a social scientist with expertise in transportation issues;

''(I) a representative from a nonprofit group representing the intelligent transportation system industry;

''(J) a representative from a public interest group concerned with safety;

''(K) a representative from a public interest group concerned with the impact of the transportation system on land use and residential patterns; and

''(L) members with expertise in planning, safety, telecommunications, utilities, and operations.

''(3) DUTIES.—The Advisory Committee shall, at a minimum, perform the following duties:

''(A) Provide input into the development of the intelligent transportation system aspects of the strategic plan under section 508.

''(B) Review, at least annually, areas of intelligent transportation systems research being considered for funding by the Department, to determine—

''(i) whether these activities are likely to advance either the state-of-the-practice or state-of-the-art in intelligent transportation systems;

''(ii) whether the intelligent transportation system technologies are likely to be deployed by users, and if not, to determine the barriers to deployment; and

''(iii) the appropriate roles for government and the private sector in investing in the research and technologies being considered.

''(4) REPORT.—Not later than February 1 of each year after the date of enactment of the MAP-21, the Secretary shall submit to Congress a report that includes—

''(A) all recommendations made by the Advisory Committee during the preceding calendar year;

''(B) an explanation of the manner in which the Secretary has implemented those recommendations; and

''(C) for recommendations not implemented, the reasons for rejecting the recommendations.

''(5) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Advisory Committee shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

''(i) REPORTING.—

''(1) GUIDELINES AND REQUIREMENTS.—

''(A) IN GENERAL.—The Secretary shall issue guidelines and requirements for the reporting and evaluation of operational tests and deployment projects carried out under this chapter.

''(B) OBJECTIVITY AND INDEPENDENCE.—The guidelines and requirements issued under subparagraph (A) shall include provisions to ensure the objectivity and independence of the reporting entity so as to avoid any real or apparent conflict of interest or potential influence on the outcome by parties to any such test or deployment project or by any other formal evaluation carried out under this chapter.

''(C) FUNDING.—The guidelines and requirements issued under subparagraph (A) shall establish reporting funding levels based on the size and scope of each test or project that ensure adequate reporting of the results of the test or project.

''(2) SPECIAL RULE.—Any survey, questionnaire, or interview that the Secretary considers necessary to carry out the reporting of any test, deployment project, or program assessment activity under this chapter shall not be subject to chapter 35 of title 44, United States Code.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 5 of title 23, United States Code, is amended by adding after the item relating to section 514 (as added by section 2302) the following:

''515. General authorities and requirements.''.

SEC. 2304. RESEARCH AND DEVELOPMENT.

(a) IN GENERAL.—Chapter 5 of title 23, United States Code, is amended by adding after section 515 (as added by section 2303) the following:

''§ 516. Research and development

''(a) IN GENERAL.—The Secretary shall carry out a comprehensive program of intelligent transportation system research and development, and operational tests of intelligent vehicles, intelligent infrastructure systems, and other similar activities that are necessary to carry out this chapter.

''(b) PRIORITY AREAS.—Under the program, the Secretary shall give higher priority to funding projects that—

''(1) enhance mobility and productivity through improved traffic management, incident management, transit management, freight management, road weather management, toll collection, traveler information, or highway operations systems and remote sensing products;

''(2) use interdisciplinary approaches to develop traffic management strategies and tools to address multiple impacts of congestion concurrently;

''(3) address traffic management, incident management, transit management, toll collection traveler information, or highway operations systems;

''(4) incorporate research on the impact of environmental, weather, and natural conditions on intelligent transportation systems, including the effects of cold climates;

''(5) enhance intermodal use of intelligent transportation systems for diverse groups, including for emergency and health-related services;

''(6) enhance safety through improved crash avoidance and protection, crash and other notification, commercial motor vehicle operations, and infrastructure-based or cooperative safety systems; or

''(7) facilitate the integration of intelligent infrastructure, vehicle, and control technologies.

''(c) FEDERAL SHARE.—The Federal share payable on account of any project or activity carried out under subsection (a) shall not exceed 80 percent.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 5 of title 23, United States Code, is amended by adding after the item relating to section 515 (as added by section 2304) the following:

''516. Research and development.''.

SEC. 2305. NATIONAL ARCHITECTURE AND STANDARDS.

(a) IN GENERAL.—Chapter 5 of title 23, United States Code, is amended by adding after section 516 (as added by section 2304) the following:

''§ 517. National architecture and standards.

''(a) IN GENERAL.—

''(1) DEVELOPMENT, IMPLEMENTATION, AND MAINTENANCE.—In accordance with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note; 110 Stat. 783; 115 Stat. 1241), the Secretary shall develop and maintain a national ITS architecture and supporting ITS standards and protocols to promote the use of systems engineering methods in the widespread deployment and evaluation of intelligent transportation systems as a component of the surface transportation systems of the United States.

''(2) INTEROPERABILITY AND EFFICIENCY.—To the maximum extent practicable, the national ITS architecture and supporting ITS standards and protocols shall promote interoperability among, and efficiency of, intelligent transportation systems and technologies implemented throughout the United States.

''(3) USE OF STANDARDS DEVELOPMENT ORGANIZATIONS.—In carrying out this section, the Secretary shall support the development and maintenance of standards and protocols using the services of such standards development organizations as the Secretary determines to be necessary and whose memberships are comprised of, and represent, the surface transportation and intelligent transportation systems industries.

''(b) STANDARDS FOR NATIONAL POLICY IMPLEMENTATION.—If the Secretary finds that a standard is necessary for implementation of a nationwide policy relating to user fee collection or other capability requiring nationwide uniformity, the Secretary, after consultation with stakeholders, may establish and require the use of that standard.

''(c) PROVISIONAL STANDARDS.—

''(1) IN GENERAL.—If the Secretary finds that the development or balloting of an intelligent transportation system standard jeopardizes the timely achievement of the objectives described in subsection (a), the Secretary may establish a provisional standard, after consultation with affected parties, using, to the maximum extent practicable, the work product of appropriate standards development organizations.

''(2) PERIOD OF EFFECTIVENESS.—A provisional standard established under paragraph (1) shall be published in the Federal Register and remain in effect until the appropriate standards development organization adopts and publishes a standard.

''(d) CONFORMITY WITH NATIONAL ARCHITECTURE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall ensure that intelligent transportation system projects carried out using amounts made available from the Highway Trust Fund, including amounts made available to deploy intelligent transportation systems, conform to the appropriate regional ITS architecture, applicable standards, and protocols developed under subsection (a) or (c).

''(2) DISCRETION OF THE SECRETARY.—The Secretary, at the discretion of the Secretary, may offer an exemption from paragraph (1) for projects designed to achieve specific research objectives outlined in the national intelligent transportation system program plan or the surface transportation research and development strategic plan developed under section 508.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 5 of title 23, United States Code, is amended by adding after the item relating to section 516 (as added by section 2304) the following:

''517. National architecture and standards.''.

SEC. 2306. 5.9 GHz VEHICLE-TO-VEHICLE AND VEHICLE-TO-INFRASTRUCTURE COMMUNICATIONS SYSTEMS DEPLOYMENT.

(a) IN GENERAL.—Chapter 5 of title 23, United States Code, is amended by adding after section 517 (as added by section 2305) the following:

''§ 518. 5.9 GHz vehicle-to-vehicle and vehicle-to-infrastructure communications systems deployment

''(a) IN GENERAL.—Not later than 3 years after the date of enactment of this section, the Secretary shall submit to the appropriate committees of Congress a report that—

''(1) describes a recommended implementation path for dedicated short-range communications technology and applications; and

''(2) includes guidance on the relationship of the proposed deployment of dedicated short-range communications to the National ITS Architecture and ITS Standards.

''(b) NATIONAL RESEARCH COUNCIL REVIEW.—The Secretary shall enter into an agreement with the National Research Council for the review by the National Research Council of the report described in subsection (a).''.

(b) CONFORMING AMENDMENT.—The analysis of chapter 5 of title 23, United States Code, is amended by adding after section 517 (as added by section 2305) the following:

''518. 5.9 GHz vehicle-to-vehicle and vehicle-to-infrastructure communications systems deployment.''.

TITLE III—AMERICA FAST FORWARD FINANCING INNOVATION

SEC. 3001. SHORT TITLE.

This title may be cited as the ''America Fast Forward Financing Innovation Act of 2011''.

SEC. 3002. TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT AMENDMENTS.

Sections 601 through 609 of title 23, United States Code, are amended to read as follows:

''§ 601. Generally applicable provisions

''(a) DEFINITIONS.—In this chapter, the following definitions apply:

''(1) ELIGIBLE PROJECT COSTS.—The term 'eligible project costs' means amounts substantially all of which are paid by, or for the account of, an obligor in connection with a project, including the cost of—

''(A) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;

''(B) construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land relating to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and

''(C) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

''(2) FEDERAL CREDIT INSTRUMENT.—The term 'Federal credit instrument' means a secured loan, loan guarantee, or line of credit authorized to be made available under this chapter with respect to a project.

''(3) INVESTMENT-GRADE RATING.—The term 'investment-grade rating' means a rating of BBB minus, Baa3, bbb minus, BBB (low), or higher assigned by a rating agency to project obligations.

''(4) LENDER.—The term 'lender' means any non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.)), including—

''(A) a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986) that is a qualified institutional buyer; and

''(B) a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) that is a qualified institutional buyer.

''(5) LETTER OF INTEREST.—The term 'letter of interest' means a letter submitted by a potential applicant prior to an application for credit assistance in a format prescribed by the Secretary on the website of the TIFIA program, which—

''(A) describes the project and the location, purpose, and cost of the project;

''(B) outlines the proposed financial plan, including the requested credit assistance and the proposed obligor;

''(C) provides a status of environmental review; and

''(D) provides information regarding satisfaction of other eligibility requirements of the TIFIA program.

''(6) LINE OF CREDIT.—The term ''line of credit'' means an agreement entered into by the Secretary with an obligor under section 604 to provide a direct loan at a future date upon the occurrence of certain events.

''(7) LIMITED BUYDOWN.—The term 'limited buydown' means, subject to the conditions described in section 603(b)(4)(C), a buydown of the interest rate by the Secretary and by the obligor if the interest rate has increased between—

''(A)(i) the date on which a project application acceptable to the Secretary is submitted; or

''(ii) the date on which the Secretary entered into a master credit agreement; and

''(B) the date on which the Secretary executes the Federal credit instrument.

''(8) LOAN GUARANTEE.—The term 'loan guarantee' means any guarantee or other pledge by the Secretary to pay all or part of the principal of and interest on a loan or other debt obligation issued by an obligor and funded by a lender.

''(9) MASTER CREDIT AGREEMENT.—The term 'master credit agreement' means an agreement to extend credit assistance for a program of projects secured by a common security pledge (which shall receive an investment grade rating from a rating agency), or for a single project covered under section 602(b)(2) that would—

''(A) make contingent commitments of 1 or more secured loans or other Federal credit instruments at future dates, *subject to the availability of future funds being made available to carry out this chapter*;

''(B) establish the maximum amounts and general terms and conditions of the secured loans or other Federal credit instruments;

''(C) identify the 1 or more dedicated non-Federal revenue sources that will secure the repayment of the secured loans or secured Federal credit instruments;

''(D) provide for the obligation of funds for the secured loans or secured Federal credit instruments after all requirements have been met for the projects subject to the master credit agreement, including—

''(i) completion of an environmental impact statement or similar analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); [and]

''(ii) compliance with such other requirements as are specified in section 602(c); and

''(iii) the availibility of funds to carry out this chapter; and

''(E) require that contingent commitments result in a financial close and obligation of credit assistance not later than 3 years after the date of entry into the master credit agreement, or release of the commitment, unless otherwise extended by the Secretary.

''(10) OBLIGOR.—The term 'obligor' means a party that—

''(A) is primarily liable for payment of the principal of or interest on a Federal credit instrument; and

''(B) may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

''(11) PROJECT.—The term 'project' means—

''(A) any surface transportation project eligible for Federal assistance under this title or chapter 53 of title 49;

''(B) a project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible;

''(C) a project for intercity passenger bus or rail facilities and vehicles, including facilities and vehicles owned by the National Railroad Passenger Corporation and components of magnetic levitation transportation systems; and

''(D) a project that—

''(i) is a project—

''(I) for a public freight rail facility or a private facility providing public benefit for highway users by way of direct freight interchange between highway and rail carriers;

''(II) for an intermodal freight transfer facility;

''(III) for a means of access to a facility described in subclause (I) or (II);

''(IV) for a service improvement for a facility described in subclause (I) or (II) (including a capital investment for an intelligent transportation system); or

''(V) that comprises a series of projects described in subclauses (I) through (IV) with the common objective of improving the flow of goods;

''(ii) may involve the combining of private and public sector funds, including investment of public funds in private sector facility improvements;

''(iii) if located within the boundaries of a port terminal, includes only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port; and

''(iv) is composed of related highway, surface transportation, transit, rail, or intermodal capital improvement projects eligible for assistance under this subsection in order to meet the eligible project cost threshold under section 602, by grouping related projects together for that purpose, on the condition that the credit assistance for the projects is secured by a common pledge.

''(12) PROJECT OBLIGATION.—The term 'project obligation' means any note, bond, debenture, or other debt obligation issued by an obligor in connection with the financing of a project, other than a Federal credit instrument.

''(13) RATING AGENCY.—The term 'rating agency' means a credit rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as that term is defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).

''(14) RURAL INFRASTRUCTURE PROJECT.—The term 'rural infrastructure project' means a surface transportation infrastructure project located in any area other than an urbanized area that has a population of greater than 200,000 inhabitants.

''(15) SECURED LOAN.—The term 'secured loan' means a direct loan or other debt obligation issued by an obligor and funded by the Secretary in connection with the financing of a project under section 603.

''(16) STATE.—The term 'State' has the meaning given the term in section 101.

''(17) SUBSIDY AMOUNT.—The term 'subsidy amount' means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a Federal credit instrument, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

''(18) SUBSTANTIAL COMPLETION.—The term 'substantial completion' means—

''(A) the opening of a project to vehicular or passenger traffic; or

''(B) a comparable event, as determined by the Secretary and specified in the credit agreement.

''(19) TIFIA PROGRAM.—The term 'TIFIA program' means the transportation infrastructure finance and innovation program of the Department.

''(20) CONTINGENT COMMITMENT.—The term 'contingent commitment' means a commitment to obligate an amount from future available budget authority that is—

''(A) contingent upon those funds being made available in law at a future date; and

''(B) not an obligation of the Federal Government.

''(b) TREATMENT OF CHAPTER.—For purposes of this title, this chapter shall be treated as being part of chapter 1.

''§ 602. Determination of eligibility and project selection

''(a) ELIGIBILITY.—A project shall be eligible to receive credit assistance under this chapter if the entity proposing to carry out the project submits a letter of interest prior to submission of a formal application for the project, and the project meets the following criteria:

''(1) CREDITWORTHINESS.—

''(A) IN GENERAL.—The project shall satisfy applicable creditworthiness standards, which, at a minimum, includes—

''(i) a rate covenant, if applicable;

''(ii) adequate coverage requirements to ensure repayment;

''(iii) an investment grade rating from at least 2 rating agencies on debt senior to the Federal credit instrument; and

''(iv) a rating from at least 2 rating agencies on the Federal credit instrument, subject to the condition that, with respect to [clauses (ii) and] *clause* (iii), if the senior debt and Federal credit instrument is for an amount less than $75,000,000 or for a rural infrastructure project or intelligent transportation systems project, 1 rating agency opinion for each of the senior debt and Federal credit instrument shall be sufficient.

''(B) SENIOR DEBT.—Notwithstanding subparagraph (A), in a case in which the Federal credit instrument is the senior debt, the Federal credit instrument shall be required to receive an investment grade rating from at least 2 rating agencies, unless the credit instrument is for a rural infrastructure project or intelligent transportation systems project, in which case 1 rating agency opinion shall be sufficient.

''(2) INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.—The project shall satisfy the applicable planning and programming requirements of sections 134 and 135 at such time as an agreement to make available a Federal credit instrument is entered into under this chapter.

''(3) APPLICATION.—A State, local government, public authority, public-private partnership, or any other legal entity undertaking the project and authorized by the Secretary, shall submit a project application acceptable to the Secretary.

''(4) ELIGIBLE PROJECT COSTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), to be eligible for assistance under this chapter, a project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of—

''(i)(I) $50,000,000; or

''(II) in the case of a rural infrastructure project, $25,000,000; or

''(ii) 33⅓ percent of the amount of Federal highway assistance funds apportioned for the most recently completed fiscal year to the State in which the project is located.

''(B) INTELLIGENT TRANSPORTATION SYSTEM PROJECTS.—In the case of a project principally involving the installation of an intelligent transportation system, eligible project costs shall be reasonably anticipated to equal or exceed $15,000,000.

''(5) DEDICATED REVENUE SOURCES.—The Federal credit instrument shall be repayable, in whole or in part, from tolls, user fees, or other dedicated revenue sources that also secure the project obligations.

''(6) PUBLIC SPONSORSHIP OF PRIVATE ENTITIES.—In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking shall be publicly sponsored as provided in paragraph (2).

''(b) SELECTION AMONG ELIGIBLE PROJECTS.—

''(1) ESTABLISHMENT.—The Secretary shall establish a rolling application process in which projects that are eligible to receive credit assistance under subsection (a) shall receive credit assistance on terms acceptable to the Secretary, if adequate funds are available to cover the subsidy costs associated with the Federal credit instrument.

''(2) ADEQUATE FUNDING NOT AVAILABLE.—

[''(A) *IN GENERAL.*—If the Secretary fully obligates funding to eligible projects in a given fiscal year, and adequate funding is not available to fund a credit instrument, a project sponsor of an eligible project may elect to enter into a master credit agreement and wait until the following fiscal year *or until additional funds are available* to receive credit assistance[, or pay its own credit subsidy to permit an obligation.

''(B) USE OF FUNDS.—A project sponsor may use *non-Federal funds or* any eligible funds apportioned under chapter 1 of this title or chapter 53 of title 49 to pay a credit subsidy described in subparagraph (A).]

''(3) PRELIMINARY RATING OPINION LETTER.—The Secretary shall require each project applicant to provide a preliminary rating opinion letter from at least 1 rating agency—

''(A) indicating that the senior obligations of the project, which may be the Federal credit instrument, have the potential to achieve an investment-grade rating; and

''(B) including a preliminary rating opinion on the Federal credit instrument.

''(c) FEDERAL REQUIREMENTS.—

''(1) IN GENERAL.—In addition to the requirements of this title for highway projects, chapter 53 of title 49 for transit projects, and section 5333(a) of title 49 for rail projects, the following provisions of law shall apply to funds made available under this chapter and projects assisted with the funds:

''(A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

''(B) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(C) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

''(2) NEPA.—No funding shall be obligated for a project that has not received an environmental Categorical Exclusion, Finding of No Significant Impact, or Record of Decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''§ 603. Secured loans

''(a) IN GENERAL.—

''(1) AGREEMENTS.—Subject to paragraphs (2) through (4), the Secretary may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used—

''(A) to finance eligible project costs of any project selected under section 602;

''(B) to refinance interim construction financing of eligible project costs of any project selected under section 602; **[**or**]**

''(C) to refinance existing loan agreements for rural infrastructure projects; or

''**[**(C)**]***(D)* to refinance long-term project obligations or Federal credit instruments if the refinancing provides additional funding capacity for the completion, enhancement, or expansion of any project that—

''(i) is selected under section 602; or

''(ii) otherwise meets the requirements of section 602.

''(2) LIMITATION ON REFINANCING OF INTERIM CONSTRUCTION FINANCING.—A loan under paragraph (1) shall not refinance interim construction financing under paragraph (1)(B) later than 1 year after the date of substantial completion of the project.

''(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget, shall determine an appropriate capital reserve subsidy amount for each secured loan, taking into account each rating letter provided by an agency under section 602(b)(3)(B).

''(b) TERMS AND LIMITATIONS.—

''(1) IN GENERAL.—A secured loan under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate.

''(2) MAXIMUM AMOUNT.—The amount of the secured loan shall not exceed the lesser of 49 percent of the reasonably anticipated eligible project costs or, if the secured loan does not receive an investment grade rating, the amount of the senior project obligations.

''(3) PAYMENT.—The secured loan—

''(A) shall—

''(i) be payable, in whole or in part, from tolls, user fees, or other dedicated revenue sources that also secure the senior project obligations; and

''(ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

''(B) may have a lien on revenues described in subparagraph (A) subject to any lien securing project obligations.

''(4) INTEREST RATE.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the interest rate on the secured loan shall be not less than the yield on United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement.

''(B) RURAL INFRASTRUCTURE PROJECTS.—A loan offered to a rural infrastructure project under this chapter shall be at ½ of the Treasury Rate.

''(C) LIMITED BUYDOWNS.—A limited buydown is subject to the following conditions:

''(i) The interest rate under the agreement may not be lowered by more than the lower of—

''(I) 1½ percentage points (150 basis points); or

''(II) the amount of the increase in the interest rate.

''(ii) The Secretary may pay up to 50 percent of the cost of the limited buydown, and the obligor shall pay the balance of the cost of the limited buydown.

''(iii) Not more than 5 percent of the funding made available annually to carry out this chapter may be used to carry out limited buydowns.

''(5) MATURITY DATE.—The final maturity date of the secured loan shall be the lesser of—

''(A) 35 years after the date of substantial completion of the project; or

''(B) if the useful life of the capital asset being financed is of a lesser period, the useful life of the asset.

''(6) NONSUBORDINATION.—

''(A) IN GENERAL.—Except as provided in **[**subparagraphs (B) and (C)**]** *subparagraph (B)*, the secured loan shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

''(B) PRE-EXISTING INDENTURE.—

''(i) IN GENERAL.—The Secretary shall waive subparagraph (A) for public agency borrowers that are financing ongoing capital programs and have outstanding senior bonds under a pre-existing indenture, if—

''(I) the secured loan is rated in the A-category or higher;

''(II) the secured loan is secured and payable from pledged revenues not affected by project performance, such as a tax-backed revenue pledge or a system-backed pledge of project revenues; and

''(III) the TIFIA program share of eligible project costs is 33 percent or less.

''(ii) LIMITATION.—If the Secretary waives the nonsubordination requirement under this subparagraph—

''(I) the maximum credit subsidy that will be paid by the Federal Government shall be limited to 10 percent of the principal amount of the secured loan; and

''(II) the obligor shall be responsible for paying the remainder of the subsidy cost.

''(7) FEES.—The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of making a secured loan under this section.

''(8) NON-FEDERAL SHARE.—The proceeds of a secured loan under this chapter may be used for any non-Federal share of project costs required under this title or chapter 53 of title 49, if the loan is repayable from non-Federal funds.

''(9) MAXIMUM FEDERAL INVOLVEMENT.—The total Federal assistance provided on a project receiving a loan under this chapter shall not exceed 80 percent of the total project cost.

''(c) REPAYMENT.—

''(1) SCHEDULE.—The Secretary shall establish a repayment schedule for each secured loan under this section based on the projected cash flow from project revenues and other repayment sources, and the useful life of the project.

''(2) COMMENCEMENT.—Scheduled loan repayments of principal or interest on a secured loan under this section shall commence not later than 5 years after the date of substantial completion of the project.

''(3) DEFERRED PAYMENTS.—

''(A) AUTHORIZATION.—If, at any time after the date of substantial completion of the project, the project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal and interest on the secured loan, the Secretary may, subject to subparagraph (C), allow the obligor to add unpaid principal and interest to the outstanding balance of the secured loan.

''(B) INTEREST.—Any payment deferred under subparagraph (A) shall—

''(i) continue to accrue interest in accordance with subsection (b)(4) until fully repaid; and

''(ii) be scheduled to be amortized over the remaining term of the loan.

''(C) CRITERIA.—

''(i) IN GENERAL.—Any payment deferral under subparagraph (A) shall be contingent on the project meeting criteria established by the Secretary.

''(ii) REPAYMENT STANDARDS.—The criteria established under clause (i) shall include standards for reasonable assurance of repayment.

''(4) PREPAYMENT.—

''(A) USE OF EXCESS REVENUES.—Any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and secured loan and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations may be applied annually to prepay the secured loan without penalty.

''(B) USE OF PROCEEDS OF REFINANCING.—The secured loan may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

''(d) SALE OF SECURED LOANS.—

''(1) IN GENERAL.—Subject to paragraph (2), as soon as practicable after substantial completion of a project and after notifying the obligor, the Secretary may sell to another entity or reoffer into the capital markets a secured loan for the project if the Secretary determines that the sale or reoffering can be made on favorable terms.

''(2) CONSENT OF OBLIGOR.—In making a sale or reoffering under paragraph (1), the Secretary may not change the original terms and conditions of the secured loan without the written consent of the obligor.

''(e) LOAN GUARANTEES.—

''(1) IN GENERAL.—The Secretary may provide a loan guarantee to a lender in lieu of making a secured loan if the Secretary determines that the budgetary cost of the loan guarantee is substantially the same as that of a secured loan.

''(2) TERMS.—The terms of a guaranteed loan shall be consistent with the terms set forth in this section for a secured loan, except that the rate on the guaranteed loan and any prepayment features shall be negotiated between the obligor and the lender, with the consent of the Secretary.

''§ 604. Lines of credit

''(a) IN GENERAL.—

''(1) AGREEMENTS.—Subject to paragraphs (2) through (4), the Secretary may enter into agreements to make available lines of credit to 1 or more obligors in the form of direct loans to be made by the Secretary at future dates on the occurrence of certain events for any project selected under section 602.

''(2) USE OF PROCEEDS.—The proceeds of a line of credit made available under this section shall be available to pay debt service on project obligations issued to finance eligible project costs, extraordinary repair and replacement costs, operation and maintenance expenses, and costs associated with unexpected Federal or State environmental restrictions.

''(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget and each rating agency providing a preliminary rating opinion letter under section 602(b)(3), shall determine an appropriate capital reserve subsidy amount for each line of credit,

taking into account the rating opinion letter.

''(4) INVESTMENT-GRADE RATING REQUIREMENT.—The funding of a line of credit under this section shall be contingent on the senior obligations of the project receiving an investment-grade rating from 2 rating agencies.

''(b) TERMS AND LIMITATIONS.—

''(1) IN GENERAL.—A line of credit under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate.

''(2) MAXIMUM AMOUNTS.—The total amount of the line of credit shall not exceed 33 percent of the reasonably anticipated eligible project costs.

''(3) DRAWS.—Any draw on the line of credit shall represent a direct loan and shall be made only if net revenues from the project (including capitalized interest but not including reasonably required financing reserves) are insufficient to pay the costs specified in subsection (a)(2).

''(4) INTEREST RATE.—Except as otherwise provided in subparagraphs (B) and (C) of section 603(b)(4), the interest rate on a direct loan resulting from a draw on the line of credit shall be not less than the yield on 30-year United States Treasury securities as of the date of execution of the line of credit agreement.

''(5) SECURITY.—The line of credit—

''(A) shall—

''(i) be payable, in whole or in part, from tolls, user fees, or other dedicated revenue sources that also secure the senior project obligations; and

''(ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

''(B) may have a lien on revenues described in subparagraph (A) subject to any lien securing project obligations.

''(6) PERIOD OF AVAILABILITY.—The full amount of the line of credit, to the extent not drawn upon, shall be available during the period beginning on the date of substantial completion of the project and ending not later than 10 years after that date.

''(7) RIGHTS OF THIRD-PARTY CREDITORS.—

''(A) AGAINST FEDERAL GOVERNMENT.—A third-party creditor of the obligor shall not have any right against the Federal Government with respect to any draw on the line of credit.

''(B) ASSIGNMENT.—An obligor may assign the line of credit to 1 or more lenders or to a trustee on the behalf of the lenders.

''(8) NONSUBORDINATION.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), a direct loan under this section shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

''(B) PRE-EXISTING INDENTURE.—

''(i) IN GENERAL.—The Secretary shall waive subparagraph (A) for public agency borrowers that are financing ongoing capital programs and have outstanding senior bonds under a pre-existing indenture, if—

''(I) the line of credit is rated in the A-category or higher;

''(II) the TIFIA program loan resulting from a draw on the line of credit is payable from pledged revenues not affected by project performance, such as a tax-backed revenue pledge or a system-backed pledge of project revenues; and

''(III) the TIFIA program share of eligible project costs is 33 percent or less.

''(ii) LIMITATION.—If the Secretary waives the nonsubordination requirement under this subparagraph—

''(I) the maximum credit subsidy that will be paid by the Federal Government shall be limited to 10 percent of the principal amount of the secured loan; and

''(II) the obligor shall be responsible for paying the remainder of the subsidy cost.

''(9) FEES.—The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of providing a line of credit under this section.

''(10) RELATIONSHIP TO OTHER CREDIT INSTRUMENTS.—A project that receives a line of credit under this section shall not also receive a secured loan or loan guarantee under section 603 in an amount that, combined with the amount of the line of credit, exceeds 49 percent of eligible project costs.

''(c) REPAYMENT.—

''(1) TERMS AND CONDITIONS.—The Secretary shall establish repayment terms and conditions for each direct loan under this section based on the projected cash flow from project revenues and other repayment sources, and the useful life of the asset being financed.

''(2) TIMING.—All repayments of principal or interest on a direct loan under this section shall be scheduled to commence not later than 5 years after the end of the period of availability specified in subsection (b)(6) and to conclude, with full repayment of principal and interest, by the date that is 25 years after the end of the period of availability specified in subsection (b)(6).

''§ 605. Program administration

''(a) REQUIREMENT.—The Secretary shall establish a uniform system to service the Federal credit instruments made available under this chapter.

''(b) FEES.—The Secretary may collect and spend fees, contingent upon authority being provided in appropriations Acts, at a level that is sufficient to cover—

''(1) the costs of services of expert firms retained pursuant to subsection (d); and

''(2) all or a portion of the costs to the Federal Government of servicing the Federal credit instruments.

''(c) SERVICER.—

''(1) IN GENERAL.—The Secretary may appoint a financial entity to assist the Secretary in servicing the Federal credit instruments.

''(2) DUTIES.—The servicer shall act as the agent for the Secretary.

''(3) FEE.—The servicer shall receive a servicing fee, subject to approval by the Secretary.

''(d) ASSISTANCE FROM EXPERT FIRMS.—The Secretary may retain the services of expert firms, including counsel, in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments.

''§ 606. State and local permits

''The provision of credit assistance under this chapter with respect to a project shall not—

''(1) relieve any recipient of the assistance of any obligation to obtain any required State or local permit or approval with respect to the project;

''(2) limit the right of any unit of State or local government to approve or regulate any rate of return on private equity invested in the project; or

''(3) otherwise supersede any State or local law (including any regulation) applicable to the construction or operation of the project.

''§ 607. Regulations

''The Secretary may promulgate such regulations as the Secretary determines appropriate to carry out this chapter.

''§ 608. Funding

''(a) FUNDING.—

''(1) SPENDING AND BORROWING AUTHORITY.—Spending and borrowing authority for a fiscal year to enter into Federal credit instruments shall be promptly apportioned to the Secretary on a fiscal year basis.

''(2) REESTIMATES.—When the estimated cost of a loan or loans is reestimated, the cost of the reestimate shall be borne by or benefit the general fund of the Treasury, consistent with section 661c(f) of title 2, United States Code.

''(3) RURAL SET-ASIDE.—

''(A) IN GENERAL.—Of the total amount of funds made available to carry out this chapter for each fiscal year, 10 percent shall be set aside for rural infrastructure projects.

''(B) REOBLIGATION.—Any amounts set aside under subparagraph (A) that remain unobligated by June 1 of the fiscal year for which the amounts were set aside shall be available for obligation by the Secretary on projects other than rural infrastructure projects.

''(4) REDISTRIBUTION OF AUTHORIZED FUNDING.—

''(A) IN GENERAL.—Beginning **for** *in* the second fiscal year after the date of enactment of this paragraph, on August 1 of that fiscal year, and each fiscal year thereafter, if the unobligated and uncommitted balance of funding available exceeds 150 percent of the amount made available to carry out this chapter for that fiscal year, the Secretary shall distribute to the States the amount of funds and associated obligation authority in excess of that amount.

''(B) DISTRIBUTION.—The amounts and obligation authority distributed under this paragraph shall be distributed, in the same manner as obligation authority is distributed to the States for the fiscal year, based on the proportion that—

''(i) the relative share of each State of obligation authority for the fiscal year; bears to

''(ii) the total amount of obligation authority distributed to all States for the fiscal year.

''(C) PURPOSE.—Funds distributed under subparagraph (B) shall be available for any purpose described in section 133(c).

''(5) AVAILABILITY.—Amounts made available to carry out this chapter shall remain available until expended.

''(6) ADMINISTRATIVE COSTS.—Of the amounts made available to carry out this chapter, the Secretary may use not more than 1 percent for each fiscal year for the administration of this chapter.

''(b) CONTRACT AUTHORITY.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, execution of a term sheet by the Secretary of a Federal credit instrument that uses amounts made available under this chapter shall impose on the United States a contractual obligation to fund the Federal credit investment.

''(2) AVAILABILITY.—Amounts made available to carry out this chapter for a fiscal year shall be available for obligation on October 1 of the fiscal year.

''§ 609. Reports to Congress

''On June 1, 2012, and every 2 years thereafter, the Secretary shall submit to Congress a report summarizing the financial performance of the projects that are receiving, or have received, assistance under this chapter (other than section 610), including a recommendation as to whether the objectives of this chapter (other than section 610) are best served—

''(1) by continuing the program under the authority of the Secretary;

''(2) by establishing a Federal corporation or federally sponsored enterprise to administer the program; or

''(3) by phasing out the program and relying on the capital markets to fund the types

of infrastructure investments assisted by this chapter (other than section 610) without Federal participation.''.

SEC. 3003. STATE INFRASTRUCTURE BANKS.

Section 610(d)(1)(A) of title 23, United States Code, is amended by striking ''sections 104(b)(1)'' and all that follows though the semicolon and inserting ''paragraphs (1) and (2) of section 104(b)''.

TITLE IV—HIGHWAY SPENDING CONTROLS

SEC. 4001. HIGHWAY SPENDING CONTROLS.

(a) IN GENERAL.—Title 23, United States Code, is amended by adding at the end the following:

CHAPTER 7—HIGHWAY SPENDING CONTROLS

Sec.
701. Solvency of Highway Account of the Highway Trust Fund.

''SEC. 701. SOLVENCY OF HIGHWAY ACCOUNT OF THE HIGHWAY TRUST FUND.

[''(a) SOLVENCY CALCULATION FOR FISCAL YEAR 2012.—Not later than 60 days after the date of enactment of the MAP–21, the Secretary, in consultation with the Secretary of Treasury, shall—

''(1) estimate the balance of the Highway Trust Fund (other than the Mass Transit Account) at the end of such fiscal year and the end of the next fiscal year, for purposes of which estimation the Secretary shall assume that the obligation limitation on Federal-aid highways and highway safety construction programs is equal to the obligation limitations enacted for those fiscal years in the MAP–21;

''(2) determine if the estimated balance of the Highway Trust Fund (other than the Mass Transit Account) would fall below—

''(A) $2,000,000,000 at the end of the fiscal year for which the obligation limitation is being distributed; or

''(B) $1,000,000,000 at the end of the next fiscal year;

''(3) if either of the conditions in paragraph (1) would occur, calculate the amount by which the obligation limitation in the fiscal year for which the obligation limitation is being distributed must be reduced to prevent such occurrence, for purposes of which calculation the Secretary shall assume that the obligation limitation on Federal-aid highways and highway safety construction programs for the next fiscal year is equal to the obligation limitation for the fiscal year for which the limitation is being distributed as reduced pursuant to this subparagraph;

''(4) distribute such obligation limitation, less any amount determined under paragraph (3);

''(5) ensure that any obligation limitation that is withheld from distribution pursuant to paragraph (3) shall lapse immediately following the distribution of obligation limitation under paragraph (4); and

''(6) upon the lapse of any obligation limitation under paragraph (5), reduce proportionately the amount of sums authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for such fiscal year to carry out each of the Federal-aid highway and highway safety construction programs (other than emergency relief) by an aggregate amount equal to the amount determined pursuant to such paragraph. The amounts withheld pursuant to this paragraph are permanently rescinded.]

''(a) SOLVENCY CALCULATION FOR FISCAL YEAR 2012.—

''(1) ADJUSTMENT OF OBLIGATION LIMITATION.—Not later than 60 days after the date of enactment of the MAP–21, the Secretary, in consultation with the Secretary of Treasury, shall:

''(A) Estimate the balance of the Highway Trust Fund (other than the Mass Transit Account) at the end of fiscal years 2012 and 2013. For purposes of which estimation, the Secretary shall assume that the obligation limitation on Federal-aid highways and highway safety construction programs will be equal to the obligation limitations enacted for those fiscal years in the MAP–21.

''(B) Determine if the estimated balance of the Highway Trust Fund (other than the Mass Transit Account) would fall below—

''(i) $2,000,000,000 at the end of fiscal year 2012; or

''(ii) $1,000,000,000 at the end of fiscal year 2013.

''(C) If either of the conditions in subparagraph (B) would occur, calculate the amount by which the fiscal year 2012 obligation limitation must be reduced to prevent such occurrence. For purposes of this calculation, the Secretary shall assume that the obligation limitation on Federal-aid highways and highway safety construction programs for the fiscal year 2013 will be equal to the obligation limitation for fiscal year 2012, as reduced pursuant to this subparagraph.

''(D) Adjust the distribution of the fiscal year 2012 obligation limitation to reflect any reduction determined under subparagraph (C).

''(2) LAPSE AND RESCISSION.—

''(A) LAPSE OF OBLIGATION LIMITATION.—Any obligation limitation that is withdrawn by the Secretary pursuant to paragraph (1)(D) shall lapse immediately following the adjustment of obligation limitation under such paragraph.

''(B) RESCISSION OF CONTRACT AUTHORITY.—Upon the lapse of any obligation limitation under subparagraph (A), the Secretary shall reduce proportionately the amount authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for fiscal year 2012 to carry out each of the Federal-aid highway and highway safety construction programs (other than emergency relief and funds under the national highway performance program that are exempt from the fiscal year 2012 obligation limitation) by an aggregate amount equal to the amount of adjustment determined pursuant to paragraph (1)(D). The amounts withdrawn pursuant to this subparagraph are permanently rescinded.

''(b) SOLVENCY CALCULATION FOR FISCAL YEAR 2013 AND FISCAL YEARS THEREAFTER.—

''(1) ADJUSTMENT OF OBLIGATION LIMITATION.—Except as provided in paragraph (2), in distributing the obligation limitation on Federal-aid highways and highway safety construction programs for fiscal year 2013 and each fiscal year thereafter, the Secretary shall—

''(A) estimate the balance of the Highway Trust Fund (other than the Mass Transit Account) at the end of such fiscal year and the end of the next fiscal year, for purposes of which estimation, the Secretary shall assume that the obligation limitation on Federal-aid highways and highway safety construction programs for the next fiscal year **is** *will be* equal to the obligation limitation enacted for the fiscal year for which the limitation is being distributed;

''(B) determine if the estimated balance of the Highway Trust Fund (other than the Mass Transit Account) would fall below—

''(i) $2,000,000,000 at the end of the fiscal year for which the obligation limitation is being distributed; or

''(ii) $1,000,000,000 at the end of the next fiscal year;

''(C) if either of the conditions in subparagraph (B) would occur, calculate the amount by which the obligation limitation in the fiscal year for which the obligation limitation is being distributed must be reduced to prevent such occurrence; and

''(D) distribute such obligation limitation less any amount determined under subparagraph (C).

''(2) LAPSE AND RESCISSION.—

''(A) OBLIGATION LIMITATION.—

''(i) RECALCULATION.—In a fiscal year in which the Secretary withholds obligation limitation based on the calculation under paragraph (1), the Secretary shall, on March 1 of such fiscal year, repeat the calculations under subparagraphs (A) through (C) of such paragraph. Based on the results of those calculations, the Secretary shall—

''(I) if the Secretary determines that either of the conditions in paragraph (1)(B) would occur, withdraw an additional amount of obligation limitation necessary to prevent such occurrence; or

''(II) distribute as much of the withheld obligation limitation as may be distributed without causing either of the conditions specified in paragraph (1)(B) to occur.

''(ii) LAPSE.—Any obligation limitation that is enacted for a fiscal year, withheld from distribution pursuant to paragraph (1)(D) (or withdrawn under clause (i)(I)), and not subsequently distributed under clause (i)(II) shall lapse immediately following the distribution of obligation limitation under such [paragraph] *clause*.

''(B) CONTRACT AUTHORITY.—

''(i) IN GENERAL.—Upon the lapse of any obligation limitation under subparagraph (A)(ii), an equal amount of the unobligated balances of funds apportioned among the States under chapter 1 and sections 1116, 1303, and 1404 of the SAFETEA–LU (119 Stat. 1177, 1207, and 1228) are permanently rescinded. In administering the rescission required under this [subparagraph] *clause*, the Secretary shall allow each State to determine the amount of the required rescission to be drawn from the programs to which the rescission applies, except as provided in clause (ii).

''(ii) RESCISSION OF FUNDS APPORTIONED IN FISCAL YEAR 2013 AND FISCAL YEARS THEREAFTER.—If a State determines that it will meet any of its required rescission amount from funds apportioned to such State on or subsequent to October 1, 2012, the Secretary shall determine the amount to be rescinded from each of the programs subject to the rescission for which the State was apportioned funds on or subsequent to October 1, 2012, in proportion to the cumulative amount of apportionments that the State received for each such program on or subsequent to October 1, 2012.

''(3) OTHER ACTIONS TO PREVENT INSOLVENCY.—The Secretary shall issue a regulation to establish any actions in addition to those described in *subsection (a) and* paragraph (1) that may be taken by the Secretary if it becomes apparent that the Highway Trust Fund (other than the Mass Transit Account) will become insolvent, including the denial of further obligations.

''(4) APPLICABLE ONLY TO FULL-YEAR LIMITATION.—The requirements of paragraph (1) apply only to the distribution of a full-year obligation limitation and do not apply to partial-year limitations under continuing appropriations Acts.''.

(b) TABLE OF CHAPTERS.—The table of chapters for title 23, United States Code, is amended by inserting after the item relating to chapter 6 the following:

''7. Highway Spending Controls ..... 701''.

The PRESIDING OFFICER. Under the previous order, the committee-reported amendments are agreed to, and the bill, as amended, will be considered original text for purposes of further amendment.

AMENDMENT NO. 1515

Mr. REID. On behalf of Senators JOHNSON and SHELBY, the chairman and ranking member of the Banking Committee, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. JOHNSON and Mr. SHELBY, proposes an amendment numbered 1515.

Mr. REID. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Missouri.

AMENDMENT NO. 1520

Mr. BLUNT. Mr. President, I ask unanimous consent that it be in order at this time to offer amendment No. 1520 to the underlying bill, S. 1813.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. REID. Mr. President, I, of course, reserve the right to object and do object.

The PRESIDING OFFICER. Objection is heard.

The PRESIDING OFFICER. The Republican leader is recognized.

RELIGIOUS LIBERTY

Mr. MCCONNELL. Mr. President, our country is unique in the world because it was established on the basis of an idea, an idea that we were all endowed by our Creator with certain unalienable rights—in other words, rights that were conferred not by a king or a President or a Congress, but by the Creator himself. The State protects these rights but it does not grant them. What the State does not grant the State cannot take away. That is what this week's debate on a particularly odious outcome from the President's health care law has been about.

Our Founders believed so strongly that the government should neither establish a religion nor prevent its free exercise that they listed it as the very first item in the Bill of Rights, and Republicans are trying today to reaffirm that basic right. But apparently our friends on the other side do not want to have this amendment or debate. They will not allow those of us who were sworn to uphold the U.S. Constitution to even offer an amendment that says we believe in our first amendment right to religious freedom.

Frankly, this is a day I was not inclined to think I would ever see. I have spent a lot of time in my life defending the first amendment but I never thought I would see the day when the elected representatives of the people of this country would be blocked by a majority party in Congress to even express their support for it, regardless of the ultimate outcome.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

MAP–21

Mr. REID. Mr. President, I appreciate the comments of my distinguished Republican colleague. The Senate just voted 85 to 11 to invoke cloture on a motion to proceed to the surface transportation bill, a bipartisan bill the sponsors of which, Senator BOXER and Senator INHOFE—an unlikely pair—have joined together to move forward on, a piece of legislation that is extremely important to this country, a bill that will save or create 2 million jobs.

There are four parts of this bill within the jurisdiction of four Senate committees. The Environment and Public Works Committee is what we are on now. I have sought to amend that with a provision that is coming from the Banking Committee. We have one coming from the Finance Committee—that has been approved on a bipartisan basis, and we will move after we do those two to the Commerce section. We have not dealt with the Finance Committee provision or the Commerce Committee.

I appreciate that the Republicans never lose an opportunity to mess up a good piece of legislation. We have had that happen now for the last 3 years. We saw it in spades last year. Here is a bipartisan bill to create and save jobs. No one disputes the importance of this legislation. Every State in the Union is desperate for these dollars. We are not borrowing money to do it; it is all paid for. Whether it is the State of West Virginia, the State of Missouri, or the State of Nevada, all the departments of transportation are waiting to find out what is going to happen at the end of March. That is fast approaching. We need to get this done.

Then I hope we can deal with other matters and not get bogged down on this legislation. Let's do the Banking part of this bill. Let's do the Finance part of this bill. Let's do the Commerce part of this bill.

But to show how the Republicans never lose an opportunity to mess up a good piece of legislation, listen to this: They are talking about first amendment rights, the Constitution. I appreciate that. But that is so senseless. This debate that is going on dealing with this issue, dealing with contraception, is a rule that has not been made final yet. There is no final rule. Let's wait until there is at least a rule we can talk about. There is not a final rule. That is all you read about in the newspapers, why there are discussions going on as we speak. There is not a rule. Everybody should calm down. Let's see what transpires.

Until there is a final rule on this, let's deal with the issue before us. That is saving jobs for our country. People can come and talk about the Constitution, the first amendment—I have never seen anything like this before, but I have never seen anything like this before, either. There is no final rule. Why don't we calm down and see what the final rule is.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BLUNT. Mr. President, I am, of course disappointed not being able to offer this amendment today, but it is an amendment we talked about for some time. It was a bipartisan amendment. It was a bipartisan piece of legislation. Senator NELSON from Nebraska and I wish to offer it and wish to offer it as soon as possible.

I have the highest regard for both of our leaders, both the majority leader and minority leader, and understand they have a job to do, but this highway bill is clearly going to take some time. This is a 4-page amendment that I would be glad to see voted on on Monday. It has been widely studied all week, this week. I would have been glad to see it voted on when I filed the bill in August. There was not a rule then either, but both Mr. NELSON and I, Senator RUBIO, Senator AYOTTE, and others were anticipating that we were going to begin to see exactly the kinds of things this discussion this week has brought about.

This is about the first amendment. It is about religious beliefs. It is not about any one issue. In fact, this amendment specifically does not mention a specific issue. It refers to the issue of conscience. In the amendment itself the reference is made to the letter that in 1809 Thomas Jefferson sent to the New London Methodist, where he says: of all the principles in the Constitution, the one that we perhaps hold most dear, if I could paraphrase it a little bit, is the right of conscience and that no government should be able to come in and impose itself between the people and their faith-based principles.

In health care we have never had this before. Why didn't we need this amendment or why didn't we need the bill that was filed in August 5 years ago or 1 year ago or 2 years ago or 3 years ago? Because only with the passage of the Affordable Health Care Act did we have the government in a position, for the first time ever, to begin to give specific mandates to health care providers.

This bill would simply say those health care providers do not have to follow that mandate if it violates their faith principles, faith principles that are part of a health care delivery system. That could be through any number of different faith groups, and I have talked to a lot of them. Frankly, some of those faith group views of health care do not agree with my views or my faith's views of health care. But that is not the point here. This is not about whether I agree with what that faith group wants to do. It is whether they are allowed to do it; whether the representative of that view of health care

and how it affects people is able to say to their government: No, this is something that is protected by the Constitution. It is protected by the first amendment. You cannot require me to provide a service—through a faith-based institution—that I do not agree with or you cannot require me as a health care provider to provide a service that I do not agree with because of my faith.

It doesn't mean you cannot get it somewhere else if it is something that can legally be done. It just means people of faith or institutions of faith do not have to do it. That is why in almost every Catholic church in America, the last two weekends, a letter has been read from the bishop or the archbishop that said this is unacceptable, it should not be complied with.

That is why the Chaplain to the Army, the Chief Archbishop to the Army, Bishop Broglio, sent out a letter to be read at Catholic mass at Army posts all over the country. Initially that letter was not going to be read because it did not agree with the tenets the government was pursuing at the time—which is the violation that people would see most offensive, I think, that the government would actually begin to say to people of faith you cannot even talk about it. You cannot even have that letter read on a military post, from the person who is responsible to the chaplains and the Catholic chaplains in the military.

Maybe it is a faith view of how to deliver health care that somebody in the Christian Science community has or somebody in the Seventh Day Adventist community has or the Southern Baptist community or whatever that might be. The specific thing is not the issue here. The issue here is can government require a faith-based institution to go beyond the tenets of its faith.

I know the Democratic leader, the majority leader, said there is not even a rule yet. The White House said—the administration said there would be a rule. And to make it even more offensive, they said: And, by the way, here is what the rule is going to be and we are going to give you a year to figure out how to adjust your views to accommodate the rule.

I would have been less offended if they said here is the rule and we understand it is in violation of your views but here is what is going to be the rule and you will have to comply with it. The idea they could change your views, your religious views, your religious beliefs, in a year or a lifetime because some Federal regulator says you need to is unbelievably offensive in our country based on the principles that we hold most dear in the Constitution itself.

So this amendment, which is bipartisan in nature and I think easily understood because it is so fundamental to who we are, is an amendment that could be quickly debated, it could be quickly voted on. The Senate of the United States could express its view. I believe that view would be one supportive of institutions of faith.

By the way, also, the administration saying we gave an exemption for the church itself—No. 1, I do not know how long that exemption would last. And, No. 2, I think that shows a lack of understanding of the work of the church or the work of the synagogue or the work of the mosque or the work of people of coming together. If the only thing that matters in their work is what happens within the four walls of the church or whoever works in the four walls of the church every day, these institutions are not what I believe they are.

The great schools, the great hospitals, the great community-providing institutions of America have, so many of them for so long, been based on faith principles. This amendment would say for health care, those faith principles would still be the overriding principle. For health care, if someone does not agree with the direction of the government, they do not have to perform that service. They do not have to provide that specific kind of insurance to their employees.

Remember, the underlying bill here, the underlying rule that has been announced, even though it may not have been officially issued, is one that talks about people who have chosen to go to work for, to get a paycheck for, to work at the direction of a faith-based community. Then to tell that community what your insurance has to look like—that is just one of the many steps. If the government can do that, what can't the government do? If the government can do that, where does the government stop? If the government can do that—when you say this is something I don't believe in so I don't want to be part of this particular health care issue, this health care moment, this health care episode—whatever you want to call it, you say, oh, well, you have to do it because the government says you have to do it and the first amendment does not matter, the protection of conscience doesn't matter, the Jefferson letter to New London Methodist doesn't matter.

Until the enactment of the Patient Protection and Affordable Care Act, this was never an issue and nothing would happen if this amendment was approved and became the law of the land. Nothing would be different tomorrow than it was a year ago, because a year ago people were not doing this. Five years ago nobody would have even thought it was possible, that the Federal Government would tell a faith-based hospital what their insurance plan exactly had to look like, the plan that they offered their employees or would tell faith-based health care providers what they could do and what they could not do or would say if you are not going to do everything the government will pay for, we will not pay you to do anything the government pays for.

This is an issue many people in the country feel strongly about, many people in the Senate, both Democrats and Republicans, feel strongly about. We can let this go on and create the anxiety it creates for the faith community or we can bring this amendment up, debate it—and, frankly, I think it is pretty well understood—debate it, vote on it, and let the country know that we still support the Constitution of the United States.

While I am disappointed I did not get to offer this amendment today, I will be back and I am going to do my best to get this amendment offered at the earliest possible time, and I would be glad to see the Senate join me, and the majority join me, in saying let's get this important issue off the minds of the American people and let them know the Constitution still matters and religious liberty is still the first amendment to the Constitution in the United States.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

(The remarks of Mr. ENZI pertaining to the introduction of S. 2091 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. ENZI. I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

STOCK ACT AMENDMENT

Mr. GRASSLEY. Mr. President, 1 week ago we passed a very important good government bill, the one that would make sure Members of Congress cannot benefit from insider trading information. I added to that an amendment that I think is a good government amendment. It calls for people who are involved in political intelligence gathering—we don't hear much about that profession, but it is quite a business. I asked that they be registered just like lobbyists are registered, and I would like to speak to the point of why that is very important and why it is important to bring it to the Senate's attention, even though it passed by a vote of 60 to 39 just a few days ago.

In the dark of night on Tuesday of this week, the House released its version of the insider trading bill that goes by the acronym STOCK, which wiped out any chance of meaningful transparency for the political intelligence industry. Think about the chutzpah of the people in the House of Representatives—a small group of people—taking out the language I put in that bill when similar language is cosponsored by 288 Members of the House of Representatives, but it happened. So that bill is coming back without the Grassley amendment on it, and we need to think about what we are going to do if we believe in good government, and if we believe there ought to be more transparency in government.

What we are faced with is a powerful industry that works in the shadows—

economic espionage. They don't want people to know what they do or whom they work for. They are basically afraid of sunlight, I would guess. My amendment was adopted in the Senate on a very bipartisan basis, kind of a rare occurrence today. It simply requires registration for lobbyists who seek information from Congress in order to trade on that information.

So isn't it very straightforward if trades are taking place based upon ''political intelligence''—that is their word, ''economic espionage'' is my word—obtained from Congress or the executive branch, people in this country should know who is gathering such information. Not requiring political intelligence professionals to register and disclose their contacts with government officials is a very gaping loophole that my amendment fixes. In fact, political intelligence firms actually brag about this loophole, and I will give an example about that bragging. This is on the Web site of an organization called the Open Source Intelligence Group, a political intelligence firm:

> Our political intelligence operation differs from standard 'lobbying' in that the OSINT Group is not looking to influence legislation on behalf of clients, but rather provide unique 'monitoring' of information through our personal relationships between lawmakers, staffers, and lobbyists.
>
> Providing this service for clients who do not want their interest in an issue publicly known is an activity that does not need to be reported under the Lobbying Disclosure Act, thus providing an additional layer of confidentially for our clients.
>
> This service is ideal for companies seeking competitive advantage by allowing a client's interest to remain confidential . . .

Think about the words ''personal relationships,'' ''confidentiality.'' Basically, what they are saying is do all this under the radar.

I wish to go back, if you didn't hear it the first time, let me repeat some of this for you, a much shorter quote:

> Providing this service for clients who do not want their interests in an issue publicly known is an activity that does not need to be reported under the Lobbying Disclosure Act, thus providing an additional layer of confidentiality for our clients.

We have it here on paper, and I just read it to you. This firm—probably one of many firms; I don't know how many firms are doing this—is telling potential clients: If you don't want anybody to know what you are asking of Federal officials, hire us. That is wrong, but that is why firms such as this don't want to register. If someone on Wall Street is trying to make money off conversations they had with Senators or staff, we should know who they are. It is that plain and simple.

Since the passage of my amendment, which would require political intelligence lobbyists to register as lobbyists, I have heard a great deal of ''concern'' from the lobbying community. Political intelligence professionals have claimed they should do their business in secret for several reasons.

Now, this is the explanation of why they need secrecy. First, they have said if they are required to register, they will no longer be able to sell information to their clients because people will not want to hire them. That makes me wonder, what do they have to hide?

Second, they have said many of them have large numbers of clients, and it would take them a lot of time to register these large numbers of secret clients. Again, that makes me think we actually need more transparency to find out who are all of these people buying intelligence information.

Third, they have claimed it would not address the so-called ''20-percent loophole'' that allows people who spend less than 20 percent of their time lobbying from having to register under existing laws as lobbyists. Not too many people know of that 20-percent loophole, but that is a pretty big loophole. A person can lobby, but they don't have to register if they don't spend more than 20 percent of their time on it. Well, on this issue I have some good news for these people. We don't make the mistake that caused the 20-percent loophole. My amendment requires anyone who makes a political intelligence contact to have to register. No loopholes, no deals, no special treatment, just everyone registers.

Finally, I just want to assure people, particularly journalists, that they would not have to register. Now, that information has been floating around, and it has been floating around that some constituents looking for information in order to make a business decision might have to register. Not so. Only political intelligence brokers, people who seek information so others can trade securities, would have to register.

As I said before, if people want to trade stocks from what we do in Congress, we should know who they are. After all, the basic underlying piece of legislation prohibits Members of Congress from having insider trading information and profiting from it. We ought to know with whom we are dealing. The American people deserve a little sunshine from this industry and on this industry.

Last night, the House turned away from transparency. They supported the status quo. What we need is a full and open conference process so we can take up this very important issue once again that the House believes was somehow not very important, even though 288 Members of the House of Representatives—that is two-thirds of the House of Representatives—have signed on to this principle that these people ought to register. We can take that up then in conference, both the House and Senate, working together.

Is every word in this bill the way it ought to be? If somebody wants to point out some things that ought to be changed, I am open to that. But don't forget, 288 people in the House have signed on. It can't be too bad.

So if we don't get to conference or if we have to debate this again on the floor of the Senate, we might not get 60 votes again. So I worry we will miss the best opportunity we have had for openness and transparency in years.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. I thank the Chair.

(The remarks of Mr. WYDEN pertaining to the introduction of S. 2098 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. WYDEN. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. FRANKEN). The Senator from Minnesota.

NEW ENERGY AGENDA

Ms. KLOBUCHAR. Mr. President, I am on the floor today to discuss something that has been a top priority for me in the Senate; that is, the critical need to get serious about building a new energy agenda for America, one that keeps our businesses competitive in the global economy, preserves the integrity of our environment, and restarts the engine that has always kept our country moving forward—and that is innovation. I am specifically focused on the energy tax extenders, those that are so necessary for us to keep going in the area of homegrown and renewable energy.

We all know there is no single solution for getting us there. What we need is not a silver bullet; we need a silver buckshot, as we like to say in Minnesota.

I have talked about the need with many of my colleagues to continue developing alternative resources such as hydro, geothermal, biofuels, solar, wind, and we have also talked about how we need to continue to develop existing technologies such as domestic oil and gas production while enforcing appropriate safeguards. This is the very ''all-of-the-above'' approach we need to take in order to keep all options on the table.

This means exploring some of the new proposals we have seen with promising technologies such as the smart grid. But it also means extending the critical tax incentives that have been so important in advancing the development of the next generation of biofuels and the next generation of renewable energy. That is why I have pushed to ensure that we have the right policies in place for encouraging clean energy innovation, including the biodiesel tax credit which supports over 31,000 jobs and has allowed domestic production to more than double since 2011. It means the production tax credit, which made it possible for wind power to represent over one-third of all new electricity generation capacity in the United States last year.

Think of that figure. Think of the strides we have made and where we can go in the future. The advanced energy manufacturing tax credit has leveraged

$5.4 billion in private investment, boosting growth and creating new U.S. manufacturing jobs by producing components and equipment for the burgeoning global renewable energy industry.

Extending these critical tax credits will help strengthen our country's clean energy businesses so they can continue to grow and thrive. But they are just one part of the equation. Again, there is no silver bullet solution to our Nation's energy challenges, and that is why we need to be willing to come together to hammer out a comprehensive strategy for moving forward. We cannot afford to keep our heads buried in the sand. We cannot afford to let yet another golden opportunity pass us by. Sadly, too many have already come and gone.

Over the years, I believe there have been—especially in this last decade—several moments when we could have acted but didn't when we had the full support of the American people who had wanted a new direction in energy policy. The first was immediately after 9/11 when President Bush—if he had made a new energy policy one of the challenges to the country in addition to invading Afghanistan and combating terrorism, I believe we could have moved forward. But that didn't happen, and there is no need to dwell on it today.

The second moment was before the arrival of the Presiding Officer in the Congress, and that was in the summer of 2008 when we did take action to raise gas mileage and energy-efficiency standards—something I like to call building a bridge to the next century—but we didn't make the kind of comprehensive progress on a comprehensive energy plan that we should have made.

The third moment was when President Obama first came into office. At that time, I advocated for a clean energy standard that I believe could have passed in the first 6 months. It could have been combined with some of the other comprehensive things we were talking about. We had a bipartisan group going at the time, a group of 14 of us. But, instead, a decision was made to focus on cap and trade later, instead of starting with that clean energy standard and building from that.

Those were missed opportunities, a chain of missed opportunities. But until we get serious about building a newer energy agenda for America, we are going to continue to struggle with the consequences which have created a vicious cycle of economic and environmental costs, not least of all those caused by climate change.

Climate change, as the Presiding Officer knows, is not just about melting glaciers and rising ocean levels. Shifting global trends have the potential to wreak intense havoc on local economies, particularly those anchored in agricultural. The facts stand for themselves.

In January 2010, the U.S. Securities and Exchange Commission said for the first time that public companies should add climate change to the list of possible financial or legal impacts that they actually disclose to investors.

The Bureau of Economic Analysis, at the Department of Commerce, estimates that at least one-third of the U.S. gross domestic product is weather and climate sensitive, with a potential economic impact of $4 trillion a year. Much of that impact would be wrung out of our farm communities and from States with large rural populations, such as my own. Any farmer will tell you a change in weather can mean the difference between a bumper crop and a complete disaster—regardless of how hard that farmer works. So it goes without saying that any kind of significant swing in climate—paired with increasingly unpredictable rainfall—could pose a problem to Americans who make their living off the land.

In 2008, Minnesota's farms, forests, and ranches produced $18 billion in goods and exported close to one-third of that. This is a sector that is critically important to our economy, and we cannot afford for it to be jeopardized. We also cannot afford the rising costs of fire management, as forest fires have become increasingly intense in recent years.

The current path is not sustainable. That is why I am on the floor, in the hope that we can spark a meaningful conversation, but, most specifically, that we look at extending those energy tax credits.

I believe we can take a page from our State, the State of Minnesota.

My home State is proof that policies promoting homegrown energy can also promote business growth and job creation. The unemployment rate in the State of Minnesota is 5.7 percent—well below the national average—and part of that is thanks to our energy policies. In fact, a recent report by the Pew Charitable Trust showed that in the last decade Minnesota jobs in this sector grew by 11.9 percent, compared to 1.9 percent for jobs overall.

As I travel around the State, I can see the progress that has been made. I think of places I have visited, such as Sebeka, MN, where a small telephone company felt their customers who were in extremely rural areas needed backup power supplies. So what did they do? They found a way to combine wind turbines and solar panels so their customers could actually purchase backup power. They did it themselves, and they sold it to their customers.

It was very popular, and at one point an 80-year-old man came to see them, and he said: I would like to purchase more. I want to do my whole house in solar. The telephone company said: Sir, you can do that, but it will take you about 10 years to get your investment back, but it is going to be worth it. Do you mind if we ask how old you are? The man said: I am 80 years old but I want to go green.

That is one of those true stories from the State of Minnesota.

Then there is Pentair, a Minneapolis-based water solutions company that has donated a custom-designed Rain Water Recycling System to the new and great Target baseball field. That technology will capture, conserve, and reuse rainwater, saving the ballpark more than 2 million gallons of water each year.

In one of General Mills' manufacturing plants, they have developed their own innovative way to reuse water—diverting it to the local municipal golf course to water the grass.

These are just a few examples of Minnesota's commitment to energy innovation. There are countless stories out there, but it is not just a Minnesota story, it is an American story.

I would note that the renewable energy standard in Minnesota—25 by 25—is one of the most aggressive in the country—30 percent for Xcel—and yet our unemployment rate is so much better than the rest of the country.

The quest to develop clean, sustainable, homegrown energy is not specific to just one part of the country or, for that matter, just one political party. Our renewable energy standard was actually nearly unanimously adopted by the legislature—Democrats and Republicans—and signed into law by a Republican Governor, Governor Pawlenty. This is an issue I believe can and should unite us, and it is a way to address these concerns because it builds a coalition across a broad spectrum; that is, energy policy. It saves money. It is better for the environment. It is certainly better for our national security, producing our own homegrown energy.

In the past, Democrats and Republicans have managed to come together to confront tough challenges—from the Civil Rights Act in the 1960s, to keeping Social Security solvent in the 1980s, to welfare reform in the 1990s.

But perhaps the most fitting example, in the context of combating climate change, is the Clean Air Act. As the Presiding Officer knows, that landmark bill took the first steps to address acid rain and expanded efforts to control toxic air pollutants.

When the bill passed in the 1990s, it had strong bipartisan support from Democrats and Republicans alike. It is worth mentioning that all 10 Members of the Minnesota delegation at the time, which included 5 Democrats and 5 Republicans—that was our Federal delegation—supported the bill, including Republican Senator Dave Durenberger, who was among its chief authors and staunchest supporters.

Since then, the Clean Air Act has helped prevent more than 18 million child respiratory illnesses and 300,000 premature deaths.

Policies to protect our rivers, lakes, and streams have also had a positive impact on people's health.

Coming from the ''Land of 10,000 Lakes,'' I have a unique appreciation for the importance of clean water. It is the resource that sustains our lakes and rivers, that provides critical habitat to countless fish and millions of

migratory birds, that fuels our thriving outdoor economy.

Hunting and fishing are more than just hobbies in our State, I say to the Presiding Officer. They are a way of life, and they are critically important to our economy.

Every year, nearly 2 million people fish our lakes and our streams, and close to 700,000 people hunt our fields and forests.

Nationwide, the hunting and fishing industry is valued at $95.5 billion a year, and it brings in $14 billion in revenue. Clean water is a fundamental pillar in supporting this economic sector and protecting people against dangerous toxins such as mercury.

Minnesota has passed some of the most stringent mercury rules in the country. In 2006, our State legislature passed laws requiring our largest powerplants to cut mercury emissions 90 percent by 2015. The Federal Government is finally catching up and will publish a requirement in coming days to make similar reductions by 2016.

Yet despite everything we have done to combat mercury pollution, we are still grappling with its consequences. A recent analysis of 25 years of data has found an unexpected rise in average mercury levels in northern pike and walleye from Minnesota lakes. After declining by 37 percent from 1982 to 1992, average mercury concentrations in these fish began to increase in the mid 1990s.

During the last decade of that period, 1996 to 2006, average mercury concentrations increased 15 percent. These numbers make one of the clearest possible arguments for supporting Federal protection, because we all have a stake in protecting the health of our fish and wildlife, and we cannot do that if we cannot keep dangerous toxins out of our air and water supply.

This is important to our economy, but it is also important to maintaining a certain way of American life, a way of life that many of us grew up with that we ought to be able to pass on to future generations. I grew up in a family that valued the outdoors. I was 18 years old before I took any vacation that did not involve a tent or a camper in one way or another.

This did not just start with my parents. My grandpa was an avid hunter and fisherman. He worked 1,500 feet underground in the mines in Ely, MN. You can imagine why for him hunting was his way of life. This was his way out. When he got above ground from those mines, it was something he loved to do. I want future generations of Minnesotans to be able to enjoy these same pastimes. I want them to be able to fish in clean water, to hunt in abundant forests, and to camp out in our beautiful wilderness. But I also want them to know the same America we know, an America that is innovative, that is forward thinking, that is willing to come together and hammer out hard-won solutions to tough challenges.

Nowhere is this more important than our quest to move America forward through smarter energy and environmental policies. I cannot help but think, this is our generation's version of the space race and energy race. But the finish line will not be Neil Armstrong placing a flag on the Moon. It will be building the next generation of energy-efficient windows, and doing it in northern Minnesota instead of in China, or an electric car battery factory in Memphis, TN, instead of Mumbai, India, or a wind turbine manufacturer in San Jose, CA, instead of Sao Paulo, Brazil.

This is my vision for an energy America that is energy independent, a stronger, more innovative America. I know you all want to same thing. That is why I am here on the floor today, because I know we cannot continue to get by with piecemeal energy policy. We cannot play red light-green light with our tax incentives as we are doing this year, and that is why we have to put them in place again.

What we need now is a comprehensive national blueprint for energy policy, a solution that will serve the integrity of our air, of our water and natural resources, that gives businesses the incentives to research and develop new sources of energy that invest in the next generation of American innovation.

That is our challenge. It is not going to happen overnight, but I believe we will get it done. We have before; we will do it again. One way to start is to make sure we extend these energy tax credits.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

RELIGIOUS LIBERTY

Mr. THUNE. Mr. President, there is an old political axiom that is attributed to Thomas Jefferson, more recently to Gerald Ford, that says: A government that is big enough to give you everything you want is also big enough to take it all away.

Those words took on a whole new meaning this last week when we found out the Secretary of the Health and Human Services Department, Kathleen Sebelius, was issuing new regulations with regard to the health care act that passed last year that would apply to religious-affiliated universities, charities, and hospitals.

I think we have to remember exactly why it was that many of our forefathers came to this country in the first place. They came, in many cases, because they were trying to get away from religious persecution in their homelands. So they came to the United States with the desire to start anew and to assert that in this new government they formed that they would protect freedoms, basic freedoms, such as religious liberty.

So in the Declaration of Independence they said:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are [the rights to] Life, Liberty, and the pursuit of Happiness.—[In order] to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

So that was a foundational principle of our democracy, and it was enshrined, when they wrote the Constitution, in the first amendment of the Bill of Rights, when they said:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .

It was the very first right they enshrined in the Bill of Rights in the Constitution of the United States. That was the weight they attached to the important issue of religious liberty, and it was consistent with the statement in the Declaration of Independence, where it says that those rights are endowed by our Creator. They are not given to us by a State. They are not given to us by government. They are something that is endowed by our Creator. The government is here to protect those rights.

So when this issue popped up on many people's radar screen—and, of course, it has been percolating out there for quite a while, but there had been an opportunity to weigh in and to provide comments, with the hope that the Department of Health and Human Services would come to the right conclusion and exempt religious-affiliated schools, hospitals, and charities—when that was not going to be the case and they were going to require these very organizations to do something that violated their consciences and violated the teachings and the practices of their faith, many people across this country—we have all heard from them—got very engaged on this issue.

It seems to me, at least, there is a very simple answer to this; that is, the administration could go back and revisit this issue and more broadly make this exemption not just for churches—which is where it is today—but also for church schools, church hospitals, church universities.

It was interesting, Tuesday morning the minority leader in the Senate, Senator MCCONNELL, was out here talking about this issue, and he mentioned:

> One out of six patients in America is treated at a Catholic hospital. Catholic Charities is the largest private provider of social services to poor children, families, and individuals in America. The Catholic Church runs the largest network of private schools in the country.

He goes on to say:

> These institutions have thrived because they have been allowed to freely pursue their religious convictions in a country that, until now, respected their constitutional right to do so.

He went on to say in that statement:

> If the rights of some are not protected, the rights of all are in danger.

I think what has many of the churches across this country and many of the

universities and many of the hospitals concerned about is that this is going to become a finalized regulation.

The proponents of the regulation are saying there is a year to comply with it. I would submit to you that asking people in this country to check their principles at the door not now but a year from now is not making any kind of an accommodation.

This needs to be reversed. This is clearly a violation of religious liberty, the protection and right we have in the first amendment of our Constitution in our Bill of Rights, and I hope the administration will do the right thing and acknowledge that they have made a mistake, that they have gone too far, that they have overreached, that they have treaded in an area they should not tread and make this right. The way to make this right is to reverse this decision.

Some have argued: What is that going to mean? Does that mean people in this country are not going to have access to contraceptive services? The answer to that is absolutely not. Contraception would be widely available. It is just that religious-affiliated employers would not be forced to fund this coverage which violates the tenants of their faith. It does not have anything to do with contraception. It does not have anything to do with that issue at all. What it has to do with is the issue of religious liberty and whether we are going to respect that or are we going to allow that to be eroded, and who knows where this goes next.

The other point I would make is, this is also, I think, an example of what happens when you get a government that is so big it can give you everything you want but also big enough to take it all away. There are a lot of people who, when this was debated, when the affordable care act was debated, argued—myself included—this would lead to government running more of our lives, making more decisions, intruding more, having more control, and making decisions with regard to people's health care.

I would submit this is an example—and perhaps example No. 1—of that very fact. What we are seeing now is, the affordable care act—as it gets implemented, we are giving more and more power to the Federal Government, and when we do that, when big government gets bigger and bigger, it has more latitude when it comes to running over the rights of ordinary Americans. This is a perfect example of that.

I could go down the list of other regulations. I have come down to the floor many times to talk about regulatory overreach, excessive regulations that go way beyond common sense, that do not deal with issues of public health and safety but are simply regulations for regulation's sake.

People have heard me come down and talk about the Department of Labor's efforts now to regulate the young people who work on family farms and ranches and the overly proscriptive way in which they are trying to keep young people from performing duties they learned growing up that they are trained to do, that contribute to the overall success and prosperity of family farms and ranches.

The Department of Labor's proposal right now would restrict young people from working at elevations that are more than 6 feet, from working with farm animals that are more than 6 months old, from working around grain elevators or stockyards or operating certain kinds of equipment, many pieces of equipment, types of equipment that are fairly standard on a farming operation. It strikes at the very heart of what makes a family farm and ranch operation tick. It is an assault on the heartland of this country and the culture and values that have helped shape it and make it great.

So this issue of regulatory overreach and big government is an issue that I think is symbolized by this current debate. What we are having is a debate about the reach of government to where they can start coming up with regulations under the new health care law that clearly violate the religious liberty protections that are afforded for people in this country under the first amendment and which I think our Founders, if they were around today, would find incredibly offensive.

This is an affront, an assault on these very liberties. It is an assault on our Bill of Rights, our Constitution. It is something the administration should walk back from and make right. They can do that very simply by reversing this or widening or broadening this exemption to cover religious-affiliated schools, universities and charities. And they could do that right now.

I would hope that would be the case. If it is not, there is legislation that has been proposed here. A number of my colleagues have already filed bills. In fact, Senator BLUNT was down here earlier today and asked to call up an amendment that would address this issue. It was objected to on the grounds that it is not related to the underlying bill, the highway bill. Well, if it is not related to the highway bill, then let's provide an opportunity for Congress to weigh in on this. I can tell you one thing, the American people are weighing in on this. This Congress of the United States, as their representatives, needs to stand for the American people and, more importantly, needs to defend the Constitution of the United States. If the administration is going to take this step, and if the administration is not going to walk back from this, this Congress of the United States needs to be heard.

There will be numerous attempts until that opportunity is presented by my colleagues and me to make sure this wrong is fixed, is corrected, and that the religious liberties for which our Founders came to this country and for which so many have fought and died over the years to defend are protected, and those rights that are enshrined in our Declaration of Independence and our Constitution and our Bill of Rights are protected for the American people.

I yield the floor.

ADDITIONAL STATEMENTS

OBSERVING NATIONAL INVENTORS' DAY

• Mr. BEGICH. Mr. President, today I would like to focus attention on inventors. Senate Joint Resolution 140, Public Law 97–198, designated February 11, the anniversary of the birth of the inventor Thomas Alva Edison, as National Inventors' Day.

Each year we recognize the contributions of those who use their imagination and skills to conceive, create, concoct, discover, devise, and formulate new devices, machines, and processes in order to receive patents, trademarks, and copyrights.

Inventors play an enormously important role in promoting progress in every aspect of our lives. Invention and innovation are basic to the technological and manufacturing strength of the United States and our economic, environmental, and social well-being.

The Constitution specifically provides for the granting of exclusive rights to inventors for their discoveries. During the First Congress, President George Washington prevailed upon the House and Senate to enact a patent statute and wisely advised that ''there is nothing which can better deserve your patronage than the promotion of science.''

In our State, since our Nation's bicentennial, over 1,600 patents have been issued to Alaska residents. The ingenuity of our citizens is reflected in the variety of patents issued such as a vehicle escape tool; an ocean spill and contaminated sea ice containment, separation, and removal system; an audible fishing weight; and a fish pin bone removal apparatus—just to name a few.

In recent years, over 500 new applications have been received by the U.S. Patent and Trademark Office from Alaskans involving wells, hydraulic and earth engineering, and electric conductors and insulators.

I applaud the efforts of support groups in Alaska such as the Inventors Institute of Alaska, Alaska Inventors and Entrepreneurs, and the Patent and Trademark Resource Center.

The genius of inventors is key to our future. The next great American invention could be among the patent applications pending at the Patent Office.

On the observance of National Inventors' Day, I urge all Alaskans to reflect on contributions of inventors and to take part in appropriate programs and activities.•

REMEMBERING CHIEF MASTER SERGEANT LUTHER JEFFERSON, SR.

• Mrs. BOXER. Mr. President, I am honored to salute the life and service of retired CMSgt Luther Jefferson, Sr., who served as a Tuskegee Airman in the 332nd Fighter Group. Chief Jefferson will be remembered not only for his valor and service to his country but also for his compassion, optimism, and generous spirit. He died at his home in Victorville, California on January 19, 2012.

Luther Jefferson was born March 23, 1923, in Cotton Valley, LA, and was the fifth of 11 children born to Andrew and Sue Willie Curry Jefferson. Reared in poverty on a sharecropper's farm, Luther was determined to work hard, study diligently, and maintain a positive outlook on life.

In March 1943, Luther Jefferson was drafted into the U.S. military. While completing basic training at the Army Air Base in Greenberg, NC, he learned of an experimental training program for African-American pilots, based at the Tuskegee Institute and Tuskegee Army Air Field in Alabama. After passing the required examination and being accepted into the program, he was assigned to the 332nd Fighter Group's 99th Fighter Squadron—part of an elite group now known as the Tuskegee Airmen. Logging more than 5,000 hours in aircraft that included the P–40 Fighter and B–25s, he helped protect Army Air Corps bombers in Italy during WWII and participated in the post-WWII Berlin Airlift. Following the war, Jefferson was assigned to Wright-Patterson Air Force Base at Dayton, OH in the Research and Development Section of New Aircraft and Human Characteristics—as one of a select few chosen to test new aircraft and combat simulations. Luther Jefferson also participated in the Dugway Proving Ground atomic test in Utah. By the time he retired from the U.S. Air Force in 1972, Luther Jefferson had become one of the branch's first African-American chief master sergeants.

As a civilian, Chief Jefferson remained active in his community and volunteered as a Little League umpire and a Meals-on-Wheels driver for homebound seniors.

Luther Jefferson, Sr., passed away at 88 years of age. I extend my heartfelt condolences to his two siblings Avis Jefferson and Alice Shaw; three children, Deborah Jefferson, Yvonne Atkinson, and Andrew Jefferson; and his six grandchildren, extended family, and numerous friends.

I ask my colleagues to join me in honoring the life of Tuskegee Airman CMSgt Luther Jefferson, Sr.

HONORING CAPTAIN CARLTON JACOB HOLLAND, JR. USA

• Mr. BARRASSO. Mr. President, today I honor Captain Jake Holland, United States Army, for his service in defense of Wyoming and our Nation.

Captain Holland of Casper, WY, was an Army Ranger assigned to the 48th Army of the Republic of Vietnam, Advance Team 88, Headquarters, Military Assistance Command—Vietnam Advisors, Military Assistance Command. He was stationed in the Central Highlands of Phuoc Long Province as a MACV advisor to the South Vietnamese.

The Central Highlands were a critical supply route for the Viet Cong through the Ho Chi Minh Trail. The MACV mission was infamously known as one of the most dangerous missions for ground troops. They deployed deep into the jungle in small teams of four to train and assist the South Vietnamese Army and the indigenous Montagnard fighters.

Early in the morning on February 9, Captain Holland and his men came under attack. They were outmanned and outgunned by the Viet Cong but that did not dissuade their determination to resist the attack on Bu Dang Compound.

As the enemy advanced closer to the compound demanding surrender over loud speakers, Captain Holland established a perimeter with his remaining forces. He picked up a .50 caliber machine gun and moved from position to position, exposing himself with each burst of fire. After all of the ammunition ran out, Captain Holland and his men succumbed to their wounds but they never gave up the fight. He was 36 years old.

Forty-seven years ago today, on February 9, 1965, Wyoming suffered its first casualty of the Vietnam War. For his valiant actions on this fateful day, Captain Holland was awarded the Distinguished Service Cross, the second highest honor in the Army. His decorations also included the Purple Heart Medal, National Defense Service Medal, Vietnam Service Medal, and the Vietnam Campaign Medal.

Today, Captain Holland lays in rest with his brothers in arms at Arlington National Cemetery in Section 35, site 3621. His name is engraved on Panel 01E, Line 86 at the Vietnam Veterans Memorial.

In Wyoming we never forget. It is through this tradition that we make every effort to honor and remember those who have selflessly made the ultimate sacrifice. We hold Captain Holland's service and valor high.•

RECOGNIZING WEST NOTTINGHAM ACADEMY

• Mr. CARDIN. Mr. President, I wish to recognize the 200th anniversary of the chartering and relocation of West Nottingham Academy in Colora, MD. West Nottingham Academy is recognized as the oldest boarding school in the nation 267 years after the school's original founding. West Nottingham Academy was founded in 1744 by Samuel Finley, a young Presbyterian minister from Ireland who later became president of Princeton. The school prepared boys for university study, and two early graduates, Benjamin Rush and Richard Stockton, went on to sign the Declaration of Independence. In 1812, West Nottingham Academy was granted a Charter by the State of Maryland, and moved to its present location. Notable alumni include Maryland Governor Austin Lane Crothers, Cincinnati founder John Filson, North Carolina Governor Alexander Martin, and Pennsylvania Congressman Peter Kostmayer.

West Nottingham Academy has evolved from its humble beginnings as a log cabin addition to Samuel Finley's home to a modern campus that is home to 120 boarding and day students in grades 9–12 representing eight States and ten countries. Student life is enriched outside the classroom by interscholastic sports teams, service learning opportunities, student-led clubs, and educational excursions to Baltimore, Philadelphia, and Washington.

West Nottingham Academy uses an innovative, student-centered academic approach which celebrates students' many learning styles through a variety of teaching methods. The student-centered approach is exemplified in West Nottingham's Chesapeake Learning Center, where students with learning differences receive support services uniquely tailored to help each student reach his or her full potential.

I would ask my colleagues to join me in congratulating West Nottingham Academy on the bicentennial of its chartering and relocation, and on over 200 years of providing educational opportunity and leadership to Maryland and our Nation.•

TRIBUTE TO SERGEANT FIRST CLASS JEREMIAH MOCK

• Mr. HELLER. Mr. President, today I wish to honor SFC Jeremiah Mock on the occasion of his oath of reenlistment in the Nevada Army National Guard. His commitment to the citizens of the Silver State is unwavering, and Nevada is honored by his service.

I would first like to recognize all of our Nation's service men and women. Each and every day, our troops are serving the United States to protect our freedom. They dedicate their lives to serve this great Nation and constantly make grave sacrifices to ensure the safety of our country. Our servicemembers and their families deserve our gratitude and thanks.

Before serving in the Nevada National Guard, Sergeant Mock served 9 years in the Army Reserve, where he was deployed repeatedly on combat tours to Iraq and Afghanistan. His continued dedication to service led him to join the Nevada National Guard in 2007, and he continues to serve his State, despite becoming the innocent victim of a brutal shooting in Carson City, NV, on September 6, 2011. I will never forget this tragic event, and I continue to send my thoughts and prayers to the victims and their families.

I commend Sergeant Mock for his bravery and thank him for his faithful

service to his State and country. I also wish to recognize Sergeant Mock's wife, SSG Stephanie Mock, who enlisted in the Nevada Air National Guard shortly after the tragic events of September 6, 2011. The Mock family is a true inspiration and illustration of a proud Nevada family who have overcome great hardship through faith and determination.

I congratulate Sergeant Mock on his reenlistment and am humbled by him and all of our courageous service men and women. Let us continue to be mindful of our dedicated servicemembers who fight to protect and preserve the ideals of freedom and democracy.●

RECOGNIZING MIYAKE RESTAURANTS

● Ms. SNOWE. Mr. President, one of the proudest American traditions is that of an individual who starts out on his or her own, takes a risk, and opens a successful business. Such entrepreneurs are the true drivers of our economy, creating jobs and supporting other small enterprises while revitalizing the areas in which they operate. Today I commend chef Masa Miyake of Miyake Restaurants, who has done exactly this in the city of Portland, ME.

In 2007, Masa was working as a chef in New York City and living in Queens with his wife and two young children. He dreamt of relocating to a place that offered a better quality of life for his children and somewhere with savory seafood. Maine offered him all of these things, and having vacationed on Maine's coast in the past, the State reminded him of the beauty of his native Japan. Coincidentally, Masa actually grew up in Japan's Aomori Prefecture in northern Japan, Maine's sister state.

When Masa opened Food Factory Miyake later that year in Portland, he and his wife and eventually one other person were the sole employees of the operation. As a small firm starting out, they did not have a liquor license, and initially the business was BYOB—bring your own beverage. But through hard work and ingenuity, Masa grew the business and built a respected brand, not to mention an excellent selection of authentic drink pairings including wine and sake.

Today, Masa's two restaurants—the revitalized original Miyake and the new Pai Men Miyake noodle restaurant—employ over 38 individuals. Maine is well known for its first-class seafood, and is really beginning to make a name for itself in the trendy world of sushi and haute Asian-fusion cuisine, thanks in no small part to chef Masa Miyake.

Further, Masa has developed his 3-acre backyard into a small farm. Here, Masa and his staff grow vegetables and raise livestock to directly supply his restaurants and other local Maine businesses, including Rosemont Markets, Hugo's, and the Barn on Walnut Hill. These include rare animals such as blue Swedish ducks, Freedom Ranger chickens, and guinea hens. This dynamic blend greatly enhances the rich culture of our State, and I congratulate Chef Miyake for his innovative approach to food and hope other budding entrepreneurs will follow his lead.

I am proud to extend my congratulations to chef Masa Miyake not only for his substantial contribution to the culinary scene in Maine but also for recognizing and highlighting the appeal of Maine as a great place to raise a family and start a business. Job creators with vision and big ideas like Chef Miyake are exactly what Maine needs as we work to restore and improve the economy in our small but vibrant and beautiful State. I offer my best wishes for continued success to Miyake Restaurants and look forward to Chef Miyake's future succulent dishes.●

MESSAGES FROM THE HOUSE

At 10:05 a.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1734. An act to decrease the deficit by realigning, consolidating, selling, disposing, and improving the efficiency of Federal buildings and other civilian real property, and for other purposes.

H.R. 2606. An act to reauthorize the Secretary of the Interior to allow the construction and operation of natural gas pipeline facilities in the Gateway National Recreation Area, and for other purposes.

H.R. 3521. An act to amend the Congressional Budget and Impoundment Control Act of 1974 to provide for a legislative line-item veto to expedite consideration of rescissions, and for other purposes.

H.R. 3581. An act to amend the Balanced Budget and Emergency Deficit Control Act of 1985 to increase transparency in Federal budgeting, and for other purposes.

At 12:32 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House has passed the following bill with an amendment, in which it requests the concurrence of the Senate:

S. 2038. An act to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes.

The message also announced that the House has passed the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 99. Concurrent resolution authorizing the use of Emancipation Hall in the Capitol Visitor Center for a ceremony to unveil the marker which acknowledges the role that slave labor played in the construction of the United States Capitol.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1734. An act to decrease the deficit by realigning, consolidating, selling, disposing, and improving the efficiency of Federal buildings and other civilian real property, and for other purposes; to the Committee on Environment and Public Works.

H.R. 2606. An act to authorize the Secretary of the Interior to allow the construction and operation of natural gas pipeline facilities in the Gateway National Recreation Area, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3521. An act to amend the Congressional Budget and Impoundment Control Act of 1974 to provide for a legislative line-item veto to expedite consideration of rescissions, and for other purposes; to the Committee on the Budget.

H.R. 3581. An act to amend the Balanced Budget and Emergency Deficit Control Act of 1985 to increase transparency in Federal budgeting, and for other purposes; to the Committee on the Budget.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 2079. A bill to extend the pay limitation for Members of Congress and Federal employees.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–4926. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Bacillus thuringiensis Cry2Ae Protein in Cotton; Exemption from the Requirement of a Tolerance'' (FRL No. 9333–7) received in the Office of the President of the Senate on February 2, 2012; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4927. A communication from the Acting Under Secretary of Defense (Personnel and Readiness), transmitting the report of (5) officers authorized to wear the insignia of the grade of rear admiral in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

EC–4928. A communication from the Assistant Secretary of Defense (Global Strategic Affairs), transmitting, pursuant to law, a report relative to the amount of funds the Department of Defense intends to obligate to the Cooperative Threat Reduction Program; to the Committee on Armed Services.

EC–4929. A communication from the Director, Financial Crimes Enforcement Network, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Financial Crimes Enforcement Network: Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Residential Mortgage Lenders and Originators'' (RIN1506–AB02) received in the Office of the President of the Senate on February 6, 2012; to the Committee on Banking, Housing, and Urban Affairs.

EC–4930. A communication from the Deputy Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency with respect to persons undermining democratic processes or institutions in Zimbabwe declared in Executive Order 13288; to the Committee on Banking, Housing, and Urban Affairs.

EC–4931. A communication from the Chairman and President of the Export-Import Bank, transmitting, pursuant to law, the

Bank's 2011 Annual Report; to the Committee on Banking, Housing, and Urban Affairs.

EC–4932. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled ''Report on Uncosted Balances for Fiscal Year Ended 2011''; to the Committee on Energy and Natural Resources.

EC–4933. A communication from the Secretary of the Commission, Bureau of Consumer Protection, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled ''Appliance Labeling Rule'' (RIN3084–AB03) received in the Office of the President of the Senate on February 7, 2012; to the Committee on Energy and Natural Resources.

EC–4934. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Georgia; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards'' (FRL No. 9627–7) received in the Office of the President of the Senate on February 2, 2012; to the Committee on Environment and Public Works.

EC–4935. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; New Hampshire: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule'' (FRL No. 9627–8) received in the Office of the President of the Senate on February 2, 2012; to the Committee on Environment and Public Works.

EC–4936. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; North Carolina; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards'' (FRL No. 9627–6) received in the Office of the President of the Senate on February 2, 2012; to the Committee on Environment and Public Works.

EC–4937. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; State of Tennessee: Prevention of Significant Deterioration and Nonattainment New Source Review Rules: Nitrogen Oxides as a Precursor to Ozone'' (FRL No. 9627–5) received in the Office of the President of the Senate on February 2, 2012; to the Committee on Environment and Public Works.

EC–4938. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District'' (FRL No. 9501–5) received in the Office of the President of the Senate on February 2, 2012; to the Committee on Environment and Public Works.

EC–4939. A communication from the Chief of Recovery and Delisting, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Bald Eagles Nesting in Sonoran Desert Area of Central Arizona Removed from the List of Endangered and Threatened Wildlife'' (RIN1018–AX08) received during adjournment of the Senate in the Office of the President of the Senate on February 3, 2012; to the Committee on Environment and Public Works.

EC–4940. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Application of QJSA and QPSA Rules to Deferred Annuity Contracts'' (Rev. Rul. 2012–3) received in the Office of the President of the Senate on February 7, 2012; to the Committee on Finance.

EC–4941. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Rollover from Qualified Defined Contribution Plan to Qualified Defined Benefit Plan to Obtain Additional Annuity'' (Rev. Rul. 2012–4) received in the Office of the President of the Senate on February 7, 2012; to the Committee on Finance.

EC–4942. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Application for Recognition as a 501(c) (29) Organization'' ((RIN1545–BK64) (TD 9574)) received in the Office of the President of the Senate on February 7, 2012; to the Committee on Finance.

EC–4943. A communication from the Assistant Secretary for the Employment and Training Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Senior Community Service Employment Program; Final Rule, Additional Indicator on Volunteer Work'' (RIN1205–AB60) received during adjournment of the Senate in the Office of the President of the Senate on February 3, 2012; to the Committee on Health, Education, Labor, and Pensions.

EC–4944. A communication from the Assistant Secretary for the Employment and Training Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program; Delay of Effective Date'' (RIN1205–AB61) received during adjournment of the Senate in the Office of the President of the Senate on February 3, 2012; to the Committee on Health, Education, Labor, and Pensions.

EC–4945. A communication from the Director of Regulations and Policy Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Further Amendments to General Regulations of the Food and Drug Administration to Incorporate Tobacco Products'' (RIN0910–AG60) received in the Office of the President of the Senate on February 6, 2012; to the Committee on Health, Education, Labor, and Pensions.

EC–4946. A communication from the Program Manager, Centers for Disease Control, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Guidelines for Determining Probability of Causation under the Energy Employees Occupational Illness Compensation Program Act of 2000; Revision of Guidelines on Non-Radiogenic Cancers'' (RIN0920–AA39) received in the Office of the President of the Senate on February 6, 2012; to the Committee on Health, Education, Labor, and Pensions.

EC–4947. A communication from the Secretary, Mississippi River Commission, Department of the Army, transmitting, pursuant to law, the Commission's Annual Report for calendar year 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–4948. A communication from the Director of the Regulation Policy and Management Office, Veterans Benefits Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Schedule for Rating Disabilities; AL Amyloidosis (Primary Amyloidosis)'' (RIN2900–AN75) received during adjournment of the Senate in the Office of the President of the Senate on February 8, 2012; to the Committee on Veterans' Affairs.

EC–4949. A communication from the Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2012 Gulf of Alaska Pollock and Pacific Cod Total Allowable Catch Amounts'' (RIN0648–XA917) received in the Office of the President of the Senate on February 7, 2012; to the Committee on Commerce, Science, and Transportation.

EC–4950. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 11'' (RIN0648–AX05) received during adjournment of the Senate in the Office of the President of the Senate on February 3, 2012; to the Committee on Commerce, Science, and Transportation.

EC–4951. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries Off West Coast States; Pacific Coast Groundfish Harvest Specifications and Management Measures for the Remainder of the 2011 Fishery'' (RIN0648–BA01) received during adjournment of the Senate in the Office of the President of the Senate on February 3, 2012; to the Committee on Commerce, Science, and Transportation.

EC–4952. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gag Grouper Closure Measures'' (RIN0648–BA94) received during adjournment of the Senate in the Office of the President of the Senate on February 3, 2012; to the Committee on Commerce, Science, and Transportation.

EC–4953. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Pacific Cod Fishing in the Parallel Fishery in the Bering Sea and Aleutian Islands Management Area'' (RIN0648–AY65) received during adjournment of the Senate in the Office of the President of the Senate on February 3, 2012; to the Committee on Commerce, Science, and Transportation.

EC–4954. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Emergency Rule Extension, Georges Bank Yellowtail Flounder Catch Limit Revisions'' (RIN0648–BA27) received during adjournment of the Senate in the Office of the President of the Senate on February 3, 2012; to the Committee on Commerce, Science, and Transportation.

EC–4955. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries Off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program; Program Improvement and Enhancement; Amendment 21–1'' (RIN0648–BB13) received during adjournment of the Senate in the Office of the President of the Senate on February 3, 2012; to the Committee on Commerce, Science, and Transportation.

EC–4956. A communication from the Deputy Assistant Administrator for Operations, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures'' (RIN0648–BA01) received during adjournment of the Senate in the Office of the President of the Senate on February 3, 2012; to the Committee on Commerce, Science, and Transportation.

EC–4957. A communication from the Director, Bureau of Economic Analysis, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''International Services Surveys: Amendments to the BE-120, Benchmark Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons'' (RIN0691–AA76) received during adjournment of the Senate in the Office of the President of the Senate on February 3, 2012; to the Committee on Commerce, Science, and Transportation.

EC–4958. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Amendment to the Export Administration Regulations: Addition of a Reference to a Provision of the Iran Sanctions Act of 1996 (ISA) and Statement of the Licensing Policy for Transactions Involving Persons Sanctioned under the ISA'' (RIN0694–AF30) received during adjournment of the Senate in the Office of the President of the Senate on February 3, 2012; to the Committee on Commerce, Science, and Transportation.

EC–4959. A communication from the Assistant Director for Policy, Office of Foreign Assets Control, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Cote d'Ivoire Sanctions Regulations; Darfur Sanctions Regulations; Democratic Republic of the Congo Sanctions Regulations'' (31 CFR Parts 543, 546, and 547) received during adjournment of the Senate in the Office of the President of the Senate on February 3, 2012; to the Committee on Banking, Housing, and Urban Affairs.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. HELLER:

S. 2080. A bill to authorize depository institutions, depository institution holding companies, Fannie Mae, and Freddie Mac to lease foreclosed property held by such entities for up to 5 years, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BURR (for himself, Mr. MCCONNELL, Mr. COCHRAN, Mrs. HUTCHISON, Mr. CORNYN, Mr. PAUL, Mr. GRAHAM, Mr. ENZI, Mr. JOHNSON of Wisconsin, Mr. BARRASSO, Mr. WICKER, Mr. RISCH, Ms. AYOTTE, Mr. BOOZMAN, Mr. COBURN, Mr. DEMINT, Mr. THUNE, and Mr. CHAMBLISS):

S. 2081. A bill to require participation in public service and engagement in an active job search as conditions for receipt of extended unemployment benefits; to the Committee on Finance.

By Mr. UDALL of New Mexico (for himself and Mr. BINGAMAN):

S. 2082. A bill to establish the Cavernous Angioma CARE Center (Clinical Care, Awareness, Research and Education) of Excellence, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. THUNE (for himself and Ms. CANTWELL):

S. 2083. A bill to amend the Internal Revenue Code of 1986 to prohibit the Secretary of the Treasury from requiring that taxpayers reconcile amounts with respect to reportable payment transactions to amounts related to gross receipts and sales; to the Committee on Finance.

By Ms. SNOWE (for herself and Ms. KLOBUCHAR):

S. 2084. A bill to require the Secretary of Transportation to establish accelerated licensing procedures to assist veterans to acquire commercial driver's licenses, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. PAUL (for himself, Mr. JOHNSON of Wisconsin, and Mr. LEE):

S. 2085. A bill to strengthen employee cost savings suggestions programs within the Federal Government; to the Committee on Homeland Security and Governmental Affairs.

By Mrs. MCCASKILL:

S. 2086. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to provide for a legislative line-item veto to expedite consideration of rescissions, and for other purposes; to the Committee on the Budget.

By Mr. BROWN of Ohio (for himself, Ms. KLOBUCHAR, Mr. FRANKEN, Mrs. GILLIBRAND, Mr. SCHUMER, Mr. CASEY, and Mrs. HAGAN):

S. 2087. A bill to clarify the meaning of ''produced'' for purposes of limitations on the procurement by the Department of Defense of specialty metals within the United States; to the Committee on Armed Services.

By Mr. ROCKEFELLER:

S. 2088. A bill to amend the Internal Revenue Code of 1986 to permanently double the amount of start-up expenses entrepreneurs can deduct from their taxes; to the Committee on Finance.

By Ms. KLOBUCHAR:

S. 2089. A bill to amend title 10, United States Code, to expand the authority of the Secretary of the Army to loan or donate excess small arms to certain eligible organizations for funeral and other ceremonial purposes; to the Committee on Armed Services.

By Mr. AKAKA (for himself, Mr. BARRASSO, Mr. JOHNSON of South Dakota, Ms. MURKOWSKI, Mr. TESTER, Mr. BAUCUS, Mr. FRANKEN, Ms. CANTWELL, Mr. HOEVEN, Mrs. MURRAY, and Mr. UDALL of New Mexico):

S. 2090. A bill to amend the Indian Law Enforcement Reform Act to extend the period of time provided to the Indian Law and Order Commission to produce a required report, and for other purposes; to the Committee on Indian Affairs.

By Mr. ENZI:

S. 2091. A bill to amend the Internal Revenue Code of 1986 to reform the international tax system of the United States, and for other purposes; to the Committee on Finance.

By Mr. MANCHIN (for himself and Mr. RUBIO):

S. 2092. A bill to amend title XXVII of the Public Health Service Act to provide conscience protections for individuals and organizations; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MENENDEZ:

S. 2093. A bill to establish pilot programs to encourage the use of shared appreciation mortgage modifications, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BROWN of Ohio:

S. 2094. A bill to amend the Federal Water Pollution Control Act to update a program to provide assistance for the planning, design, and construction of treatment works to intercept, transport, control, or treat municipal combined sewer overflows and sanitary sewer overflows, and to require the Administrator of the Environmental Protection Agency to update certain guidance used to develop and determine the financial capability of communities to implement clean water infrastructure programs; to the Committee on Environment and Public Works.

By Mr. FRANKEN:

S. 2095. A bill to ensure that individuals who are in an authorized job training program or completing work for a degree or certificate remain eligible for regular unemployment compensation; to the Committee on Finance.

By Mr. CORNYN (for himself, Mr. WYDEN, and Mrs. HUTCHISON):

S. 2096. A bill to provide for Federal agencies to develop public access policies relating to research conducted by employees of that agency or from funds administered by that agency; to the Committee on Homeland Security and Governmental Affairs.

By Ms. LANDRIEU:

S. 2097. A bill to amend title XVIII of the Social Security Act to provide for coverage of comprehensive cancer care planning under the Medicare Program and to improve the care furnished to individuals diagnosed with cancer by establishing grants programs for provider education, and related research; to the Committee on Finance.

By Mr. WYDEN:

S. 2098. A bill to support statewide individual-level integrated postsecondary education data systems, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. JOHNSON of South Dakota (for himself and Mr. SHELBY):

S. 2099. A bill to amend the Federal Deposit Insurance Act with respect to information provided to the Bureau of Consumer Financial Protection; to the Committee on Banking, Housing, and Urban Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CASEY (for himself, Mr. RUBIO, Mrs. GILLIBRAND, Mrs. BOXER, Mr. ISAKSON, Mr. DURBIN, and Mr. KYL):

S. Res. 370. A resolution calling for democratic change in Syria; to the Committee on Foreign Relations.

By Mrs. MURRAY (for herself, Ms. COLLINS, Mr. LEVIN, Mr. SANDERS, Mr. WEBB, Ms. KLOBUCHAR, Ms. STABENOW, and Ms. SNOWE):

S. Res. 371. A resolution designating the week of February 6 through 10, 2012, as ''National School Counseling Week''; considered and agreed to.

ADDITIONAL COSPONSORS

S. 316

At the request of Mr. CORNYN, the name of the Senator from Wyoming (Mr. BARRASSO) was added as a cosponsor of S. 316, a bill to ensure that the victims and victims' families of the November 5, 2009, attack at Fort Hood, Texas, receive the same treatment, benefits, and honors as those Americans who have been killed or wounded in a combat zone overseas and their families.

S. 376

At the request of Mr. COBURN, the name of the Senator from Nebraska (Mr. JOHANNS) was added as a cosponsor of S. 376, a bill to amend title 5, United States Code, to provide that persons having seriously delinquent tax debts shall be ineligible for Federal employment.

S. 402

At the request of Ms. SNOWE, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 402, a bill to amend title 10, United States Code, to provide for the award of a military service medal to members of the Armed Forces who served honorably during the Cold War, and for other purposes.

S. 412

At the request of Mr. LEVIN, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 412, a bill to ensure that amounts credited to the Harbor Maintenance Trust Fund are used for harbor maintenance.

S. 555

At the request of Mr. FRANKEN, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of S. 555, a bill to end discrimination based on actual or perceived sexual orientation or gender identity in public schools, and for other purposes.

S. 641

At the request of Mr. DURBIN, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 641, a bill to provide 100,000,000 people with first-time access to safe drinking water and sanitation on a sustainable basis within six years by improving the capacity of the United States Government to fully implement the Senator Paul Simon Water for the Poor Act of 2005.

S. 704

At the request of Mr. WYDEN, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 704, a bill to provide for duty-free treatment of certain recreational performance outerwear, and for other purposes.

S. 1164

At the request of Mr. DEMINT, the name of the Senator from Utah (Mr. LEE) was added as a cosponsor of S. 1164, a bill to empower States with authority for most taxing and spending for highway programs and mass transit programs, and for other purposes.

S. 1269

At the request of Ms. SNOWE, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 1269, a bill to amend the Elementary and Secondary Education Act of 1965 to require the Secretary of Education to collect information from coeducational secondary schools on such schools' athletic programs, and for other purposes.

S. 1315

At the request of Mr. BLUMENTHAL, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1315, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to extend public safety officers' death benefits to fire police officers.

S. 1335

At the request of Mr. INHOFE, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1335, a bill to amend title 49, United States Code, to provide rights for pilots, and for other purposes.

S. 1369

At the request of Mr. CRAPO, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 1369, a bill to amend the Federal Water Pollution Control Act to exempt the conduct of silvicultural activities from national pollutant discharge elimination system permitting requirements.

S. 1460

At the request of Mr. BAUCUS, the names of the Senator from Maryland (Mr. CARDIN) and the Senator from Connecticut (Mr. BLUMENTHAL) were added as cosponsors of S. 1460, a bill to grant the congressional gold medal, collectively, to the First Special Service Force, in recognition of its superior service during World War II.

S. 1467

At the request of Mr. BLUNT, the names of the Senator from Arizona (Mr. MCCAIN), the Senator from Alabama (Mr. SESSIONS), the Senator from Alaska (Ms. MURKOWSKI), the Senator from South Carolina (Mr. GRAHAM) and the Senator from Massachusetts (Mr. BROWN) were added as cosponsors of S. 1467, a bill to amend the Patient Protection and Affordable Care Act to protect rights of conscience with regard to requirements for coverage of specific items and services.

S. 1575

At the request of Mr. CARDIN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1575, a bill to amend the Internal Revenue Code of 1986 to modify the depreciation recovery period for energy-efficient cool roof systems.

S. 1591

At the request of Mrs. GILLIBRAND, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 1591, a bill to award a Congressional Gold Medal to Raoul Wallenberg, in recognition of his achievements and heroic actions during the Holocaust.

S. 1616

At the request of Mr. ENZI, the name of the Senator from Arkansas (Mr. BOOZMAN) was added as a cosponsor of S. 1616, a bill to amend the Internal Revenue Code of 1986 to exempt certain stock of real estate investment trusts from the tax on foreign investments in United States real property interests, and for other purposes.

S. 1676

At the request of Mr. THUNE, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 1676, a bill to amend the Internal Revenue Code of 1986 to provide for taxpayers making donations with their returns of income tax to the Federal Government to pay down the public debt.

S. 1734

At the request of Mr. BLUMENTHAL, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1734, a bill to provide incentives for the development of qualified infectious disease products.

S. 1770

At the request of Mrs. GILLIBRAND, the name of the Senator from Connecticut (Mr. BLUMENTHAL) was added as a cosponsor of S. 1770, a bill to prohibit discrimination in adoption or foster case placements based on the sexual orientation, gender identity, or marital status of any prospective adoptive or foster parent, or the sexual orientation or gender identity of the child involved.

S. 1796

At the request of Mr. ISAKSON, the name of the Senator from Missouri (Mr. BLUNT) was added as a cosponsor of S. 1796, a bill to make permanent the Internal Revenue Service Free File program.

S. 1821

At the request of Mr. COONS, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 1821, a bill to prevent the termination of the temporary office of bankruptcy judges in certain judicial districts.

S. 1925

At the request of Mr. LEAHY, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from Colorado (Mr. BENNET), the Senator from Montana (Mr. TESTER), the Senator from Montana (Mr. BAUCUS) and the Senator from North Dakota (Mr. CONRAD) were added as cosponsors of S. 1925, a bill to reauthorize the Violence Against Women Act of 1994.

S. 1945

At the request of Mr. DURBIN, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 1945, a bill to permit the televising of Supreme Court proceedings.

S. 1990

At the request of Mr. LIEBERMAN, the name of the Senator from Missouri

(Mr. BLUNT) was added as a cosponsor of S. 1990, a bill to require the Transportation Security Administration to comply with the Uniformed Services Employment and Reemployment Rights Act.

S. 2043

At the request of Mr. RUBIO, the names of the Senator from North Carolina (Mr. BURR), the Senator from South Carolina (Mr. GRAHAM) and the Senator from Maine (Ms. SNOWE) were added as cosponsors of S. 2043, a bill to amend title XXVII of the Public Health Service Act to provide religious conscience protections for individuals and organizations.

S. 2053

At the request of Mr. BENNET, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 2053, a bill to encourage transit-oriented development, and for other purposes.

S. 2059

At the request of Mr. WHITEHOUSE, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2059, a bill to reduce the deficit by imposing a minimum effective tax rate for high-income taxpayers.

S. 2062

At the request of Mr. PAUL, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 2062, a bill to amend the Lacey Act Amendments of 1981 to repeal certain provisions relating to criminal penalties and violations of foreign laws, and for other purposes.

S.J. RES. 19

At the request of Mr. HATCH, the name of the Senator from North Dakota (Mr. HOEVEN) was added as a cosponsor of S.J. Res. 19, a joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

S. RES. 310

At the request of Ms. MIKULSKI, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. Res. 310, a resolution designating 2012 as the ''Year of the Girl'' and congratulating Girl Scouts of the USA on its 100th anniversary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HELLER:

S. 2080. A bill to authorize depository institutions, depository institution holding companies, Fannie Mae, and Freddie Mac to lease foreclosed property held by such entities for up to 5 years, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. HELLER. Mr. President, when our Nation's economy was thriving, Nevada was at the heart of the construction boom. Buildings and homes were going up across the State. Neighborhoods were growing, schools were being built at record rates, and the construction industry was flourishing. All of this activity drove investments into other areas of the economy, and for many life was good in Nevada. But when the crisis hit, the highs that my State experienced were matched by the lows that followed.

Nevada now leads the Nation in unemployment with more than 160,000 Nevadans looking for a job. Many can no longer afford their homes. Nevadans are being forced into bankruptcy and facing foreclosure. While Nevada is home to some of the most resilient, hard-working people in the country, almost one-quarter of Nevadans are so frustrated that they have simply given up hope for better employment.

Much of the difficulty Nevadans are experiencing can be traced back to the crisis in my State. The ill effects of the depressed housing market are widespread. High rates of foreclosures are devastating to families, neighborhoods, and entire communities. Families who have been foreclosed upon are already having a hard time paying their bills. Add to those difficulties the time spent finding a new place and the costs of moving and their problems are compounded. Time spent fighting the bank to avoid foreclosure and relocating would likely be better used to find a job or better paying employment.

One of the biggest problems distressed home owners are facing is the programs that have been put into place to help keep people in their homes that have not lived up to expectations. My office spends a great deal of time with Nevadans on the cusp of losing their homes, looking for help, and trying to keep families in their homes. It is truly heart wrenching to hear some of these stories. These homeowners do not want to foreclose, and obviously they do not want to lose their homes.

I recently received this e-mail from a constituent in Reno who is fighting to keep their home. I would like to share that with you.

> We hoped for a win-win situation but in the end all we got was a nightmare in which everyone loses: my sister and I obviously lose, our neighborhood loses as another house sits vacant with a rusting metal sign in the front, our State loses as the housing plight increases again, the bank loses because they lose a customer who just needed another chance and, most importantly, democracy loses as the plutocrats roll over another family.

When families move, their children often have to change schools. So now not only are children forced to move from their homes, they are also leaving behind their schools and their neighborhoods. This kind of destabilization is harmful for families who are already struggling.

Consider the effects of foreclosures on neighborhoods and communities. The widespread availability of housing is flooding the real estate inventory in Nevada. This is forcing down home values and making it difficult for other people to sell their homes as well. In February 2006 the average home in Nevada was valued at $309,000. Today the home values have dropped to $120,000.

Homes left vacant and uncared for can quickly become an eyesore, pushing low home values even lower. This means others in the neighborhood can have a difficult time selling their homes if they want to move. If they find a better job elsewhere, for example, they may not be able to take it because they cannot sell their homes for a reasonable price, if they are able to sell them at all.

Today I am introducing legislation to help reverse these destabilizing forces. The bill I am introducing today, the Keeping Families in their Home Act, will help address large unsold housing inventories and give families a chance to stay in their homes. This bill would allow banks, Fannie Mae and Freddie Mac, to enter into long-term leases, including an option to purchase properties acquired through foreclosure with the prior homeowner or any individual.

By providing an opportunity for the homeowner to stay in their home, the bank is giving families a chance to regain sound financial footing. This commonsense solution helps provide some much needed stability is available for all families.

While I believe this bill is a good step in the right direction, let me be clear: much more needs to be done to help the housing problems facing Nevada. The programs already in place simply have not done enough and have not lived up to expectations.

I was pleased to see reports of growth in our economy, but people in my State continue to suffer. Back home Nevadans still believe there are no jobs. Small businesses are trying to survive while gridlock in Washington is making it harder for employers to know what is expected in the coming year. Crushing regulations are bringing Nevada's growth industries to a halt. In order for Nevada to experience real long-term recovery, Washington needs to fundamentally change the way it works. Congress needs to stop overspending. Republicans and Democrats should come together to close unfair loopholes and make the Tax Code easier for businesses to understand and to follow. This bill is just one solution to help turn around this housing crisis. It is also an idea that both Republicans and Democrats can support.

I look forward to working with my colleagues to pass this bill and others into law so that we can help families dealing with foreclosures across the country. As I have said before, moving forward I welcome any and all ideas on how to fix the housing crisis in this country. Nevadans cannot afford to wait any longer.

In the meantime, I urge my colleagues to seriously consider supporting this bill. This legislation can go a long way toward helping families, stabilizing neighborhoods, and stem

any further reduction in home prices. I hope Senators will join me in this endeavor so the President can sign this bill into law and help families who badly need it.

By Mr. ROCKEFELLER:

S. 2088. A bill to amend the Internal Revenue Code of 1986 to permanently double the amount of start-up expenses entrepreneurs can deduct from their taxes; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, today I am introducing the Small Business Start-up Support Act of 2012, legislation that will promote small business growth in my home state of West Virginia, and around the country.

Since the recession, I have met with countless business owners, as well as those who dream of starting a small business. One of the common themes of these conversations is the difficulty these individuals have raising capital, particularly when a business is in its infancy.

This legislation helps those individuals out, by expanding a successful provision of the tax code that allows business owners to deduct up to $5,000 of start-up costs. These start-up costs are things like legal and marketing costs that are necessary to get a business up and running, but put a strain on an already tight budget. My bill would expand this deduction so that individuals can deduct up to $10,000 of start-up costs.

For a business to survive, and thrive, its owner has to do their homework during its infancy. They have to study things like supply chains and distribution models. They have to develop marketing plans. Each of these things has a cost that is incurred before a business makes dollar one. That is when a business owner is most in need of assistance and that is why this credit was first enacted.

A temporary expansion of the start-up deduction was enacted in 2008, and it was one of many actions this Congress took to help business owners weather the recession and keep their doors open. President Obama included a permanent extension of this provision in his ''Startup America'' legislative agenda and I am committed to seeing it become law.

I ask my colleagues to join me in supporting this important legislation and thank the chair for allowing me to speak on this issue.

By Mr. ENZI:

S. 2091. A bill to amend the Internal Revenue Code of 1986 to reform the international tax system of the United States, and for other purposes; to the Committee on Finance.

Mr. ENZI. Mr. President, I rise to speak about a bill I am introducing today, the United States Job Creation and International Tax Reform Act of 2012. The name says it all. This is a bill that would incentivize American companies to create jobs in the United States while at the same time leveling the playing field for U.S. companies in the global marketplace. This bill would reform and modernize the rules for taxing the global operations of American companies and would help America become a more attractive location to base a business that serves customers all over the world.

Unfortunately, our current tax rules do just the opposite. In fact, many businesses could be better off if they were headquartered outside the United States. That is not right, and Congress should fix it. This bill would do that.

I wish to thank Senator HATCH and members of his staff who have been helpful in working through the complexities of this international tax.

I also wish to mention Eric Oman, a member of my staff and a CPA, who worked with me in developing this legislation. He has lived overseas and worked with the U.S. tax laws overseas. That is the kind of expertise we need to reform international tax law.

I wish to thank all who testified before the Finance Committee, especially Scott Naatjes, who is the vice president and general tax counsel of Cargill. This man has dealt with the complex accounting of foreign earnings and the money to be repatriated to the United States, an actual practitioner whom we relied on. He gave us insight into years of records that have to be reviewed for a single item in the complex web of the current international tax system in order to bring the money back to the United States.

Finally, I wish to thank DAVE CAMP, the chairman of the House, Ways, and Means Committee, who kick-started the discussion on tax reform when he released his discussion draft last October.

Enacted in the 1960s, our current international tax rules have passed their expiration date. Many of the U.S. major trading partners, including Canada, Japan, the United Kingdom, and most of Europe have moved to what are called territorial tax systems. That is actually a word for a global tax system. These types of tax systems tax the income generated within their borders and exempt foreign earnings from tax.

The United States, on the other hand, taxes the worldwide income of U.S. companies and provides deferral of the U.S. tax until the foreign earnings are brought home. Deferral of the tax until the earnings are brought home encourages them not to bring the money home. It actually incentivizes them to leave their money abroad and to expand over there. Because the United States has nearly the highest corporate tax rate in the world, companies don't bring those earnings back and, as I said, reinvest outside the United States. That certainly is not a recipe for U.S. growth and U.S. job creation.

The dominance of U.S.-headquartered companies in the global marketplace is waning. Thirty-six percent of the Fortune Global 500 companies were headquartered in the United States in 2000. In 2009, that number dropped to 28 percent. That is from 36 percent to 28 percent among the Fortune Global 500 companies headquartered in the United States. Clearly, America is losing ground and our current international tax rules are a big part of the problem.

The bill I am introducing would help to right the ship by pulling our international tax rules into the 21st century so U.S. companies are not at a competitive disadvantage with foreign companies because of American tax rules that are outdated by changes most other countries have already made. The bill would give U.S. companies incentives to create jobs in the United States and undertake activities in the United States in order to win globally.

First, if the foreign earnings have already been subject to a tax in a foreign country, this bill would provide a 95-percent exemption from the U.S. tax on those foreign earnings. This would allow for American-managed capital to be put to the most productive use and help stabilize our economy.

Second, this bill would allow foreign earnings that are currently sitting overseas to be brought back to America at a reduced rate—not a zero tax rate but a greatly reduced rate—and with the ability to pay that, the taxes that are owed in installments. That gets the cash back now and still gets some taxation for us instead of leaving it all overseas. This provision would serve as a transition to the new territorial system by allowing U.S. companies to unlock a significant amount of capital currently being held offshore and quickly move into the new territorial system, and that means more jobs and a better economy. It also emphasizes one of the things I talk about with any of the tax changes—as one of the few accountants—we have to transition into these things if we want the companies stable enough that they can exist through the change in the Tax Code, and that provides for a transition as well.

Third, this bill would reduce the U.S. tax burden on income generated by American companies from ideas and innovations. This bill would encourage companies to develop and keep rights to ideas and inventions in the United States. When families tune in to ''60 Minutes'' on Sunday evenings, they would hear fewer stories about how U.S. companies are moving their profits to tax haven countries and avoiding U.S. tax on those earnings. Families would hear fewer stories about how the U.S. multinational companies set up post office boxes in the Cayman Islands and Switzerland without a single employee or officer of the company anywhere on site and attribute a significant portion of their foreign earnings to those jurisdictions.

Instead, families would hear more stories about how U.S. companies are generating the ideas and inventions of tomorrow right here in America.

This bill can be a first step in tax reform. We have a lot of work to do in many other areas of tax law in order to make it simpler, fairer, and more transparent. We need to be looking at the individual tax system, the corporate tax system, and particularly how we tax the passthrough entities such as partnerships and S corporations that have to pay the tax on the money when it is still invested in the business.

I also recognize, as we move forward in these other areas, it may be appropriate to make changes to this bill. This is exactly how the legislative process should work, and I look forward to getting back to conducting the Senate's business in regular order, where we work through the issues in the committee first and offer amendments to improve the bills that ultimately come to the Senate floor, where there is a shot for everybody else to make amendments.

But today with the introduction of this bill, we move from discussion to action with respect to a single piece of the tax reform. The Simpson-Bowles deficit commission recommended a move to a territorial system, and I am glad to be moving the conversation forward on this recommendation with the introduction of this bill. I hope this bill will begin a discussion, a discussion of fairness that needs to begin yesterday.

I hope Members and their staff will review the bill and the detailed explanation we have prepared. I also ask that all interested stakeholders review the bill and reach out to my staff and the staff of the Finance Committee to discuss what they like, what they don't like, and their suggestions for improvements. That is the way bills are supposed to work.

The international tax rules are not easy or simple and reforming them will be a heavy lift. But those things are worth doing, and when they are worth doing, they are rarely easy or simple.

I look forward to joining with my colleagues to pass international tax reforms that our American companies and our country desperately need.

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

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

S. 2091

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

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''United States Job Creation and International Tax Reform Act of 2012''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—PARTICIPATION EXEMPTION SYSTEM FOR TAXATION OF FOREIGN INCOME

Sec. 101. Deduction for dividends received by domestic corporations from certain foreign corporations.

Sec. 102. Application of dividends received deduction to certain sales and exchanges of stock.

Sec. 103. Deduction for foreign intangible income derived from trade or business within the United States.

Sec. 104. Treatment of deferred foreign income upon transition to participation exemption system of taxation.

TITLE II—OTHER INTERNATIONAL TAX REFORMS

Subtitle A—Modifications of Subpart F

Sec. 201. Treatment of low-taxed foreign income as subpart F income.

Sec. 202. Permanent extension of look-thru rule for controlled foreign corporations.

Sec. 203. Permanent extension of exceptions for active financing income.

Sec. 204. Foreign base company income not to include sales or services income.

Subtitle B—Modifications Related to Foreign Tax Credit

Sec. 211. Modification of application of sections 902 and 960 with respect to post-2012 earnings.

Sec. 212. Separate foreign tax credit basket for foreign intangible income.

Sec. 213. Inventory property sales source rule exceptions not to apply for foreign tax credit limitation.

Subtitle C—Allocation of Interest on Worldwide Basis

Sec. 221. Acceleration of election to allocate interest on a worldwide basis.

TITLE I—PARTICIPATION EXEMPTION SYSTEM FOR TAXATION OF FOREIGN INCOME

SEC. 101. DEDUCTION FOR DIVIDENDS RECEIVED BY DOMESTIC CORPORATIONS FROM CERTAIN FOREIGN CORPORATIONS.

(a) ALLOWANCE OF DEDUCTION.—Part VIII of subchapter B of chapter 1 is amended by inserting after section 245 the following new section:

''SEC. 245A. DIVIDENDS RECEIVED BY DOMESTIC CORPORATIONS FROM CERTAIN FOREIGN CORPORATIONS.

''(a) IN GENERAL.—In the case of any dividend received from a controlled foreign corporation by a domestic corporation which is a United States shareholder with respect to such controlled foreign corporation, there shall be allowed as a deduction an amount equal to 95 percent of the qualified foreign-source portion of the dividend.

''(b) TREATMENT OF ELECTING NONCONTROLLED SECTION 902 CORPORATIONS AS CONTROLLED FOREIGN CORPORATIONS.—

''(1) IN GENERAL.—If a domestic corporation elects the application of this subsection for any noncontrolled section 902 corporation with respect to the domestic corporation, then, for purposes of this title—

''(A) the noncontrolled section 902 corporation shall be treated as a controlled foreign corporation with respect to the domestic corporation, and

''(B) the domestic corporation shall be treated as a United States shareholder with respect to the noncontrolled section 902 corporation.

''(2) ELECTION.—

''(A) TIME OF ELECTION.—Any election under this subsection with respect to any noncontrolled section 902 corporation shall be made not later than the due date for filing the return of tax for the first taxable year of the taxpayer with respect to which the foreign corporation is a noncontrolled section 902 corporation with respect to the taxpayer (or, if later, the first taxable year of the taxpayer for which this section is in effect).

''(B) REVOCATION OF ELECTION.—Any election under this subsection, once made, may be revoked only with the consent of the Secretary.

''(C) CONTROLLED GROUPS.—If a domestic corporation making an election under this subsection with respect to any noncontrolled section 902 corporation is a member of a controlled group of corporations (within the meaning of section 1563(a), except that 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears therein), then, except as otherwise provided by the Secretary, such election shall apply to all members of such group.

''(c) QUALIFIED FOREIGN-SOURCE PORTION OF DIVIDENDS.—For purposes of this section—

''(1) QUALIFIED FOREIGN-SOURCE PORTION.—

''(A) IN GENERAL.—The qualified foreign-source portion of any dividend is an amount which bears the same ratio to such dividend as—

''(i) the post-2012 undistributed qualified foreign earnings, bears to

''(ii) the total post-2012 undistributed earnings.

''(B) POST-2012 UNDISTRIBUTED EARNINGS.—The term 'post-2012 undistributed earnings' means the amount of the earnings and profits of a controlled foreign corporation (computed in accordance with sections 964(a) and 986) accumulated in taxable years beginning after December 31, 2012—

''(i) as of the close of the taxable year of the controlled foreign corporation in which the dividend is distributed, and

''(ii) without diminution by reason of dividends distributed during such taxable years.

''(C) POST-2012 UNDISTRIBUTED QUALIFIED FOREIGN EARNINGS.—The term 'post-2012 undistributed qualified foreign earnings' means the portion of the post-2012 undistributed earnings which is attributable to income other than—

''(i) income described in section 245(a)(5)(A), or

''(ii) dividends described in section 245(a)(5)(B).

''(2) ORDERING RULE FOR DISTRIBUTIONS OF EARNINGS AND PROFITS.—Distributions shall be treated as first made out of earnings and profits of a controlled foreign corporation which are not post-2012 undistributed earnings and then out of post-2012 undistributed earnings.

''(d) DISALLOWANCE OF FOREIGN TAX CREDIT, ETC.—

''(1) IN GENERAL.—No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to the qualified foreign-source portion of any dividend.

''(2) DENIAL OF DEDUCTION.—No deduction shall be allowed under this chapter for any tax for which credit is not allowable under section 901 by reason of paragraph (1).

''(3) COORDINATION WITH SECTION 78.—Section 78 shall not apply to any tax for which credit is not allowable under section 901 by reason of paragraph (1).

''(4) TREATMENT OF NONDEDUCTIBLE PORTION IN APPLYING FOREIGN TAX CREDIT LIMIT.—For purposes of applying the limitation under section 904(a), the remaining 5 percent of the qualified foreign-source portion of any dividend with respect to which a deduction is not allowable to the domestic corporation under subsection (a) shall be treated as income from sources within the United States.

''(e) SPECIAL RULES FOR HYBRID DIVIDENDS.—

''(1) IN GENERAL.—Subsection (a) shall not apply to any dividend received by a United States shareholder from a controlled foreign corporation if the dividend is a hybrid dividend.

''(2) HYBRID DIVIDENDS OF TIERED CONTROLLED FOREIGN CORPORATIONS.—If a controlled foreign corporation with respect to which a domestic corporation is a United States shareholder receives a hybrid dividend from any other controlled foreign corporation with respect to which such domestic corporation is also a United States shareholder, then, notwithstanding any other provision of this title—

''(A) the hybrid dividend shall be treated for purposes of section 951(a)(1)(A) as subpart F income of the receiving controlled foreign corporation for the taxable year of the controlled foreign corporation in which the dividend was received, and

''(B) the United States shareholder shall include in gross income an amount equal to the shareholder's pro rata share (determined in the same manner as under section 951(a)(2)) of the subpart F income described in subparagraph (A) .

''(3) DENIAL OF FOREIGN TAX CREDIT, ETC.—The rules of subsection (d) shall apply to any hybrid dividend received by, or any amount included under paragraph (2) in the gross income of, a United States shareholder, except that, for purposes of applying subsection (d)(4), all of such dividend or amount shall be treated as income from sources within the United States.

''(4) HYBRID DIVIDEND.—The term 'hybrid dividend' means an amount received from a controlled foreign corporation—

''(A) which is treated as a dividend for purposes of this title, and

''(B) for which the controlled foreign corporation received a deduction (or similar tax benefit) under the laws of the country in which the controlled foreign corporation was created or organized.

''(f) DEFINITIONS.—For purposes of this section—

''(1) UNITED STATES SHAREHOLDER.—The term 'United States shareholder' has the meaning given such term in section 951(b).

''(2) CONTROLLED FOREIGN CORPORATION.—The term 'controlled foreign corporation' has the meaning given such term in section 957(a).

''(3) NONCONTROLLED SECTION 902 CORPORATION.—The term 'noncontrolled section 902 corporation' has the meaning given such term in section 904(d)(2)(E)(i).

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this section.''.

(b) APPLICATION OF HOLDING PERIOD REQUIREMENT.—Subsection (c) of section 246 is amended—

(1) by striking ''or 245'' in paragraph (1) and inserting ''245, or 245A'', and

(2) by adding at the end the following new paragraph:

''(5) SPECIAL RULES FOR QUALIFIED FOREIGN-SOURCE PORTION OF DIVIDENDS RECEIVED FROM CONTROLLED FOREIGN CORPORATIONS.—

''(A) 1-YEAR HOLDING PERIOD REQUIREMENT.—For purposes of section 245A—

''(i) paragraph (1)(A) shall be applied—

''(I) by substituting '365 days' for '45 days' each place it appears, and

''(II) by substituting '731-day period' for '91-day period', and

''(ii) paragraph (2) shall not apply.

''(B) STATUS MUST BE MAINTAINED DURING HOLDING PERIOD.—For purposes of section 245A, the holding period requirement of this subsection shall be treated as met only if—

''(i) the controlled foreign corporation referred to in section 245A(a) is a controlled foreign corporation at all times during such period, and

''(ii) the taxpayer is a United States shareholder (as defined in section 951) with respect to such controlled foreign corporation at all times during such period.

''(C) SPECIAL RULES FOR ELECTING NONCONTROLLED SECTION 902 CORPORATIONS.—In the case of an election under section 245A(b) to treat a noncontrolled section 902 corporation as a controlled foreign corporation, the requirements of subparagraph (B) shall be treated as met for any continuous period ending on the day before the effective date of the election for which the taxpayer met the ownership requirements of section 904(d)(2)(E) with respect to such corporation.''.

(c) APPLICATION OF RULES GENERALLY APPLICABLE TO DEDUCTIONS FOR DIVIDENDS RECEIVED.—

(1) TREATMENT OF DIVIDENDS FROM TAX-EXEMPT CORPORATIONS.—Paragraph (1) of section 246(a) is amended by striking ''and 245'' and inserting ''245, and 245A''.

(2) ASSETS GENERATING TAX-EXEMPT PORTION OF DIVIDEND NOT TAKEN INTO ACCOUNT IN ALLOCATING AND APPORTIONING DEDUCTIBLE EXPENSES.—Paragraph (3) of section 864(e) is amended by striking ''or 245(a)'' and inserting '', 245(a), or 245A''.

(3) COORDINATION WITH SECTION 1059.—Subparagraph (B) of section 1059(b)(2) is amended by striking ''or 245'' and inserting ''245, or 245A''.

(d) CONFORMING AMENDMENTS.—

(1) Clause (vi) of section 56(g)(4)(C) is amended by inserting ''245A or'' before ''965''.

(2) Subsection (b) of section 951 is amended—

(A) by striking ''subpart'' and inserting ''title'', and

(B) by adding at the end the following: ''Such term shall include, with respect to any entity treated as a controlled foreign corporation under section 245A(b), any domestic corporation treated as a United States shareholder with respect to such entity under such section.''.

(3) Subsection (a) of section 957 is amended—

(A) by striking ''subpart'' in the matter preceding paragraph (1) and inserting ''title'', and

(B) by adding at the end the following: ''Such term shall include any entity treated as a controlled foreign corporation under section 245A(b).''.

(4) The table of sections for part VIII of subchapter B of chapter 1 is amended by inserting after the item relating to section 245 the following new item:

''Sec. 245A. Dividends received by domestic corporations from certain foreign corporations.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2012, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 102. APPLICATION OF DIVIDENDS RECEIVED DEDUCTION TO CERTAIN SALES AND EXCHANGES OF STOCK.

(a) SALES BY UNITED STATES PERSONS OF STOCK IN CFC.—Section 1248 is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

''(j) COORDINATION WITH DIVIDENDS RECEIVED DEDUCTION.—

''(1) IN GENERAL.—In the case of the sale or exchange by a domestic corporation of stock in a foreign corporation held for 1 year or more, any amount received by the domestic corporation which is treated as a dividend by reason of this section shall be treated as a dividend for purposes of applying section 245A.

''(2) LOSSES DISALLOWED.—If a domestic corporation—

''(A) sells or exchanges stock in a foreign corporation in a taxable year of the domestic corporation with or within which a taxable year of the foreign corporation beginning after December 31, 2012, ends, and

''(B) met the ownership requirements of subsection (a)(2) with respect to such stock, no deduction shall be allowed to the domestic corporation with respect to any loss from the sale or exchange.''.

(b) SALE BY A CFC OF A LOWER TIER CFC.—Section 964(e) is amended by adding at the end the following new paragraph:

''(4) COORDINATION WITH DIVIDENDS RECEIVED DEDUCTION.—

''(A) IN GENERAL.—If, for any taxable year of a controlled foreign corporation beginning after December 31, 2012, any amount is treated as a dividend under paragraph (1) by reason of a sale or exchange by the controlled foreign corporation of stock in another foreign corporation held for 1 year or more, then, notwithstanding any other provision of this title—

''(i) the qualified foreign-source portion of such dividend shall be treated for purposes of section 951(a)(1)(A) as subpart F income of the selling controlled foreign corporation for such taxable year,

''(ii) a United States shareholder with respect to the selling controlled foreign corporation shall include in gross income for the taxable year of the shareholder with or within which such taxable year of the controlled foreign corporation ends an amount equal to the shareholder's pro rata share (determined in the same manner as under section 951(a)(2)) of the amount treated as subpart F income under clause (i), and

''(iii) the deduction under section 245A(a) shall be allowable to the United States shareholder with respect to the subpart F income included in gross income under clause (ii) in the same manner as if such subpart F income were a dividend received by the shareholder from the selling controlled foreign corporation.

''(B) EFFECT OF LOSS ON EARNINGS AND PROFITS.—For purposes of this title, in the case of a sale or exchange by a controlled foreign corporation of stock in another foreign corporation in a taxable year of the selling controlled foreign corporation beginning after December 31, 2012, to which this paragraph would apply if gain were recognized, the earnings and profits of the selling controlled foreign corporation shall not be reduced by reason of any loss from such sale or exchange.

''(C) QUALIFIED FOREIGN-SOURCE PORTION.—For purposes of this paragraph, the qualified foreign-source portion of any amount treated as a dividend under paragraph (1) shall be determined in the same manner as under section 245A(c).''.

SEC. 103. DEDUCTION FOR FOREIGN INTANGIBLE INCOME DERIVED FROM TRADE OR BUSINESS WITHIN THE UNITED STATES.

(a) IN GENERAL.—Part VIII of subchapter B of chapter 1 is amended by adding at the end the following new section:

''SEC. 250. FOREIGN INTANGIBLE INCOME DERIVED FROM TRADE OR BUSINESS WITHIN THE UNITED STATES.

''(a) IN GENERAL.—In the case of a domestic corporation, there shall be allowed as a deduction an amount equal to 50 percent of the qualified foreign intangible income of such domestic corporation for the taxable year.

''(b) QUALIFIED FOREIGN INTANGIBLE INCOME.—

''(1) IN GENERAL.—The term 'qualified foreign intangible income' means, with respect to any domestic corporation, foreign intangible income which is derived by the domestic corporation from the active conduct of a trade or business within the United States with respect to the intangible property giving rise to the income.

''(2) REQUIREMENTS RELATING TO TRADE OR BUSINESS WITHIN THE UNITED STATES.—For purposes of this section, foreign intangible income shall be treated as derived by a domestic corporation from the active conduct of a trade or business within the United States only if—

''(A) the domestic corporation developed, created, or produced within the United States the intangible property giving rise to the income, or

''(B) in any case in which the domestic corporation acquired such intangible property, the domestic corporation added substantial value to the property through the active conduct of such trade or business within the United States.

''(c) FOREIGN INTANGIBLE INCOME.—For purposes of this section—

''(1) IN GENERAL.—The term 'foreign intangible income' means any intangible income which is derived in connection with—

''(A) property which is sold, leased, licensed, or otherwise disposed of for use, consumption, or disposition outside the United States, or

''(B) services provided with respect to persons or property located outside the United States.

''(2) EXCEPTIONS FOR CERTAIN INCOME.—The following amounts shall not be taken into account in computing foreign intangible income:

''(A) Any amount treated as received by the domestic corporation under section 367(d)(2) with respect to any intangible property.

''(B) Any payment under a cost-sharing arrangement entered into under section 482.

''(C) Any amount received from a controlled foreign corporation with respect to which the domestic corporation is a United States shareholder to the extent such amount is attributable or properly allocable to income which is—

''(i) effectively connected with the conduct of a trade or business within the United States and subject to tax under this chapter, or

''(ii) subpart F income.

For purposes of clause (ii), amounts not otherwise treated as subpart F income shall be so treated if the amount creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or any other controlled foreign corporation.

''(3) INTANGIBLE INCOME.—The term 'intangible income' means gross income from—

''(A) the sale, lease, license, or other disposition of property in which intangible property is used directly or indirectly, or

''(B) the provision of services related to intangible property or in connection with property in which intangible property is used directly or indirectly,

to the extent that such gross income is properly attributable to such intangible property.

''(4) DEDUCTIONS TO BE TAKEN INTO ACCOUNT.—The gross income of a domestic corporation taken into account under this subsection shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions properly allocable to such income.

''(5) INTANGIBLE PROPERTY.—The term 'intangible property' has the meaning given such term by section 936(h)(3)(B).

''(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this section.''.

(b) CONFORMING AMENDMENT.—The table of sections for part VIII of subchapter B of chapter 1 is amended by adding at the end the following new item:

''Sec. 250. Foreign intangible income derived from trade or business within the United States.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of domestic corporations beginning after December 31, 2012.

SEC. 104. TREATMENT OF DEFERRED FOREIGN INCOME UPON TRANSITION TO PARTICIPATION EXEMPTION SYSTEM OF TAXATION.

(a) IN GENERAL.—Section 965 is amended to read as follows:

''SEC. 965. TREATMENT OF DEFERRED FOREIGN INCOME UPON TRANSITION TO PARTICIPATION EXEMPTION SYSTEM OF TAXATION.

''(a) DEDUCTION ALLOWED.—In the case of a domestic corporation which elects the application of this section to any controlled foreign corporation with respect to which it is a United States shareholder, there shall be allowed as a deduction for the taxable year of the United States shareholder with or within which the first taxable year of the controlled foreign corporation beginning after December 31, 2012, ends an amount equal to 70 percent of the amount determined under subsection (b) for the taxable year.

''(b) ELIGIBLE AMOUNT.—For purposes of subsection (a)—

''(1) IN GENERAL.—The amount determined under this subsection for a United States shareholder with respect to any controlled foreign corporation for the taxable year of the shareholder described in subsection (a) is the lesser of—

''(A) the shareholder's pro rata share of the earnings and profits of the controlled foreign corporation described in section 959(c)(3) as of the close of the taxable year preceding the first taxable year of the controlled foreign corporation beginning after December 31, 2012, or

''(B) an amount equal to the sum of—

''(i) the dividends received by the shareholder during such taxable year from the controlled foreign corporation which are attributable to the earnings and profits described in subparagraph (A), plus

''(ii) the increase in subpart F income required to be included in gross income of the shareholder for the taxable year by reason of the election under paragraph (2).

''(2) ELECTION OF DEEMED SUBPART F INCLUSION.—A United States shareholder may elect for purposes of paragraph (1)(B)(ii) to treat all (or any portion) of the shareholder's pro rata share of the earnings and profits of a controlled foreign corporation described in paragraph (1)(A) as subpart F income includible in the gross income of the shareholder for the taxable year of the shareholder described in subsection (a).

''(3) ORDERING RULE.—For purposes of paragraph (1)(B)(i), distributions shall be treated as first made out of earnings and profits of a controlled foreign corporation described in paragraph (1)(A).

''(4) DIVIDEND.—The term 'dividend' shall not include amounts includible in gross income as a dividend under section 78.

''(c) DISALLOWANCE OF FOREIGN TAX CREDIT, ETC.—In the case of a domestic corporation making an election under subsection (a) with respect to any controlled foreign corporation—

''(1) IN GENERAL.—No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to the earnings and profits taken into account in determining the amount under subsection (b).

''(2) DENIAL OF DEDUCTION.—No deduction shall be allowed under this chapter for any tax for which credit is not allowable under section 901 by reason of paragraph (1).

''(3) COORDINATION WITH SECTION 78.—Section 78 shall not apply to any tax for which credit is not allowable under section 901 by reason of paragraph (1).

''(4) TREATMENT OF NONDEDUCTIBLE PORTION IN APPLYING FOREIGN TAX CREDIT LIMIT.—For purposes of applying the limitation under section 904(a), the remaining 30 percent of the amount determined under subsection (b) with respect to which a deduction is not allowable under subsection (a) shall be treated as income from sources within the United States.

''(d) ELECTION TO PAY LIABILITY FOR DEEMED SUBPART F INCOME IN INSTALLMENTS.—

''(1) IN GENERAL.—In the case of a United States shareholder with respect to 1 or more controlled foreign corporations to which elections under subsections (a) and (b)(2) apply, such United States shareholder may elect to pay the net tax liability determined with respect to its deemed subpart F inclusions with respect to such corporations under subsection (b)(2) for the taxable year described in subsection (a) in 2 or more (but not exceeding 8) equal installments.

''(2) DATE FOR PAYMENT OF INSTALLMENTS.—If an election is made under paragraph (1), the first installment shall be paid on the due date (determined without regard to any extension of time for filing the return) for the return of tax for the taxable year for which the election was made and each succeeding installment shall be paid on the due date (as so determined) for the return of tax for the taxable year following the taxable year with respect to which the preceding installment was made.

''(3) ACCELERATION OF PAYMENT.—If there is an addition to tax for failure to pay timely assessed with respect to any installment required under this subsection, a liquidation or sale of substantially all the assets of the taxpayer (including in a title 11 or similar case), a cessation of business by the taxpayer, or any similar circumstance, then the unpaid portion of all remaining installments shall be due on the date of such event (or in the case of a title 11 or similar case, the day before the petition is filed).

''(4) PRORATION OF DEFICIENCY TO INSTALLMENTS.—If an election is made under paragraph (1) to pay the net tax liability described in paragraph (1) in installments and a deficiency has been assessed which increases such net tax liability, the increase shall be prorated to the installments payable under paragraph (1). The part of the increase so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as a part of, such installment. The part of the increase so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

''(5) TIME FOR PAYMENT OF INTEREST.—Interest payable under section 6601 on the unpaid portion of any amount of tax the time for payment of which as been extended under this subsection shall be paid annually at the same time as, and as part of, each installment payment of such tax. In the case of a deficiency to which paragraph (4) applies, interest with respect to such deficiency which is assigned under the preceding sentence to

any installment the date for payment of which has arrived on or before the date of the assessment of the deficiency, shall be paid upon notice and demand from the Secretary.

''(6) NET TAX LIABILITY FOR DEEMED SUBPART F INCLUSIONS.—For purposes of this subsection—

''(A) IN GENERAL.—The net tax liability described in paragraph (1) with respect to any United States shareholder for any taxable year is the excess (if any) of—

''(i) such taxpayer's net income tax for the taxable year, over

''(ii) such taxpayer's net income tax for such taxable year determined as if the elections under subsection (b)(2) with respect to 1 or more controlled foreign corporations had not been made.

''(B) NET INCOME TAX.—The term 'net income tax' means the net income tax (as defined in section 38(c)(1)) reduced by the credit allowed under section 38.

''(e) SPECIAL RULES.—For purposes of this section—

''(1) ELECTIONS.—Any election under subsection (a), (b)(2), or (d)(1) shall be made not later than the due date (including extensions) for the return of tax for the taxable year for which made and shall be made in such manner as the Secretary may provide.

''(2) SECTION NOT TO APPLY TO NONCONTROLLED SECTION 902 CORPORATIONS TREATED AS CFCS.—No election may be made under subsection (a) with respect to a controlled foreign corporation which was a noncontrolled section 902 corporation which a United States shareholder elected under section 245A(b) to treat as a controlled foreign corporation.

''(3) PRO RATA SHARE.—A shareholder's pro rata share of any earnings and profits shall be determined in the same manner as under section 951(a)(2).''

(b) CONFORMING AMENDMENTS.—

(1) Clause (vi) of section 56(g)(4)(C), as amended by this Act, is amended—

(A) by striking ''965'' and inserting ''965(b)'', and

(B) by inserting ''AND INCLUSIONS'' after ''CERTAIN DISTRIBUTIONS'' in the heading thereof.

(2) Paragraph (2) of section 6601(b) is amended—

(A) by striking ''section 6156(a)'' in the matter preceding subparagraph (A) and inserting ''section 965(d)(1) or 6156(a)'', and

(B) by striking ''section 6156(b)'' in subparagraph (A) and inserting ''section 965(d)(2) or 6156(b), as the case may be''.

(3) The table of section for subpart F of part III of subchapter N of chapter 1 is amended by striking the item relating to section 965 and inserting the following:

''Sec. 965. Treatment of deferred foreign income upon transition to participation exemption system of taxation.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2012, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

TITLE II—OTHER INTERNATIONAL TAX REFORMS

Subtitle A—Modifications of Subpart F

SEC. 201. TREATMENT OF LOW-TAXED FOREIGN INCOME AS SUBPART F INCOME.

(a) IN GENERAL.—Subsection (a) of section 952 is amended by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively, and by inserting after paragraph (2) the following new paragraph:

''(3) low-taxed income (as defined under subsection (e)),''.

(b) LOW-TAXED INCOME.—Section 952 is amended by adding at the end the following new subsection:

''(e) LOW-TAXED INCOME.—

''(1) IN GENERAL.—For purposes of subsection (a), except as provided in paragraph (2), the term 'low-taxed income' means, with respect to any taxable year of a controlled foreign corporation, the entire gross income of the controlled foreign corporation unless the taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax (determined under rules similar to the rules of section 954(b)(4)) imposed by a foreign country in excess of one-half of the highest rate of tax under section 11(b) for taxable years of United States corporations beginning in the same calendar year as the taxable year of the controlled foreign corporation begins.

''(2) EXCEPTION FOR QUALIFIED BUSINESS INCOME.—For purposes of paragraph (1), qualified business income—

''(A) shall be taken into account in determining the effective rate of income tax at which the entire gross income of the controlled foreign corporation is taxed, but

''(B) the amount of gross income treated as low-taxed income under paragraph (1) shall be reduced by the amount of the qualified business income.

''(3) QUALIFIED BUSINESS INCOME.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified business income' means, with respect to any controlled foreign corporation, income derived by the controlled foreign corporation in a foreign country but only if—

''(i) such income is attributable to the active conduct of a trade or business of such corporation in such foreign country,

''(ii) the corporation maintains an office or fixed place of business in such foreign country, and

''(iii) officers and employees of the corporation physically located at such office or place of business in such foreign country conducted (or significantly contributed to the conduct of) activities within the foreign country which are substantial in relation to the activities necessary for the active conduct of the trade or business to which such income is attributable.

''(B) EXCEPTION FOR INTANGIBLE INCOME.—For purposes of subparagraph (A), qualified business income of a controlled foreign corporation shall not include intangible income (as defined in section 250(c)(3)).

''(4) DETERMINATION OF EFFECTIVE RATE OF FOREIGN INCOME TAX AND QUALIFIED BUSINESS INCOME.—

''(A) COUNTRY-BY-COUNTRY DETERMINATION.—For purposes of determining the effective rate of income tax imposed by any foreign country under paragraph (1) and qualified business income under paragraph (3), each such paragraph shall be applied separately with respect to—

''(i) each foreign country in which a controlled foreign corporation conducts any trade or business, and

''(ii) the entire gross income and qualified business income derived with respect to such foreign country.

''(B) TREATMENT OF LOSSES.—For purposes of determining the effective rate of income tax imposed by any foreign country under paragraph (1)—

''(i) such effective rate shall be determined without regard to any losses carried to the relevant taxable year, and

''(ii) to the extent the income of the controlled foreign corporation reduces losses in the relevant taxable year, such effective rate shall be treated as being the effective rate which would have been imposed on such income without regard to such losses.

''(5) DEDUCTIONS TO BE TAKEN INTO ACCOUNT.—The gross income of a controlled foreign corporation taken into account under this subsection shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income.''.

(c) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 952 is amended—

(A) by striking ''paragraph (4)'' in the next to last sentence and inserting ''paragraph (5)'', and

(B) by striking ''paragraph (5)'' in the last sentence and inserting ''paragraph (6)''.

(2) Subsection (d) of section 952 is amended by striking ''subsection (a)(5)'' and inserting ''subsection (a)(6)''.

(3) Paragraphs (1) and (2) of section 999(c) are each amended by striking ''section 952(a)(3)'' and inserting ''section 952(a)(4)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2012, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 202. PERMANENT EXTENSION OF LOOK-THRU RULE FOR CONTROLLED FOREIGN CORPORATIONS.

(a) IN GENERAL.—Section 954(c)(6)(C) is amended by striking ''and before January 1, 2012,''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2011, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 203. PERMANENT EXTENSION OF EXCEPTIONS FOR ACTIVE FINANCING INCOME.

(a) EXCEPTION FROM INSURANCE INCOME.—Section 953(e)(10) is amended—

(1) by striking ''and before January 1, 2012,'', and

(2) by striking the last sentence.

(b) EXCEPTION FROM FOREIGN PERSONAL HOLDING COMPANY INCOME.—Section 954(h)(9) is amended by striking ''and before January 1, 2012,''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2011, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 204. FOREIGN BASE COMPANY INCOME NOT TO INCLUDE SALES OR SERVICES INCOME.

(a) REPEAL.—Paragraphs (2) and (3) of section 954(a) are repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 954(d) is amended by adding at the end the following new paragraph:

''(5) TERMINATION.—This subsection shall not apply to taxable years of foreign corporations beginning after December 31, 2012, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''.

(2) Section 954(e) is amended by adding at the end the following new paragraph:

''(3) TERMINATION.—This subsection shall not apply to taxable years of foreign corporations beginning after December 31, 2012, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2012, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

Subtitle B—Modifications Related to Foreign Tax Credit

SEC. 211. MODIFICATION OF APPLICATION OF SECTIONS 902 AND 960 WITH RESPECT TO POST-2012 EARNINGS.

(a) SECTION 902 NOT TO APPLY TO DIVIDENDS FROM POST-2012 EARNINGS.—Section 902 is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

''(d) SECTION NOT TO APPLY TO DIVIDENDS FROM POST-2012 EARNINGS.—

''(1) IN GENERAL.—This section shall not apply to the portion of any dividend paid by a foreign corporation to the extent such portion is made out of earnings and profits of the foreign corporation (computed in accordance with sections 964(a) and 986) accumulated in taxable years beginning after December 31, 2012.

''(2) COORDINATION WITH DISTRIBUTIONS FROM PRE-2013 EARNINGS AND PROFITS.—For purposes of this section—

''(A) ORDERING RULE.—Any distribution in a taxable year beginning after December 31, 2012, shall be treated as first made out of earnings and profits of the foreign corporation (computed in accordance with sections 964(a) and 986) accumulated in taxable years beginning before January 1, 2013.

''(B) POST-1986 UNDISTRIBUTED EARNINGS.—Post-1986 undistributed earnings shall not include earnings and profits described in paragraph (1).''

(b) DETERMINATION OF SECTION 960 CREDIT ON CURRENT YEAR BASIS.—Section 960 is amended by adding at the end the following new subsection:

''(d) DEEMED PAID CREDIT FOR SUBPART F INCLUSIONS ATTRIBUTABLE TO POST-2012 EARNINGS.—

''(1) IN GENERAL.—For purposes of this subpart, if there is included in the gross income of a domestic corporation any amount under section 951(a)—

''(A) with respect to any controlled foreign corporation with respect to which such domestic corporation is a United States shareholder, and

''(B) which is attributable to the earnings and profits of the controlled foreign corporation (computed in accordance with sections 964(a) and 986) accumulated in taxable years beginning after December 31, 2012,

then subsections (a), (b), and (c) shall not apply and such domestic corporation shall be deemed to have paid so much of such foreign corporation's foreign income taxes as are properly attributable to the amount so included.

''(2) FOREIGN INCOME TAXES.—For purposes of this subsection, the term 'foreign income taxes' means any income, war profits, or excess profits taxes paid or accrued by the controlled foreign corporation to any foreign country or possession of the United States.

''(3) REGULATIONS.—The Secretary shall provide such regulations as may be necessary or appropriate to carry out the provisions of this subsection.''.

SEC. 212. SEPARATE FOREIGN TAX CREDIT BASKET FOR FOREIGN INTANGIBLE INCOME.

(a) IN GENERAL.—Paragraph (1) of section 904(d) is amended by striking ''and'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', and'', and by adding at the end the following:

''(C) foreign intangible income (as defined in paragraph (2)(J)).''.

(b) FOREIGN INTANGIBLE INCOME.—

(1) IN GENERAL.—Section 904(d)(2) is amended by redesignating subparagraphs (J) and (K) as subparagraphs (K) and (L) and by inserting after subparagraph (I) the following:

''(J) FOREIGN INTANGIBLE INCOME.—For purposes of this section—

''(i) IN GENERAL.—The term 'foreign intangible income' has the meaning given such term by section 250(c).

''(ii) COORDINATION.—Passive category income and general category income shall not include foreign intangible income.''

(2) GENERAL CATEGORY INCOME.—Section 904(d)(2)(A)(ii) is amended by inserting ''or foreign intangible income'' after ''passive category income''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2012.

(2) TRANSITIONAL RULE.—For purposes of section 904(d)(1) of the Internal Revenue Code of 1986 (as amended by this Act)—

(A) taxes carried from any taxable year beginning before January 1, 2013, to any taxable year beginning on or after such date, with respect to any item of income, shall be treated as described in the subparagraph of such section 904(d)(1) in which such income would be described without regard to the amendments made by this section, and

(B) any carryback of taxes with respect to foreign intangible income from a taxable year beginning on or after January 1, 2013, to a taxable year beginning before such date shall be allocated to the general income category.

SEC. 213. INVENTORY PROPERTY SALES SOURCE RULE EXCEPTIONS NOT TO APPLY FOR FOREIGN TAX CREDIT LIMITATION.

(a) IN GENERAL.—Section 904 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

''(l) INVENTORY PROPERTY SALES SOURCE RULE EXCEPTIONS NOT TO APPLY.—Any amount which would be treated as derived from sources without the United States by reason of the application of section 862(a)(6) or 863(b)(2) for any taxable year shall be treated as derived from sources within the United States for purposes of this section.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2012.

Subtitle C—Allocation of Interest on Worldwide Basis

SEC. 221. ACCELERATION OF ELECTION TO ALLOCATE INTEREST ON A WORLDWIDE BASIS.

Section 864(f)(6) is amended by striking ''December 31, 2020'' and inserting ''December 31,

---

By Mr. WYDEN:

S. 2098. A bill to support statewide individual-level integrated postsecondary education data systems, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. WYDEN. Mr. President, when we went to college, usually things were different. Often a student took out a loan, but those loans were manageable, and usually there were jobs waiting. Today, too often that is not the case. In fact, the students today who take out loans will leave school weighed down, on average, with $25,000 worth of debt. They are going to be trying to get into a labor market where there are more than four unemployed Americans for every available job.

It has been noted that for the first time student loan debt exceeds credit card debt, and that now totals over $100 billion. Now, clearly, investment in higher education is an economic imperative. Education is the great equalizer. It enables upward economic mobility, and it breaks down class structures that impair many countries' ability to grow their economies. A highly-skilled and educated workforce is the basis for a healthy economy, and it is the linchpin to our economic future.

In every major economic decision our people make, they try to evaluate the value of that decision. Like prospective homeowners who inspect and assess the potential value of their future home, in my view future students should be able to comparison shop and choose a school and a program based on what their return on investment will be.

Our capital markets work best when we can accurately measure the value of the things we choose to invest in. We saw what happens when this is not the case when the housing bubble burst, and our economy is still struggling to recover from the mortgage meltdown. In many instances, consumers who didn't have all the facts bought a product based on misleading information and fell victim to predatory lenders looking to make a profit off that growing bubble.

Consumers must know what they can expect from their investments, and students are entitled to know the value of their education before they go out and borrow tens of thousands of dollars from the banks and from the government to finance their choices. Right now, consumers don't have this information, though the information exists. It is unavailable to students and families too often when they are making perhaps the most important decisions that affect their future—both their financial future and their career.

That is why today I am introducing the Student Right to Know Before You Go Act, which would help college students get the information they need about their education. This proposal would ensure that future students and their families can make well-informed decisions by having access to information on their expected average annual earnings after graduation; rates of remedial enrollment, credit accumulation, and graduation; the average cost, both before and after financial aid, of the program, and average debt upon graduation; and, finally, the effects of remedial education and financial aid on credential attainment and a greater understanding of what student success can mean.

For markets to work, there has to be good information available, and until now it has been extremely hard for students and families to collect this data in a cost-effective way while at the same time ensuring student privacy. However, the States, as we have seen so often—the Presiding Officer of the Senate and I have talked about this from time to time—the States have piloted their own programs and proved that the technology exists to enable our ability to generate and share this information in a way that students and consumers can use while at the same time protecting their privacy.

This technology, in my view, makes it possible to ensure a return on their investment for students, for parents, for policymakers, and taxpayers. It is going to help us create a workforce that meets the demands of the businesses that employ it and ensures that our workers can successfully compete in the global economy.

One last point, if I might. I think it is clear that access to higher education is an integral part of the step ladder to success and particularly success for the middle class who built this country. Chairman HARKIN, of course, the chairman of our committee who deals with these issues, has probably done more than any other Member in the Senate to put a focus on this issue and how important it is to grow the middle class and address the big concerns they have faced.

Middle-class people haven't had a pay raise in a full decade. It seems to me as part of the agenda—and Chairman HARKIN has had some excellent hearings on these higher education issues—one of the best ways we can come together on a bipartisan basis is to empower students and empower families to be in the best possible position to make the college choices that are going to pay off in the years ahead.

That is what this legislation, the Right to Know Before You Go Act, would do. I hope my colleagues will consider it in the days ahead.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 370—CALLING FOR DEMOCRATIC CHANGE IN SYRIA

Mr. CASEY (for himself, Mr. RUBIO, Mrs. GILLIBRAND, Mrs. BOXER, Mr. ISAKSON, Mr. DURBIN, and Mr. KYL) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 370

Whereas the Syrian Arab Republic is a signatory to the International Covenant on Civil and Political Rights (ICCPR), adopted at New York December 16, 1966, the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984, and the Universal Declaration of Human Rights, adopted at Paris, December 10, 1948.

Whereas, in March 2011, peaceful demonstrations in Syria began against the authoritarian rule of Bashar al-Assad;

Whereas, in response to the demonstrations, the Government of Syria launched a brutal crackdown, which has resulted in gross human rights violations, use of force against civilians, torture, extrajudicial killings, arbitrary executions, sexual violence, and interference with access to medical treatment;

Whereas the United Nations estimated that, as of January 25, 2012, more than 5,400 people in Syria had been killed since the violence began in March 2011;

Whereas, on August 18, 2011, President Barack Obama called upon President Bashar al-Assad to step down from power;

Whereas the Department of State has repeatedly condemned the Government of Syria's crackdown on its people, including on January 30, 2012, when Secretary of State Hillary Clinton stated ''The status quo is unsustainable. . . . The longer the Assad regime continues its attacks on the Syrian people and stands in the way of a peaceful transition, the greater the concern that instability will escalate and spill over throughout the region.'';

Whereas President Obama, on April 29, 2011, designated 3 individuals subject to sanctions for humans rights abuses in Syria: Mahir al-Assad, the brother of Syrian President Bashar al-Assad and brigade commander in the Syrian Army's 4th Armored Division; Atif Najib, the former head of the Political Security Directorate for Daraa Province and a cousin of Bashar al-Assad; and Ali Mamluk, director of Syria's General Intelligence Directorate;

Whereas, on May 18, 2011, President Obama issued an executive order sanctioning senior officials of the Syrian Arab Republic and their supporters, specifically designating seven people: President Bashar al-Assad, Vice President Farouk al-Shara, Prime Minister Adel Safar, Minister of the Interior Mohammad Ibrahim al-Shaar, Minister of Defense Ali Habib Mahmoud, Head of Syrian Military Intelligence Abdul Fatah Qudsiya, and Director of Political Security Directorate Mohammed Dib Zaitoun;

Whereas President Obama, on August 17, 2011, issued Executive Order 13582, blocking property of the Government of Syria and prohibiting certain transactions with respect to Syria;

Whereas, on December 1, 2011, the Department of the Treasury designated two individuals, Aus Aslan and Muhammad Makhluf, under Executive Order 13573 and two entities, the Military Housing Establishment and the Real Estate Bank of Syria, under Executive Order 13582;

Whereas, on May 6, 2011, the European Union's 27 countries imposed sanctions on the Government of Syria for the human rights abuses, including asset freezes and visa bans on members of the Government of Syria and an arms embargo on the country;

Whereas, on November 12, 2011, the League of Arab States voted to suspend Syria's membership in the organization;

Whereas, on December 2, 2011, the United Nations Human Rights Council passed Resolution S-18/1, which recalls General Assembly resolution A/RES/66/176 of December 19, 2011, as well as Human Rights Council resolutions S/16-1, S/17-1 and S/18-1, and further deplores the human rights situation in Syria, commends the League of Arab States, and supports implementation of its Plan of Action;

Whereas the League of Arab States approved and implemented a plan of action to send a team of international monitors to Syria, which began December 26, 2011;

Whereas, on January 28, 2012, the League of Arab States decided to suspend its international monitoring mission due to escalating violence within Syria;

Whereas, on February 4, 2012, the Russian Federation and People's Republic of China vetoed a United Nations Security Council Resolution in support of the League of Arab States' Plan of Action;

Whereas the Governments of the Russian Federation and the Islamic Republic of Iran remain major suppliers of military equipment to the Government of Syria notwithstanding that government's violent repression of demonstrators; and

Whereas the gross human rights violations perpetuated by the Government of Syria against the people of Syria represent a grave risk to regional peace and stability: Now, therefore, be it

Resolved, That the Senate—

(1) strongly condemns the ongoing, widespread, and systemic violations of human rights conducted by authorities in Syria, including the use of force against civilians, torture, extrajudicial killings, arbitrary executions, sexual violence, and interference with access to medical treatment;

(2) maintains that Bashar al-Assad has lost all claims to legitimacy due to the perpetuation of mass atrocities against the people of Syria and continued violations of human rights;

(3) calls upon Bashar al-Assad to step down from power;

(4) strongly condemns the Governments of the Russian Federation and the Islamic Republic of Iran for providing military and security equipment to the Government of Syria, which has been used to repress peaceful demonstrations and commit mass atrocities against unarmed civilian populations in Syria;

(5) commends the League of Arab States' efforts to bring about a peaceful resolution in Syria;

(6) regrets that the League of Arab States observer mission was not able to monitor the full implementation of the League of Arab States' Action Plan of November 2, 2011, due to the escalating violence in Syria;

(7) commends President Obama for authorizing targeted sanctions on human rights abusers in Syria and for extending these sanctions to 12 individuals;

(8) encourages the President to continue designating for sanctions all individuals responsible for human rights violations in Syria;

(9) urges the President to support an effective transition to democracy in Syria by identifying and providing substantial material and technical support, upon request, to Syrian organizations that are representative of the people of Syria, make demonstrable commitments to protect human rights and religious freedom, reject terrorism, cooperate with international counterterrorism and nonproliferation efforts, and abstain from destabilizing neighboring countries;

(10) urges the President to develop a plan to identify weapons stockpiles and prevent the proliferation of conventional, biological, chemical, and other types of weapons in Syria;

(11) urges the Department of State to establish a ''Friends of the Syrian People'' Contact Group of countries committed to democratic change in Syria, including Turkey, members of the League of Arab States, and members of the European Union;

(12) urges the Department of State to develop a strategy to encourage defections from the military of the Government of Syria;

(13) urges the President to diplomatically engage with the Republic of Turkey and members of the League of Arab States and the European Union to discuss options to protect the people of Syria, including the provision of robust humanitarian assistance, the viability of establishing a safe haven along the borders of Syria, and the use of all means available to monitor and publicly report on abuses inside the country; and

(14) urges the international community to mobilize in support of a post-Assad democratic and inclusive Government of Syria that holds accountable those responsible for crimes against humanity and gross violations of human rights.

SENATE RESOLUTION 371—DESIGNATING THE WEEK OF FEBRUARY 6 THROUGH 10, 2012, AS ''NATIONAL SCHOOL COUNSELING WEEK''

Mrs. MURRAY (for herself, Ms. COLLINS, Mr. LEVIN, Mr. SANDERS, Mr. WEBB, Ms. KLOBUCHAR, Ms. STABENOW, and Ms. SNOWE) submitted the following resolution; which was considered and agreed to:

S. RES. 371

Whereas the American School Counselor Association has designated the week of February 6 through 10, 2012, as ''National School Counseling Week'';

Whereas the importance of school counseling has been recognized through the inclusion of elementary- and secondary-school counseling programs in amendments to the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.);

Whereas school counselors have long advocated that the education system of the United States must provide equitable opportunities for all students;

Whereas personal and social growth results in increased academic achievement;

Whereas school counselors help develop well-rounded students by guiding the students through academic, personal, social, and career development;

Whereas school counselors assist with and coordinate efforts to foster a positive school culture resulting in a safer learning environment for all students;

Whereas school counselors have been instrumental in helping students, teachers, and parents deal with personal trauma as well as tragedies in the community and the United States;

Whereas students face myriad challenges every day, including peer pressure, depression, the deployment of family members to serve in conflicts overseas, and school violence;

Whereas school counselors are one of the few professionals in a school building who are trained in both education and mental-health matters;

Whereas the roles and responsibilities of school counselors are often misunderstood;

Whereas the school-counselor position is often among the first to be eliminated to meet budgetary constraints;

Whereas the national average ratio of students to school counselors of 459 to 1 is almost twice that of the ratio of 250 to 1 recommended by the American School Counselor Association, the American Counseling Association, the National Association for College Admission Counseling, and other organizations; and

Whereas the celebration of National School Counseling Week would increase awareness of the important and necessary role school counselors play in the lives of students in the United States: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of February 6 through 10, 2012, as ''National School Counseling Week''; and

(2) encourages the people of the United States to observe the week with appropriate ceremonies and activities that promote awareness of the role school counselors play in the school and the community at large in preparing students for fulfilling lives as contributing members of society.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1513. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table.

SA 1514. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1515. Mr. REID (for Mr. JOHNSON of South Dakota (for himself and Mr. SHELBY)) proposed an amendment to the bill S. 1813, supra.

SA 1516. Mr. MCCAIN (for himself, Mr. CARPER, Mr. COATS, and Mr. UDALL of Colorado) submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1517. Mr. COATS (for himself and Mr. LUGAR) submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1518. Mr. COATS submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1519. Mr. COATS submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1520. Mr. BLUNT (for himself, Mr. MCCONNELL, Mr. JOHANNS, Mr. WICKER, Mr. HATCH, Ms. AYOTTE, Mr. RUBIO, Mr. NELSON of Nebraska, Mr. ROBERTS, Mr. MCCAIN, Mr. KYL, Mr. COATS, Mr. BARRASSO, Mr. TOOMEY, Mr. LUGAR, Mr. CORNYN, Mr. BOOZMAN, Mr. PAUL, Mr. HOEVEN, and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1521. Mr. WICKER (for himself and Mr. VITTER) submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1522. Mr. NELSON of Nebraska (for himself and Ms. KLOBUCHAR) submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1523. Mr. NELSON of Nebraska (for himself and Mr. JOHANNS) submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1524. Mr. PAUL submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1525. Mr. PAUL submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1526. Mr. PAUL submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1527. Mr. PAUL submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1528. Mr. PAUL submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1529. Mr. PAUL (for himself and Mr. DEMINT) submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1530. Mr. PAUL submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1531. Mr. PAUL submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1532. Mr. PAUL (for himself, Mr. VITTER, and Mr. ALEXANDER) submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1533. Mr. MENENDEZ (for himself, Mr. KIRK, Mr. DURBIN, and Mr. LAUTENBERG) submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 1513. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 354, line 14, strike the quotation mark and the following period.

On page 354, between lines 14 and 15, insert the following:

''(6) REDUCED REGULATORY BURDENS.—To reduce excessive regulatory burdens that hinder job growth, project and program delivery, and cost reductions.''.

SA 1514. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 45, between lines 16 and 17, insert the following:

''(C) FURTHER ADJUSTMENT FOR PRIVATIZED HIGHWAYS.—

''(i) DEFINITION OF PRIVATIZED HIGHWAY.—In this subparagraph, the term 'privatized highway' means a highway subject to an agreement giving a private entity—

''(I) control over the operation of the highway; and

''(II) ownership over the toll revenues collected from the operation of the highway.

''(ii) ADJUSTMENT.—After making the adjustments to the apportionment of a State under subparagraphs (A) and (B), the Secretary shall further adjust the amount to be apportioned to the State by reducing the apportionment by an amount equal to the product obtained by multiplying—

''(I) the amount to be apportioned to the State, as so adjusted under those subparagraphs; and

''(II) the percentage described in clause (iii).

''(iii) PERCENTAGE.—The percentage referred to in clause (ii) is the percentage equal to the sum obtained by adding—

''(I) the product obtained by multiplying—

''(aa) ½; and

''(bb) the proportion that—

''(AA) the total number of privatized lane miles of National Highway System routes in a State; bears to

''(BB) the total number of all lane miles of National Highway System routes in the State; and

''(II) the product obtained by multiplying—

''(aa) ½; and

''(bb) the proportion that—

''(AA) the total number of vehicle miles traveled on privatized lanes on National Highway System routes in the State; bears to

''(BB) the total number of vehicle miles traveled on all lanes on National Highway System routes in the State.''.

SA 1515. Mr. REID (for Mr. JOHNSON of South Dakota (for himself and Mr. SHELBY)) proposed an amendment to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; as follows:

At the end add the following:

DIVISION D—PUBLIC TRANSPORTATION

SEC. 40001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the ''Federal Public Transportation Act of 2012''.

(b) TABLE OF CONTENTS.—The table of contents for this division is as follows:

Sec. 40001. Short title; table of contents.
Sec. 40002. Repeals.
Sec. 40003. Policies, purposes, and goals.
Sec. 40004. Definitions.
Sec. 40005. Metropolitan transportation planning.
Sec. 40006. Statewide and nonmetropolitan transportation planning.
Sec. 40007. Public Transportation Emergency Relief Program.
Sec. 40008. Urbanized area formula grants.
Sec. 40009. Clean fuel grant program.
Sec. 40010. Fixed guideway capital investment grants.
Sec. 40011. Formula grants for the enhanced mobility of seniors and individuals with disabilities.
Sec. 40012. Formula grants for other than urbanized areas.
Sec. 40013. Research, development, demonstration, and deployment projects.
Sec. 40014. Technical assistance and standards development.
Sec. 40015. Bus testing facilities.
Sec. 40016. Public transportation workforce development and human resource programs.
Sec. 40017. General provisions.
Sec. 40018. Contract requirements.
Sec. 40019. Transit asset management.
Sec. 40020. Project management oversight.
Sec. 40021. Public transportation safety.
Sec. 40022. Alcohol and controlled substances testing.
Sec. 40023. Nondiscrimination.
Sec. 40024. Labor standards.
Sec. 40025. Administrative provisions.
Sec. 40026. National transit database.
Sec. 40027. Apportionment of appropriations for formula grants.
Sec. 40028. State of good repair grants.
Sec. 40029. Authorizations.
Sec. 40030. Apportionments based on growing States and high density States formula factors.
Sec. 40031. Technical and conforming amendments.

SEC. 40002. REPEALS.

(a) CHAPTER 53.—Chapter 53 of title 49, United States Code, is amended by striking sections 5316, 5317, 5321, 5324, 5328, and 5339.

(b) TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.—Section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note) is repealed.

(c) SAFETEA–LU.—The following provisions are repealed:

(1) Section 3009(i) of SAFETEA–LU (Public Law 109–59; 119 Stat. 1572).

(2) Section 3011(c) of SAFETEA–LU (49 U.S.C. 5309 note).

(3) Section 3012(b) of SAFETEA–LU (49 U.S.C. 5310 note).

(4) Section 3045 of SAFETEA–LU (49 U.S.C. 5308 note).

(5) Section 3046 of SAFETEA–LU (49 U.S.C. 5338 note).

SEC. 40003. POLICIES, PURPOSES, AND GOALS.

Section 5301 of title 49, United States Code, is amended to read as follows:

''§ 5301. Policies, purposes, and goals

''(a) DECLARATION OF POLICY.—It is in the interest of the United States, including the economic interest of the United States, to foster the development and revitalization of public transportation systems.

''(b) GENERAL PURPOSES.—The purposes of this chapter are to—

''(1) provide funding to support public transportation;

''(2) improve the development and delivery of capital projects;

''(3) initiate a new framework for improving the safety of public transportation systems;

''(4) establish standards for the state of good repair of public transportation infrastructure and vehicles;

''(5) promote continuing, cooperative, and comprehensive planning that improves the performance of the transportation network;

''(6) establish a technical assistance program to assist recipients under this chapter to more effectively and efficiently provide public transportation service;

''(7) continue Federal support for public transportation providers to deliver high quality service to all users, including individuals with disabilities, seniors, and individuals who depend on public transportation;

''(8) support research, development, demonstration, and deployment projects dedicated to assisting in the delivery of efficient and effective public transportation service; and

''(9) promote the development of the public transportation workforce.

''(c) NATIONAL GOALS.—The goals of this chapter are to—

''(1) increase the availability and accessibility of public transportation across a balanced, multimodal transportation network;

''(2) promote the environmental benefits of public transportation, including reduced reliance on fossil fuels, fewer harmful emissions, and lower public health expenditures;

''(3) improve the safety of public transportation systems;

''(4) achieve and maintain a state of good repair of public transportation infrastructure and vehicles;

''(5) provide an efficient and reliable alternative to congested roadways;

''(6) increase the affordability of transportation for all users; and

''(7) maximize economic development opportunities by—

''(A) connecting workers to jobs;

''(B) encouraging mixed-use, transit-oriented development; and

''(C) leveraging private investment and joint development.''.

SEC. 40004. DEFINITIONS.

Section 5302 of title 49, United States Code, is amended to read as follows:

''§ 5302. Definitions

''Except as otherwise specifically provided, in this chapter the following definitions apply:

''(1) ASSOCIATED TRANSIT IMPROVEMENT.—The term 'associated transit improvement' means, with respect to any project or an area to be served by a project, projects that are designed to enhance public transportation service or use and that are physically or functionally related to transit facilities. Eligible projects are—

''(A) historic preservation, rehabilitation, and operation of historic public transportation buildings, structures, and facilities (including historic bus and railroad facilities) intended for use in public transportation service;

''(B) bus shelters;

''(C) landscaping and streetscaping, including benches, trash receptacles, and street lights;

''(D) pedestrian access and walkways;

''(E) bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on public transportation vehicles;

''(F) signage; or

''(G) enhanced access for persons with disabilities to public transportation.

''(2) BUS RAPID TRANSIT SYSTEM.—The term 'bus rapid transit system' means a bus transit system—

''(A) in which the majority of each line operates in a separated right-of-way dedicated for public transportation use during peak periods; and

''(B) that includes features that emulate the services provided by rail fixed guideway public transportation systems, including—

''(i) defined stations;

''(ii) traffic signal priority for public transportation vehicles;

''(iii) short headway bidirectional services for a substantial part of weekdays and weekend days; and

''(iv) any other features the Secretary may determine are necessary to produce high-quality public transportation services that emulate the services provided by rail fixed guideway public transportation systems.

''(3) CAPITAL PROJECT.—The term 'capital project' means a project for—

''(A) acquiring, constructing, supervising, or inspecting equipment or a facility for use in public transportation, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, transit-related intelligent transportation systems, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;

''(B) rehabilitating a bus;

''(C) remanufacturing a bus;

''(D) overhauling rail rolling stock;

''(E) preventive maintenance;

''(F) leasing equipment or a facility for use in public transportation, subject to regulations that the Secretary prescribes limiting the leasing arrangements to those that are more cost-effective than purchase or construction;

''(G) a joint development improvement that—

''(i) enhances economic development or incorporates private investment, such as commercial and residential development;

''(ii)(I) enhances the effectiveness of public transportation and is related physically or functionally to public transportation; or

''(II) establishes new or enhanced coordination between public transportation and other transportation;

''(iii) provides a fair share of revenue that will be used for public transportation;

''(iv) provides that a person making an agreement to occupy space in a facility constructed under this paragraph shall pay a fair share of the costs of the facility through rental payments and other means;

''(v) may include—

''(I) property acquisition;

''(II) demolition of existing structures;

''(III) site preparation;

''(IV) utilities;

''(V) building foundations;

''(VI) walkways;

''(VII) pedestrian and bicycle access to a public transportation facility;

''(VIII) construction, renovation, and improvement of intercity bus and intercity rail stations and terminals;

''(IX) renovation and improvement of historic transportation facilities;

''(X) open space;

''(XI) safety and security equipment and facilities (including lighting, surveillance, and related intelligent transportation system applications);

''(XII) facilities that incorporate community services such as daycare or health care;

''(XIII) a capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall; and

''(XIV) construction of space for commercial uses; and

''(vi) does not include outfitting of commercial space (other than an intercity bus or rail station or terminal) or a part of a public facility not related to public transportation;

''(H) the introduction of new technology, through innovative and improved products, into public transportation;

''(I) the provision of nonfixed route paratransit transportation services in accordance with section 223 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12143), but only for grant recipients that are in compliance with applicable requirements of that Act, including both fixed route and demand responsive service, and only for amounts not to exceed 10 percent of such recipient's annual formula apportionment under sections 5307 and 5311;

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

''(K) mobility management—

''(i) consisting of short-range planning and management activities and projects for improving coordination among public transportation and other transportation service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a governmental entity, under this chapter (other than section 5309); but

''(ii) excluding operating public transportation services; or

''(L) associated capital maintenance, including—

''(i) equipment, tires, tubes, and material, each costing at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used; and

''(ii) reconstruction of equipment and material, each of which after reconstruction will have a fair market value of at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and material will be used.

''(4) DESIGNATED RECIPIENT.—The term 'designated recipient' means—

''(A) an entity designated, in accordance with the planning process under sections 5303 and 5304, by the Governor of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under section 5336 to urbanized areas of 200,000 or more in population; or

''(B) a State or regional authority, if the authority is responsible under the laws of a State for a capital project and for financing and directly providing public transportation.

''(5) DISABILITY.—The term 'disability' has the same meaning as in section 3(1) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

''(6) EMERGENCY REGULATION.—The term 'emergency regulation' means a regulation—

''(A) that is effective temporarily before the expiration of the otherwise specified periods of time for public notice and comment under section 5334(c); and

''(B) prescribed by the Secretary as the result of a finding that a delay in the effective date of the regulation—

''(i) would injure seriously an important public interest;

''(ii) would frustrate substantially legislative policy and intent; or

''(iii) would damage seriously a person or class without serving an important public interest.

''(7) FIXED GUIDEWAY.—The term 'fixed guideway' means a public transportation facility—

''(A) using and occupying a separate right-of-way for the exclusive use of public transportation;

''(B) using rail;

''(C) using a fixed catenary system;

''(D) for a passenger ferry system; or

''(E) for a bus rapid transit system.

''(8) GOVERNOR.—The term 'Governor'—

''(A) means the Governor of a State, the mayor of the District of Columbia, and the chief executive officer of a territory of the United States; and

''(B) includes the designee of the Governor.

''(9) LOCAL GOVERNMENTAL AUTHORITY.—The term 'local governmental authority' includes—

''(A) a political subdivision of a State;

''(B) an authority of at least 1 State or political subdivision of a State;

''(C) an Indian tribe; and

''(D) a public corporation, board, or commission established under the laws of a State.

''(10) LOW-INCOME INDIVIDUAL.—The term 'low-income individual' means an individual whose family income is at or below 150 percent of the poverty line, as that term is defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that section, for a family of the size involved.

''(11) NET PROJECT COST.—The term 'net project cost' means the part of a project that reasonably cannot be financed from revenues.

''(12) NEW BUS MODEL.—The term 'new bus model' means a bus model (including a model using alternative fuel)—

''(A) that has not been used in public transportation in the United States before the date of production of the model; or

''(B) used in public transportation in the United States, but being produced with a major change in configuration or components.

''(13) PUBLIC TRANSPORTATION.—The term 'public transportation'—

''(A) means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and

''(B) does not include—

''(i) intercity passenger rail transportation provided by the entity described in chapter 243 (or a successor to such entity);

''(ii) intercity bus service;

''(iii) charter bus service;

''(iv) school bus service;

''(v) sightseeing service;

''(vi) courtesy shuttle service for patrons of one or more specific establishments; or

''(vii) intra-terminal or intra-facility shuttle services.

''(14) REGULATION.—The term 'regulation' means any part of a statement of general or particular applicability of the Secretary designed to carry out, interpret, or prescribe law or policy in carrying out this chapter.

''(15) SECRETARY.—The term 'Secretary' means the Secretary of Transportation.

''(16) SENIOR.—The term 'senior' means an individual who is 65 years of age or older.

''(17) STATE.—The term 'State' means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

''(18) STATE OF GOOD REPAIR.—The term 'state of good repair' has the meaning given that term by the Secretary, by rule, under section 5326(b).

''(19) TRANSIT.—The term 'transit' means public transportation.

''(20) URBAN AREA.—The term 'urban area' means an area that includes a municipality or other built-up place that the Secretary, after considering local patterns and trends of urban growth, decides is appropriate for a local public transportation system to serve individuals in the locality.

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

SEC. 40005. METROPOLITAN TRANSPORTATION PLANNING.

(a) IN GENERAL.—Section 5303 of title 49, United States Code, is amended to read as follows:

''§ 5303. Metropolitan transportation planning

''(a) POLICY.—It is in the national interest—

''(1) to encourage and promote the safe, cost-effective, and efficient management, operation, and development of surface transportation systems that will serve efficiently the mobility needs of individuals and freight, reduce transportation-related fatalities and serious injuries, and foster economic growth and development within and between States and urbanized areas, while fitting the needs and complexity of individual communities, maximizing value for taxpayers, leveraging cooperative investments, and minimizing transportation-related fuel consumption and air pollution through the metropolitan and statewide transportation planning processes identified in this chapter;

''(2) to encourage the continued improvement, evolution, and coordination of the metropolitan and statewide transportation planning processes by and among metropolitan planning organizations, State departments of transportation, regional planning organizations, interstate partnerships, and public transportation and intercity service operators as guided by the planning factors identified in subsection (h) of this section and section 5304(d);

''(3) to encourage and promote transportation needs and decisions that are integrated with other planning needs and priorities; and

''(4) to maximize the effectiveness of transportation investments.

''(b) DEFINITIONS.—In this section and section 5304, the following definitions shall apply:

''(1) EXISTING MPO.—The term 'existing MPO' means a metropolitan planning organization that was designated as a metropolitan planning organization as of the day before the date of enactment of the Federal Public Transportation Act of 2012.

''(2) LOCAL OFFICIAL.—The term 'local official' means any elected or appointed official of general purpose local government with responsibility for transportation in a designated area.

''(3) MAINTENANCE AREA.—The term 'maintenance area' means an area that was designated as an air quality nonattainment area, but was later redesignated by the Administrator of the Environmental Protection Agency as an air quality attainment area, under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

''(4) METROPOLITAN PLANNING AREA.—The term 'metropolitan planning area' means a

geographical area determined by agreement between the metropolitan planning organization for the area and the applicable Governor under subsection (c).

''(5) METROPOLITAN PLANNING ORGANIZATION.—The term 'metropolitan planning organization' means the policy board of an organization established pursuant to subsection (c).

''(6) METROPOLITAN TRANSPORTATION PLAN.—The term 'metropolitan transportation plan' means a plan developed by a metropolitan planning organization under subsection (i).

''(7) NONATTAINMENT AREA.—The term 'nonattainment area' has the meaning given the term in section 171 of the Clean Air Act (42 U.S.C. 7501).

''(8) NONMETROPOLITAN AREA.—

''(A) IN GENERAL.—The term 'nonmetropolitan area' means a geographical area outside the boundaries of a designated metropolitan planning area.

''(B) INCLUSIONS.—The term 'nonmetropolitan area' includes a small urbanized area with a population of more than 50,000, but fewer than 200,000 individuals, as calculated according to the most recent decennial census, and a nonurbanized area.

''(9) NONMETROPOLITAN PLANNING ORGANIZATION.—The term 'nonmetropolitan planning organization' means an organization that—

''(A) was designated as a metropolitan planning organization as of the day before the date of enactment of the Federal Public Transportation Act of 2012; and

''(B) is not designated as a tier I MPO or tier II MPO.

''(10) REGIONALLY SIGNIFICANT.—The term 'regionally significant', with respect to a transportation project, program, service, or strategy, means a project, program, service, or strategy that—

''(A) serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, and major planned developments); and

''(B) would normally be included in the modeling of a transportation network of a metropolitan area.

''(11) RURAL PLANNING ORGANIZATION.—The term 'rural planning organization' means a voluntary organization of local elected officials and representatives of local transportation systems that—

''(A) works in cooperation with the department of transportation (or equivalent entity) of a State to plan transportation networks and advise officials of the State on transportation planning; and

''(B) is located in a rural area—

''(i) with a population of not fewer than 5,000 individuals, as calculated according to the most recent decennial census; and

''(ii) that is not located in an area represented by a metropolitan planning organization.

''(12) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—The term 'statewide transportation improvement program' means a statewide transportation improvement program developed by a State under section 5304(g).

''(13) STATEWIDE TRANSPORTATION PLAN.—The term 'statewide transportation plan' means a plan developed by a State under section 5304(f).

''(14) TIER I MPO.—The term 'tier I MPO' means a metropolitan planning organization designated as a tier I MPO under subsection (e)(4)(A).

''(15) TIER II MPO.—The term 'tier II MPO' means a metropolitan planning organization designated as a tier II MPO under subsection (e)(4)(B).

''(16) TRANSPORTATION IMPROVEMENT PROGRAM.—The term 'transportation improvement program' means a program developed by a metropolitan planning organization under subsection (j).

''(17) URBANIZED AREA.—The term 'urbanized area' means a geographical area with a population of 50,000 or more individuals, as calculated according to the most recent decennial census.

''(c) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

''(1) IN GENERAL.—To carry out the metropolitan transportation planning process under this section, a metropolitan planning organization shall be designated for each urbanized area with a population of 200,000 or more individuals, as calculated according to the most recent decennial census—

''(A) by agreement between the applicable Governor and local officials that, in the aggregate, represent at least 75 percent of the affected population (including the largest incorporated city (based on population), as calculated according to the most recent decennial census); or

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

''(2) SMALL URBANIZED AREAS.—To carry out the metropolitan transportation planning process under this section, a metropolitan planning organization may be designated for any urbanized area with a population of 50,000 or more individuals, but fewer than 200,000 individuals, as calculated according to the most recent decennial census—

''(A) by agreement between the applicable Governor and local officials that, in the aggregate, represent at least 75 percent of the affected population (including the largest incorporated city (based on population), as calculated according to the most recent decennial census); and

''(B) with the consent of the Secretary, based on a finding that the resulting metropolitan planning organization has met the minimum requirements under subsection (e)(4)(B).

''(3) STRUCTURE.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, a metropolitan planning organization shall consist of—

''(A) elected local officials in the relevant metropolitan area;

''(B) officials of public agencies that administer or operate major modes of transportation in the relevant metropolitan area, including providers of public transportation; and

''(C) appropriate State officials.

''(4) EFFECT OF SUBSECTION.—Nothing in this subsection interferes with any authority under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities—

''(A) to develop the metropolitan transportation plans and transportation improvement programs for adoption by a metropolitan planning organization; or

''(B) to develop capital plans, coordinate public transportation services and projects, or carry out other activities pursuant to State law.

''(5) CONTINUING DESIGNATION.—A designation of an existing MPO—

''(A) for an urbanized area with a population of 200,000 or more individuals, as calculated according to the most recent decennial census, shall remain in effect—

''(i) for the period during which the structure of the existing MPO complies with the requirements of paragraph (1); or

''(ii) until the date on which the existing MPO is redesignated under paragraph (6); and

''(B) for an urbanized area with a population of fewer than 200,000 individuals, as calculated according to the most recent decennial census, shall remain in effect until the date on which the existing MPO is redesignated under paragraph (6) unless—

''(i) the existing MPO requests that its planning responsibilities be transferred to the State or to another planning organization designated by the State; or

''(ii)(I) the applicable Governor determines not later than 3 years after the date on which the Secretary issues a rule pursuant to subsection (e)(4)(B)(i), that the existing MPO is not meeting the minimum requirements established by the rule; and

''(II) the Secretary approves the Governor's determination.

''(C) DESIGNATION AS TIER II MPO.—If the Secretary determines the existing MPO has met the minimum requirements under the rule issued under subsection (e)(4)(B)(i), the Secretary shall designate the existing MPO as a tier II MPO.

''(6) REDESIGNATION.—

''(A) IN GENERAL.—The designation of a metropolitan planning organization under this subsection shall remain in effect until the date on which the metropolitan planning organization is redesignated, as appropriate, in accordance with the requirements of this subsection pursuant to an agreement between—

''(i) the applicable Governor; and

''(ii) affected local officials who, in the aggregate, represent at least 75 percent of the existing metropolitan planning area population (including the largest incorporated city (based on population), as calculated according to the most recent decennial census).

''(B) RESTRUCTURING.—A metropolitan planning organization may be restructured to meet the requirements of paragraph (3) without undertaking a redesignation.

''(7) DESIGNATION OF MULTIPLE MPOS.—

''(A) IN GENERAL.—More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the applicable Governor and an existing MPO determine that the size and complexity of the existing metropolitan planning area make the designation of more than 1 metropolitan planning organization for the metropolitan planning area appropriate.

''(B) SERVICE JURISDICTIONS.—If more than 1 metropolitan planning organization is designated for an existing metropolitan planning area under subparagraph (A), the existing metropolitan planning area shall be split into multiple metropolitan planning areas, each of which shall be served by the existing MPO or a new metropolitan planning organization.

''(C) TIER DESIGNATION.—The tier designation of each metropolitan planning organization subject to a designation under this paragraph shall be determined based on the size of each respective metropolitan planning area, in accordance with subsection (e)(4).

''(d) METROPOLITAN PLANNING AREA BOUNDARIES.—

''(1) IN GENERAL.—For purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the applicable metropolitan planning organization and the Governor of the State in which the metropolitan planning area is located.

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

''(A) shall encompass at least the relevant existing urbanized area and any contiguous area expected to become urbanized within a 20-year forecast period under the applicable metropolitan transportation plan; and

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

''(3) IDENTIFICATION OF NEW URBANIZED AREAS.—The designation by the Bureau of the Census of a new urbanized area within

the boundaries of an existing metropolitan planning area shall not require the redesignation of the relevant existing MPO.

''(4) NONATTAINMENT AND MAINTENANCE AREAS.—

''(A) EXISTING METROPOLITAN PLANNING AREAS.—

''(i) IN GENERAL.—Except as provided in clause (ii), notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area or maintenance area as of the date of enactment of the Federal Public Transportation Act of 2012, the boundaries of the existing metropolitan planning area as of that date of enactment shall remain in force and effect.

''(ii) EXCEPTION.—Notwithstanding clause (i), the boundaries of an existing metropolitan planning area described in that clause may be adjusted by agreement of the applicable Governor and the affected metropolitan planning organizations in accordance with subsection (c)(7).

''(B) NEW METROPOLITAN PLANNING AREAS.—In the case of an urbanized area designated as a nonattainment area or maintenance area after the date of enactment of the Federal Public Transportation Act of 2012, the boundaries of the applicable metropolitan planning area—

''(i) shall be established in accordance with subsection (c)(1);

''(ii) shall encompass the areas described in paragraph (2)(A);

''(iii) may encompass the areas described in paragraph (2)(B); and

''(iv) may address any appropriate nonattainment area or maintenance area.

''(e) REQUIREMENTS.—

''(1) DEVELOPMENT OF PLANS AND TIPS.—To accomplish the policy objectives described in subsection (a), each metropolitan planning organization, in cooperation with the applicable State and public transportation operators, shall develop metropolitan transportation plans and transportation improvement programs for metropolitan planning areas of the State through a performance-driven, outcome-based approach to metropolitan transportation planning consistent with subsection (h).

''(2) CONTENTS.—The metropolitan transportation plans and transportation improvement programs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation) that will function as—

''(A) an intermodal transportation system for the metropolitan planning area; and

''(B) an integral part of an intermodal transportation system for the applicable State and the United States.

''(3) PROCESS OF DEVELOPMENT.—The process for developing metropolitan transportation plans and transportation improvement programs shall—

''(A) provide for consideration of all modes of transportation; and

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

''(4) TIERING.—

''(A) TIER I MPOS.—

''(i) IN GENERAL.—A metropolitan planning organization shall be designated as a tier I MPO if—

''(I) as certified by the Governor of each applicable State, the metropolitan planning organization operates within, and primarily serves, a metropolitan planning area with a population of 1,000,000 or more individuals, as calculated according to the most recent decennial census; and

''(II) the Secretary determines the metropolitan planning organization—

''(aa) meets the minimum technical requirements under clause (iv); and

''(bb) not later than 2 years after the date of enactment of the Federal Public Transportation Act of 2012, will fully implement the processes described in subsections (h) though (j).

''(ii) ABSENCE OF DESIGNATION.—In the absence of designation as a tier I MPO under clause (i), a metropolitan planning organization shall operate as a tier II MPO until the date on which the Secretary determines the metropolitan planning organization can meet the minimum technical requirements under clause (iv).

''(iii) REDESIGNATION AS TIER I.—A metropolitan planning organization operating within a metropolitan planning area with a population of 200,000 or more and fewer than 1,000,000 individuals and primarily within urbanized areas with populations of 200,000 or more individuals, as calculated according to the most recent decennial census, that is designated as a tier II MPO under subparagraph (B) may request, with the support of the applicable Governor, a redesignation as a tier I MPO on a determination by the Secretary that the metropolitan planning organization has met the minimum technical requirements under clause (iv).

''(iv) MINIMUM TECHNICAL REQUIREMENTS.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue a rule that establishes the minimum technical requirements necessary for a metropolitan planning organization to be designated as a tier I MPO, including, at a minimum, modeling, data, staffing, and other technical requirements.

''(B) TIER II MPOS.—

''(i) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue a rule that establishes minimum requirements necessary for a metropolitan planning organization to be designated as a tier II MPO.

''(ii) REQUIREMENTS.—The minimum requirements established under clause (i) shall—

''(I) ensure that each metropolitan planning organization has the capabilities necessary to develop the metropolitan transportation plan and transportation improvement program under this section; and

''(II) include—

''(aa) only the staff resources necessary to operate the metropolitan planning organization; and

''(bb) a requirement that the metropolitan planning organization has the technical capacity to conduct the modeling necessary, as appropriate to the size and resources of the metropolitan planning organization, to fulfill the requirements of this section, except that in cases in which a metropolitan planning organization has a formal agreement with a State to conduct the modeling on behalf of the metropolitan planning organization, the metropolitan planning organization shall be exempt from the technical capacity requirement.

''(iii) INCLUSION.—A metropolitan planning organization operating primarily within an urbanized area with a population of 200,000 or more individuals, as calculated according to the most recent decennial census, and that does not qualify as a tier I MPO under subparagraph (A)(i), shall—

''(I) be designated as a tier II MPO; and

''(II) follow the processes under subsection (k).

''(C) CONSOLIDATION.—

''(i) IN GENERAL.—Metropolitan planning organizations operating within contiguous or adjacent urbanized areas may elect to consolidate in order to meet the population thresholds required to achieve designation as a tier I or tier II MPO under this paragraph.

''(ii) EFFECT OF SUBSECTION.—Nothing in this subsection requires or prevents consolidation among multiple metropolitan planning organizations located within a single urbanized area.

''(f) COORDINATION IN MULTISTATE AREAS.—

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

''(2) COORDINATION ALONG DESIGNATED TRANSPORTATION CORRIDORS.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire designated transportation corridor.

''(3) COORDINATION WITH INTERSTATE COMPACTS.—The Secretary shall encourage metropolitan planning organizations to take into consideration, during the development of metropolitan transportation plans and transportation improvement programs, any relevant transportation studies concerning planning for regional transportation (including high-speed and intercity rail corridor studies, commuter rail corridor studies, intermodal terminals, and interstate highways) in support of freight, intercity, or multistate area projects and services that have been developed pursuant to interstate compacts or agreements, or by organizations established under section 5304.

''(g) ENGAGEMENT IN METROPOLITAN TRANSPORTATION PLAN AND TIP DEVELOPMENT.—

''(1) NONATTAINMENT AND MAINTENANCE AREAS.—If more than 1 metropolitan planning organization has authority within a metropolitan area, nonattainment area, or maintenance area, each metropolitan planning organization shall consult with all other metropolitan planning organizations designated for the metropolitan area, nonattainment area, or maintenance area and the State in the development of metropolitan transportation plans and transportation improvement programs under this section.

''(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE METROPOLITAN PLANNING AREAS.—If a transportation improvement project funded under this chapter or title 23 is located within the boundaries of more than 1 metropolitan planning area, the affected metropolitan planning organizations shall coordinate metropolitan transportation plans and transportation improvement programs regarding the project.

''(3) COORDINATION OF ADJACENT PLANNING ORGANIZATIONS.—

''(A) IN GENERAL.—A metropolitan planning organization that is adjacent or located in reasonably close proximity to another metropolitan planning organization shall coordinate with that metropolitan planning organization with respect to planning processes, including preparation of metropolitan transportation plans and transportation improvement programs, to the maximum extent practicable.

''(B) NONMETROPOLITAN PLANNING ORGANIZATIONS.—A metropolitan planning organization that is adjacent or located in reasonably close proximity to a nonmetropolitan planning organization shall consult with that nonmetropolitan planning organization with respect to planning processes, to the maximum extent practicable.

''(4) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.—

''(A) IN GENERAL.—The Secretary shall encourage each metropolitan planning organization to cooperate with Federal, State, tribal, and local officers and entities responsible for other types of planning activities that are affected by transportation in the relevant area (including planned growth, economic development, infrastructure services, housing, other public services, environmental protection, airport operations, high-speed and intercity passenger rail, freight rail, port access, and freight movements), to the maximum extent practicable, to ensure that the metropolitan transportation planning process, metropolitan transportation plans, and transportation improvement programs are developed in cooperation with other related planning activities in the area.

''(B) INCLUSION.—Cooperation under subparagraph (A) shall include the design and delivery of transportation services within the metropolitan area that are provided by—

''(i) recipients of assistance under sections 202, 203, and 204 of title 23;

''(ii) recipients of assistance under this title;

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

''(iv) sponsors of regionally significant programs, projects, and services that are related to transportation and receive assistance from any public or private source.

''(5) COORDINATION OF OTHER FEDERALLY REQUIRED PLANNING PROGRAMS.—The Secretary shall encourage each metropolitan planning organization to coordinate, to the maximum extent practicable, the development of metropolitan transportation plans and transportation improvement programs with other relevant federally required planning programs.

''(h) SCOPE OF PLANNING PROCESS.—

''(1) IN GENERAL.—The metropolitan transportation planning process for a metropolitan planning area under this section shall provide for consideration of projects and strategies that will—

''(A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

''(B) increase the safety of the transportation system for motorized and nonmotorized users;

''(C) increase the security of the transportation system for motorized and nonmotorized users;

''(D) increase the accessibility and mobility of individuals and freight;

''(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

''(F) enhance the integration and connectivity of the transportation system, across and between modes, for individuals and freight;

''(G) increase efficient system management and operation; and

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

''(2) PERFORMANCE-BASED APPROACH.—

''(A) IN GENERAL.—The metropolitan transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decision-making to support the national goals described in section 5301(c) of this title and in section 150(b) of title 23.

''(B) PERFORMANCE TARGETS.—

''(i) SURFACE TRANSPORTATION PERFORMANCE TARGETS.—

''(I) IN GENERAL.—Each metropolitan planning organization shall establish performance targets that address the performance measures described in sections 119(f), 148(h), 149(k) (where applicable), and 167(i) of title 23, to use in tracking attainment of critical outcomes for the region of the metropolitan planning organization.

''(II) COORDINATION.—Selection of performance targets by a metropolitan planning organization shall be coordinated with the relevant State to ensure consistency, to the maximum extent practicable.

''(ii) PUBLIC TRANSPORTATION PERFORMANCE TARGETS.—Each metropolitan planning organization shall adopt the performance targets identified by providers of public transportation pursuant to sections 5326(c) and 5329(d), for use in tracking attainment of critical outcomes for the region of the metropolitan planning organization.

''(C) TIMING.—Each metropolitan planning organization shall establish or adopt the performance targets under subparagraph (B) not later than 90 days after the date on which the relevant State or provider of public transportation establishes the performance targets.

''(D) INTEGRATION OF OTHER PERFORMANCE-BASED PLANS.—A metropolitan planning organization shall integrate in the metropolitan transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in other State plans and processes, as well as asset management and safety plans developed by providers of public transportation, required as part of a performance-based program, including plans such as—

''(i) the State National Highway System asset management plan;

''(ii) asset management plans developed by providers of public transportation;

''(iii) the State strategic highway safety plan;

''(iv) safety plans developed by providers of public transportation;

''(v) the congestion mitigation and air quality performance plan, where applicable;

''(vi) the national freight strategic plan; and

''(vii) the statewide transportation plan.

''(E) USE OF PERFORMANCE MEASURES AND TARGETS.—The performance measures and targets established under this paragraph shall be used, at a minimum, by the relevant metropolitan planning organization as the basis for development of policies, programs, and investment priorities reflected in the metropolitan transportation plan and transportation improvement program.

''(3) FAILURE TO CONSIDER FACTORS.—The failure to take into consideration 1 or more of the factors specified in paragraphs (1) and (2) shall not be subject to review by any court under this chapter, title 23, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a metropolitan transportation plan, a transportation improvement program, a project or strategy, or the certification of a planning process.

''(4) PARTICIPATION BY INTERESTED PARTIES.—

''(A) IN GENERAL.—Each metropolitan planning organization shall provide to affected individuals, public agencies, and other interested parties notice and a reasonable opportunity to comment on the metropolitan transportation plan and transportation improvement program and any relevant scenarios.

''(B) CONTENTS OF PARTICIPATION PLAN.—Each metropolitan planning organization shall establish a participation plan that—

''(i) is developed in consultation with all interested parties; and

''(ii) provides that all interested parties have reasonable opportunities to comment on the contents of the metropolitan transportation plan of the metropolitan planning organization.

''(C) METHODS.—In carrying out subparagraph (A), the metropolitan planning organization shall, to the maximum extent practicable—

''(i) develop the metropolitan transportation plan and transportation improvement program in consultation with interested parties, as appropriate, including by the formation of advisory groups representative of the community and interested parties that participate in the development of the metropolitan transportation plan and transportation improvement program;

''(ii) hold any public meetings at times and locations that are, as applicable—

''(I) convenient; and

''(II) in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

''(iii) employ visualization techniques to describe metropolitan transportation plans and transportation improvement programs; and

''(iv) make public information available in appropriate electronically accessible formats and means, such as the Internet, to afford reasonable opportunity for consideration of public information under subparagraph (A).

''(i) DEVELOPMENT OF METROPOLITAN TRANSPORTATION PLAN.—

''(1) DEVELOPMENT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), not later than 5 years after the date of enactment of the Federal Public Transportation Act of 2012, and not less frequently than once every 5 years thereafter, each metropolitan planning organization shall prepare and update, respectively, a metropolitan transportation plan for the relevant metropolitan planning area in accordance with this section.

''(B) EXCEPTIONS.—A metropolitan planning organization shall prepare or update, as appropriate, the metropolitan transportation plan not less frequently than once every 4 years if the metropolitan planning organization is operating within—

''(i) a nonattainment area; or

''(ii) a maintenance area.

''(2) OTHER REQUIREMENTS.—A metropolitan transportation plan under this section shall—

''(A) be in a form that the Secretary determines to be appropriate;

''(B) have a term of not less than 20 years; and

''(C) contain, at a minimum—

''(i) an identification of the existing transportation infrastructure, including highways, local streets and roads, bicycle and pedestrian facilities, public transportation facilities and services, commuter rail facilities and services, high-speed and intercity passenger rail facilities and services, freight facilities (including freight railroad and port facilities), multimodal and intermodal facilities, and intermodal connectors that, evaluated in the aggregate, function as an integrated metropolitan transportation system;

''(ii) a description of the performance measures and performance targets used in assessing the existing and future performance of the transportation system in accordance with subsection (h)(2);

''(iii) a description of the current and projected future usage of the transportation system, including a projection based on a preferred scenario, and further including, to the extent practicable, an identification of existing or planned transportation rights-of-way, corridors, facilities, and related real properties;

''(iv) a system performance report evaluating the existing and future condition and performance of the transportation system

with respect to the performance targets described in subsection (h)(2) and updates in subsequent system performance reports, including—

''(I) progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports;

''(II) an accounting of the performance of the metropolitan planning organization on outlay of obligated project funds and delivery of projects that have reached substantial completion in relation to—

''(aa) the projects included in the transportation improvement program; and

''(bb) the projects that have been removed from the previous transportation improvement program; and

''(III) when appropriate, an analysis of how the preferred scenario has improved the conditions and performance of the transportation system and how changes in local policies, investments, and growth have impacted the costs necessary to achieve the identified performance targets;

''(v) recommended strategies and investments for improving system performance over the planning horizon, including transportation systems management and operations strategies, maintenance strategies, demand management strategies, asset management strategies, capacity and enhancement investments, State and local economic development and land use improvements, intelligent transportation systems deployment, and technology adoption strategies, as determined by the projected support of the performance targets described in subsection (h)(2);

''(vi) recommended strategies and investments to improve and integrate disability-related access to transportation infrastructure, including strategies and investments based on a preferred scenario, when appropriate;

''(vii) investment priorities for using projected available and proposed revenues over the short- and long-term stages of the planning horizon, in accordance with the financial plan required under paragraph (4);

''(viii) a description of interstate compacts entered into in order to promote coordinated transportation planning in multistate areas, if applicable;

''(ix) an optional illustrative list of projects containing investments that—

''(I) are not included in the metropolitan transportation plan; but

''(II) would be so included if resources in addition to the resources identified in the financial plan under paragraph (4) were available;

''(x) a discussion (developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies) of types of potential environmental and stormwater mitigation activities and potential areas to carry out those activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the metropolitan transportation plan; and

''(xi) recommended strategies and investments, including those developed by the State as part of interstate compacts, agreements, or organizations, that support intercity transportation.

''(3) SCENARIO DEVELOPMENT.—

''(A) IN GENERAL.—When preparing the metropolitan transportation plan, the metropolitan planning organization may, while fitting the needs and complexity of their community, develop multiple scenarios for consideration as a part of the development of the metropolitan transportation plan, in accordance with subparagraph (B).

''(B) COMPONENTS OF SCENARIOS.—The scenarios—

''(i) shall include potential regional investment strategies for the planning horizon;

''(ii) shall include assumed distribution of population and employment;

''(iii) may include a scenario that, to the maximum extent practicable, maintains baseline conditions for the performance targets identified in subsection (h)(2);

''(iv) may include a scenario that improves the baseline conditions for as many of the performance targets under subsection (h)(2) as possible;

''(v) may include a revenue constrained scenario based on total revenues reasonably expected to be available over the 20-year planning period and assumed population and employment; and

''(vi) may include estimated costs and potential revenues available to support each scenario.

''(C) METRICS.—In addition to the performance targets identified in subsection (h)(2), scenarios developed under this paragraph may be evaluated using locally developed metrics for the following categories:

''(i) Congestion and mobility, including transportation use by mode.

''(ii) Freight movement.

''(iii) Safety.

''(iv) Efficiency and costs to taxpayers.

''(4) FINANCIAL PLAN.—A financial plan referred to in paragraph (2)(C)(vii) shall—

''(A) be prepared by each metropolitan planning organization to support the metropolitan transportation plan; and

''(B) contain a description of—

''(i) the projected resource requirements for implementing projects, strategies, and services recommended in the metropolitan transportation plan, including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from Federal, State, local, and private sources, and innovative financing techniques to finance projects and programs;

''(ii) the projected difference between costs and revenues, and strategies for securing additional new revenue (such as by capture of some of the economic value created by any new investment);

''(iii) estimates of future funds, to be developed cooperatively by the metropolitan planning organization, any public transportation agency, and the State, that are reasonably expected to be available to support the investment priorities recommended in the metropolitan transportation plan; and

''(iv) each applicable project only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(5) COORDINATION WITH CLEAN AIR ACT AGENCIES.—The metropolitan planning organization for any metropolitan area that is a nonattainment area or maintenance area shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act (42 U.S.C. 7401 et seq.).

''(6) PUBLICATION.—On approval by the relevant metropolitan planning organization, a metropolitan transportation plan involving Federal participation shall be, at such times and in such manner as the Secretary shall require—

''(A) published or otherwise made readily available by the metropolitan planning organization for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the Internet; and

''(B) submitted for informational purposes to the applicable Governor.

''(7) CONSULTATION.—

''(A) IN GENERAL.—In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with Federal, State, tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a metropolitan transportation plan.

''(B) ISSUES.—The consultation under subparagraph (A) shall involve, as available, consideration of—

''(i) metropolitan transportation plans with Federal, State, tribal, and local conservation plans or maps; and

''(ii) inventories of natural or historic resources.

''(8) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (4), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the metropolitan transportation plan under paragraph (2)(C)(ix).

''(j) TRANSPORTATION IMPROVEMENT PROGRAM.—

''(1) DEVELOPMENT.—

''(A) IN GENERAL.—In cooperation with the applicable State and any affected public transportation operator, the metropolitan planning organization designated for a metropolitan area shall develop a transportation improvement program for the metropolitan planning area that—

''(i) contains projects consistent with the current metropolitan transportation plan;

''(ii) reflects the investment priorities established in the current metropolitan transportation plan; and

''(iii) once implemented, will make significant progress toward achieving the performance targets established under subsection (h)(2).

''(B) OPPORTUNITY FOR PARTICIPATION.—In developing the transportation improvement program, the metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties, in accordance with subsection (h)(4).

''(C) UPDATING AND APPROVAL.—The transportation improvement program shall be—

''(i) updated not less frequently than once every 4 years, on a cycle compatible with the development of the relevant statewide transportation improvement program under section 5304; and

''(ii) approved by the applicable Governor.

''(2) CONTENTS.—

''(A) PRIORITY LIST.—The transportation improvement program shall include a priority list of proposed federally supported projects and strategies to be carried out during the 4-year period beginning on the date of adoption of the transportation improvement program, and each 4-year period thereafter, using existing and reasonably available revenues in accordance with the financial plan under paragraph (3).

''(B) DESCRIPTIONS.—Each project described in the transportation improvement program shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project and the effect that the project or project phase will have in addressing the performance targets described in subsection (h)(2).

''(C) PERFORMANCE TARGET ACHIEVEMENT.—The transportation improvement program

shall include, to the maximum extent practicable, a description of the anticipated effect of the transportation improvement program on attainment of the performance targets established in the metropolitan transportation plan, linking investment priorities to those performance targets.

''(D) ILLUSTRATIVE LIST OF PROJECTS.—In developing a transportation improvement program, an optional illustrative list of projects may be prepared containing additional investment priorities that—

''(i) are not included in the transportation improvement program; but

''(ii) would be so included if resources in addition to the resources identified in the financial plan under paragraph (3) were available.

''(3) FINANCIAL PLAN.—A financial plan referred to in paragraph (2)(D)(ii) shall—

''(A) be prepared by each metropolitan planning organization to support the transportation improvement program; and

''(B) contain a description of—

''(i) the projected resource requirements for implementing projects, strategies, and services recommended in the transportation improvement program, including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from Federal, State, local, and private sources, and innovative financing techniques to finance projects and programs;

''(ii) the projected difference between costs and revenues, and strategies for securing additional new revenue (such as by capture of some of the economic value created by any new investment);

''(iii) estimates of future funds, to be developed cooperatively by the metropolitan planning organization, any public transportation agency, and the State, that are reasonably expected to be available to support the investment priorities recommended in the transportation improvement program; and

''(iv) each applicable project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(4) INCLUDED PROJECTS.—

''(A) PROJECTS UNDER THIS CHAPTER AND TITLE 23.—A transportation improvement program developed under this subsection for a metropolitan area shall include a description of the projects within the area that are proposed for funding under this chapter and chapter 1 of title 23.

''(B) PROJECTS UNDER CHAPTER 2.—

''(i) REGIONALLY SIGNIFICANT.—Each regionally significant project proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program.

''(ii) NONREGIONALLY SIGNIFICANT.—A description of each project proposed for funding under chapter 2 of title 23 that is not determined to be regionally significant shall be contained in 1 line item or identified individually in the transportation improvement program.

''(5) OPPORTUNITY FOR PARTICIPATION.—Before approving a transportation improvement program, a metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the transportation improvement program, in accordance with subsection (h)(4).

''(6) SELECTION OF PROJECTS.—

''(A) IN GENERAL.—Each tier I MPO and tier II MPO shall select projects carried out within the boundaries of the applicable metropolitan planning area from the transportation improvement program, in consultation with the relevant State and on concurrence of the affected facility owner, for funds apportioned to the State under section 104(b)(2) of title 23 and suballocated to the metropolitan planning area under section 133(d) of title 23.

''(B) PROJECTS UNDER CHAPTER 53.—In the case of projects under this chapter, the selection of federally funded projects in metropolitan areas shall be carried out, from the approved transportation improvement program, by the designated recipients of public transportation funding in cooperation with the metropolitan planning organization.

''(C) CONGESTION MITIGATION AND AIR QUALITY PROJECTS.—Each tier I MPO shall select projects carried out within the boundaries of the applicable metropolitan planning area from the transportation improvement program, in consultation with the relevant State and on concurrence of the affected facility owner, for funds apportioned to the State under section 104(b)(4) of title 23 and suballocated to the metropolitan planning area under section 149(j) of title 23.

''(D) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, approval by the Secretary shall not be required to carry out a project included in a transportation improvement program in place of another project in the transportation improvement program.

''(7) PUBLICATION.—

''(A) IN GENERAL.—A transportation improvement program shall be published or otherwise made readily available by the applicable metropolitan planning organization for public review in electronically accessible formats and means, such as the Internet.

''(B) ANNUAL LIST OF PROJECTS.—An annual list of projects, including investments in pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation, for which Federal funds have been obligated during the preceding fiscal year shall be published or otherwise made available by the cooperative effort of the State, public transportation operator, and metropolitan planning organization in electronically accessible formats and means, such as the Internet, in a manner that is consistent with the categories identified in the relevant transportation improvement program.

''(k) PLANNING REQUIREMENTS FOR TIER II MPOS.—

''(1) IN GENERAL.—The Secretary may provide for the performance-based development of a metropolitan transportation plan and transportation improvement program for the metropolitan planning area of a tier II MPO, as the Secretary determines to be appropriate, taking into account—

''(A) the complexity of transportation needs in the area; and

''(B) the technical capacity of the metropolitan planning organization.

''(2) EVALUATION OF PERFORMANCE-BASED PLANNING.—In reviewing a tier II MPO under subsection (m), the Secretary shall take into consideration the effectiveness of the tier II MPO in implementing and maintaining a performance-based planning process that—

''(A) addresses the performance targets described in subsection (h)(2); and

''(B) demonstrates progress on the achievement of those performance targets.

''(l) CERTIFICATION.—

''(1) IN GENERAL.—The Secretary shall—

''(A) ensure that the metropolitan transportation planning process of a metropolitan planning organization is being carried out in accordance with applicable Federal law; and

''(B) subject to paragraph (2), certify, not less frequently than once every 4 years, that the requirements of subparagraph (A) are met with respect to the metropolitan transportation planning process.

''(2) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make a certification under paragraph (1)(B) if—

''(A) the metropolitan transportation planning process complies with the requirements of this section and other applicable Federal law;

''(B) representation on the metropolitan planning organization board includes officials of public agencies that administer or operate major modes of transportation in the relevant metropolitan area, including providers of public transportation; and

''(C) a transportation improvement program for the metropolitan planning area has been approved by the relevant metropolitan planning organization and applicable Governor.

''(3) DELEGATION OF AUTHORITY.—The Secretary may—

''(A) delegate to the appropriate State fact-finding authority regarding the certification of a tier II MPO under this subsection; and

''(B) make the certification under paragraph (1) in consultation with the State.

''(4) EFFECT OF FAILURE TO CERTIFY.—

''(A) WITHHOLDING OF PROJECT FUNDS.—If a metropolitan transportation planning process of a metropolitan planning organization is not certified under paragraph (1), the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the metropolitan planning organization for projects funded under this chapter and title 23.

''(B) RESTORATION OF WITHHELD FUNDS.—Any funds withheld under subparagraph (A) shall be restored to the metropolitan planning area on the date of certification of the metropolitan transportation planning process by the Secretary.

''(5) PUBLIC INVOLVEMENT.—In making a determination regarding certification under this subsection, the Secretary shall provide for public involvement appropriate to the metropolitan planning area under review.

''(m) PERFORMANCE-BASED PLANNING PROCESSES EVALUATION.—

''(1) IN GENERAL.—The Secretary shall establish criteria to evaluate the effectiveness of the performance-based planning processes of metropolitan planning organizations under this section, taking into consideration the following:

''(A) The extent to which the metropolitan planning organization has achieved, or is currently making substantial progress toward achieving, the performance targets specified in subsection (h)(2), taking into account whether the metropolitan planning organization developed meaningful performance targets.

''(B) The extent to which the metropolitan planning organization has used proven best practices that help ensure transportation investment that is efficient and cost-effective.

''(C) The extent to which the metropolitan planning organization—

''(i) has developed an investment process that relies on public input and awareness to ensure that investments are transparent and accountable; and

''(ii) provides regular reports allowing the public to access the information being collected in a format that allows the public to meaningfully assess the performance of the metropolitan planning organization.

''(2) REPORT.—

''(A) IN GENERAL.—Not later than 5 years after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall submit to Congress a report evaluating—

''(i) the overall effectiveness of performance-based planning as a tool for guiding transportation investments; and

''(ii) the effectiveness of the performance-based planning process of each metropolitan planning organization under this section.

''(B) PUBLICATION.—The report under subparagraph (A) shall be published or otherwise made available in electronically accessible formats and means, including on the Internet.

''(n) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this chapter or title 23, Federal funds may not be advanced in any metropolitan planning area classified as a nonattainment area or maintenance area for any highway project that will result in a significant increase in the carrying capacity for single-occupant vehicles, unless the owner or operator of the project demonstrates that the project will achieve or make substantial progress toward achieving the performance targets described in subsection (h)(2).

''(2) APPLICABILITY.—This subsection applies to any nonattainment area or maintenance area within the boundaries of a metropolitan planning area, as determined under subsection (d).

''(o) EFFECT OF SECTION.—Nothing in this section provides to any metropolitan planning organization the authority to impose any legal requirement on any transportation facility, provider, or project not subject to the requirements of this chapter or title 23.

''(p) FUNDING.—Funds apportioned under section 104(b)(6) of title 23 and set aside under section 5305(g) of this title shall be available to carry out this section.

''(q) CONTINUATION OF CURRENT REVIEW PRACTICE.—

''(1) IN GENERAL.—In consideration of the factors described in paragraph (2), any decision by the Secretary concerning a metropolitan transportation plan or transportation improvement program shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(2) DESCRIPTION OF FACTORS.—The factors referred to in paragraph (1) are that—

''(A) metropolitan transportation plans and transportation improvement programs are subject to a reasonable opportunity for public comment;

''(B) the projects included in metropolitan transportation plans and transportation improvement programs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

''(C) decisions by the Secretary concerning metropolitan transportation plans and transportation improvement programs have not been reviewed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) as of January 1, 1997.

''(r) SCHEDULE FOR IMPLEMENTATION.—The Secretary shall issue guidance on a schedule for implementation of the changes made by this section, taking into consideration the established planning update cycle for metropolitan planning organizations. The Secretary shall not require a metropolitan planning organization to deviate from its established planning update cycle to implement changes made by this section. Metropolitan planning organizations shall reflect changes made to their transportation plan or transportation improvement program updates not later than 2 years after the date of issuance of guidance by the Secretary.''.

(b) PILOT PROGRAM FOR TRANSIT-ORIENTED DEVELOPMENT PLANNING.—

(1) DEFINITIONS.—In this subsection the following definitions shall apply:

(A) ELIGIBLE PROJECT.—The term ''eligible project'' means a new fixed guideway capital project or a core capacity improvement project, as those terms are defined in section 5309 of title 49, United States Code, as amended by this division.

(B) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

(2) GENERAL AUTHORITY.—The Secretary may make grants under this subsection to a State or local governmental authority to assist in financing comprehensive planning associated with an eligible project that seeks to—

(A) enhance economic development, ridership, and other goals established during the project development and engineering processes;

(B) facilitate multimodal connectivity and accessibility;

(C) increase access to transit hubs for pedestrian and bicycle traffic;

(D) enable mixed-use development;

(E) identify infrastructure needs associated with the eligible project; and

(F) include private sector participation.

(3) ELIGIBILITY.—A State or local governmental authority that desires to participate in the program under this subsection shall submit to the Secretary an application that contains, at a minimum—

(A) identification of an eligible project;

(B) a schedule and process for the development of a comprehensive plan;

(C) a description of how the eligible project and the proposed comprehensive plan advance the metropolitan transportation plan of the metropolitan planning organization;

(D) proposed performance criteria for the development and implementation of the comprehensive plan; and

(E) identification of—

(i) partners;

(ii) availability of and authority for funding; and

(iii) potential State, local or other impediments to the implementation of the comprehensive plan.

SEC. 40006. STATEWIDE AND NONMETROPOLITAN TRANSPORTATION PLANNING.

Section 5304 of title 49, United States Code, is amended to read as follows:

''§ 5304. Statewide and nonmetropolitan transportation planning

''(a) STATEWIDE TRANSPORTATION PLANS AND STIPS.—

''(1) DEVELOPMENT.—

''(A) IN GENERAL.—To accomplish the policy objectives described in section 5303(a), each State shall develop a statewide transportation plan and a statewide transportation improvement program for all areas of the State in accordance with this section.

''(B) INCORPORATION OF METROPOLITAN TRANSPORTATION PLANS AND TIPS.—Each State shall incorporate in the statewide transportation plan and statewide transportation improvement program, without change or by reference, the metropolitan transportation plans and transportation improvement programs, respectively, for each metropolitan planning area in the State.

''(C) NONMETROPOLITAN AREAS.—Each State shall coordinate with local officials in small urbanized areas with a population of 50,000 or more individuals, but fewer than 200,000 individuals, as calculated according to the most recent decennial census, and nonurbanized areas of the State in preparing the nonmetropolitan portions of statewide transportation plans and statewide transportation improvement programs.

''(2) CONTENTS.—The statewide transportation plan and statewide transportation improvement program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation) that will function as—

''(A) an intermodal transportation system for the State; and

''(B) an integral part of an intermodal transportation system for the United States.

''(3) PROCESS.—The process for developing the statewide transportation plan and statewide transportation improvement program shall—

''(A) provide for consideration of all modes of transportation; and

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

''(b) COORDINATION AND CONSULTATION.—

''(1) IN GENERAL.—Each State shall—

''(A) coordinate planning carried out under this section with—

''(i) the transportation planning activities carried out under section 5303 for metropolitan areas of the State; and

''(ii) statewide trade and economic development planning activities and related multistate planning efforts;

''(B) coordinate planning carried out under this section with the transportation planning activities carried out by each nonmetropolitan planning organization in the State, as applicable;

''(C) coordinate planning carried out under this section with the transportation planning activities carried out by each rural planning organization in the State, as applicable; and

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

''(2) MULTISTATE AREAS.—

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

''(B) COORDINATION ALONG DESIGNATED TRANSPORTATION CORRIDORS.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate transportation corridor to provide coordinated transportation planning for the entire designated corridor.

''(C) INTERSTATE COMPACTS.—For purposes of this section, any 2 or more States—

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

''(ii) may establish such agencies (joint or otherwise) as the States determine to be appropriate for ensuring the effectiveness of the agreements and compacts; and

''(iii) are encouraged to enter into such compacts, agreements, or organizations as are appropriate to develop planning documents in support of intercity or multistate area projects, facilities, and services, the relevant components of which shall be reflected in statewide transportation improvement programs and statewide transportation plans.

''(D) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal any interstate compact or agreement entered into under this subsection is expressly reserved.

''(c) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.—

''(1) IN GENERAL.—The Secretary shall encourage each State to cooperate with Federal, State, tribal, and local officers and entities responsible for other types of planning activities that are affected by transportation

in the relevant area (including planned growth, economic development, infrastructure services, housing, other public services, environmental protection, airport operations, high-speed and intercity passenger rail, freight rail, port access, and freight movements), to the maximum extent practicable, to ensure that the statewide and nonmetropolitan planning process, statewide transportation plans, and statewide transportation improvement programs are developed with due consideration for other related planning activities in the State.

''(2) INCLUSION.—Cooperation under paragraph (1) shall include the design and delivery of transportation services within the State that are provided by—

''(A) recipients of assistance under sections 202, 203, and 204 of title 23;

''(B) recipients of assistance under this chapter;

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

''(D) sponsors of regionally significant programs, projects, and services that are related to transportation and receive assistance from any public or private source.

''(d) SCOPE OF PLANNING PROCESS.—

''(1) IN GENERAL.—The statewide transportation planning process for a State under this section shall provide for consideration of projects, strategies, and services that will—

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

''(B) increase the safety of the transportation system for motorized and nonmotorized users;

''(C) increase the security of the transportation system for motorized and nonmotorized users;

''(D) increase the accessibility and mobility of individuals and freight;

''(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

''(F) enhance the integration and connectivity of the transportation system, across and between modes, for individuals and freight;

''(G) increase efficient system management and operation; and

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

''(2) PERFORMANCE-BASED APPROACH.—

''(A) IN GENERAL.—The statewide transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decision-making to support the national goals described in section 5301(c) of this title and in section 150(b) of title 23.

''(B) SURFACE TRANSPORTATION PERFORMANCE TARGETS.—

''(i) IN GENERAL.—Each State shall establish performance targets that address the performance measures described in sections 119(f), 148(h), and 167(i) of title 23 to use in tracking attainment of critical outcomes for the region of the State.

''(ii) COORDINATION.—Selection of performance targets by a State shall be coordinated with relevant metropolitan planning organizations to ensure consistency, to the maximum extent practicable.

''(C) PUBLIC TRANSPORTATION PERFORMANCE TARGETS.—For providers of public transportation operating in urbanized areas with a population of fewer than 200,000 individuals, as calculated according to the most recent decennial census, and not represented by a metropolitan planning organization, each State shall adopt the performance targets identified by such providers of public transportation pursuant to sections 5326(c) and 5329(d), for use in tracking attainment of critical outcomes for the region of the metropolitan planning organization.

''(D) INTEGRATION OF OTHER PERFORMANCE-BASED PLANS.—A State shall integrate into the statewide transportation planning process, directly or by reference, the goals, objectives, performance measures, and performance targets described in this paragraph in other State plans and processes, and asset management and safety plans developed by providers of public transportation in urbanized areas with a population of fewer than 200,000 individuals, as calculated according to the most recent decennial census, and not represented by a metropolitan planning organization, required as part of a performance-based program, including plans such as—

''(i) the State National Highway System asset management plan;

''(ii) asset management plans developed by providers of public transportation;

''(iii) the State strategic highway safety plan;

''(iv) safety plans developed by providers of public transportation; and

''(v) the national freight strategic plan.

''(E) USE OF PERFORMANCE MEASURES AND TARGETS.—The performance measures and targets established under this paragraph shall be used, at a minimum, by a State as the basis for development of policies, programs, and investment priorities reflected in the statewide transportation plan and statewide transportation improvement program.

''(3) FAILURE TO CONSIDER FACTORS.—The failure to take into consideration 1 or more of the factors specified in paragraphs (1) and (2) shall not be subject to review by any court under this chapter, title 23, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a statewide transportation plan, a statewide transportation improvement program, a project or strategy, or the certification of a planning process.

''(4) PARTICIPATION BY INTERESTED PARTIES.—

''(A) IN GENERAL.—Each State shall provide to affected individuals, public agencies, and other interested parties notice and a reasonable opportunity to comment on the statewide transportation plan and statewide transportation improvement program.

''(B) METHODS.—In carrying out subparagraph (A), the State shall, to the maximum extent practicable—

''(i) develop the statewide transportation plan and statewide transportation improvement program in consultation with interested parties, as appropriate, including by the formation of advisory groups representative of the State and interested parties that participate in the development of the statewide transportation plan and statewide transportation improvement program;

''(ii) hold any public meetings at times and locations that are, as applicable—

''(I) convenient; and

''(II) in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

''(iii) employ visualization techniques to describe statewide transportation plans and statewide transportation improvement programs; and

''(iv) make public information available in appropriate electronically accessible formats and means, such as the Internet, to afford reasonable opportunity for consideration of public information under subparagraph (A).

''(e) COORDINATION AND CONSULTATION.—

''(1) METROPOLITAN AREAS.—

''(A) IN GENERAL.—Each State shall develop a statewide transportation plan and statewide transportation improvement program for each metropolitan area in the State by incorporating, without change or by reference, at a minimum, as prepared by each metropolitan planning organization designated for the metropolitan area under section 5303—

''(i) all regionally significant projects to be carried out during the 10-year period beginning on the effective date of the relevant existing metropolitan transportation plan; and

''(ii) all projects to be carried out during the 4-year period beginning on the effective date of the relevant transportation improvement program.

''(B) PROJECTED COSTS.—Each metropolitan planning organization shall provide to each applicable State a description of the projected costs of implementing the projects included in the metropolitan transportation plan of the metropolitan planning organization for purposes of metropolitan financial planning and fiscal constraint.

''(2) NONMETROPOLITAN AREAS.—With respect to nonmetropolitan areas in a State, the statewide transportation plan and statewide transportation improvement program of the State shall be developed in coordination with affected nonmetropolitan local officials with responsibility for transportation, including providers of public transportation.

''(3) INDIAN TRIBAL AREAS.—With respect to each area of a State under the jurisdiction of an Indian tribe, the statewide transportation plan and statewide transportation improvement program of the State shall be developed in consultation with—

''(A) the tribal government; and

''(B) the Secretary of the Interior.

''(4) FEDERAL LAND MANAGEMENT AGENCIES.—With respect to each area of a State under the jurisdiction of a Federal land management agency, the statewide transportation plan and statewide transportation improvement program of the State shall be developed in consultation with the relevant Federal land management agency.

''(5) CONSULTATION, COMPARISON, AND CONSIDERATION.—

''(A) IN GENERAL.—A statewide transportation plan shall be developed, as appropriate, in consultation with Federal, State, tribal, and local agencies responsible for land use management, natural resources, infrastructure permitting, environmental protection, conservation, and historic preservation.

''(B) COMPARISON AND CONSIDERATION.—Consultation under subparagraph (A) shall involve the comparison of statewide transportation plans to, as available—

''(i) Federal, State, tribal, and local conservation plans or maps; and

''(ii) inventories of natural or historic resources.

''(f) STATEWIDE TRANSPORTATION PLAN.—

''(1) DEVELOPMENT.—

''(A) IN GENERAL.—Each State shall develop a statewide transportation plan, the forecast period of which shall be not less than 20 years for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State.

''(B) INITIAL PERIOD.—A statewide transportation plan shall include, at a minimum, for the first 10-year period of the statewide transportation plan, the identification of existing and future transportation facilities that will function as an integrated statewide transportation system, giving emphasis to those facilities that serve important national, statewide, and regional transportation functions.

''(C) SUBSEQUENT PERIOD.—For the second 10-year period of the statewide transportation plan (referred to in this subsection as the 'outer years period'), a statewide transportation plan—

''(i) may include identification of future transportation facilities; and

''(ii) shall describe the policies and strategies that provide for the development and implementation of the intermodal transportation system of the State.

''(D) OTHER REQUIREMENTS.—A statewide transportation plan shall—

''(i) include, for the 20-year period covered by the statewide transportation plan, a description of—

''(I) the projected aggregate cost of projects anticipated by a State to be implemented; and

''(II) the revenues necessary to support the projects;

''(ii) include, in such form as the Secretary determines to be appropriate, a description of—

''(I) the existing transportation infrastructure, including an identification of highways, local streets and roads, bicycle and pedestrian facilities, public transportation facilities and services, commuter rail facilities and services, high-speed and intercity passenger rail facilities and services, freight facilities (including freight railroad and port facilities), multimodal and intermodal facilities, and intermodal connectors that, evaluated in the aggregate, function as an integrated transportation system;

''(II) the performance measures and performance targets used in assessing the existing and future performance of the transportation system described in subsection (d)(2);

''(III) the current and projected future usage of the transportation system, including, to the maximum extent practicable, an identification of existing or planned transportation rights-of-way, corridors, facilities, and related real properties;

''(IV) a system performance report evaluating the existing and future condition and performance of the transportation system with respect to the performance targets described in subsection (d)(2) and updates to subsequent system performance reports, including—

''(aa) progress achieved by the State in meeting performance targets, as compared to system performance recorded in previous reports; and

''(bb) an accounting of the performance by the State on outlay of obligated project funds and delivery of projects that have reached substantial completion, in relation to the projects currently on the statewide transportation improvement program and those projects that have been removed from the previous statewide transportation improvement program;

''(V) recommended strategies and investments for improving system performance over the planning horizon, including transportation systems management and operations strategies, maintenance strategies, demand management strategies, asset management strategies, capacity and enhancement investments, land use improvements, intelligent transportation systems deployment and technology adoption strategies as determined by the projected support of performance targets described in subsection (d)(2);

''(VI) recommended strategies and investments to improve and integrate disability-related access to transportation infrastructure;

''(VII) investment priorities for using projected available and proposed revenues over the short- and long-term stages of the planning horizon, in accordance with the financial plan required under paragraph (2);

''(VIII) a description of interstate compacts entered into in order to promote coordinated transportation planning in multistate areas, if applicable;

''(IX) an optional illustrative list of projects containing investments that—

''(aa) are not included in the statewide transportation plan; but

''(bb) would be so included if resources in addition to the resources identified in the financial plan under paragraph (2) were available;

''(X) a discussion (developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies) of types of potential environmental and stormwater mitigation activities and potential areas to carry out those activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the statewide transportation plan; and

''(XI) recommended strategies and investments, including those developed by the State as part of interstate compacts, agreements, or organizations, that support intercity transportation; and

''(iii) be updated by the State not less frequently than once every 5 years.

''(2) FINANCIAL PLAN.—A financial plan referred to in paragraph (1)(D)(ii)(VII) shall—

''(A) be prepared by each State to support the statewide transportation plan; and

''(B) contain a description of—

''(i) the projected resource requirements during the 20-year planning horizon for implementing projects, strategies, and services recommended in the statewide transportation plan, including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from Federal, State, local, and private sources, and innovative financing techniques to finance projects and programs;

''(ii) the projected difference between costs and revenues, and strategies for securing additional new revenue (such as by capture of some of the economic value created by any new investment);

''(iii) estimates of future funds, to be developed cooperatively by the State, any public transportation agency, and relevant metropolitan planning organizations, that are reasonably expected to be available to support the investment priorities recommended in the statewide transportation plan;

''(iv) each applicable project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project; and

''(v) aggregate cost ranges or bands, subject to the condition that any future funding source shall be reasonably expected to be available to support the projected cost ranges or bands, for the outer years period of the statewide transportation plan.

''(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—For any nonmetropolitan area that is a nonattainment area or maintenance area, the State shall coordinate the development of the statewide transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act (42 U.S.C. 7401 et seq.).

''(4) PUBLICATION.—A statewide transportation plan involving Federal and non-Federal participation programs, projects, and strategies shall be published or otherwise made readily available by the State for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the Internet, in such manner as the Secretary shall require.

''(5) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (2), a State shall not be required to select any project from the illustrative list of additional projects included in the statewide transportation plan under paragraph (1)(D)(ii)(IX).

''(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAMS.—

''(1) DEVELOPMENT.—

''(A) IN GENERAL.—In cooperation with nonmetropolitan officials with responsibility for transportation and affected public transportation operators, the State shall develop a statewide transportation improvement program for the State that—

''(i) includes projects consistent with the statewide transportation plan;

''(ii) reflects the investment priorities established in the statewide transportation plan; and

''(iii) once implemented, makes significant progress toward achieving the performance targets described in subsection (d)(2).

''(B) OPPORTUNITY FOR PARTICIPATION.—In developing a statewide transportation improvement program, the State, in cooperation with affected public transportation operators, shall provide an opportunity for participation by interested parties in the development of the statewide transportation improvement program, in accordance with subsection (e).

''(C) OTHER REQUIREMENTS.—

''(i) IN GENERAL.—A statewide transportation improvement program shall—

''(I) cover a period of not less than 4 years; and

''(II) be updated not less frequently than once every 4 years, or more frequently, as the Governor determines to be appropriate.

''(ii) INCORPORATION OF TIPS.—A statewide transportation improvement program shall incorporate any relevant transportation improvement program developed by a metropolitan planning organization under section 5303, without change.

''(iii) PROJECTS.—Each project included in a statewide transportation improvement program shall be—

''(I) consistent with the statewide transportation plan developed under this section for the State;

''(II) identical to a project or phase of a project described in a relevant transportation improvement program; and

''(III) for any project located in a nonattainment area or maintenance area, carried out in accordance with the applicable State air quality implementation plan developed under the Clean Air Act (42 U.S.C. 7401 et seq.).

''(2) CONTENTS.—

''(A) PRIORITY LIST.—A statewide transportation improvement program shall include a priority list of proposed federally supported projects and strategies, to be carried out during the 4-year period beginning on the date of adoption of the statewide transportation improvement program, and during each 4-year period thereafter, using existing and reasonably available revenues in accordance with the financial plan under paragraph (3).

''(B) DESCRIPTIONS.—Each project or phase of a project included in a statewide transportation improvement program shall include sufficient descriptive material (such as type of work, termini, length, estimated completion date, and other similar factors) to identify—

''(i) the project or project phase; and

''(ii) the effect that the project or project phase will have in addressing the performance targets described in subsection (d)(2).

''(C) PERFORMANCE TARGET ACHIEVEMENT.—A statewide transportation improvement program shall include, to the maximum extent practicable, a discussion of the anticipated effect of the statewide transportation

improvement program toward achieving the performance targets established in the statewide transportation plan, linking investment priorities to those performance targets.

''(D) ILLUSTRATIVE LIST OF PROJECTS.—An optional illustrative list of projects may be prepared containing additional investment priorities that—

''(i) are not included in the statewide transportation improvement program; but

''(ii) would be so included if resources in addition to the resources identified in the financial plan under paragraph (3) were available.

''(3) FINANCIAL PLAN.—A financial plan referred to in paragraph (2)(D)(ii) shall—

''(A) be prepared by each State to support the statewide transportation improvement program; and

''(B) contain a description of—

''(i) the projected resource requirements for implementing projects, strategies, and services recommended in the statewide transportation improvement program, including existing and projected system operating and maintenance needs, proposed enhancement and expansions to the system, projected available revenue from Federal, State, local, and private sources, and innovative financing techniques to finance projects and programs;

''(ii) the projected difference between costs and revenues, and strategies for securing additional new revenue (such as by capture of some of the economic value created by any new investment);

''(iii) estimates of future funds, to be developed cooperatively by the State and relevant metropolitan planning organizations and public transportation agencies, that are reasonably expected to be available to support the investment priorities recommended in the statewide transportation improvement program; and

''(iv) each applicable project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(4) INCLUDED PROJECTS.—

''(A) PROJECTS UNDER THIS CHAPTER AND TITLE 23.—A statewide transportation improvement program developed under this subsection for a State shall include the projects within the State that are proposed for funding under this chapter and chapter 1 of title 23.

''(B) PROJECTS UNDER THIS CHAPTER AND CHAPTER 2.—

''(i) REGIONALLY SIGNIFICANT.—Each regionally significant project proposed for funding under this chapter and chapter 2 of title 23 shall be identified individually in the statewide transportation improvement program.

''(ii) NONREGIONALLY SIGNIFICANT.—A description of each project proposed for funding under this chapter and chapter 2 of title 23 that is not determined to be regionally significant shall be contained in 1 line item or identified individually in the statewide transportation improvement program.

''(5) PUBLICATION.—

''(A) IN GENERAL.—A statewide transportation improvement program shall be published or otherwise made readily available by the State for public review in electronically accessible formats and means, such as the Internet.

''(B) ANNUAL LIST OF PROJECTS.—An annual list of projects, including investments in pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation, for which Federal funds have been obligated during the preceding fiscal year shall be published or otherwise made available by the cooperative effort of the State, public transportation operator, and relevant metropolitan planning organizations in electronically accessible formats and means, such as the Internet, in a manner that is consistent with the categories identified in the relevant statewide transportation improvement program.

''(6) PROJECT SELECTION FOR URBANIZED AREAS WITH POPULATIONS OF FEWER THAN 200,000 NOT REPRESENTED BY DESIGNATED MPOS.—Projects carried out in urbanized areas with populations of fewer than 200,000 individuals, as calculated according to the most recent decennial census, and that are not represented by designated metropolitan planning organizations, shall be selected from the approved statewide transportation improvement program (including projects carried out under this chapter and projects carried out by the State), in cooperation with the affected nonmetropolitan planning organization, if any exists, and in consultation with the affected nonmetropolitan area local officials with responsibility for transportation.

''(7) APPROVAL BY SECRETARY.—

''(A) IN GENERAL.—Not less frequently than once every 4 years, a statewide transportation improvement program developed under this subsection shall be reviewed and approved by the Secretary, based on the current planning finding of the Secretary under subparagraph (B).

''(B) PLANNING FINDING.—The Secretary shall make a planning finding referred to in subparagraph (A) not less frequently than once every 5 years regarding whether the transportation planning process through which statewide transportation plans and statewide transportation improvement programs are developed is consistent with this section and section 5303.

''(8) MODIFICATIONS TO PROJECT PRIORITY.—Approval by the Secretary shall not be required to carry out a project included in an approved statewide transportation improvement program in place of another project in the statewide transportation improvement program.

''(h) CERTIFICATION.—

''(1) IN GENERAL.—The Secretary shall—

''(A) ensure that the statewide transportation planning process of a State is being carried out in accordance with applicable Federal law; and

''(B) subject to paragraph (2), certify, not less frequently than once every 5 years, that the requirements of subparagraph (A) are met with respect to the statewide transportation planning process.

''(2) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make a certification under paragraph (1)(B) if—

''(A) the statewide transportation planning process complies with the requirements of this section and other applicable Federal law; and

''(B) a statewide transportation improvement program for the State has been approved by the Governor of the State.

''(3) EFFECT OF FAILURE TO CERTIFY.—

''(A) WITHHOLDING OF PROJECT FUNDS.—If a statewide transportation planning process of a State is not certified under paragraph (1), the Secretary may withhold up to 20 percent of the funds attributable to the State for projects funded under this chapter and title 23.

''(B) RESTORATION OF WITHHELD FUNDS.—Any funds withheld under subparagraph (A) shall be restored to the State on the date of certification of the statewide transportation planning process by the Secretary.

''(4) PUBLIC INVOLVEMENT.—In making a determination regarding certification under this subsection, the Secretary shall provide for public involvement appropriate to the State under review.

''(i) PERFORMANCE-BASED PLANNING PROCESSES EVALUATION.—

''(1) IN GENERAL.—The Secretary shall establish criteria to evaluate the effectiveness of the performance-based planning processes of States, taking into consideration the following:

''(A) The extent to which the State has achieved, or is currently making substantial progress toward achieving, the performance targets described in subsection (d)(2), taking into account whether the State developed meaningful performance targets.

''(B) The extent to which the State has used proven best practices that help ensure transportation investment that is efficient and cost-effective.

''(C) The extent to which the State—

''(i) has developed an investment process that relies on public input and awareness to ensure that investments are transparent and accountable; and

''(ii) provides regular reports allowing the public to access the information being collected in a format that allows the public to meaningfully assess the performance of the State.

''(2) REPORT.—

''(A) IN GENERAL.—Not later than 5 years after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall submit to Congress a report evaluating—

''(i) the overall effectiveness of performance-based planning as a tool for guiding transportation investments; and

''(ii) the effectiveness of the performance-based planning process of each State.

''(B) PUBLICATION.—The report under subparagraph (A) shall be published or otherwise made available in electronically accessible formats and means, including on the Internet.

''(j) FUNDING.—Funds apportioned under section 104(b)(6) of title 23 and set aside under section 5305(g) shall be available to carry out this section.

''(k) CONTINUATION OF CURRENT REVIEW PRACTICE.—

''(1) IN GENERAL.—In consideration of the factors described in paragraph (2), any decision by the Secretary concerning a statewide transportation plan or statewide transportation improvement program shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(2) DESCRIPTION OF FACTORS.—The factors referred to in paragraph (1) are that—

''(A) statewide transportation plans and statewide transportation improvement programs are subject to a reasonable opportunity for public comment;

''(B) the projects included in statewide transportation plans and statewide transportation improvement programs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

''(C) decisions by the Secretary concerning statewide transportation plans and statewide transportation improvement programs have not been reviewed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) as of January 1, 1997.

''(l) SCHEDULE FOR IMPLEMENTATION.—The Secretary shall issue guidance on a schedule for implementation of the changes made by this section, taking into consideration the established planning update cycle for States. The Secretary shall not require a State to deviate from its established planning update cycle to implement changes made by this section. States shall reflect changes made to their transportation plan or transportation improvement program updates not later than 2 years after the date of issuance of guidance by the Secretary under this subsection.''.

SEC. 40007. PUBLIC TRANSPORTATION EMERGENCY RELIEF PROGRAM.

Section 5306 of title 49, United States Code, is amended to read as follows:

"§ 5306. Public transportation emergency relief program

''(a) DEFINITION.—In this section the following definitions shall apply:

''(1) ELIGIBLE OPERATING COSTS.—The term 'eligible operating costs' means costs relating to—

''(A) evacuation services;

''(B) rescue operations;

''(C) temporary public transportation service; or

''(D) reestablishing, expanding, or relocating public transportation route service before, during, or after an emergency.

''(2) EMERGENCY.—The term 'emergency' means a natural disaster affecting a wide area (such as a flood, hurricane, tidal wave, earthquake, severe storm, or landslide) or a catastrophic failure from any external cause, as a result of which—

''(A) the Governor of a State has declared an emergency and the Secretary has concurred; or

''(B) the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

''(b) GENERAL AUTHORITY.—

''(1) CAPITAL ASSISTANCE.—The Secretary may make grants and enter into contracts and other agreements (including agreements with departments, agencies, and instrumentalities of the Government) for capital projects to protect, repair, reconstruct, or replace equipment and facilities of a public transportation system operating in the United States or on an Indian reservation that the Secretary determines is in danger of suffering serious damage, or has suffered serious damage, as a result of an emergency.

''(2) OPERATING ASSISTANCE.—Of the funds appropriated to carry out this section, the Secretary may make grants and enter into contracts or other agreements for the eligible operating costs of public transportation equipment and facilities in an area directly affected by an emergency during—

''(A) the 1-year period beginning on the date of a declaration described in subsection (a)(2); or

''(B) if the Secretary determines there is a compelling need, the 2-year period beginning on the date of a declaration described in subsection (a)(2).

''(c) COORDINATION OF EMERGENCY FUNDS.—

''(1) USE OF FUNDS.—Funds appropriated to carry out this section shall be in addition to any other funds available—

''(A) under this chapter; or

''(B) for the same purposes as authorized under this section by any other branch of the Government, including the Federal Emergency Management Agency, or a State agency, local governmental entity, organization, or person.

''(2) NOTIFICATION.—The Secretary shall notify the Secretary of Homeland Security of the purpose and amount of any grant made or contract or other agreement entered into under this section.

''(d) INTERAGENCY TRANSFERS.—Amounts that are made available for emergency purposes to any other agency of the Government, including the Federal Emergency Management Agency, and that are eligible to be expended for purposes authorized under this section may be transferred to and administered by the Secretary under this section.

''(e) INTERAGENCY AGREEMENT.—

''(1) IN GENERAL.—The Secretary shall enter into an interagency agreement with the Secretary of Homeland Security which shall provide for the means by which the Department of Transportation, including the Federal Transit Administration, and the Department of Homeland Security, including the Federal Emergency Management Agency, shall cooperate in administering emergency relief for public transportation.

''(2) CONTENTS.—The interagency agreement under paragraph (1) shall provide that funds made available to the Federal Emergency Management Agency for emergency relief for public transportation shall be transferred to the Secretary to carry out this section, to the maximum extent possible.

''(f) GRANT REQUIREMENTS.—A grant awarded under this section shall be subject to the terms and conditions the Secretary determines are necessary.

''(g) GOVERNMENT SHARE OF COSTS.—

''(1) CAPITAL PROJECTS AND OPERATING ASSISTANCE.—A grant, contract, or other agreement for a capital project or eligible operating costs under this section shall be, at the option of the recipient, for not more than 80 percent of the net project cost, as determined by the Secretary.

''(2) NON-FEDERAL SHARE.—The remainder of the net project cost may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

''(3) WAIVER.—The Secretary may waive, in whole or part, the non-Federal share required under paragraph (2).''.

SEC. 40008. URBANIZED AREA FORMULA GRANTS.

Section 5307 of title 49, United States Code, is amended to read as follows:

"§ 5307. Urbanized area formula grants

''(a) GENERAL AUTHORITY.—

''(1) GRANTS.—The Secretary may make grants under this section for—

''(A) capital projects;

''(B) planning; and

''(C) operating costs of equipment and facilities for use in public transportation in an urbanized area with a population of fewer than 200,000 individuals, as determined by the Bureau of the Census.

''(2) SPECIAL RULE.—The Secretary may make grants under this section to finance the operating cost of equipment and facilities for use in public transportation, excluding rail fixed guideway, in an urbanized area with a population of not fewer than 200,000 individuals, as determined by the Bureau of the Census—

''(A) for public transportation systems that operate 75 or fewer buses during peak service hours, in an amount not to exceed 50 percent of the share of the apportionment which is attributable to such systems within the urbanized area, as measured by vehicle revenue hours; and

''(B) for public transportation systems that operate a minimum of 76 buses and a maximum of 100 buses during peak service hours, in an amount not to exceed 25 percent of the share of the apportionment which is attributable to such systems within the urbanized area, as measured by vehicle revenue hours.

''(3) TEMPORARY AND TARGETED ASSISTANCE.—

''(A) ELIGIBILITY.—The Secretary may make a grant under this section to finance the operating cost of equipment and facilities to a recipient for use in public transportation in an area that the Secretary determines has—

''(i) a population of not fewer than 200,000 individuals, as determined by the Bureau of the Census; and

''(ii) a 3-month unemployment rate, as reported by the Bureau of Labor Statistics, that is—

''(I) greater than 7 percent; and

''(II) at least 2 percentage points greater than the lowest 3-month unemployment rate for the area during the 5-year period preceding the date of the determination.

''(B) AWARD OF GRANT.—

''(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the Secretary may make a grant under this section for not more than 2 consecutive fiscal years.

''(ii) ADDITIONAL YEAR.—If, at the end of the second fiscal year following the date on which the Secretary makes a determination under subparagraph (A) with respect to an area, the Secretary determines that the 3-month unemployment rate for the area is at least 2 percentage points greater than the unemployment rate for the area at the time the Secretary made the determination under subparagraph (A), the Secretary may make a grant to a recipient in the area for 1 additional consecutive fiscal year.

''(iii) EXCLUSION PERIOD.—Beginning on the last day of the last consecutive fiscal year for which a recipient receives a grant under this paragraph, the Secretary may not make a subsequent grant under this paragraph to the recipient for a number of fiscal years equal to the number of consecutive fiscal years in which the recipient received a grant under this paragraph.

''(C) LIMITATION.—

''(i) FIRST FISCAL YEAR.—For the first fiscal year following the date on which the Secretary makes a determination under subparagraph (A) with respect to an area, not more than 25 percent of the amount apportioned to a designated recipient under section 5336 for the fiscal year shall be available for operating assistance for the area.

''(ii) SECOND AND THIRD FISCAL YEARS.—For the second and third fiscal years following the date on which the Secretary makes a determination under subparagraph (A) with respect to an area, not more than 20 percent of the amount apportioned to a designated recipient under section 5336 for the fiscal year shall be available for operating assistance for the area.

''(D) PERIOD OF AVAILABILITY FOR OPERATING ASSISTANCE.—Operating assistance awarded under this paragraph shall be available for expenditure to a recipient in an area until the end of the second fiscal year following the date on which the Secretary makes a determination under subparagraph (A) with respect to the area, after which time any unexpended funds shall be available to the recipient for other eligible activities under this section.

''(E) CERTIFICATION.—The Secretary may make a grant for operating assistance under this paragraph for a fiscal year only if the recipient certifies that—

''(i) the recipient will maintain public transportation service levels at or above the current service level, which shall be demonstrated by providing an equal or greater number of vehicle hours of service in the fiscal year than the number of vehicle hours of service provided in the preceding fiscal year;

''(ii) any non-Federal entity that provides funding to the recipient, including a State or local governmental entity, will maintain the tax rate or rate of allocations dedicated to public transportation at or above the rate for the preceding fiscal year;

''(iii) the recipient has allocated the maximum amount of funding under this section for preventive maintenance costs eligible as a capital expense necessary to maintain the level and quality of service provided in the preceding fiscal year; and

''(iv) the recipient will not use funding under this section for new capital assets except as necessary for the existing system to maintain or achieve a state of good repair, assure safety, or replace obsolete technology.

''(b) ACCESS TO JOBS PROJECTS.—

''(1) IN GENERAL.—A designated recipient shall expend not less than 3 percent of the amount apportioned to the designated recipient under section 5336 or an amount equal to the amount apportioned to the designated recipient in fiscal year 2011 to carry out section 5316 (as in effect for fiscal year 2011), whichever is less, to carry out a program to develop and maintain job access projects. Eligible projects may include—

''(A) a project relating to the development and maintenance of public transportation services designed to transport eligible low-income individuals to and from jobs and activities related to their employment, including—

''(i) a public transportation project to finance planning, capital, and operating costs of providing access to jobs under this chapter;

''(ii) promoting public transportation by low-income workers, including the use of public transportation by workers with non-traditional work schedules;

''(iii) promoting the use of public transportation vouchers for welfare recipients and eligible low-income individuals; and

''(iv) promoting the use of employer-provided transportation, including the transit pass benefit program under section 132 of the Internal Revenue Code of 1986; and

''(B) a transportation project designed to support the use of public transportation including—

''(i) enhancements to existing public transportation service for workers with non-traditional hours or reverse commutes;

''(ii) guaranteed ride home programs;

''(iii) bicycle storage facilities; and

''(iv) projects that otherwise facilitate the provision of public transportation services to employment opportunities.

''(2) PROJECT SELECTION AND PLAN DEVELOPMENT.—Each grant recipient under this subsection shall certify that—

''(A) the projects selected were included in a locally developed, coordinated public transit-human services transportation plan;

''(B) the plan was developed and approved through a process that included individuals with low incomes, representatives of public, private, and nonprofit transportation and human services providers, and participation by the public;

''(C) services funded under this subsection are coordinated with transportation services funded by other Federal departments and agencies to the maximum extent feasible; and

''(D) allocations of the grant to subrecipients, if any, are distributed on a fair and equitable basis.

''(3) COMPETITIVE PROCESS FOR GRANTS TO SUBRECIPIENTS.—

''(A) AREAWIDE SOLICITATIONS.—A recipient of funds apportioned under this subsection may conduct, in cooperation with the appropriate metropolitan planning organization, an areawide solicitation for applications for grants to the recipient and subrecipients under this subsection.

''(B) APPLICATION.—If the recipient elects to engage in a competitive process, recipients and subrecipients seeking to receive a grant from apportioned funds shall submit to the recipient an application in the form and in accordance with such requirements as the recipient shall establish.

''(c) PROGRAM OF PROJECTS.—Each recipient of a grant shall—

''(1) make available to the public information on amounts available to the recipient under this section;

''(2) develop, in consultation with interested parties, including private transportation providers, a proposed program of projects for activities to be financed;

''(3) publish a proposed program of projects in a way that affected individuals, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the recipient;

''(4) provide an opportunity for a public hearing in which to obtain the views of individuals on the proposed program of projects;

''(5) ensure that the proposed program of projects provides for the coordination of public transportation services assisted under section 5336 of this title with transportation services assisted from other United States Government sources;

''(6) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and

''(7) make the final program of projects available to the public.

''(d) GRANT RECIPIENT REQUIREMENTS.—A recipient may receive a grant in a fiscal year only if—

''(1) the recipient, within the time the Secretary prescribes, submits a final program of projects prepared under subsection (c) of this section and a certification for that fiscal year that the recipient (including a person receiving amounts from a Governor under this section)—

''(A) has or will have the legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program;

''(B) has or will have satisfactory continuing control over the use of equipment and facilities;

''(C) will maintain equipment and facilities;

''(D) will ensure that, during non-peak hours for transportation using or involving a facility or equipment of a project financed under this section, a fare that is not more than 50 percent of the peak hour fare will be charged for any—

''(i) senior;

''(ii) individual who, because of illness, injury, age, congenital malfunction, or other incapacity or temporary or permanent disability (including an individual who is a wheelchair user or has semiambulatory capability), cannot use a public transportation service or a public transportation facility effectively without special facilities, planning, or design; and

''(iii) individual presenting a Medicare card issued to that individual under title II or XVIII of the Social Security Act (42 U.S.C. 401 et seq. and 1395 et seq.);

''(E) in carrying out a procurement under this section, will comply with sections 5323 and 5325;

''(F) has complied with subsection (c) of this section;

''(G) has available and will provide the required amounts as provided by subsection (e) of this section;

''(H) will comply with sections 5303 and 5304;

''(I) has a locally developed process to solicit and consider public comment before raising a fare or carrying out a major reduction of transportation;

''(J)(i) will expend for each fiscal year for public transportation security projects, including increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, providing an emergency telephone line to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation system, at least 1 percent of the amount the recipient receives for each fiscal year under section 5336 of this title; or

''(ii) has decided that the expenditure for security projects is not necessary;

''(K) in the case of a recipient for an urbanized area with a population of not fewer than 200,000 individuals, as determined by the Bureau of the Census—

''(i) will expend not less than 1 percent of the amount the recipient receives each fiscal year under this section for associated transit improvements, as defined in section 5302; and

''(ii) will submit an annual report listing projects carried out in the preceding fiscal year with those funds; and

''(L) will comply with section 5329(d); and

''(2) the Secretary accepts the certification.

''(e) GOVERNMENT SHARE OF COSTS.—

''(1) CAPITAL PROJECTS.—A grant for a capital project under this section shall be for 80 percent of the net project cost of the project. The recipient may provide additional local matching amounts.

''(2) OPERATING EXPENSES.—A grant for operating expenses under this section may not exceed 50 percent of the net project cost of the project.

''(3) REMAINING COSTS.—Subject to paragraph (4), the remainder of the net project costs shall be provided—

''(A) in cash from non-Government sources other than revenues from providing public transportation services;

''(B) from revenues from the sale of advertising and concessions;

''(C) from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital;

''(D) from amounts appropriated or otherwise made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation; and

''(E) from amounts received under a service agreement with a State or local social service agency or private social service organization.

''(4) USE OF CERTAIN FUNDS.—For purposes of subparagraphs (D) and (E) of paragraph (3), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

''(f) UNDERTAKING PROJECTS IN ADVANCE.—

''(1) PAYMENT.—The Secretary may pay the Government share of the net project cost to a State or local governmental authority that carries out any part of a project eligible under subparagraph (A) or (B) of subsection (a)(1) without the aid of amounts of the Government and according to all applicable procedures and requirements if—

''(A) the recipient applies for the payment;

''(B) the Secretary approves the payment; and

''(C) before carrying out any part of the project, the Secretary approves the plans and specifications for the part in the same way as for other projects under this section.

''(2) APPROVAL OF APPLICATION.—The Secretary may approve an application under paragraph (1) of this subsection only if an authorization for this section is in effect for the fiscal year to which the application applies. The Secretary may not approve an application if the payment will be more than—

''(A) the recipient's expected apportionment under section 5336 of this title if the total amount authorized to be appropriated for the fiscal year to carry out this section is appropriated; less

''(B) the maximum amount of the apportionment that may be made available for projects for operating expenses under this section.

''(3) FINANCING COSTS.—

''(A) IN GENERAL.—The cost of carrying out part of a project includes the amount of interest earned and payable on bonds issued by the recipient to the extent proceeds of the bonds are expended in carrying out the part.

''(B) LIMITATION ON THE AMOUNT OF INTEREST.—The amount of interest allowed under this paragraph may not be more than the most favorable financing terms reasonably available for the project at the time of borrowing.

''(C) CERTIFICATION.—The applicant shall certify, in a manner satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

''(g) REVIEWS, AUDITS, AND EVALUATIONS.—

''(1) ANNUAL REVIEW.—

''(A) IN GENERAL.—At least annually, the Secretary shall carry out, or require a recipient to have carried out independently, reviews and audits the Secretary considers appropriate to establish whether the recipient has carried out—

''(i) the activities proposed under subsection (d) of this section in a timely and effective way and can continue to do so; and

''(ii) those activities and its certifications and has used amounts of the Government in the way required by law.

''(B) AUDITING PROCEDURES.—An audit of the use of amounts of the Government shall comply with the auditing procedures of the Comptroller General.

''(2) TRIENNIAL REVIEW.—At least once every 3 years, the Secretary shall review and evaluate completely the performance of a recipient in carrying out the recipient's program, specifically referring to compliance with statutory and administrative requirements and the extent to which actual program activities are consistent with the activities proposed under subsection (d) of this section and the planning process required under sections 5303, 5304, and 5305 of this title. To the extent practicable, the Secretary shall coordinate such reviews with any related State or local reviews.

''(3) ACTIONS RESULTING FROM REVIEW, AUDIT, OR EVALUATION.—The Secretary may take appropriate action consistent with a review, audit, and evaluation under this subsection, including making an appropriate adjustment in the amount of a grant or withdrawing the grant.

''(h) TREATMENT.—For purposes of this section, the United States Virgin Islands shall be treated as an urbanized area, as defined in section 5302.

''(i) PASSENGER FERRY GRANT PROGRAM.—

''(1) IN GENERAL.—The Secretary may make grants under this subsection to recipients for passenger ferry projects that are eligible for a grant under subsection (a).

''(2) GRANT REQUIREMENTS.—Except as otherwise provided in this subsection, a grant under this subsection shall be subject to the same terms and conditions as a grant under subsection (a).

''(3) COMPETITIVE PROCESS.—The Secretary shall solicit grant applications and make grants for eligible projects on a competitive basis.

''(4) GEOGRAPHICALLY CONSTRAINED AREAS.—Of the amounts made available to carry out this subsection, $10,000,000 shall be for capital grants relating to passenger ferries in areas with limited or no access to public transportation as a result of geographical constraints.''.

SEC. 40009. CLEAN FUEL GRANT PROGRAM.

Section 5308 of title 49, United States Code, is amended to read as follows:

''§ 5308. Clean fuel grant program

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) CLEAN FUEL BUS.—The term 'clean fuel bus' means a bus that is a clean fuel vehicle.

''(2) CLEAN FUEL VEHICLE.—The term 'clean fuel vehicle' means a passenger vehicle used to provide public transportation that the Administrator of the Environmental Protection Agency has certified sufficiently reduces energy consumption or reduces harmful emissions, including direct carbon emissions, when compared to a comparable standard vehicle.

''(3) DIRECT CARBON EMISSIONS.—The term 'direct carbon emissions' means the quantity of direct greenhouse gas emissions from a vehicle, as determined by the Administrator of the Environmental Protection Agency.

''(4) ELIGIBLE AREA.—The term 'eligible area' means an area that is—

''(A) designated as a nonattainment area for ozone or carbon monoxide under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)); or

''(B) a maintenance area, as defined in section 5303, for ozone or carbon monoxide.

''(5) ELIGIBLE PROJECT.—The term 'eligible project' means a project or program of projects in an eligible area for—

''(A) acquiring or leasing clean fuel vehicles;

''(B) constructing or leasing facilities and related equipment for clean fuel vehicles;

''(C) constructing new public transportation facilities to accommodate clean fuel vehicles; or

''(D) rehabilitating or improving existing public transportation facilities to accommodate clean fuel vehicles.

''(6) RECIPIENT.—The term 'recipient' means—

''(A) for an eligible area that is an urbanized area with a population of fewer than 200,000 individuals, as determined by the Bureau of the Census, the State in which the eligible area is located; and

''(B) for an eligible area not described in subparagraph (A), the designated recipient for the eligible area.

''(b) AUTHORITY.—The Secretary may make grants to recipients to finance eligible projects under this section.

''(c) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—A grant under this section shall be subject to the requirements of section 5307.

''(2) GOVERNMENT SHARE OF COSTS FOR CERTAIN PROJECTS.—Section 5323(j) applies to projects carried out under this section, unless the grant recipient requests a lower grant percentage.

''(d) MINIMUM AMOUNTS.—Of amounts made available by or appropriated under section 5338(a)(2)(D) in each fiscal year to carry out this section—

''(1) not less than 65 percent shall be made available to fund eligible projects relating to clean fuel buses; and

''(2) not less than 10 percent shall be made available for eligible projects relating to facilities and related equipment for clean fuel buses.

''(e) COMPETITIVE PROCESS.—The Secretary shall solicit grant applications and make grants for eligible projects on a competitive basis.

''(f) AVAILABILITY OF FUNDS.—Any amounts made available or appropriated to carry out this section—

''(1) shall remain available to an eligible project for 2 years after the fiscal year for which the amount is made available or appropriated; and

''(2) that remain unobligated at the end of the period described in paragraph (1) shall be added to the amount made available to an eligible project in the following fiscal year.''.

SEC. 40010. FIXED GUIDEWAY CAPITAL INVESTMENT GRANTS.

(a) IN GENERAL.—Section 5309 of title 49, United States Code, is amended to read as follows:

''§ 5309. Fixed guideway capital investment grants

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) APPLICANT.—The term 'applicant' means a State or local governmental authority that applies for a grant under this section.

''(2) BUS RAPID TRANSIT PROJECT.—The term 'bus rapid transit project' means a single route bus capital project—

''(A) a majority of which operates in a separated right-of-way dedicated for public transportation use during peak periods;

''(B) that represents a substantial investment in a single route in a defined corridor or subarea; and

''(C) that includes features that emulate the services provided by rail fixed guideway public transportation systems, including—

''(i) defined stations;

''(ii) traffic signal priority for public transportation vehicles;

''(iii) short headway bidirectional services for a substantial part of weekdays and weekend days; and

''(iv) any other features the Secretary may determine are necessary to produce high-quality public transportation services that emulate the services provided by rail fixed guideway public transportation systems.

''(3) CORE CAPACITY IMPROVEMENT PROJECT.—The term 'core capacity improvement project' means a substantial corridor-based capital investment in an existing fixed guideway system that adds capacity and functionality.

''(4) NEW FIXED GUIDEWAY CAPITAL PROJECT.—The term 'new fixed guideway capital project' means—

''(A) a new fixed guideway project that is a minimum operable segment or extension to an existing fixed guideway system; or

''(B) a bus rapid transit project that is a minimum operable segment or an extension to an existing bus rapid transit system.

''(5) PROGRAM OF INTERRELATED PROJECTS.—The term 'program of interrelated projects' means the simultaneous development of—

''(A) 2 or more new fixed guideway capital projects or core capacity improvement projects; or

''(B) 1 or more new fixed guideway capital projects and 1 or more core capacity improvement projects.

''(b) GENERAL AUTHORITY.—The Secretary may make grants under this section to State and local governmental authorities to assist in financing—

''(1) new fixed guideway capital projects, including the acquisition of real property, the initial acquisition of rolling stock for the system, the acquisition of rights-of-way, and relocation, for fixed guideway corridor development for projects in the advanced stages of project development or engineering; and

''(2) core capacity improvement projects, including the acquisition of real property, the acquisition of rights-of-way, double tracking, signalization improvements, electrification, expanding system platforms, acquisition of rolling stock, construction of infill stations, and such other capacity improvement projects as the Secretary determines are appropriate.

''(c) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—The Secretary may make a grant under this section for new fixed guideway capital projects or core capacity improvement projects, if the Secretary determines that—

''(A) the project is part of an approved transportation plan required under sections 5303 and 5304; and

''(B) the applicant has, or will have—

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

''(ii) satisfactory continuing control over the use of the equipment or facilities; and

''(iii) the technical and financial capacity to maintain new and existing equipment and facilities.

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

''(3) TECHNICAL CAPACITY.—The Secretary shall use an expedited technical capacity review process for applicants that have recently and successfully completed at least 1 new bus rapid transit project, new fixed guideway capital project, or core capacity improvement project, if—

''(A) the applicant achieved budget, cost, and ridership outcomes for the project that are consistent with or better than projections; and

''(B) the applicant demonstrates that the applicant continues to have the staff expertise and other resources necessary to implement a new project.

''(4) RECIPIENT REQUIREMENTS.—A recipient of a grant awarded under this section shall be subject to all terms, conditions, requirements, and provisions that the Secretary determines to be necessary or appropriate for purposes of this section.

''(d) NEW FIXED GUIDEWAY GRANTS.—

''(1) PROJECT DEVELOPMENT PHASE.—

''(A) ENTRANCE INTO PROJECT DEVELOPMENT PHASE.—A new fixed guideway capital project shall enter into the project development phase when—

''(i) the applicant—

''(I) submits a letter to the Secretary describing the project and requesting entry into the project development phase; and

''(II) initiates activities required to be carried out under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the project; and

''(ii) the Secretary responds in writing to the applicant within 45 days whether the information provided is sufficient to enter into the project development phase, including, when necessary, a detailed description of any information deemed insufficient.

''(B) ACTIVITIES DURING PROJECT DEVELOPMENT PHASE.—Concurrent with the analysis required to be made under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), each applicant shall develop sufficient information to enable the Secretary to make findings of project justification, policies and land use patterns that promote public transportation, and local financial commitment under this subsection.

''(C) COMPLETION OF PROJECT DEVELOPMENT ACTIVITIES REQUIRED.—

''(i) IN GENERAL.—Not later than 2 years after the date on which a project enters into the project development phase, the applicant shall complete the activities required to obtain a project rating under subsection (g)(2) and submit completed documentation to the Secretary.

''(ii) EXTENSION OF TIME.—Upon the request of an applicant, the Secretary may extend the time period under clause (i), if the applicant submits to the Secretary—

''(I) a reasonable plan for completing the activities required under this paragraph; and

''(II) an estimated time period within which the applicant will complete such activities.

''(2) ENGINEERING PHASE.—

''(A) IN GENERAL.—A new fixed guideway capital project may advance to the engineering phase upon completion of activities required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as demonstrated by a record of decision with respect to the project, a finding that the project has no significant impact, or a determination that the project is categorically excluded, only if the Secretary determines that the project—

''(i) is selected as the locally preferred alternative at the completion of the process required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

''(ii) is adopted into the metropolitan transportation plan required under section 5303;

''(iii) is justified based on a comprehensive review of the project's mobility improvements, environmental benefits, and cost-effectiveness, as measured by cost per rider;

''(iv) is supported by policies and land use patterns that promote public transportation, including plans for future land use and rezoning, and economic development around public transportation stations; and

''(v) is supported by an acceptable degree of local financial commitment (including evidence of stable and dependable financing sources), as required under subsection (f).

''(B) DETERMINATION THAT PROJECT IS JUSTIFIED.—In making a determination under subparagraph (A)(iii), the Secretary shall evaluate, analyze, and consider—

''(i) the reliability of the forecasting methods used to estimate costs and utilization made by the recipient and the contractors to the recipient; and

''(ii) population density and current public transportation ridership in the transportation corridor.

''(e) CORE CAPACITY IMPROVEMENT PROJECTS.—

''(1) PROJECT DEVELOPMENT PHASE.—

''(A) ENTRANCE INTO PROJECT DEVELOPMENT PHASE.—A core capacity improvement project shall be deemed to have entered into the project development phase if—

''(i) the applicant—

''(I) submits a letter to the Secretary describing the project and requesting entry into the project development phase; and

''(II) initiates activities required to be carried out under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the project; and

''(ii) the Secretary responds in writing to the applicant within 45 days whether the information provided is sufficient to enter into the project development phase, including when necessary a detailed description of any information deemed insufficient.

''(B) ACTIVITIES DURING PROJECT DEVELOPMENT PHASE.—Concurrent with the analysis required to be made under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), each applicant shall develop sufficient information to enable the Secretary to make findings of project justification and local financial commitment under this subsection.

''(C) COMPLETION OF PROJECT DEVELOPMENT ACTIVITIES REQUIRED.—

''(i) IN GENERAL.—Not later than 2 years after the date on which a project enters into the project development phase, the applicant shall complete the activities required to obtain a project rating under subsection (g)(2) and submit completed documentation to the Secretary.

''(ii) EXTENSION OF TIME.—Upon the request of an applicant, the Secretary may extend the time period under clause (i), if the applicant submits to the Secretary—

''(I) a reasonable plan for completing the activities required under this paragraph; and

''(II) an estimated time period within which the applicant will complete such activities.

''(2) ENGINEERING PHASE.—

''(A) IN GENERAL.—A core capacity improvement project may advance into the engineering phase upon completion of activities required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as demonstrated by a record of decision with respect to the project, a finding that the project has no significant impact, or a determination that the project is categorically excluded, only if the Secretary determines that the project—

''(i) is selected as the locally preferred alternative at the completion of the process required under the National Environmental Policy Act of 1969;

''(ii) is adopted into the metropolitan transportation plan required under section 5303;

''(iii) is in a corridor that is—

''(I) at or over capacity; or

''(II) projected to be at or over capacity within the next 5 years;

''(iv) is justified based on a comprehensive review of the project's mobility improvements, environmental benefits, and cost-effectiveness, as measured by cost per rider; and

''(v) is supported by an acceptable degree of local financial commitment (including evidence of stable and dependable financing sources), as required under subsection (f).

''(B) DETERMINATION THAT PROJECT IS JUSTIFIED.—In making a determination under subparagraph (A)(iv), the Secretary shall evaluate, analyze, and consider—

''(i) the reliability of the forecasting methods used to estimate costs and utilization made by the recipient and the contractors to the recipient;

''(ii) whether the project will adequately address the capacity concerns in a corridor;

''(iii) whether the project will improve interconnectivity among existing systems; and

''(iv) whether the project will improve environmental outcomes.

''(f) FINANCING SOURCES.—

''(1) REQUIREMENTS.—In determining whether a project is supported by an acceptable degree of local financial commitment and shows evidence of stable and dependable financing sources for purposes of subsection (d)(2)(A)(v) or (e)(2)(A)(v), the Secretary shall require that—

''(A) the proposed project plan provides for the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases or funding shortfalls;

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

''(C) local resources are available to recapitalize, maintain, and operate the overall existing and proposed public transportation system, including essential feeder bus and other services necessary to achieve the projected ridership levels without requiring a reduction in existing public transportation services or level of service to operate the project.

''(2) CONSIDERATIONS.—In assessing the stability, reliability, and availability of proposed sources of local financing for purposes of subsection (d)(2)(A)(v) or (e)(2)(A)(v), the Secretary shall consider—

''(A) the reliability of the forecasting methods used to estimate costs and revenues made by the recipient and the contractors to the recipient;

''(B) existing grant commitments;

''(C) the degree to which financing sources are dedicated to the proposed purposes;

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

''(E) the extent to which the project has a local financial commitment that exceeds the required non-Government share of the cost of the project.

''(g) PROJECT ADVANCEMENT AND RATINGS.—

''(1) PROJECT ADVANCEMENT.—A new fixed guideway capital project or core capacity improvement project proposed to be carried out using a grant under this section may not advance from the project development phase to the engineering phase, or from the engineering phase to the construction phase, unless the Secretary determines that—

''(A) the project meets the applicable requirements under this section; and

''(B) there is a reasonable likelihood that the project will continue to meet the requirements under this section.

''(2) RATINGS.—

''(A) OVERALL RATING.—In making a determination under paragraph (1), the Secretary shall evaluate and rate a project as a whole on a 5-point scale (high, medium-high, medium, medium-low, or low) based on—

''(i) in the case of a new fixed guideway capital project, the project justification criteria under subsection (d)(2)(A)(iii), the policies and land use patterns that support public transportation, and the degree of local financial commitment; and

''(ii) in the case of a core capacity improvement project, the capacity needs of the corridor, the project justification criteria under subsection (e)(2)(A)(iv), and the degree of local financial commitment.

''(B) INDIVIDUAL RATINGS FOR EACH CRITERION.—In rating a project under this paragraph, the Secretary shall—

''(i) provide, in addition to the overall project rating under subparagraph (A), individual ratings for each of the criteria established under subsection (d)(2)(A)(iii) or (e)(2)(A)(iv), as applicable; and

''(ii) give comparable, but not necessarily equal, numerical weight to each of the criteria established under subsections (d)(2)(A)(iii) or (e)(2)(A)(iv), as applicable, in calculating the overall project rating under clause (i).

''(C) MEDIUM RATING NOT REQUIRED.—The Secretary shall not require that any single project justification criterion meet or exceed a 'medium' rating in order to advance the project from one phase to another.

''(3) WARRANTS.—The Secretary shall, to the maximum extent practicable, develop and use special warrants for making a project justification determination under subsection (d)(2) or (e)(2), as applicable, for a project proposed to be funded using a grant under this section, if—

''(A) the share of the cost of the project to be provided under this section does not exceed—

''(i) $100,000,000; or

''(ii) 50 percent of the total cost of the project;

''(B) the applicant requests the use of the warrants;

''(C) the applicant certifies that its existing public transportation system is in a state of good repair; and

''(D) the applicant meets any other requirements that the Secretary considers appropriate to carry out this subsection.

''(4) LETTERS OF INTENT AND EARLY SYSTEMS WORK AGREEMENTS.—In order to expedite a project under this subsection, the Secretary shall, to the maximum extent practicable, issue letters of intent and enter into early systems work agreements upon issuance of a record of decision for projects that receive an overall project rating of medium or better.

''(5) POLICY GUIDANCE.—The Secretary shall issue policy guidance regarding the review and evaluation process and criteria—

''(A) not later than 180 days after the date of enactment of the Federal Public Transportation Act of 2012; and

''(B) each time the Secretary makes significant changes to the process and criteria, but not less frequently than once every 2 years.

''(6) RULES.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue rules establishing an evaluation and rating process for—

''(A) new fixed guideway capital projects that is based on the results of project justification, policies and land use patterns that promote public transportation, and local financial commitment, as required under this subsection; and

''(B) core capacity improvement projects that is based on the results of the capacity needs of the corridor, project justification, and local financial commitment.

''(7) APPLICABILITY.—This subsection shall not apply to a project for which the Secretary issued a letter of intent, entered into a full funding grant agreement, or entered into a project construction agreement before the date of enactment of the Federal Public Transportation Act of 2012.

''(h) PROGRAMS OF INTERRELATED PROJECTS.—

''(1) PROJECT DEVELOPMENT PHASE.—A federally funded project in a program of interrelated projects shall advance through project development as provided in subsection (d) or (e), as applicable.

''(2) ENGINEERING PHASE.—A federally funded project in a program of interrelated projects may advance into the engineering phase upon completion of activities required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as demonstrated by a record of decision with respect to the project, a finding that the project has no significant impact, or a determination that the project is categorically excluded, only if the Secretary determines that—

''(A) the project is selected as the locally preferred alternative at the completion of the process required under the National Environmental Policy Act of 1969;

''(B) the project is adopted into the metropolitan transportation plan required under section 5303;

''(C) the program of interrelated projects involves projects that have a logical connectivity to one another;

''(D) the program of interrelated projects, when evaluated as a whole, meets the requirements of subsection (d)(2) or (e)(2), as applicable;

''(E) the program of interrelated projects is supported by a program implementation plan demonstrating that construction will begin on each of the projects in the program of interrelated projects within a reasonable time frame; and

''(F) the program of interrelated projects is supported by an acceptable degree of local financial commitment, as described in subsection (f).

''(3) PROJECT ADVANCEMENT AND RATINGS.—

''(A) PROJECT ADVANCEMENT.—A project receiving a grant under this section that is part of a program of interrelated projects may not advance from the project development phase to the engineering phase, or from the engineering phase to the construction phase, unless the Secretary determines that the program of interrelated projects meets the applicable requirements of this section and there is a reasonable likelihood that the program will continue to meet such requirements.

''(B) RATINGS.—

''(i) OVERALL RATING.—In making a determination under subparagraph (A), the Secretary shall evaluate and rate a program of interrelated projects on a 5-point scale (high, medium-high, medium, medium-low, or low) based on the criteria described in paragraph (2).

''(ii) INDIVIDUAL RATING FOR EACH CRITERION.—In rating a program of interrelated projects, the Secretary shall provide, in addition to the overall program rating, individual ratings for each of the criteria described in paragraph (2) and shall give comparable, but not necessarily equal, numerical weight to each such criterion in calculating the overall program rating.

''(iii) MEDIUM RATING NOT REQUIRED.—The Secretary shall not require that any single criterion described in paragraph (2) meet or exceed a 'medium' rating in order to advance the program of interrelated projects from one phase to another.

''(4) ANNUAL REVIEW.—

''(A) REVIEW REQUIRED.—The Secretary shall annually review the program implementation plan required under paragraph (2)(E) to determine whether the program of interrelated projects is adhering to its schedule.

''(B) EXTENSION OF TIME.—If a program of interrelated projects is not adhering to its schedule, the Secretary may, upon the request of the applicant, grant an extension of time if the applicant submits a reasonable plan that includes—

''(i) evidence of continued adequate funding; and

''(ii) an estimated time frame for completing the program of interrelated projects.

''(C) SATISFACTORY PROGRESS REQUIRED.—If the Secretary determines that a program of interrelated projects is not making satisfactory progress, no Federal funds shall be provided for a project within the program of interrelated projects.

''(5) FAILURE TO CARRY OUT PROGRAM OF INTERRELATED PROJECTS.—

''(A) REPAYMENT REQUIRED.—If an applicant does not carry out the program of interrelated projects within a reasonable time, for reasons within the control of the applicant, the applicant shall repay all Federal funds provided for the program, and any reasonable interest and penalty charges that the Secretary may establish.

''(B) CREDITING OF FUNDS RECEIVED.—Any funds received by the Government under this paragraph, other than interest and penalty charges, shall be credited to the appropriation account from which the funds were originally derived.

''(6) NON-FEDERAL FUNDS.—Any non-Federal funds committed to a project in a program of interrelated projects may be used to meet a non-Government share requirement for any other project in the program of interrelated projects, if the Government share of the cost of each project within the program of interrelated projects does not exceed 80 percent.

''(7) PRIORITY.—In making grants under this section, the Secretary may give priority to programs of interrelated projects for which the non-Government share of the cost of the projects included in the programs of interrelated projects exceeds the non-Government share required under subsection (k).

''(8) NON-GOVERNMENT PROJECTS.—Including a project not financed by the Government in a program of interrelated projects does not impose Government requirements that would not otherwise apply to the project.

''(i) PREVIOUSLY ISSUED LETTER OF INTENT OR FULL FUNDING GRANT AGREEMENT.—Subsections (d) and (e) shall not apply to projects for which the Secretary has issued a letter of intent, entered into a full funding

grant agreement, or entered into a project construction grant agreement before the date of enactment of the Federal Public Transportation Act of 2012.

''(j) LETTERS OF INTENT, FULL FUNDING GRANT AGREEMENTS, AND EARLY SYSTEMS WORK AGREEMENTS.—

''(1) LETTERS OF INTENT.—

''(A) AMOUNTS INTENDED TO BE OBLIGATED.—The Secretary may issue a letter of intent to an applicant announcing an intention to obligate, for a new fixed guideway capital project or core capacity improvement project, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project. When a letter is issued for a capital project under this section, the amount shall be sufficient to complete at least an operable segment.

''(B) TREATMENT.—The issuance of a letter under subparagraph (A) is deemed not to be an obligation under sections 1108(c), 1501, and 1502(a) of title 31, United States Code, or an administrative commitment.

''(2) FULL FUNDING GRANT AGREEMENTS.—

''(A) IN GENERAL.—A new fixed guideway capital project or core capacity improvement project shall be carried out through a full funding grant agreement.

''(B) CRITERIA.—The Secretary shall enter into a full funding grant agreement, based on the evaluations and ratings required under subsection (d), (e), or (h), as applicable, with each grantee receiving assistance for a new fixed guideway capital project or core capacity improvement project that has been rated as high, medium-high, or medium, in accordance with subsection (g)(2)(A) or (h)(3)(B), as applicable.

''(C) TERMS.—A full funding grant agreement shall—

''(i) establish the terms of participation by the Government in a new fixed guideway capital project or core capacity improvement project;

''(ii) establish the maximum amount of Federal financial assistance for the project;

''(iii) include the period of time for completing the project, even if that period extends beyond the period of an authorization; and

''(iv) make timely and efficient management of the project easier according to the law of the United States.

''(D) SPECIAL FINANCIAL RULES.—

''(i) IN GENERAL.—A full funding grant agreement under this paragraph obligates an amount of available budget authority specified in law and may include a commitment, contingent on amounts to be specified in law in advance for commitments under this paragraph, to obligate an additional amount from future available budget authority specified in law.

''(ii) STATEMENT OF CONTINGENT COMMITMENT.—The agreement shall state that the contingent commitment is not an obligation of the Government.

''(iii) INTEREST AND OTHER FINANCING COSTS.—Interest and other financing costs of efficiently carrying out a part of the project within a reasonable time are a cost of carrying out the project under a full funding grant agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

''(iv) COMPLETION OF OPERABLE SEGMENT.—The amount stipulated in an agreement under this paragraph for a new fixed guideway capital project shall be sufficient to complete at least an operable segment.

''(E) BEFORE AND AFTER STUDY.—

''(i) IN GENERAL.—A full funding grant agreement under this paragraph shall require the applicant to conduct a study that—

''(I) describes and analyzes the impacts of the new fixed guideway capital project or core capacity improvement project on public transportation services and public transportation ridership;

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

''(III) identifies reasons for differences between predicted and actual outcomes.

''(ii) INFORMATION COLLECTION AND ANALYSIS PLAN.—

''(I) SUBMISSION OF PLAN.—Applicants seeking a full funding grant agreement under this paragraph shall submit a complete plan for the collection and analysis of information to identify the impacts of the new fixed guideway capital project or core capacity improvement project and the accuracy of the forecasts prepared during the development of the project. Preparation of this plan shall be included in the full funding grant agreement as an eligible activity.

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

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

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

''(cc) collection of data on the public transportation system 2 years after the opening of a new fixed guideway capital project or core capacity improvement project, including analogous information on public transportation service levels and ridership patterns and information on the as-built scope, capital, and financing costs of the project; and

''(dd) analysis of the consistency of predicted project characteristics with actual outcomes.

''(F) COLLECTION OF DATA ON CURRENT SYSTEM.—To be eligible for a full funding grant agreement under this paragraph, recipients shall have collected data on the current system, according to the plan required under subparagraph (E)(ii), before the beginning of construction of the proposed new fixed guideway capital project or core capacity improvement project. Collection of this data shall be included in the full funding grant agreement as an eligible activity.

''(3) EARLY SYSTEMS WORK AGREEMENTS.—

''(A) CONDITIONS.—The Secretary may enter into an early systems work agreement with an applicant if a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued on the project and the Secretary finds there is reason to believe—

''(i) a full funding grant agreement for the project will be made; and

''(ii) the terms of the work agreement will promote ultimate completion of the project more rapidly and at less cost.

''(B) CONTENTS.—

''(i) IN GENERAL.—An early systems work agreement under this paragraph obligates budget authority available under this chapter and title 23 and shall provide for reimbursement of preliminary costs of carrying out the project, including land acquisition, timely procurement of system elements for which specifications are decided, and other activities the Secretary decides are appropriate to make efficient, long-term project management easier.

''(ii) CONTINGENT COMMITMENT.—An early systems work agreement may include a commitment, contingent on amounts to be specified in law in advance for commitments under this paragraph, to obligate an additional amount from future available budget authority specified in law.

''(iii) PERIOD COVERED.—An early systems work agreement under this paragraph shall cover the period of time the Secretary considers appropriate. The period may extend beyond the period of current authorization.

''(iv) INTEREST AND OTHER FINANCING COSTS.—Interest and other financing costs of efficiently carrying out the early systems work agreement within a reasonable time are a cost of carrying out the agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

''(v) FAILURE TO CARRY OUT PROJECT.—If an applicant does not carry out the project for reasons within the control of the applicant, the applicant shall repay all Federal grant funds awarded for the project from all Federal funding sources, for all project activities, facilities, and equipment, plus reasonable interest and penalty charges allowable by law or established by the Secretary in the early systems work agreement.

''(vi) CREDITING OF FUNDS RECEIVED.—Any funds received by the Government under this paragraph, other than interest and penalty charges, shall be credited to the appropriation account from which the funds were originally derived.

''(4) LIMITATION ON AMOUNTS.—

''(A) IN GENERAL.—The Secretary may enter into full funding grant agreements under this subsection for new fixed guideway capital projects and core capacity improvement projects that contain contingent commitments to incur obligations in such amounts as the Secretary determines are appropriate.

''(B) APPROPRIATION REQUIRED.—An obligation may be made under this subsection only when amounts are appropriated for the obligation.

''(5) NOTIFICATION TO CONGRESS.—At least 30 days before issuing a letter of intent, entering into a full funding grant agreement, or entering into an early systems work agreement under this section, the Secretary shall notify, in writing, the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement as well as the evaluations and ratings for the project.

''(k) GOVERNMENT SHARE OF NET CAPITAL PROJECT COST.—

''(1) IN GENERAL.—Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the net capital project cost. A grant for the project shall not exceed 80 percent of the net capital project cost.

''(2) ADJUSTMENT FOR COMPLETION UNDER BUDGET.—The Secretary may adjust the final net capital project cost of a new fixed guideway capital project or core capacity improvement project evaluated under subsection (d), (e), or (h) to include the cost of eligible activities not included in the originally defined project if the Secretary determines that the originally defined project has been completed at a cost that is significantly below the original estimate.

''(3) MAXIMUM GOVERNMENT SHARE.—The Secretary may provide a higher grant percentage than requested by the grant recipient if—

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

''(B) the ridership estimated for the project is not less than 90 percent of the ridership estimated for the project at the time the project was approved for advancement into the engineering phase.

''(4) REMAINDER OF NET CAPITAL PROJECT COST.—The remainder of the net capital project cost shall be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

''(5) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as authorizing the Secretary to require a non-Federal financial commitment for a project that is more than 20 percent of the net capital project cost.

''(6) SPECIAL RULE FOR ROLLING STOCK COSTS.—In addition to amounts allowed pursuant to paragraph (1), a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the applicant satisfies the Secretary that only amounts other than amounts provided by the Government were used and that the purchase was made for use on the extension. A refund or reduction of the remainder may be made only if a refund of a proportional amount of the grant of the Government is made at the same time.

''(7) LIMITATION ON APPLICABILITY.—This subsection shall not apply to projects for which the Secretary entered into a full funding grant agreement before the date of enactment of the Federal Public Transportation Act of 2012.

''(l) UNDERTAKING PROJECTS IN ADVANCE.—

''(1) IN GENERAL.—The Secretary may pay the Government share of the net capital project cost to a State or local governmental authority that carries out any part of a project described in this section without the aid of amounts of the Government and according to all applicable procedures and requirements if—

''(A) the State or local governmental authority applies for the payment;

''(B) the Secretary approves the payment; and

''(C) before the State or local governmental authority carries out the part of the project, the Secretary approves the plans and specifications for the part in the same way as other projects under this section.

''(2) FINANCING COSTS.—

''(A) IN GENERAL.—The cost of carrying out part of a project includes the amount of interest earned and payable on bonds issued by the State or local governmental authority to the extent proceeds of the bonds are expended in carrying out the part.

''(B) LIMITATION ON AMOUNT OF INTEREST.—The amount of interest under this paragraph may not be more than the most favorable interest terms reasonably available for the project at the time of borrowing.

''(C) CERTIFICATION.—The applicant shall certify, in a manner satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

''(m) AVAILABILITY OF AMOUNTS.—

''(1) IN GENERAL.—An amount made available or appropriated for a new fixed guideway capital project or core capacity improvement project shall remain available to that project for 5 fiscal years, including the fiscal year in which the amount is made available or appropriated. Any amounts that are unobligated to the project at the end of the 5-fiscal-year period may be used by the Secretary for any purpose under this section.

''(2) USE OF DEOBLIGATED AMOUNTS.—An amount available under this section that is deobligated may be used for any purpose under this section.

''(n) REPORTS ON NEW FIXED GUIDEWAY AND CORE CAPACITY IMPROVEMENT PROJECTS.—

''(1) ANNUAL REPORT ON FUNDING RECOMMENDATIONS.—Not later than the first Monday in February of each year, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives a report that includes—

''(A) a proposal of allocations of amounts to be available to finance grants for projects under this section among applicants for these amounts;

''(B) evaluations and ratings, as required under subsections (d), (e), and (h), for each such project that is in project development, engineering, or has received a full funding grant agreement; and

''(C) recommendations of such projects for funding based on the evaluations and ratings and on existing commitments and anticipated funding levels for the next 3 fiscal years based on information currently available to the Secretary.

''(2) REPORTS ON BEFORE AND AFTER STUDIES.—Not later than the first Monday in August of each year, the Secretary shall submit to the committees described in paragraph (1) a report containing a summary of the results of any studies conducted under subsection (j)(2)(E).

''(3) ANNUAL GAO REVIEW.—The Comptroller General of the United States shall—

''(A) conduct an annual review of—

''(i) the processes and procedures for evaluating, rating, and recommending new fixed guideway capital projects and core capacity improvement projects; and

''(ii) the Secretary's implementation of such processes and procedures; and

''(B) report to Congress on the results of such review by May 31 of each year.''.

(b) PILOT PROGRAM FOR EXPEDITED PROJECT DELIVERY.—

(1) DEFINITIONS.—In this subsection the following definitions shall apply:

(A) ELIGIBLE PROJECT.—The term ''eligible project'' means a new fixed guideway capital project or a core capacity improvement project, as those terms are defined in section 5309 of title 49, United States Code, as amended by this section, that has not entered into a full funding grant agreement with the Federal Transit Administration before the date of enactment of the Federal Public Transportation Act of 2012.

(B) PROGRAM.—The term ''program'' means the pilot program for expedited project delivery established under this subsection.

(C) RECIPIENT.—The term ''recipient'' means a recipient of funding under chapter 53 of title 49, United States Code.

(D) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

(2) ESTABLISHMENT.—The Secretary shall establish and implement a pilot program to demonstrate whether innovative project development and delivery methods or innovative financing arrangements can expedite project delivery for certain meritorious new fixed guideway capital projects and core capacity improvement projects.

(3) LIMITATION ON NUMBER OF PROJECTS.—The Secretary shall select 3 eligible projects to participate in the program, of which—

(A) at least 1 shall be an eligible project requesting more than $100,000,000 in Federal financial assistance under section 5309 of title 49, United States Code; and

(B) at least 1 shall be an eligible project requesting less than $100,000,000 in Federal financial assistance under section 5309 of title 49, United States Code.

(4) GOVERNMENT SHARE.—The Government share of the total cost of an eligible project that participates in the program may not exceed 50 percent.

(5) ELIGIBILITY.—A recipient that desires to participate in the program shall submit to the Secretary an application that contains, at a minimum—

(A) identification of an eligible project;

(B) a schedule and finance plan for the construction and operation of the eligible project;

(C) an analysis of the efficiencies of the proposed project development and delivery methods or innovative financing arrangement for the eligible project; and

(D) a certification that the recipient's existing public transportation system is in a state of good repair.

(6) SELECTION CRITERIA.—The Secretary may award a full funding grant agreement under this subsection if the Secretary determines that—

(A) the recipient has completed planning and the activities required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) the recipient has the necessary legal, financial, and technical capacity to carry out the eligible project.

(7) BEFORE AND AFTER STUDY AND REPORT.—

(A) STUDY REQUIRED.—A full funding grant agreement under this paragraph shall require a recipient to conduct a study that—

(i) describes and analyzes the impacts of the eligible project on public transportation services and public transportation ridership;

(ii) describes and analyzes the consistency of predicted and actual benefits and costs of the innovative project development and delivery methods or innovative financing for the eligible project; and

(iii) identifies reasons for any differences between predicted and actual outcomes for the eligible project.

(B) SUBMISSION OF REPORT.—Not later than 9 months after an eligible project selected to participate in the program begins revenue operations, the recipient shall submit to the Secretary a report on the results of the study under subparagraph (A).

SEC. 40011. FORMULA GRANTS FOR THE ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES.

Section 5310 of title 49, United States Code, is amended to read as follows:

''§ 5310. Formula grants for the enhanced mobility of seniors and individuals with disabilities

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) RECIPIENT.—The term 'recipient' means a designated recipient or a State that receives a grant under this section directly.

''(2) SUBRECIPIENT.—The term 'subrecipient' means a State or local governmental authority, nonprofit organization, or operator of public transportation that receives a grant under this section indirectly through a recipient.

''(b) GENERAL AUTHORITY.—

''(1) GRANTS.—The Secretary may make grants under this section to recipients for—

''(A) public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable;

''(B) public transportation projects that exceed the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

''(C) public transportation projects that improve access to fixed route service and decrease reliance by individuals with disabilities on complementary paratransit; and

''(D) alternatives to public transportation that assist seniors and individuals with disabilities with transportation.

''(2) LIMITATIONS FOR CAPITAL PROJECTS.—

''(A) AMOUNT AVAILABLE.—The amount available for capital projects under paragraph (1)(A) shall be not less than 55 percent of the funds apportioned to the recipient under this section.

''(B) ALLOCATION TO SUBRECIPIENTS.—A recipient of a grant under paragraph (1)(A) may allocate the amounts provided under the grant to—

''(i) a nonprofit organization; or

''(ii) a State or local governmental authority that—

''(I) is approved by a State to coordinate services for seniors and individuals with disabilities; or

''(II) certifies that there are no nonprofit organizations readily available in the area to provide the services described in paragraph (1)(A).

''(3) ADMINISTRATIVE EXPENSES.—

''(A) IN GENERAL.—A recipient may use not more than 10 percent of the amounts apportioned to the recipient under this section to administer, plan, and provide technical assistance for a project funded under this section.

''(B) GOVERNMENT SHARE OF COSTS.—The Government share of the costs of administering a program carried out using funds under this section shall be 100 percent.

''(4) ELIGIBLE CAPITAL EXPENSES.—The acquisition of public transportation services is an eligible capital expense under this section.

''(5) COORDINATION.—

''(A) DEPARTMENT OF TRANSPORTATION.—To the maximum extent feasible, the Secretary shall coordinate activities under this section with related activities under other Federal departments and agencies.

''(B) OTHER FEDERAL AGENCIES AND NONPROFIT ORGANIZATIONS.—A State or local governmental authority or nonprofit organization that receives assistance from Government sources (other than the Department of Transportation) for nonemergency transportation services shall—

''(i) participate and coordinate with recipients of assistance under this chapter in the design and delivery of transportation services; and

''(ii) participate in the planning for the transportation services described in clause (i).

''(6) PROGRAM OF PROJECTS.—

''(A) IN GENERAL.—Amounts made available to carry out this section may be used for transportation projects to assist in providing transportation services for seniors and individuals with disabilities, if such transportation projects are included in a program of projects.

''(B) SUBMISSION.—A recipient shall annually submit a program of projects to the Secretary.

''(C) ASSURANCE.—The program of projects submitted under subparagraph (B) shall contain an assurance that the program provides for the maximum feasible coordination of transportation services assisted under this section with transportation services assisted by other Government sources.

''(7) MEAL DELIVERY FOR HOMEBOUND INDIVIDUALS.—A public transportation service provider that receives assistance under this section or section 5311(c) may coordinate and assist in regularly providing meal delivery service for homebound individuals, if the delivery service does not conflict with providing public transportation service or reduce service to public transportation passengers.

''(c) APPORTIONMENT AND TRANSFERS.—

''(1) FORMULA.—The Secretary shall apportion amounts made available to carry out this section as follows:

''(A) LARGE URBANIZED AREAS.—Sixty percent of the funds shall be apportioned among designated recipients for urbanized areas with a population of 200,000 or more individuals, as determined by the Bureau of the Census, in the ratio that—

''(i) the number of seniors and individuals with disabilities in each such urbanized area; bears to

''(ii) the number of seniors and individuals with disabilities in all such urbanized areas.

''(B) SMALL URBANIZED AREAS.—Twenty percent of the funds shall be apportioned among the States in the ratio that—

''(i) the number of seniors and individuals with disabilities in urbanized areas with a population of fewer than 200,000 individuals, as determined by the Bureau of the Census, in each State; bears to

''(ii) the number of seniors and individuals with disabilities in urbanized areas with a population of fewer than 200,000 individuals, as determined by the Bureau of the Census, in all States.

''(C) OTHER THAN URBANIZED AREAS.—Twenty percent of the funds shall be apportioned among the States in the ratio that—

''(i) the number of seniors and individuals with disabilities in other than urbanized areas in each State; bears to

''(ii) the number of seniors and individuals with disabilities in other than urbanized areas in all States.

''(2) AREAS SERVED BY PROJECTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B)—

''(i) funds apportioned under paragraph (1)(A) shall be used for projects serving urbanized areas with a population of 200,000 or more individuals, as determined by the Bureau of the Census;

''(ii) funds apportioned under paragraph (1)(B) shall be used for projects serving urbanized areas with a population of fewer than 200,000 individuals, as determined by the Bureau of the Census; and

''(iii) funds apportioned under paragraph (1)(C) shall be used for projects serving other than urbanized areas.

''(B) EXCEPTIONS.—A State may use funds apportioned to the State under subparagraph (B) or (C) of paragraph (1)—

''(i) for a project serving an area other than an area specified in subparagraph (A)(ii) or (A)(iii), as the case may be, if the Governor of the State certifies that all of the objectives of this section are being met in the area specified in subparagraph (A)(ii) or (A)(iii); or

''(ii) for a project anywhere in the State, if the State has established a statewide program for meeting the objectives of this section.

''(C) LIMITED TO ELIGIBLE PROJECTS.—Any funds transferred pursuant to subparagraph (B) shall be made available only for eligible projects selected under this section.

''(D) CONSULTATION.—A recipient may transfer an amount under subparagraph (B) only after consulting with responsible local officials, publicly owned operators of public transportation, and nonprofit providers in the area for which the amount was originally apportioned.

''(d) GOVERNMENT SHARE OF COSTS.—

''(1) CAPITAL PROJECTS.—A grant for a capital project under this section shall be in an amount equal to 80 percent of the net capital costs of the project, as determined by the Secretary.

''(2) OPERATING ASSISTANCE.—A grant made under this section for operating assistance may not exceed an amount equal to 50 percent of the net operating costs of the project, as determined by the Secretary.

''(3) REMAINDER OF NET COSTS.—The remainder of the net costs of a project carried out under this section—

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

''(B) may be derived from amounts appropriated or otherwise made available—

''(i) to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation; or

''(ii) to carry out the Federal lands highways program under section 204 of title 23, United States Code.

''(4) USE OF CERTAIN FUNDS.—For purposes of paragraph (3)(B)(i), the prohibition under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) on the use of grant funds for matching requirements shall not apply to Federal or State funds to be used for transportation purposes.

''(e) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—A grant under this section shall be subject to the same requirements as a grant under section 5307, to the extent the Secretary determines appropriate.

''(2) CERTIFICATION REQUIREMENTS.—

''(A) PROJECT SELECTION AND PLAN DEVELOPMENT.—Before receiving a grant under this section, each recipient shall certify that—

''(i) the projects selected by the recipient are included in a locally developed, coordinated public transit-human services transportation plan;

''(ii) the plan described in clause (i) was developed and approved through a process that included participation by seniors, individuals with disabilities, representatives of public, private, and nonprofit transportation and human services providers, and other members of the public; and

''(iii) to the maximum extent feasible, the services funded under this section will be coordinated with transportation services assisted by other Federal departments and agencies.

''(B) ALLOCATIONS TO SUBRECIPIENTS.—If a recipient allocates funds received under this section to subrecipients, the recipient shall certify that the funds are allocated on a fair and equitable basis.

''(f) COMPETITIVE PROCESS FOR GRANTS TO SUBRECIPIENTS.—

''(1) AREAWIDE SOLICITATIONS.—A recipient of funds apportioned under subsection (c)(1)(A) may conduct, in cooperation with the appropriate metropolitan planning organization, an areawide solicitation for applications for grants under this section.

''(2) STATEWIDE SOLICITATIONS.—A recipient of funds apportioned under subparagraph (B) or (C) of subsection (c)(1) may conduct a statewide solicitation for applications for grants under this section.

''(3) APPLICATION.—If the recipient elects to engage in a competitive process, a recipient or subrecipient seeking to receive a grant from funds apportioned under subsection (c) shall submit to the recipient making the election an application in such form and in accordance with such requirements as the recipient making the election shall establish.

''(g) TRANSFERS OF FACILITIES AND EQUIPMENT.—A recipient may transfer a facility or equipment acquired using a grant under this section to any other recipient eligible to receive assistance under this chapter, if—

''(1) the recipient in possession of the facility or equipment consents to the transfer; and

''(2) the facility or equipment will continue to be used as required under this section.

''(h) PERFORMANCE MEASURES.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue a final rule to establish performance measures for grants under this section.

''(2) TARGETS.—Not later than 3 months after the date on which the Secretary issues a final rule under paragraph (1), and each fiscal year thereafter, each recipient that receives Federal financial assistance under this section shall establish performance targets in relation to the performance measures established by the Secretary.

''(3) REPORTS.—Each recipient of Federal financial assistance under this section shall submit to the Secretary an annual report that describes—

''(A) the progress of the recipient toward meeting the performance targets established under paragraph (2) for that fiscal year; and

''(B) the performance targets established by the recipient for the subsequent fiscal year.''.

SEC. 40012. FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.

Section 5311 of title 49, United States Code, is amended to read as follows:

''§ 5311. Formula grants for other than urbanized areas

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

''(1) RECIPIENT.—The term 'recipient' means a State or Indian tribe that receives a Federal transit program grant directly from the Government.

''(2) SUBRECIPIENT.—The term 'subrecipient' means a State or local governmental authority, a nonprofit organization, or an operator of public transportation or intercity bus service that receives Federal transit program grant funds indirectly through a recipient.

''(b) GENERAL AUTHORITY.—

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

''(A) planning, provided that a grant under this section for planning activities shall be in addition to funding awarded to a State under section 5305 for planning activities that are directed specifically at the needs of other than urbanized areas in the State;

''(B) public transportation capital projects;

''(C) operating costs of equipment and facilities for use in public transportation; and

''(D) the acquisition of public transportation services, including service agreements with private providers of public transportation service.

''(2) STATE PROGRAM.—

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

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

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

''(i) the program provides a fair distribution of amounts in the State, including Indian reservations; and

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

''(3) RURAL TRANSPORTATION ASSISTANCE PROGRAM.—

''(A) IN GENERAL.—The Secretary shall carry out a rural transportation assistance program in other than urbanized areas.

''(B) GRANTS AND CONTRACTS.—In carrying out this paragraph, the Secretary may use not more than 2 percent of the amount made available under section 5338(a)(2)(F) to make grants and contracts for transportation research, technical assistance, training, and related support services in other than urbanized areas.

''(C) PROJECTS OF A NATIONAL SCOPE.—Not more than 15 percent of the amounts available under subparagraph (B) may be used by the Secretary to carry out projects of a national scope, with the remaining balance provided to the States.

''(4) DATA COLLECTION.—Each recipient under this section shall submit an annual report to the Secretary containing information on capital investment, operations, and service provided with funds received under this section, including—

''(A) total annual revenue;

''(B) sources of revenue;

''(C) total annual operating costs;

''(D) total annual capital costs;

''(E) fleet size and type, and related facilities;

''(F) vehicle revenue miles; and

''(G) ridership.

''(c) APPORTIONMENTS.—

''(1) PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS.—Of the amounts made available or appropriated for each fiscal year pursuant to section 5338(a)(2)(F) to carry out this paragraph, the following amounts shall be apportioned each fiscal year for grants to Indian tribes for any purpose eligible under this section, under such terms and conditions as may be established by the Secretary:

''(A) $10,000,000 shall be distributed on a competitive basis by the Secretary.

''(B) $20,000,000 shall be apportioned as formula grants, as provided in subsection (k).

''(2) APPALACHIAN DEVELOPMENT PUBLIC TRANSPORTATION ASSISTANCE PROGRAM.—

''(A) DEFINITIONS.—In this paragraph—

''(i) the term 'Appalachian region' has the same meaning as in section 14102 of title 40; and

''(ii) the term 'eligible recipient' means a State that participates in a program established under subtitle IV of title 40.

''(B) IN GENERAL.—The Secretary shall carry out a public transportation assistance program in the Appalachian region.

''(C) APPORTIONMENT.—Of amounts made available or appropriated for each fiscal year under section 5338(a)(2)(F) to carry out this paragraph, the Secretary shall apportion funds to eligible recipients for any purpose eligible under this section, based on the guidelines established under section 9.5(b) of the Appalachian Regional Commission Code.

''(D) SPECIAL RULE.—An eligible recipient may use amounts that cannot be used for operating expenses under this paragraph for a highway project if—

''(i) that use is approved, in writing, by the eligible recipient after appropriate notice and an opportunity for comment and appeal are provided to affected public transportation providers; and

''(ii) the eligible recipient, in approving the use of amounts under this subparagraph, determines that the local transit needs are being addressed.

''(3) REMAINING AMOUNTS.—

''(A) IN GENERAL.—The amounts made available or appropriated for each fiscal year pursuant to section 5338(a)(2)(F) that are not apportioned under paragraph (1) or (2) shall be apportioned in accordance with this paragraph.

''(B) APPORTIONMENT BASED ON LAND AREA AND POPULATION IN NONURBANIZED AREAS.—

''(i) IN GENERAL.—83.15 percent of the amount described in subparagraph (A) shall be apportioned to the States in accordance with this subparagraph.

''(ii) LAND AREA.—

''(I) IN GENERAL.—Subject to subclause (II), each State shall receive an amount that is equal to 20 percent of the amount apportioned under clause (i), multiplied by the ratio of the land area in areas other than urbanized areas in that State and divided by the land area in all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.

''(II) MAXIMUM APPORTIONMENT.—No State shall receive more than 5 percent of the amount apportioned under subclause (I).

''(iii) POPULATION.—Each State shall receive an amount equal to 80 percent of the amount apportioned under clause (i), multiplied by the ratio of the population of areas other than urbanized areas in that State and divided by the population of all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.

''(C) APPORTIONMENT BASED ON LAND AREA, VEHICLE REVENUE MILES, AND LOW-INCOME INDIVIDUALS IN NONURBANIZED AREAS.—

''(i) IN GENERAL.—16.85 percent of the amount described in subparagraph (A) shall be apportioned to the States in accordance with this subparagraph.

''(ii) LAND AREA.—Subject to clause (v), each State shall receive an amount that is equal to 29.68 percent of the amount apportioned under clause (i), multiplied by the ratio of the land area in areas other than urbanized areas in that State and divided by the land area in all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.

''(iii) VEHICLE REVENUE MILES.—Subject to clause (v), each State shall receive an amount that is equal to 29.68 percent of the amount apportioned under clause (i), multiplied by the ratio of vehicle revenue miles in areas other than urbanized areas in that State and divided by the vehicle revenue miles in all areas other than urbanized areas in the United States, as determined by national transit database reporting.

''(iv) LOW-INCOME INDIVIDUALS.—Each State shall receive an amount that is equal to 40.64 percent of the amount apportioned under clause (i), multiplied by the ratio of low-income individuals in areas other than urbanized areas in that State and divided by the number of low-income individuals in all areas other than urbanized areas in the United States, as shown by the Bureau of the Census.

''(v) MAXIMUM APPORTIONMENT.—No State shall receive—

''(I) more than 5 percent of the amount apportioned under clause (ii); or

''(II) more than 5 percent of the amount apportioned under clause (iii).

''(d) USE FOR LOCAL TRANSPORTATION SERVICE.—A State may use an amount apportioned under this section for a project included in a program under subsection (b) of this section and eligible for assistance under this chapter if the project will provide local transportation service, as defined by the Secretary of Transportation, in an area other than an urbanized area.

''(e) USE FOR ADMINISTRATION, PLANNING, AND TECHNICAL ASSISTANCE.—The Secretary may allow a State to use not more than 15 percent of the amount apportioned under this section to administer this section and

provide technical assistance to a subrecipient, including project planning, program and management development, coordination of public transportation programs, and research the State considers appropriate to promote effective delivery of public transportation to an area other than an urbanized area.

''(f) INTERCITY BUS TRANSPORTATION.—

''(1) IN GENERAL.—A State shall expend at least 15 percent of the amount made available in each fiscal year to carry out a program to develop and support intercity bus transportation. Eligible activities under the program include—

''(A) planning and marketing for intercity bus transportation;

''(B) capital grants for intercity bus shelters;

''(C) joint-use stops and depots;

''(D) operating grants through purchase-of-service agreements, user-side subsidies, and demonstration projects; and

''(E) coordinating rural connections between small public transportation operations and intercity bus carriers.

''(2) CERTIFICATION.—A State does not have to comply with paragraph (1) of this subsection in a fiscal year in which the Governor of the State certifies to the Secretary, after consultation with affected intercity bus service providers, that the intercity bus service needs of the State are being met adequately.

''(g) ACCESS TO JOBS PROJECTS.—

''(1) IN GENERAL.—Amounts made available under section 5338(a)(2)(F) may be used to carry out a program to develop and maintain job access projects. Eligible projects may include—

''(A) projects relating to the development and maintenance of public transportation services designed to transport eligible low-income individuals to and from jobs and activities related to their employment, including—

''(i) public transportation projects to finance planning, capital, and operating costs of providing access to jobs under this chapter;

''(ii) promoting public transportation by low-income workers, including the use of public transportation by workers with non-traditional work schedules;

''(iii) promoting the use of transit vouchers for welfare recipients and eligible low-income individuals; and

''(iv) promoting the use of employer-provided transportation, including the transit pass benefit program under section 132 of the Internal Revenue Code of 1986; and

''(B) transportation projects designed to support the use of public transportation including—

''(i) enhancements to existing public transportation service for workers with non-traditional hours or reverse commutes;

''(ii) guaranteed ride home programs;

''(iii) bicycle storage facilities; and

''(iv) projects that otherwise facilitate the provision of public transportation services to employment opportunities.

''(2) PROJECT SELECTION AND PLAN DEVELOPMENT.—Each grant recipient under this subsection shall certify that—

''(A) the projects selected were included in a locally developed, coordinated public transit-human services transportation plan;

''(B) the plan was developed and approved through a process that included participation by low-income individuals, representatives of public, private, and nonprofit transportation and human services providers, and the public;

''(C) to the maximum extent feasible, services funded under this subsection are coordinated with transportation services funded by other Federal departments and agencies; and

''(D) allocations of the grant to subrecipients, if any, are distributed on a fair and equitable basis.

''(3) COMPETITIVE PROCESS FOR GRANTS TO SUBRECIPIENTS.—

''(A) STATEWIDE SOLICITATIONS.—A State may conduct a statewide solicitation for applications for grants to recipients and subrecipients under this subsection.

''(B) APPLICATION.—If the State elects to engage in a competitive process, recipients and subrecipients seeking to receive a grant from apportioned funds shall submit to the State an application in the form and in accordance with such requirements as the State shall establish.

''(h) GOVERNMENT SHARE OF COSTS.—

''(1) CAPITAL PROJECTS.—

''(A) IN GENERAL.—Except as provided by subparagraph (B), a grant awarded under this section for a capital project or project administrative expenses shall be for 80 percent of the net costs of the project, as determined by the Secretary.

''(B) EXCEPTION.—A State described in section 120(b) of title 23 shall receive a Government share of the net costs in accordance with the formula under that section.

''(2) OPERATING ASSISTANCE.—

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

''(B) EXCEPTION.—A State described in section 120(b) of title 23 shall receive a Government share of the net operating costs equal to 62.5 percent of the Government share provided for under paragraph (1)(B).

''(3) REMAINDER.—The remainder of net project costs—

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

''(B) may be derived from amounts appropriated or otherwise made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation; and

''(C) notwithstanding subparagraph (B), may be derived from amounts made available to carry out the Federal lands highway program established by section 204 of title 23.

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

''(5) LIMITATION ON OPERATING ASSISTANCE.—A State carrying out a program of operating assistance under this section may not limit the level or extent of use of the Government grant for the payment of operating expenses.

''(i) TRANSFER OF FACILITIES AND EQUIPMENT.—With the consent of the recipient currently having a facility or equipment acquired with assistance under this section, a State may transfer the facility or equipment to any recipient eligible to receive assistance under this chapter if the facility or equipment will continue to be used as required under this section.

''(j) RELATIONSHIP TO OTHER LAWS.—

''(1) IN GENERAL.—Section 5333(b) applies to this section if the Secretary of Labor utilizes a special warranty that provides a fair and equitable arrangement to protect the interests of employees.

''(2) RULE OF CONSTRUCTION.—This subsection does not affect or discharge a responsibility of the Secretary of Transportation under a law of the United States.

''(k) FORMULA GRANTS FOR PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS.—

''(1) APPORTIONMENT.—

''(A) IN GENERAL.—Of the amounts described in subsection (c)(1)(B)—

''(i) 50 percent of the total amount shall be apportioned so that each Indian tribe providing public transportation service shall receive an amount equal to the total amount apportioned under this clause multiplied by the ratio of the number of vehicle revenue miles provided by an Indian tribe divided by the total number of vehicle revenue miles provided by all Indian tribes, as reported to the Secretary;

''(ii) 25 percent of the total amount shall be apportioned equally among each Indian tribe providing at least 200,000 vehicle revenue miles of public transportation service annually, as reported to the Secretary; and

''(iii) 25 percent of the total amount shall be apportioned among each Indian tribe providing public transportation on tribal lands on which more than 1,000 low-income individuals reside (as determined by the Bureau of the Census) so that each Indian tribe shall receive an amount equal to the total amount apportioned under this clause multiplied by the ratio of the number of low-income individuals residing on an Indian tribe's lands divided by the total number of low-income individuals on tribal lands on which more than 1,000 low-income individuals reside.

''(B) LIMITATION.—No recipient shall receive more than $300,000 of the amounts apportioned under subparagraph (A)(iii) in a fiscal year.

''(C) REMAINING AMOUNTS.—Of the amounts made available under subparagraph (A)(iii), any amounts not apportioned under that subparagraph shall be allocated among Indian tribes receiving less than $300,000 in a fiscal year according to the formula specified in that clause.

''(D) LOW-INCOME INDIVIDUALS.—For purposes of subparagraph (A)(iii), the term 'low-income individual' means an individual whose family income is at or below 100 percent of the poverty line, as that term is defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that section, for a family of the size involved.

''(2) NON-TRIBAL SERVICE PROVIDERS.—A recipient that is an Indian tribe may use funds apportioned under this subsection to finance public transportation services provided by a non-tribal provider of public transportation that connects residents of tribal lands with surrounding communities, improves access to employment or healthcare, or otherwise addresses the mobility needs of tribal members.''.

SEC. 40013. RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.

Section 5312 of title 49, United States Code, is amended to read as follows:

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

''(a) RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.—

''(1) IN GENERAL.—The Secretary may make grants and enter into contracts, cooperative agreements, and other agreements for research, development, demonstration, and deployment projects, and evaluation of research and technology of national significance to public transportation, that the Secretary determines will improve public transportation.

''(2) AGREEMENTS.—In order to carry out paragraph (1), the Secretary may make grants to and enter into contracts, cooperative agreements, and other agreements with—

''(A) departments, agencies, and instrumentalities of the Government;

''(B) State and local governmental entities;

''(C) providers of public transportation;

''(D) private or non-profit organizations;

''(E) institutions of higher education; and

''(F) technical and community colleges.

''(3) APPLICATION.—

''(A) IN GENERAL.—To receive a grant, contract, cooperative agreement, or other agreement under this section, an entity described in paragraph (2) shall submit an application to the Secretary.

''(B) FORM AND CONTENTS.—An application under subparagraph (A) shall be in such form and contain such information as the Secretary may require, including—

''(i) a statement of purpose detailing the need being addressed;

''(ii) the short- and long-term goals of the project, including opportunities for future innovation and development, the potential for deployment, and benefits to riders and public transportation; and

''(iii) the short- and long-term funding requirements to complete the project and any future objectives of the project.

''(b) RESEARCH.—

''(1) IN GENERAL.—The Secretary may make a grant to or enter into a contract, cooperative agreement, or other agreement under this section with an entity described in subsection (a)(2) to carry out a public transportation research project that has as its ultimate goal the development and deployment of new and innovative ideas, practices, and approaches.

''(2) PROJECT ELIGIBILITY.—A public transportation research project that receives assistance under paragraph (1) shall focus on—

''(A) providing more effective and efficient public transportation service, including services to—

''(i) seniors;

''(ii) individuals with disabilities; and

''(iii) low-income individuals;

''(B) mobility management and improvements and travel management systems;

''(C) data and communication system advancements;

''(D) system capacity, including—

''(i) train control;

''(ii) capacity improvements; and

''(iii) performance management;

''(E) capital and operating efficiencies;

''(F) planning and forecasting modeling and simulation;

''(G) advanced vehicle design;

''(H) advancements in vehicle technology;

''(I) asset maintenance and repair systems advancement;

''(J) construction and project management;

''(K) alternative fuels;

''(L) the environment and energy efficiency;

''(M) safety improvements; or

''(N) any other area that the Secretary determines is important to advance the interests of public transportation.

''(c) INNOVATION AND DEVELOPMENT.—

''(1) IN GENERAL.—The Secretary may make a grant to or enter into a contract, cooperative agreement, or other agreement under this section with an entity described in subsection (a)(2) to carry out a public transportation innovation and development project that seeks to improve public transportation systems nationwide in order to provide more efficient and effective delivery of public transportation services, including through technology and technological capacity improvements.

''(2) PROJECT ELIGIBILITY.—A public transportation innovation and development project that receives assistance under paragraph (1) shall focus on—

''(A) the development of public transportation research projects that received assistance under subsection (b) that the Secretary determines were successful;

''(B) planning and forecasting modeling and simulation;

''(C) capital and operating efficiencies;

''(D) advanced vehicle design;

''(E) advancements in vehicle technology;

''(F) the environment and energy efficiency;

''(G) system capacity, including train control and capacity improvements; or

''(H) any other area that the Secretary determines is important to advance the interests of public transportation.

''(d) DEMONSTRATION, DEPLOYMENT, AND EVALUATION.—

''(1) IN GENERAL.—The Secretary may, under terms and conditions that the Secretary prescribes, make a grant to or enter into a contract, cooperative agreement, or other agreement with an entity described in paragraph (2) to promote the early deployment and demonstration of innovation in public transportation that has broad applicability.

''(2) PARTICIPANTS.—An entity described in this paragraph is—

''(A) an entity described in subsection (a)(2); or

''(B) a consortium of entities described in subsection (a)(2), including a provider of public transportation, that will share the costs, risks, and rewards of early deployment and demonstration of innovation.

''(3) PROJECT ELIGIBILITY.—A project that receives assistance under paragraph (1) shall seek to build on successful research, innovation, and development efforts to facilitate—

''(A) the deployment of research and technology development resulting from private efforts or federally funded efforts; and

''(B) the implementation of research and technology development to advance the interests of public transportation.

''(4) EVALUATION.—Not later than 2 years after the date on which a project receives assistance under paragraph (1), the Secretary shall conduct a comprehensive evaluation of the success or failure of the projects funded under this subsection and any plan for broad-based implementation of the innovation promoted by successful projects.

''(e) ANNUAL REPORT ON RESEARCH.—Not later than the first Monday in February of each year, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives a report that includes—

''(1) a description of each project that received assistance under this section during the preceding fiscal year;

''(2) an evaluation of each project described in paragraph (1), including any evaluation conducted under subsection (d)(4) for the preceding fiscal year; and

''(3) a proposal for allocations of amounts for assistance under this section for the subsequent fiscal year.

''(f) GOVERNMENT SHARE OF COSTS.—

''(1) IN GENERAL.—The Government share of the cost of a project carried out under this section shall not exceed 80 percent.

''(2) NON-GOVERNMENT SHARE.—The non-Government share of the cost of a project carried out under this section may be derived from in-kind contributions.

''(3) FINANCIAL BENEFIT.—If the Secretary determines that there would be a clear and direct financial benefit to an entity under a grant, contract, cooperative agreement, or other agreement under this section, the Secretary shall establish a Government share of the costs of the project to be carried out under the grant, contract, cooperative agreement, or other agreement that is consistent with the benefit.''.

SEC. 40014. TECHNICAL ASSISTANCE AND STANDARDS DEVELOPMENT.

Section 5314 of title 49, United States Code, is amended to read as follows:

''§ 5314. Technical assistance and standards development

''(a) TECHNICAL ASSISTANCE AND STANDARDS DEVELOPMENT.—

''(1) IN GENERAL.—The Secretary may make grants and enter into contracts, cooperative agreements, and other agreements (including agreements with departments, agencies, and instrumentalities of the Government) to carry out activities that the Secretary determines will assist recipients of assistance under this chapter to—

''(A) more effectively and efficiently provide public transportation service;

''(B) administer funds received under this chapter in compliance with Federal law; and

''(C) improve public transportation.

''(2) ELIGIBLE ACTIVITIES.—The activities carried out under paragraph (1) may include—

''(A) technical assistance; and

''(B) the development of standards and best practices by the public transportation industry.

''(b) TECHNICAL ASSISTANCE CENTERS.—

''(1) DEFINITION.—In this subsection, the term 'eligible entity' means a nonprofit organization, an institution of higher education, or a technical or community college.

''(2) IN GENERAL.—The Secretary may make grants to and enter into contracts, cooperative agreements, and other agreements with eligible entities to administer centers to provide technical assistance, including—

''(A) the development of tools and guidance; and

''(B) the dissemination of best practices.

''(3) COMPETITIVE PROCESS.—The Secretary may make grants and enter into contracts, cooperative agreements, and other agreements under paragraph (2) through a competitive process on a biennial basis for technical assistance in each of the following categories:

''(A) Human services transportation coordination, including—

''(i) transportation for seniors;

''(ii) transportation for individuals with disabilities; and

''(iii) coordination of local resources and programs to assist low-income individuals and veterans in gaining access to training and employment opportunities.

''(B) Transit-oriented development.

''(C) Transportation equity with regard to the impact that transportation planning, investment, and operations have on low-income and minority individuals.

''(D) Financing mechanisms, including—

''(i) public-private partnerships;

''(ii) bonding; and

''(iii) State and local capacity building.

''(E) Any other activity that the Secretary determines is important to advance the interests of public transportation.

''(4) EXPERTISE OF TECHNICAL ASSISTANCE CENTERS.—In selecting an eligible entity to administer a center under this subsection, the Secretary shall consider—

''(A) the demonstrated subject matter expertise of the eligible entity; and

''(B) the capacity of the eligible entity to deliver technical assistance on a regional or nationwide basis.

''(5) PARTNERSHIPS.—An eligible entity may partner with another eligible entity to provide technical assistance under this subsection.

''(c) GOVERNMENT SHARE OF COSTS.—

''(1) IN GENERAL.—The Government share of the cost of an activity under this section may not exceed 80 percent.

''(2) NON-GOVERNMENT SHARE.—The non-Government share of the cost of an activity under this section may be derived from in-kind contributions.''.

SEC. 40015. BUS TESTING FACILITIES.

Section 5318 of title 49, United States Code, is amended to read as follows:

''§ 5318. Bus testing facilities

''(a) FACILITIES.—The Secretary shall certify not more than 4 comprehensive facilities for testing new bus models for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise.

''(b) COOPERATIVE AGREEMENT.—The Secretary shall enter into a cooperative agreement with not more than 4 qualified entities to test public transportation vehicles under subsection (a).

''(c) FEES.—An entity that operates and maintains a facility certified under subsection (a) shall establish and collect reasonable fees for the testing of vehicles at the facility. The Secretary must approve the fees.

''(d) AVAILABILITY OF AMOUNTS TO PAY FOR TESTING.—

''(1) IN GENERAL.—The Secretary shall enter into a cooperative agreement with an entity that operates and maintains a facility certified under subsection (a), under which 80 percent of the fee for testing a vehicle at the facility may be available from amounts apportioned to a recipient under section 5336 or from amounts appropriated to carry out this section.

''(2) PROHIBITION.—An entity that operates and maintains a facility described in subsection (a) shall not have a financial interest in the outcome of the testing carried out at the facility.

''(e) ACQUIRING NEW BUS MODELS.—Amounts appropriated or made available under this chapter may be obligated or expended to acquire a new bus model only if—

''(1) a bus of that model has been tested at a facility described in subsection (a); and

''(2) the bus tested under paragraph (1) met—

''(A) performance standards for maintainability, reliability, performance (including braking performance), structural integrity, fuel economy, emissions, and noise, as established by the Secretary by rule; and

''(B) the minimum safety performance standards established by the Secretary pursuant to section 5329(b).''.

SEC. 40016. PUBLIC TRANSPORTATION WORKFORCE DEVELOPMENT AND HUMAN RESOURCE PROGRAMS.

Section 5322 of title 49, United States Code, is amended to read as follows:

''§ 5322. Public transportation workforce development and human resource programs

''(a) IN GENERAL.—The Secretary may undertake, or make grants or enter into contracts for, activities that address human resource needs as the needs apply to public transportation activities, including activities that—

''(1) educate and train employees;

''(2) develop the public transportation workforce through career outreach and preparation;

''(3) develop a curriculum for workforce development;

''(4) conduct outreach programs to increase minority and female employment in public transportation;

''(5) conduct research on public transportation personnel and training needs;

''(6) provide training and assistance for minority business opportunities;

''(7) advance training relating to maintenance of alternative energy, energy efficiency, or zero emission vehicles and facilities used in public transportation; and

''(8) address a current or projected workforce shortage in an area that requires technical expertise.

''(b) FUNDING.—

''(1) URBANIZED AREA FORMULA GRANTS.—A recipient or subrecipient of funding under section 5307 shall expend not less than 0.5 percent of such funding for activities consistent with subsection (a).

''(2) WAIVER.—The Secretary may waive the requirement under paragraph (1) with respect to a recipient or subrecipient if the Secretary determines that the recipient or subrecipient—

''(A) has an adequate workforce development program; or

''(B) has partnered with a local educational institution in a manner that sufficiently promotes or addresses workforce development and human resource needs.

''(c) INNOVATIVE PUBLIC TRANSPORTATION WORKFORCE DEVELOPMENT PROGRAM.—

''(1) PROGRAM ESTABLISHED.—The Secretary shall establish a competitive grant program to assist the development of innovative activities eligible for assistance under subsection (a).

''(2) SELECTION OF RECIPIENTS.—To the maximum extent feasible, the Secretary shall select recipients that—

''(A) are geographically diverse;

''(B) address the workforce and human resources needs of large public transportation providers;

''(C) address the workforce and human resources needs of small public transportation providers;

''(D) address the workforce and human resources needs of urban public transportation providers;

''(E) address the workforce and human resources needs of rural public transportation providers;

''(F) advance training related to maintenance of alternative energy, energy efficiency, or zero emission vehicles and facilities used in public transportation;

''(G) target areas with high rates of unemployment; and

''(H) address current or projected workforce shortages in areas that require technical expertise.

''(d) GOVERNMENT'S SHARE OF COSTS.—The Government share of the cost of a project carried out using a grant under this section shall be 50 percent.

''(e) REPORT.—Not later than 2 years after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report concerning the measurable outcomes and impacts of the programs funded under this section.''.

SEC. 40017. GENERAL PROVISIONS.

Section 5323 of title 49, United States Code, is amended to read as follows:

''§ 5323. General provisions

''(a) INTERESTS IN PROPERTY.—

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

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

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

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

''(2) LIMITATION.—A governmental authority may not use financial assistance of the United States Government to acquire land, equipment, or a facility used in public transportation from another governmental authority in the same geographic area.

''(b) RELOCATION AND REAL PROPERTY REQUIREMENTS.—The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) shall apply to financial assistance for capital projects under this chapter.

''(c) CONSIDERATION OF ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—

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

''(2) COMPLIANCE WITH NEPA.—The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply to financial assistance for capital projects under this chapter.

''(d) CORRIDOR PRESERVATION.—

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

''(2) ENVIRONMENTAL REVIEWS.—Right-of-way acquired under this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

''(e) CONDITION ON CHARTER BUS TRANSPORTATION SERVICE.—

''(1) AGREEMENTS.—Financial assistance under this chapter may be used to buy or operate a bus only if the applicant, governmental authority, or publicly owned operator that receives the assistance agrees that, except as provided in the agreement, the governmental authority or an operator of public transportation for the governmental authority will not provide charter bus transportation service outside the urban area in which it provides regularly scheduled public transportation service. An agreement shall provide for a fair arrangement the Secretary of Transportation considers appropriate to ensure that the assistance will not enable a governmental authority or an operator for a governmental authority to foreclose a private operator from providing intercity charter bus service if the private operator can provide the service.

''(2) VIOLATIONS.—

''(A) INVESTIGATIONS.—On receiving a complaint about a violation of the agreement required under paragraph (1), the Secretary shall investigate and decide whether a violation has occurred.

''(B) ENFORCEMENT OF AGREEMENTS.—If the Secretary decides that a violation has occurred, the Secretary shall correct the violation under terms of the agreement.

''(C) ADDITIONAL REMEDIES.—In addition to any remedy specified in the agreement, the Secretary shall bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers

appropriate if the Secretary finds a pattern of violations of the agreement.

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

''(1) USE AS LOCAL MATCHING FUNDS.—Notwithstanding any other provision of law, a recipient of assistance under section 5307, 5309, or 5337 may use the proceeds from the issuance of revenue bonds as part of the local matching funds for a capital project.

''(2) MAINTENANCE OF EFFORT.—The Secretary shall approve of the use of the proceeds from the issuance of revenue bonds for the remainder of the net project cost only if the Secretary finds that the aggregate amount of financial support for public transportation in the urbanized area provided by the State and affected local governmental authorities during the next 3 fiscal years, as programmed in the State transportation improvement program under section 5304, is not less than the aggregate amount provided by the State and affected local governmental authorities in the urbanized area during the preceding 3 fiscal years.

''(3) DEBT SERVICE RESERVE.—The Secretary may reimburse an eligible recipient for deposits of bond proceeds in a debt service reserve that the recipient establishes pursuant to section 5302(3)(J) from amounts made available to the recipient under section 5309.

''(g) SCHOOLBUS TRANSPORTATION.—

''(1) AGREEMENTS.—Financial assistance under this chapter may be used for a capital project, or to operate public transportation equipment or a public transportation facility, only if the applicant agrees not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator. This subsection does not apply—

''(A) to an applicant that operates a school system in the area to be served and a separate and exclusive schoolbus program for the school system; and

''(B) unless a private schoolbus operator can provide adequate transportation that complies with applicable safety standards at reasonable rates.

''(2) VIOLATIONS.—If the Secretary finds that an applicant, governmental authority, or publicly owned operator has violated the agreement required under paragraph (1), the Secretary shall bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers appropriate.

''(h) BUYING BUSES UNDER OTHER LAWS.—Subsections (e) and (g) of this section apply to financial assistance to buy a bus under sections 133 and 142 of title 23.

''(i) GRANT AND LOAN PROHIBITIONS.—A grant or loan may not be used to—

''(1) pay ordinary governmental or nonproject operating expenses; or

''(2) support a procurement that uses an exclusionary or discriminatory specification.

''(j) GOVERNMENT SHARE OF COSTS FOR CERTAIN PROJECTS.—A grant for a project to be assisted under this chapter that involves acquiring vehicle-related equipment or facilities required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) or vehicle-related equipment or facilities (including clean fuel or alternative fuel vehicle-related equipment or facilities) for purposes of complying with or maintaining compliance with the Clean Air Act, is for 90 percent of the net project cost of such equipment or facilities attributable to compliance with those Acts. The Secretary shall have discretion to determine, through practicable administrative procedures, the costs of such equipment or facilities attributable to compliance with those Acts.

''(k) BUY AMERICA.—

''(1) IN GENERAL.—The Secretary may obligate an amount that may be appropriated to carry out this chapter for a project only if the steel, iron, and manufactured goods used in the project are produced in the United States.

''(2) WAIVER.—The Secretary may waive paragraph (1) of this subsection if the Secretary finds that—

''(A) applying paragraph (1) would be inconsistent with the public interest;

''(B) the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

''(C) when procuring rolling stock (including train control, communication, and traction power equipment) under this chapter—

''(i) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the rolling stock; and

''(ii) final assembly of the rolling stock has occurred in the United States; or

''(D) including domestic material will increase the cost of the overall project by more than 25 percent.

''(3) WRITTEN WAIVER DETERMINATION AND ANNUAL REPORT.—

''(A) WRITTEN DETERMINATION.—Before issuing a waiver under paragraph (2), the Secretary shall—

''(i) publish in the Federal Register and make publicly available in an easily identifiable location on the website of the Department of Transportation a detailed written explanation of the waiver determination; and

''(ii) provide the public with a reasonable period of time for notice and comment.

''(B) ANNUAL REPORT.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, and annually thereafter, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report listing any waiver issued under paragraph (2) during the preceding year.

''(4) LABOR COSTS FOR FINAL ASSEMBLY.—In this subsection, labor costs involved in final assembly are not included in calculating the cost of components.

''(5) WAIVER PROHIBITED.—The Secretary may not make a waiver under paragraph (2) of this subsection for goods produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, decides that the government of that foreign country—

''(A) has an agreement with the United States Government under which the Secretary has waived the requirement of this subsection; and

''(B) has violated the agreement by discriminating against goods to which this subsection applies that are produced in the United States and to which the agreement applies.

''(6) PENALTY FOR MISLABELING AND MISREPRESENTATION.—A person is ineligible under subpart 9.4 of the Federal Acquisition Regulation, or any successor thereto, to receive a contract or subcontract made with amounts authorized under the Federal Public Transportation Act of 2012 if a court or department, agency, or instrumentality of the Government decides the person intentionally—

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

''(B) represented that goods described in subparagraph (A) of this paragraph were produced in the United States.

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

''(8) OPPORTUNITY TO CORRECT INADVERTENT ERROR.—The Secretary may allow a manufacturer or supplier of steel, iron, or manufactured goods to correct after bid opening any certification of noncompliance or failure to properly complete the certification (but not including failure to sign the certification) under this subsection if such manufacturer or supplier attests under penalty of perjury that such manufacturer or supplier submitted an incorrect certification as a result of an inadvertent or clerical error. The burden of establishing inadvertent or clerical error is on the manufacturer or supplier.

''(9) ADMINISTRATIVE REVIEW.—A party adversely affected by an agency action under this subsection shall have the right to seek review under section 702 of title 5.

''(l) PARTICIPATION OF GOVERNMENTAL AGENCIES IN DESIGN AND DELIVERY OF TRANSPORTATION SERVICES.—Governmental agencies and nonprofit organizations that receive assistance from Government sources (other than the Department of Transportation) for nonemergency transportation services shall—

''(1) participate and coordinate with recipients of assistance under this chapter in the design and delivery of transportation services; and

''(2) be included in the planning for those services.

''(m) RELATIONSHIP TO OTHER LAWS.—

''(1) FRAUD AND FALSE STATEMENTS.—Section 1001 of title 18 applies to a certificate, submission, or statement provided under this chapter. The Secretary may terminate financial assistance under this chapter and seek reimbursement directly, or by offsetting amounts, available under this chapter if the Secretary determines that a recipient of such financial assistance has made a false or fraudulent statement or related act in connection with a Federal public transportation program.

''(2) POLITICAL ACTIVITIES OF NONSUPERVISORY EMPLOYEES.—The provision of assistance under this chapter shall not be construed to require the application of chapter 15 of title 5 to any nonsupervisory employee of a public transportation system (or any other agency or entity performing related functions) to whom such chapter does not otherwise apply.

''(n) PREAWARD AND POSTDELIVERY REVIEW OF ROLLING STOCK PURCHASES.—The Secretary shall prescribe regulations requiring a preaward and postdelivery review of a grant under this chapter to buy rolling stock to ensure compliance with Government motor vehicle safety requirements, subsection (k) of this section, and bid specifications requirements of grant recipients under this chapter. Under this subsection, independent inspections and review are required, and a manufacturer certification is not sufficient. Rolling stock procurements of 20 vehicles or fewer made for the purpose of serving other than urbanized areas and urbanized areas with populations of 200,000 or fewer shall be subject to the same requirements as established for procurements of 10 or fewer buses under the post-delivery purchaser's requirements certification process under section 663.37(c) of title 49, Code of Federal Regulations.

''(o) SUBMISSION OF CERTIFICATIONS.—A certification required under this chapter and

any additional certification or assurance required by law or regulation to be submitted to the Secretary may be consolidated into a single document to be submitted annually as part of a grant application under this chapter. The Secretary shall publish annually a list of all certifications required under this chapter with the publication required under section 5336(d)(2).

''(p) GRANT REQUIREMENTS.—The grant requirements under sections 5307, 5309, and 5337 apply to any project under this chapter that receives any assistance or other financing under chapter 6 (other than section 609) of title 23.

''(q) ALTERNATIVE FUELING FACILITIES.—A recipient of assistance under this chapter may allow the incidental use of federally funded alternative fueling facilities and equipment by nontransit public entities and private entities if—

''(1) the incidental use does not interfere with the recipient's public transportation operations;

''(2) all costs related to the incidental use are fully recaptured by the recipient from the nontransit public entity or private entity;

''(3) the recipient uses revenues received from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and

''(4) private entities pay all applicable excise taxes on fuel.

''(r) FIXED GUIDEWAY CATEGORICAL EXCLUSION.—

''(1) STUDY.—Not later than 6 months after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall conduct a study to determine the feasibility of providing a categorical exclusion for streetcar, bus rapid transit, and light rail projects located within an existing transportation right-of-way from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) in accordance with the Council on Environmental Quality implementing regulations under parts 1500 through 1508 of title 40, Code of Federal Regulations, or any successor thereto.

''(2) FINDINGS AND RULES.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue findings and, if appropriate, issue rules to provide categorical exclusions for suitable categories of projects.''.

SEC. 40018. CONTRACT REQUIREMENTS.

Section 5325 of title 49, United States Code, is amended—

(1) in subsection (h), by striking ''Federal Public Transportation Act of 2005'' and inserting ''Federal Public Transportation Act of 2012'';

(2) in subsection (j)(2)(C), by striking '', including the performance reported in the Contractor Performance Assessment Reports required under section 5309(l)(2)''; and

(3) by adding at the end the following:

''(k) VETERANS EMPLOYMENT.—Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference to veterans, as defined in section 2108 of title 5, who have the requisite skills and abilities to perform the construction work required under the contract.''.

SEC. 40019. TRANSIT ASSET MANAGEMENT.

Section 5326 of title 49, United States Code, is amended to read as follows:

''§ 5326. Transit asset management

''(a) DEFINITIONS.—In this section the following definitions shall apply:

''(1) CAPITAL ASSET.—The term 'capital asset' includes equipment, rolling stock, infrastructure, and facilities for use in public transportation and owned or leased by a recipient or subrecipient of Federal financial assistance under this chapter.

''(2) TRANSIT ASSET MANAGEMENT PLAN.—The term 'transit asset management plan' means a plan developed by a recipient of funding under this chapter that—

''(A) includes, at a minimum, capital asset inventories and condition assessments, decision support tools, and investment prioritization; and

''(B) the recipient certifies complies with the rule issued under this section.

''(3) TRANSIT ASSET MANAGEMENT SYSTEM.—The term 'transit asset management system' means a strategic and systematic process of operating, maintaining, and improving public transportation capital assets effectively throughout the life cycle of such assets.

''(b) TRANSIT ASSET MANAGEMENT SYSTEM.—The Secretary shall establish and implement a national transit asset management system, which shall include—

''(1) a definition of the term 'state of good repair' that includes objective standards for measuring the condition of capital assets of recipients, including equipment, rolling stock, infrastructure, and facilities;

''(2) a requirement that recipients and subrecipients of Federal financial assistance under this chapter develop a transit asset management plan;

''(3) a requirement that each recipient of Federal financial assistance under this chapter report on the condition of the system of the recipient and provide a description of any change in condition since the last report;

''(4) an analytical process or decision support tool for use by public transportation systems that—

''(A) allows for the estimation of capital investment needs of such systems over time; and

''(B) assists with asset investment prioritization by such systems; and

''(5) technical assistance to recipients of Federal financial assistance under this chapter.

''(c) PERFORMANCE MEASURES AND TARGETS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue a final rule to establish performance measures based on the state of good repair standards established under subsection (b)(1).

''(2) TARGETS.—Not later than 3 months after the date on which the Secretary issues a final rule under paragraph (1), and each fiscal year thereafter, each recipient of Federal financial assistance under this chapter shall establish performance targets in relation to the performance measures established by the Secretary.

''(3) REPORTS.—Each recipient of Federal financial assistance under this chapter shall submit to the Secretary an annual report that describes—

''(A) the progress of the recipient during the fiscal year to which the report relates toward meeting the performance targets established under paragraph (2) for that fiscal year; and

''(B) the performance targets established by the recipient for the subsequent fiscal year.

''(d) RULEMAKING.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue a final rule to implement the transit asset management system described in subsection (b).''.

SEC. 40020. PROJECT MANAGEMENT OVERSIGHT.

Section 5327 of title 49, United States Code, is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking ''United States'' and all that follows through ''Secretary of Transportation'' and inserting the following: ''Federal financial assistance for a major capital project for public transportation under this chapter or any other provision of Federal law, a recipient must prepare a project management plan approved by the Secretary and carry out the project in accordance with the project management plan''; and

(B) in paragraph (12), by striking ''each month'' and inserting ''quarterly'';

(2) by striking subsections (c), (d), and (f);

(3) by inserting after subsection (b) the following:

''(c) ACCESS TO SITES AND RECORDS.—Each recipient of Federal financial assistance for public transportation under this chapter or any other provision of Federal law shall provide the Secretary and a contractor the Secretary chooses under section 5338(g) with access to the construction sites and records of the recipient when reasonably necessary.'';

(4) by redesignating subsection (e) as subsection (d); and

(5) in subsection (d), as so redesignated—

(A) in paragraph (1), by striking ''subsection (c) of this section'' and inserting ''section 5338(g)''; and

(B) in paragraph (2)—

(i) by striking ''preliminary engineering stage'' and inserting ''project development phase''; and

(ii) by striking ''another stage'' and inserting ''another phase''.

SEC. 40021. PUBLIC TRANSPORTATION SAFETY.

(a) PUBLIC TRANSPORTATION SAFETY PROGRAM.—Section 5329 of title 49, United States Code, is amended to read as follows:

''§ 5329. Public transportation safety program

''(a) DEFINITION.—In this section, the term 'recipient' means a State or local governmental authority, or any other operator of a public transportation system, that receives financial assistance under this chapter.

''(b) NATIONAL PUBLIC TRANSPORTATION SAFETY PLAN.—

''(1) IN GENERAL.—The Secretary shall create and implement a national public transportation safety plan to improve the safety of all public transportation systems that receive funding under this chapter.

''(2) CONTENTS OF PLAN.—The national public transportation safety plan under paragraph (1) shall include—

''(A) safety performance criteria for all modes of public transportation;

''(B) the definition of the term 'state of good repair' established under section 5326(b);

''(C) minimum safety performance standards for public transportation vehicles used in revenue operations that—

''(i) do not apply to rolling stock otherwise regulated by the Secretary or any other Federal agency; and

''(ii) to the extent practicable, take into consideration—

''(I) relevant recommendations of the National Transportation Safety Board; and

''(II) recommendations of, and best practices standards developed by, the public transportation industry; and

''(D) a public transportation safety certification training program, as described in subsection (c).

''(c) PUBLIC TRANSPORTATION SAFETY CERTIFICATION TRAINING PROGRAM.—

''(1) IN GENERAL.—The Secretary shall establish a public transportation safety certification training program for Federal and State employees, or other designated personnel, who conduct safety audits and examinations of public transportation systems and employees of public transportation agencies directly responsible for safety oversight.

''(2) INTERIM PROVISIONS.—Not later than 90 days after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall establish interim provisions for the certification and training of the personnel described in paragraph (1), which shall be in effect until the effective date of the final rule issued by the Secretary to implement this subsection.

''(d) PUBLIC TRANSPORTATION AGENCY SAFETY PLAN.—

''(1) IN GENERAL.—Effective 1 year after the effective date of a final rule issued by the Secretary to carry out this subsection, each recipient shall certify that the recipient has established a comprehensive agency safety plan that includes, at a minimum—

''(A) a requirement that the board of directors (or equivalent entity) of the recipient approve the agency safety plan and any updates to the agency safety plan;

''(B) methods for identifying and evaluating safety risks throughout all elements of the public transportation system of the recipient;

''(C) strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions;

''(D) a process and timeline for conducting an annual review and update of the safety plan of the recipient;

''(E) performance targets based on the safety performance criteria and state of good repair standards established under subparagraphs (A) and (B), respectively, of subsection (b)(2);

''(F) assignment of an adequately trained safety officer who reports directly to the general manager, president, or equivalent officer of the recipient; and

''(G) a comprehensive staff training program for the operations personnel and personnel directly responsible for safety of the recipient that includes—

''(i) the completion of a safety training program; and

''(ii) continuing safety education and training.

''(2) INTERIM AGENCY SAFETY PLAN.—A system safety plan developed pursuant to part 659 of title 49, Code of Federal Regulations, as in effect on the date of enactment of the Federal Public Transportation Act of 2012, shall remain in effect until such time as this subsection takes effect.

''(e) STATE SAFETY OVERSIGHT PROGRAM.—

''(1) APPLICABILITY.—This subsection applies only to eligible States.

''(2) DEFINITION.—In this subsection, the term 'eligible State' means a State that has—

''(A) a rail fixed guideway public transportation system within the jurisdiction of the State that is not subject to regulation by the Federal Railroad Administration; or

''(B) a rail fixed guideway public transportation system in the engineering or construction phase of development within the jurisdiction of the State that will not be subject to regulation by the Federal Railroad Administration.

''(3) IN GENERAL.—In order to obligate funds apportioned under section 5338 to carry out this chapter, effective 3 years after the date on which a final rule under this subsection becomes effective, an eligible State shall have in effect a State safety oversight program approved by the Secretary under which the State—

''(A) assumes responsibility for overseeing rail fixed guideway public transportation safety;

''(B) adopts and enforces Federal law on rail fixed guideway public transportation safety;

''(C) establishes a State safety oversight agency;

''(D) determines, in consultation with the Secretary, an appropriate staffing level for the State safety oversight agency that is commensurate with the number, size, and complexity of the rail fixed guideway public transportation systems in the eligible State;

''(E) requires that employees and other designated personnel of the eligible State safety oversight agency who are responsible for rail fixed guideway public transportation safety oversight are qualified to perform such functions through appropriate training, including successful completion of the public transportation safety certification training program established under subsection (c); and

''(F) prohibits any public transportation agency from providing funds to the State safety oversight agency or an entity designated by the eligible State as the State safety oversight agency under paragraph (4).

''(4) STATE SAFETY OVERSIGHT AGENCY.—

''(A) IN GENERAL.—Each State safety oversight program shall establish a State safety oversight agency that—

''(i) is an independent legal entity responsible for the safety of rail fixed guideway public transportation systems;

''(ii) is financially and legally independent from any public transportation entity that the State safety oversight agency oversees;

''(iii) does not fund, promote, or provide public transportation services;

''(iv) does not employ any individual who is also responsible for the administration of public transportation programs;

''(v) has the authority to review, approve, oversee, and enforce the implementation by the rail fixed guideway public transportation agency of the public transportation agency safety plan required under subsection (d);

''(vi) has investigative and enforcement authority with respect to the safety of rail fixed guideway public transportation systems of the eligible State;

''(vii) audits, at least once triennially, the compliance of the rail fixed guideway public transportation systems in the eligible State subject to this subsection with the public transportation agency safety plan required under subsection (d); and

''(viii) provides, at least once annually, a status report on the safety of the rail fixed guideway public transportation systems the State safety oversight agency oversees to—

''(I) the Federal Transit Administration;

''(II) the Governor of the eligible State; and

''(III) the board of directors, or equivalent entity, of any rail fixed guideway public transportation system that the State safety oversight agency oversees.

''(B) WAIVER.—At the request of an eligible State, the Secretary may waive clauses (i) and (iii) of subparagraph (A) for eligible States with 1 or more rail fixed guideway systems in revenue operations, design, or construction, that—

''(i) have fewer than 1,000,000 combined actual and projected rail fixed guideway revenue miles per year; or

''(ii) provide fewer than 10,000,000 combined actual and projected unlinked passenger trips per year.

''(5) ENFORCEMENT.—Each State safety oversight agency shall have the authority to request that the Secretary take enforcement actions available under subsection (g) against a rail fixed guideway public transportation system that is not in compliance with Federal safety laws.

''(6) PROGRAMS FOR MULTI-STATE RAIL FIXED GUIDEWAY PUBLIC TRANSPORTATION SYSTEMS.—An eligible State that has within the jurisdiction of the eligible State a rail fixed guideway public transportation system that operates in more than 1 eligible State shall—

''(A) jointly with all other eligible States in which the rail fixed guideway public transportation system operates, ensure uniform safety standards and enforcement procedures that shall be in compliance with this section, and establish and implement a State safety oversight program approved by the Secretary; or

''(B) jointly with all other eligible States in which the rail fixed guideway public transportation system operates, designate an entity having characteristics consistent with the characteristics described in paragraph (3) to carry out the State safety oversight program approved by the Secretary.

''(7) GRANTS.—

''(A) IN GENERAL.—The Secretary may make a grant to an eligible State to develop or carry out a State safety oversight program, if the eligible State submits—

''(i) a proposal for the establishment of a State safety oversight program to the Secretary for review and written approval before implementing a State safety oversight program; and

''(ii) any amendment to the State safety oversight program of the eligible State to the Secretary for review not later than 60 days before the effective date of the amendment.

''(B) DETERMINATION BY SECRETARY.—

''(i) IN GENERAL.—The Secretary shall transmit written approval to an eligible State that submits a State safety oversight program, if the Secretary determines the State safety oversight program meets the requirements of this subsection and the State safety oversight program is adequate to promote the purposes of this section.

''(ii) AMENDMENT.—The Secretary shall transmit to an eligible State that submits an amendment under subparagraph (A)(ii) a written determination with respect to the amendment.

''(iii) NO WRITTEN DECISION.—If an eligible State does not receive a written decision from the Secretary with respect to an amendment submitted under subparagraph (A)(ii) before the end of the 60-day period beginning on the date on which the eligible State submits the amendment, the amendment shall be deemed to be approved.

''(iv) DISAPPROVAL.—If the Secretary determines that a State safety oversight program does not meet the requirements of this subsection, the Secretary shall transmit to the eligible State a written explanation and allow the eligible State to modify and resubmit the State safety oversight program for approval.

''(C) GOVERNMENT SHARE.—

''(i) IN GENERAL.—The Government share of the reasonable cost of a State safety oversight program developed or carried out using a grant under this paragraph shall be 80 percent.

''(ii) IN-KIND CONTRIBUTIONS.—Any calculation of the non-Government share of a State safety oversight program shall include in-kind contributions by an eligible State.

''(iii) NON-GOVERNMENT SHARE.—The non-Government share of the cost of a State safety oversight program developed or carried out using a grant under this paragraph may not be met by—

''(I) any Federal funds;

''(II) any funds received from a public transportation agency; or

''(III) any revenues earned by a public transportation agency.

''(iv) SAFETY TRAINING PROGRAM.—The Secretary may reimburse an eligible State or a recipient for the full costs of participation in the public transportation safety certification training program established under subsection (c) by an employee of a State safety oversight agency or a recipient who is directly responsible for safety oversight.

''(8) CONTINUAL EVALUATION OF PROGRAM.—The Secretary shall continually evaluate the implementation of a State safety oversight program by a State safety oversight agency, on the basis of—

''(A) reports submitted by the State safety oversight agency under paragraph (4)(A)(viii); and

''(B) audits carried out by the Secretary.

''(9) INADEQUATE PROGRAM.—

''(A) IN GENERAL.—If the Secretary finds that a State safety oversight program approved by the Secretary is not being carried out in accordance with this section or has become inadequate to ensure the enforcement of Federal safety regulations, the Secretary shall—

''(i) transmit to the eligible State a written explanation of the reason the program has become inadequate and inform the State of the intention to withhold funds, including the amount of funds proposed to be withheld under this section, or withdraw approval of the State safety oversight program; and

''(ii) allow the eligible State a reasonable period of time to modify the State safety oversight program or implementation of the program and submit an updated proposal for the State safety oversight program to the Secretary for approval.

''(B) FAILURE TO CORRECT.—If the Secretary determines that a modification by an eligible State of the State safety oversight program is not sufficient to ensure the enforcement of Federal safety regulations, the Secretary may—

''(i) withhold funds available under this section in an amount determined by the Secretary; or

''(ii) provide written notice of withdrawal of State safety oversight program approval.

''(C) TEMPORARY OVERSIGHT.—In the event the Secretary takes action under subparagraph (B)(ii), the Secretary shall provide oversight of the rail fixed guideway systems in an eligible State until the State submits a State safety oversight program approved by the Secretary.

''(D) RESTORATION.—

''(i) CORRECTION.—The eligible State shall address any inadequacy to the satisfaction of the Secretary prior to the Secretary restoring funds withheld under this paragraph.

''(ii) AVAILABILITY AND REALLOCATION.—Any funds withheld under this paragraph shall remain available for restoration to the eligible State until the end of the first fiscal year after the fiscal year in which the funds were withheld, after which time the funds shall be available to the Secretary for allocation to other eligible States under this section.

''(10) FEDERAL OVERSIGHT.—The Secretary shall—

''(A) oversee the implementation of each State safety oversight program under this subsection;

''(B) audit the operations of each State safety oversight agency at least once triennially; and

''(C) issue rules to carry out this subsection.

''(f) AUTHORITY OF SECRETARY.—In carrying out this section, the Secretary may—

''(1) conduct inspections, investigations, audits, examinations, and testing of the equipment, facilities, rolling stock, and operations of the public transportation system of a recipient;

''(2) make reports and issue directives with respect to the safety of the public transportation system of a recipient;

''(3) in conjunction with an accident investigation or an investigation into a pattern or practice of conduct that negatively affects public safety, issue a subpoena to, and take the deposition of, any employee of a recipient or a State safety oversight agency, if—

''(A) before the issuance of the subpoena, the Secretary requests a determination by the Attorney General of the United States as to whether the subpoena will interfere with an ongoing criminal investigation; and

''(B) the Attorney General—

''(i) determines that the subpoena will not interfere with an ongoing criminal investigation; or

''(ii) fails to make a determination under clause (i) before the date that is 30 days after the date on which the Secretary makes a request under subparagraph (A);

''(4) require the production of documents by, and prescribe recordkeeping and reporting requirements for, a recipient or a State safety oversight agency;

''(5) investigate public transportation accidents and incidents and provide guidance to recipients regarding prevention of accidents and incidents;

''(6) at reasonable times and in a reasonable manner, enter and inspect equipment, facilities, rolling stock, operations, and relevant records of the public transportation system of a recipient; and

''(7) issue rules to carry out this section.

''(g) ENFORCEMENT ACTIONS.—

''(1) TYPES OF ENFORCEMENT ACTIONS.—The Secretary may take enforcement action against a recipient that does not comply with Federal law with respect to the safety of the public transportation system, including—

''(A) issuing directives;

''(B) requiring more frequent oversight of the recipient by a State safety oversight agency or the Secretary;

''(C) imposing more frequent reporting requirements;

''(D) requiring that any Federal financial assistance provided under this chapter be spent on correcting safety deficiencies identified by the Secretary or the State safety oversight agency before such funds are spent on other projects;

''(E) subject to paragraph (2), withholding Federal financial assistance, in an amount to be determined by the Secretary, from the recipient, until such time as the recipient comes into compliance with this section; and

''(F) subject to paragraph (3), imposing a civil penalty, in an amount to be determined by the Secretary.

''(2) USE OR WITHHOLDING OF FUNDS.—

''(A) IN GENERAL.—The Secretary may require the use of funds in accordance with paragraph (1)(D), or withhold funds under paragraph (1)(E), only if the Secretary finds that a recipient is engaged in a pattern or practice of serious safety violations or has otherwise refused to comply with Federal law relating to the safety of the public transportation system.

''(B) NOTICE.—Before withholding funds from a recipient under paragraph (1)(E), the Secretary shall provide to the recipient—

''(i) written notice of a violation and the amount proposed to be withheld; and

''(ii) a reasonable period of time within which the recipient may address the violation or propose and initiate an alternative means of compliance that the Secretary determines is acceptable.

''(C) FAILURE TO ADDRESS.—If the recipient does not address the violation or propose an alternative means of compliance that the Secretary determines is acceptable within the period of time specified in the written notice, the Secretary may withhold funds under paragraph (1)(E).

''(D) RESTORATION.—

''(i) CORRECTION.—The recipient shall address any violation to the satisfaction of the Secretary prior to the Secretary restoring funds withheld under paragraph (1)(E).

''(ii) AVAILABILITY AND REALLOCATION.—Any funds withheld under paragraph (1)(E) shall remain available for restoration to the recipient until the end of the first fiscal year after the fiscal year in which the funds were withheld, after which time the funds shall be available to the Secretary for allocation to other eligible recipients.

''(E) NOTIFICATION.—Not later than 3 days before taking any action under subparagraph (C), the Secretary shall notify the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of such action.

''(3) CIVIL PENALTIES.—

''(A) IMPOSITION OF CIVIL PENALTIES.—

''(i) IN GENERAL.—The Secretary may impose a civil penalty under paragraph (1)(F) only if—

''(I) the Secretary has exhausted the enforcement actions available under subparagraphs (A) through (E) of paragraph (1); and

''(II) the recipient continues to be in violation of Federal safety law.

''(ii) EXCEPTION.—The Secretary may waive the requirement under clause (i)(I) if the Secretary determines that such a waiver is in the public interest.

''(B) NOTICE.—Before imposing a civil penalty on a recipient under paragraph (1)(F), the Secretary shall provide to the recipient—

''(i) written notice of any violation and the penalty proposed to be imposed; and

''(ii) a reasonable period of time within which the recipient may address the violation or propose and initiate an alternative means of compliance that the Secretary determines is acceptable.

''(C) FAILURE TO ADDRESS.—If the recipient does not address the violation or propose an alternative means of compliance that the Secretary determines is acceptable within the period of time specified in the written notice, the Secretary may impose a civil penalty under paragraph (1)(F).

''(D) NOTIFICATION.—Not later than 3 days before taking any action under subparagraph (C), the Secretary shall notify the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of such action.

''(E) DEPOSIT OF CIVIL PENALTIES.—Any amounts collected by the Secretary under this paragraph shall be deposited into the Mass Transit Account of the Highway Trust Fund.

''(4) ENFORCEMENT BY THE ATTORNEY GENERAL.—At the request of the Secretary, the Attorney General may bring a civil action—

''(A) for appropriate injunctive relief to ensure compliance with this section;

''(B) to collect a civil penalty imposed under paragraph (1)(F); and

''(C) to enforce a subpoena, request for admissions, request for production of documents or other tangible things, or request for testimony by deposition issued by the Secretary under this section.

''(h) COST-BENEFIT ANALYSIS.—

''(1) ANALYSIS REQUIRED.—In carrying out this section, the Secretary shall take into consideration the costs and benefits of each action the Secretary proposes to take under this section.

''(2) WAIVER.—The Secretary may waive the requirement under this subsection if the Secretary determines that such a waiver is in the public interest.

''(i) CONSULTATION BY THE SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall consult with the Secretary of Transportation before the Secretary of Homeland Security issues a rule or order that the Secretary of Transportation determines affects the safety of public transportation design, construction, or operations.

''(j) PREEMPTION OF STATE LAW.—

''(1) NATIONAL UNIFORMITY OF REGULATION.—Laws, regulations, and orders related to public transportation safety shall be nationally uniform to the extent practicable.

''(2) IN GENERAL.—A State may adopt or continue in force a law, regulation, or order related to the safety of public transportation until the Secretary issues a rule or order covering the subject matter of the State requirement.

''(3) MORE STRINGENT LAW.—A State may adopt or continue in force a law, regulation, or order related to the safety of public transportation that is consistent with, in addition to, or more stringent than a regulation or order of the Secretary if the Secretary determines that the law, regulation, or order—

''(A) has a safety benefit;

''(B) is not incompatible with a law, regulation, or order, or the terms and conditions of a financial assistance agreement of the United States Government; and

''(C) does not unreasonably burden interstate commerce.

''(4) ACTIONS UNDER STATE LAW.—

''(A) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with—

''(i) a Federal standard of care established by a regulation or order issued by the Secretary under this section;

''(ii) its own program, rule, or standard that it created pursuant to a rule or order issued by the Secretary; or

''(iii) a State law, regulation, or order that is not incompatible with paragraph (2).

''(B) EFFECTIVE DATE.—This paragraph shall apply to any cause of action under State law arising from an event or activity occurring on or after the date of enactment of the Federal Public Transportation Act of 2012.

''(5) JURISDICTION.—Nothing in this section shall be construed to create a cause of action under Federal law on behalf of an injured party or confer Federal question jurisdiction for a State law cause of action.

''(k) ANNUAL REPORT.—The Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an annual report that—

''(1) analyzes public transportation safety trends among the States and documents the most effective safety programs implemented using grants under this section; and

''(2) describes the effect on public transportation safety of activities carried out using grants under this section.''.

(b) BUS SAFETY STUDY.—

(1) DEFINITION.—In this subsection, the term ''highway route'' means a route where 50 percent or more of the route is on roads having a speed limit of more than 45 miles per hour.

(2) STUDY.—Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that—

(A) examines the safety of public transportation buses that travel on highway routes;

(B) examines laws and regulations that apply to commercial over-the-road buses; and

(C) makes recommendations as to whether additional safety measures should be required for public transportation buses that travel on highway routes.

SEC. 40022. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

Section 5331(b)(2) of title 49, United States Code, is amended—

(1) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively; and

(2) by inserting before subparagraph (B), as so redesignated, the following:

''(A) shall establish and implement an enforcement program that includes the imposition of penalties for failure to comply with this section;''.

SEC. 40023. NONDISCRIMINATION.

(a) AMENDMENTS.—Section 5332 of title 49, United States Code, is amended—

(1) in subsection (b)—

(A) by striking ''creed'' and inserting ''religion''; and

(B) by inserting ''disability,'' after ''sex,''; and

(2) in subsection (d)(3), by striking ''and'' and inserting ''or''.

(b) EVALUATION AND REPORT.—

(1) EVALUATION.—The Comptroller General of the United States shall evaluate the progress and effectiveness of the Federal Transit Administration in assisting recipients of assistance under chapter 53 of title 49, United States Code, to comply with section 5332(b) of title 49, including—

(A) by reviewing discrimination complaints, reports, and other relevant information collected or prepared by the Federal Transit Administration or recipients of assistance from the Federal Transit Administration pursuant to any applicable civil rights statute, regulation, or other requirement; and

(B) by reviewing the process that the Federal Transit Administration uses to resolve discrimination complaints filed by members of the public.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report concerning the evaluation under paragraph (1) that includes—

(A) a description of the ability of the Federal Transit Administration to address discrimination and foster equal opportunities in federally funded public transportation projects, programs, and activities;

(B) recommendations for improvements if the Comptroller General determines that improvements are necessary; and

(C) information upon which the evaluation under paragraph (1) is based.

SEC. 40024. LABOR STANDARDS.

Section 5333(b) of title 49, United States Code, is amended—

(1) in paragraph (1), by striking ''sections 5307-5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, and 5338(b)'' each place that term appears and inserting ''sections 5307, 5308, 5309, 5311, and 5337''; and

(2) in paragraph (5), by inserting ''of Labor'' after ''Secretary''.

SEC. 40025. ADMINISTRATIVE PROVISIONS.

Section 5334 of title 49, United States Code, is amended—

(1) in subsection (a)(1), by striking ''under sections 5307 and 5309-5311 of this title'' and inserting ''that receives Federal financial assistance under this chapter'';

(2) in subsection (b)(1)—

(A) by inserting after ''emergency,'' the following: ''or for purposes of establishing and enforcing a program to improve the safety of public transportation systems in the United States,''; and

(B) by striking ''chapter, nor may the Secretary'' and inserting ''chapter. The Secretary may not'';

(3) in subsection (c)(4), by striking ''section (except subsection (i)) and sections 5318(e), 5323(a)(2), 5325(a), 5325(b), and 5325(f)'' and inserting ''subsection'';

(4) in subsection (h)(3), by striking ''another'' and inserting ''any other'';

(5) in subsection (i)(1), by striking ''title 23 shall'' and inserting ''title 23 may'';

(6) by striking subsection (j); and

(7) by redesignating subsections (k) and (l) as subsections (j) and (k), respectively.

SEC. 40026. NATIONAL TRANSIT DATABASE.

Section 5335 of title 49, United States Code, is amended by adding at the end the following:

''(c) DATA REQUIRED TO BE REPORTED.—The recipient of a grant under this chapter shall report to the Secretary, for inclusion in the National Transit Database, any information relating to—

''(1) the causes of a reportable incident, as defined by the Secretary; and

''(2) a transit asset inventory or condition assessment conducted by the recipient.''.

SEC. 40027. APPORTIONMENT OF APPROPRIATIONS FOR FORMULA GRANTS.

Section 5336 of title 49, United States Code, is amended to read as follows:

''§ 5336. Apportionment of appropriations for formula grants

''(a) BASED ON URBANIZED AREA POPULATION.—Of the amount apportioned under subsection (h)(4) to carry out section 5307—

''(1) 9.32 percent shall be apportioned each fiscal year only in urbanized areas with a population of less than 200,000 so that each of those areas is entitled to receive an amount equal to—

''(A) 50 percent of the total amount apportioned multiplied by a ratio equal to the population of the area divided by the total population of all urbanized areas with populations of less than 200,000 as shown in the most recent decennial census; and

''(B) 50 percent of the total amount apportioned multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary, of the number of inhabitants in each square mile; and

''(2) 90.68 percent shall be apportioned each fiscal year only in urbanized areas with populations of at least 200,000 as provided in subsections (b) and (c) of this section.

''(b) BASED ON FIXED GUIDEWAY VEHICLE REVENUE MILES, DIRECTIONAL ROUTE MILES, AND PASSENGER MILES.—(1) In this subsection, 'fixed guideway vehicle revenue miles' and 'fixed guideway directional route miles' include passenger ferry operations directly or under contract by the designated recipient.

''(2) Of the amount apportioned under subsection (a)(2) of this section, 33.29 percent shall be apportioned as follows:

''(A) 95.61 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

''(i) 60 percent of the 95.61 percent apportioned under this subparagraph multiplied by a ratio equal to the number of fixed guideway vehicle revenue miles attributable to the area, as established by the Secretary, divided by the total number of all fixed guideway vehicle revenue miles attributable to all areas; and

''(ii) 40 percent of the 95.61 percent apportioned under this subparagraph multiplied by a ratio equal to the number of fixed guideway directional route miles attributable to the area, established by the Secretary, divided by the total number of all fixed guideway directional route miles attributable to all areas.

An urbanized area with a population of at least 750,000 in which commuter rail transportation is provided shall receive at least

.75 percent of the total amount apportioned under this subparagraph.

''(B) 4.39 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

''(i) the number of fixed guideway vehicle passenger miles traveled multiplied by the number of fixed guideway vehicle passenger miles traveled for each dollar of operating cost in an area; divided by

''(ii) the total number of fixed guideway vehicle passenger miles traveled multiplied by the total number of fixed guideway vehicle passenger miles traveled for each dollar of operating cost in all areas.

An urbanized area with a population of at least 750,000 in which commuter rail transportation is provided shall receive at least .75 percent of the total amount apportioned under this subparagraph.

''(C) Under subparagraph (A) of this paragraph, fixed guideway vehicle revenue or directional route miles, and passengers served on those miles, in an urbanized area with a population of less than 200,000, where the miles and passengers served otherwise would be attributable to an urbanized area with a population of at least 1,000,000 in an adjacent State, are attributable to the governmental authority in the State in which the urbanized area with a population of less than 200,000 is located. The authority is deemed an urbanized area with a population of at least 200,000 if the authority makes a contract for the service.

''(D) A recipient's apportionment under subparagraph (A)(i) of this paragraph may not be reduced if the recipient, after satisfying the Secretary that energy or operating efficiencies would be achieved, reduces vehicle revenue miles but provides the same frequency of revenue service to the same number of riders.

''(c) BASED ON BUS VEHICLE REVENUE MILES AND PASSENGER MILES.—Of the amount apportioned under subsection (a)(2) of this section, 66.71 percent shall be apportioned as follows:

''(1) 90.8 percent of the total amount apportioned under this subsection shall be apportioned as follows:

''(A) 73.39 percent of the 90.8 percent apportioned under this paragraph shall be apportioned so that each urbanized area with a population of at least 1,000,000 is entitled to receive an amount equal to—

''(i) 50 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio equal to the total bus vehicle revenue miles operated in or directly serving the urbanized area divided by the total bus vehicle revenue miles attributable to all areas;

''(ii) 25 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio equal to the population of the area divided by the total population of all areas, as shown in the most recent decennial census; and

''(iii) 25 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary, of the number of inhabitants in each square mile.

''(B) 26.61 percent of the 90.8 percent apportioned under this paragraph shall be apportioned so that each urbanized area with a population of at least 200,000 but not more than 999,999 is entitled to receive an amount equal to—

''(i) 50 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio equal to the total bus vehicle revenue miles operated in or directly serving the urbanized area divided by the total bus vehicle revenue miles attributable to all areas;

''(ii) 25 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio equal to the population of the area divided by the total population of all areas, as shown by the most recent decennial census; and

''(iii) 25 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary, of the number of inhabitants in each square mile.

''(2) 9.2 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

''(A) the number of bus passenger miles traveled multiplied by the number of bus passenger miles traveled for each dollar of operating cost in an area; divided by

''(B) the total number of bus passenger miles traveled multiplied by the total number of bus passenger miles traveled for each dollar of operating cost in all areas.

''(d) DATE OF APPORTIONMENT.—The Secretary shall—

''(1) apportion amounts appropriated under section 5338(a)(2)(C) of this title to carry out section 5307 of this title not later than the 10th day after the date the amounts are appropriated or October 1 of the fiscal year for which the amounts are appropriated, whichever is later; and

''(2) publish apportionments of the amounts, including amounts attributable to each urbanized area with a population of more than 50,000 and amounts attributable to each State of a multistate urbanized area, on the apportionment date.

''(e) AMOUNTS NOT APPORTIONED TO DESIGNATED RECIPIENTS.—The Governor of a State may expend in an urbanized area with a population of less than 200,000 an amount apportioned under this section that is not apportioned to a designated recipient, as defined in section 5302(4).

''(f) TRANSFERS OF APPORTIONMENTS.—(1) The Governor of a State may transfer any part of the State's apportionment under subsection (a)(1) of this section to supplement amounts apportioned to the State under section 5311(c)(3). The Governor may make a transfer only after consulting with responsible local officials and publicly owned operators of public transportation in each area for which the amount originally was apportioned under this section.

''(2) The Governor of a State may transfer any part of the State's apportionment under section 5311(c)(3) to supplement amounts apportioned to the State under subsection (a)(1) of this section.

''(3) The Governor of a State may use throughout the State amounts of a State's apportionment remaining available for obligation at the beginning of the 90-day period before the period of the availability of the amounts expires.

''(4) A designated recipient for an urbanized area with a population of at least 200,000 may transfer a part of its apportionment under this section to the Governor of a State. The Governor shall distribute the transferred amounts to urbanized areas under this section.

''(5) Capital and operating assistance limitations applicable to the original apportionment apply to amounts transferred under this subsection.

''(g) PERIOD OF AVAILABILITY TO RECIPIENTS.—An amount apportioned under this section may be obligated by the recipient for 5 years after the fiscal year in which the amount is apportioned. Not later than 30 days after the end of the 5-year period, an amount that is not obligated at the end of that period shall be added to the amount that may be apportioned under this section in the next fiscal year.

''(h) APPORTIONMENTS.—Of the amounts made available for each fiscal year under section 5338(a)(2)(C)—

''(1) $35,000,000 shall be set aside to carry out section 5307(i);

''(2) 3.07 percent shall be apportioned to urbanized areas in accordance with subsection (j);

''(3) of amounts not apportioned under paragraphs (1) and (2), 1 percent shall be apportioned to urbanized areas with populations of less than 200,000 in accordance with subsection (i); and

''(4) any amount not apportioned under paragraphs (1), (2), and (3) shall be apportioned to urbanized areas in accordance with subsections (a) through (c).

''(i) SMALL TRANSIT INTENSIVE CITIES FORMULA.—

''(1) DEFINITIONS.—In this subsection, the following definitions apply:

''(A) ELIGIBLE AREA.—The term 'eligible area' means an urbanized area with a population of less than 200,000 that meets or exceeds in one or more performance categories the industry average for all urbanized areas with a population of at least 200,000 but not more than 999,999, as determined by the Secretary in accordance with subsection (c)(2).

''(B) PERFORMANCE CATEGORY.—The term 'performance category' means each of the following:

''(i) Passenger miles traveled per vehicle revenue mile.

''(ii) Passenger miles traveled per vehicle revenue hour.

''(iii) Vehicle revenue miles per capita.

''(iv) Vehicle revenue hours per capita.

''(v) Passenger miles traveled per capita.

''(vi) Passengers per capita.

''(2) APPORTIONMENT.—

''(A) APPORTIONMENT FORMULA.—The amount to be apportioned under subsection (h)(3) shall be apportioned among eligible areas in the ratio that—

''(i) the number of performance categories for which each eligible area meets or exceeds the industry average in urbanized areas with a population of at least 200,000 but not more than 999,999; bears to

''(ii) the aggregate number of performance categories for which all eligible areas meet or exceed the industry average in urbanized areas with a population of at least 200,000 but not more than 999,999.

''(B) DATA USED IN FORMULA.—The Secretary shall calculate apportionments under this subsection for a fiscal year using data from the national transit database used to calculate apportionments for that fiscal year under this section.

''(j) APPORTIONMENT FORMULA.—The amounts apportioned under subsection (h)(2) shall be apportioned among urbanized areas as follows:

''(1) 75 percent of the funds shall be apportioned among designated recipients for urbanized areas with a population of 200,000 or more in the ratio that—

''(A) the number of eligible low-income individuals in each such urbanized area; bears to

''(B) the number of eligible low-income individuals in all such urbanized areas.

''(2) 25 percent of the funds shall be apportioned among designated recipients for urbanized areas with a population of less than 200,000 in the ratio that—

''(A) the number of eligible low-income individuals in each such urbanized area; bears to

''(B) the number of eligible low-income individuals in all such urbanized areas.''.

SEC. 40028. STATE OF GOOD REPAIR GRANTS.

Section 5337 of title 49, United States Code, is amended to read as follows:

"§ 5337. State of good repair grants

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) FIXED GUIDEWAY.—The term 'fixed guideway' means a public transportation facility—

''(A) using and occupying a separate right-of-way for the exclusive use of public transportation;

''(B) using rail;

''(C) using a fixed catenary system;

''(D) for a passenger ferry system; or

''(E) for a bus rapid transit system.

''(2) STATE.—The term 'State' means the 50 States, the District of Columbia, and Puerto Rico.

''(3) STATE OF GOOD REPAIR.—The term 'state of good repair' has the meaning given that term by the Secretary, by rule, under section 5326(b).

''(4) TRANSIT ASSET MANAGEMENT PLAN.—The term 'transit asset management plan' means a plan developed by a recipient of funding under this chapter that—

''(A) includes, at a minimum, capital asset inventories and condition assessments, decision support tools, and investment prioritization; and

''(B) the recipient certifies that the recipient complies with the rule issued under section 5326(d).

''(b) GENERAL AUTHORITY.—

''(1) ELIGIBLE PROJECTS.—The Secretary may make grants under this section to assist State and local governmental authorities in financing capital projects to maintain public transportation systems in a state of good repair, including projects to replace and rehabilitate—

''(A) rolling stock;

''(B) track;

''(C) line equipment and structures;

''(D) signals and communications;

''(E) power equipment and substations;

''(F) passenger stations and terminals;

''(G) security equipment and systems;

''(H) maintenance facilities and equipment;

''(I) operational support equipment, including computer hardware and software;

''(J) development and implementation of a transit asset management plan; and

''(K) other replacement and rehabilitation projects the Secretary determines appropriate.

''(2) INCLUSION IN PLAN.—A recipient shall include a project carried out under paragraph (1) in the transit asset management plan of the recipient upon completion of the plan.

''(c) HIGH INTENSITY FIXED GUIDEWAY STATE OF GOOD REPAIR FORMULA.—

''(1) IN GENERAL.—Of the amount authorized or made available under section 5338(a)(2)(M), $1,874,763,500 shall be apportioned to recipients in accordance with this subsection.

''(2) AREA SHARE.—

''(A) IN GENERAL.—50 percent of the amount described in paragraph (1) shall be apportioned for fixed guideway systems in accordance with this paragraph.

''(B) SHARE.—A recipient shall receive an amount equal to the amount described in subparagraph (A), multiplied by the amount the recipient would have received under this section, as in effect for fiscal year 2011, if the amount had been calculated in accordance with section 5336(b)(1) and using the definition of the term 'fixed guideway' under subsection (a) of this section, as such sections are in effect on the day after the date of enactment of the Federal Public Transportation Act of 2012, and divided by the total amount apportioned for all areas under this section for fiscal year 2011.

''(C) RECIPIENT.—For purposes of this paragraph, the term 'recipient' means an entity that received funding under this section, as in effect for fiscal year 2011.

''(3) VEHICLE REVENUE MILES AND DIRECTIONAL ROUTE MILES.—

''(A) IN GENERAL.—50 percent of the amount described in paragraph (1) shall be apportioned to recipients in accordance with this paragraph.

''(B) VEHICLE REVENUE MILES.—A recipient in an urbanized area shall receive an amount equal to 60 percent of the amount described in subparagraph (A), multiplied by the number of fixed guideway vehicle revenue miles attributable to the urbanized area, as established by the Secretary, divided by the total number of all fixed guideway vehicle revenue miles attributable to all urbanized areas.

''(C) DIRECTIONAL ROUTE MILES.—A recipient in an urbanized area shall receive an amount equal to 40 percent of the amount described in subparagraph (A), multiplied by the number of fixed guideway directional route miles attributable to the urbanized area, as established by the Secretary, divided by the total number of all fixed guideway directional route miles attributable to all urbanized areas.

''(4) LIMITATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the share of the total amount apportioned under this section that is apportioned to an area under this subsection shall not decrease by more than 0.25 percentage points compared to the share apportioned to the area under this subsection in the previous fiscal year.

''(B) SPECIAL RULE FOR FISCAL YEAR 2012.—In fiscal year 2012, the share of the total amount apportioned under this section that is apportioned to an area under this subsection shall not decrease by more than 0.25 percentage points compared to the share that would have been apportioned to the area under this section, as in effect for fiscal year 2011, if the share had been calculated using the definition of the term 'fixed guideway' under subsection (a) of this section, as in effect on the day after the date of enactment of the Federal Public Transportation Act of 2012.

''(5) USE OF FUNDS.—Amounts made available under this subsection shall be available for the exclusive use of fixed guideway projects.

''(6) RECEIVING APPORTIONMENT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), for an area with a fixed guideway system, the amounts provided under this section shall be apportioned to the designated recipient for the urbanized area in which the system operates.

''(B) EXCEPTION.—An area described in the amendment made by section 3028(a) of the Transportation Equity Act for the 21st Century (Public Law 105–178; 112 Stat. 366) shall receive an individual apportionment under this subsection.

''(7) APPORTIONMENT REQUIREMENTS.—For purposes of determining the number of fixed guideway vehicle revenue miles or fixed guideway directional route miles attributable to an urbanized area for a fiscal year under this subsection, only segments of fixed guideway systems placed in revenue service not later than 7 years before the first day of the fiscal year shall be deemed to be attributable to an urbanized area.

''(d) FIXED GUIDEWAY STATE OF GOOD REPAIR GRANT PROGRAM.—

''(1) IN GENERAL.—The Secretary may make grants under this section to assist State and local governmental authorities in financing fixed guideway capital projects to maintain public transportation systems in a state of good repair.

''(2) COMPETITIVE PROCESS.—The Secretary shall solicit grant applications and make grants for eligible projects on a competitive basis.

''(3) PRIORITY CONSIDERATION.—In making grants under this subsection, the Secretary shall give priority to grant applications received from recipients receiving an amount under this section that is not less than 2 percent less than the amount the recipient would have received under this section, as in effect for fiscal year 2011, if the amount had been calculated using the definition of the term 'fixed guideway' under subsection (a) of this section, as in effect on the day after the date of enactment of the Federal Public Transportation Act of 2012.

''(e) HIGH INTENSITY MOTORBUS STATE OF GOOD REPAIR.—

''(1) DEFINITION.—For purposes of this subsection, the term 'fixed guideway motorbus' means public transportation that is provided on a facility with access for other high-occupancy vehicles.

''(2) APPORTIONMENT.—Of the amount authorized or made available under section 5338(a)(2)(M), $112,500,000 shall be apportioned to urbanized areas for high intensity motorbus state of good repair in accordance with this subsection.

''(3) VEHICLE REVENUE MILES AND DIRECTIONAL ROUTE MILES.—

''(A) IN GENERAL.—$60,000,000 of the amount described in paragraph (2) shall be apportioned to each area in accordance with this paragraph.

''(B) VEHICLE REVENUE MILES.—Each area shall receive an amount equal to 60 percent of the amount described in subparagraph (A), multiplied by the number of fixed guideway motorbus vehicle revenue miles attributable to the area, as established by the Secretary, divided by the total number of all fixed guideway motorbus vehicle revenue miles attributable to all areas.

''(C) DIRECTIONAL ROUTE MILES.—Each area shall receive an amount equal to 40 percent of the amount described in subparagraph (A), multiplied by the number of fixed guideway motorbus directional route miles attributable to the area, as established by the Secretary, divided by the total number of all fixed guideway motorbus directional route miles attributable to all areas.

''(4) SPECIAL RULE FOR FIXED GUIDEWAY MOTORBUS.—

''(A) IN GENERAL.—$52,500,000 of the amount described in paragraph (2) shall be apportioned—

''(i) in accordance with this paragraph; and

''(ii) among urbanized areas within a State in the same proportion as funds are apportioned within a State under section 5336, except subsection (b), and shall be added to such amounts.

''(B) TERRITORIES.—Of the amount described in subparagraph (A), $500,000 shall be distributed among the territories, as determined by the Secretary.

''(C) STATES.—Of the amount described in subparagraph (A), each State shall receive $1,000,000.

''(5) USE OF FUNDS.—A recipient may transfer any part of the apportionment under this subsection for use under subsection (c).

''(6) APPORTIONMENT REQUIREMENTS.—For purposes of determining the number of fixed guideway motorbus vehicle revenue miles or fixed guideway motorbus directional route miles attributable to an urbanized area for a fiscal year under this subsection, only segments of fixed guideway motorbus systems placed in revenue service not later than 7 years before the first day of the fiscal year shall be deemed to be attributable to an urbanized area.''.

SEC. 40029. AUTHORIZATIONS.

Section 5338 of title 49, United States Code, is amended to read as follows:

"§ 5338. Authorizations

''(a) FORMULA GRANTS.—

''(1) IN GENERAL.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5305, 5307, 5308, 5310, 5311, 5312, 5313, 5314, 5315, 5322, 5335, and 5340, subsections (c) and (e) of section 5337, and section 40005(b) of the Federal Public Transportation Act of 2012, $8,360,565,000 for each of fiscal years 2012 and 2013.

''(2) ALLOCATION OF FUNDS.—Of the amounts made available under paragraph (1)—

''(A) $124,850,000 for each of fiscal years 2012 and 2013 shall be available to carry out section 5305;

''(B) $20,000,000 for each of fiscal years 2012 and 2013 shall be available to carry out section 40005(b) of the Federal Public Transportation Act of 2012;

''(C) $4,756,161,500 for each of fiscal years 2012 and 2013 shall be allocated in accordance with section 5336 to provide financial assistance for urbanized areas under section 5307;

''(D) $65,150,000 for each of fiscal years 2012 and 2013 shall be available to carry out section 5308, of which not less than $8,500,000 shall be used to carry out activities under section 5312;

''(E) $248,600,000 for each of fiscal years 2012 and 2013 shall be available to provide financial assistance for services for the enhanced mobility of seniors and individuals with disabilities under section 5310;

''(F) $591,190,000 for each of fiscal years 2012 and 2013 shall be available to provide financial assistance for other than urbanized areas under section 5311, of which not less than $30,000,000 shall be available to carry out section 5311(c)(1) and $20,000,000 shall be available to carry out section 5311(c)(2);

''(G) $34,000,000 for each of fiscal years 2012 and 2013 shall be available to carry out research, development, demonstration, and deployment projects under section 5312;

''(H) $6,500,000 for each of fiscal years 2012 and 2013 shall be available to carry out a transit cooperative research program under section 5313;

''(I) $4,500,000 for each of fiscal years 2012 and 2013 shall be available for technical assistance and standards development under section 5314;

''(J) $5,000,000 for each of fiscal years 2012 and 2013 shall be available for the National Transit Institute under section 5315;

''(K) $2,000,000 for each of fiscal years 2012 and 2013 shall be available for workforce development and human resource grants under section 5322;

''(L) $3,850,000 for each of fiscal years 2012 and 2013 shall be available to carry out section 5335;

''(M) $1,987,263,500 for each of fiscal years 2012 and 2013 shall be available to carry out subsections (c) and (e) of section 5337; and

''(N) $511,500,000 for each of fiscal years 2012 and 2013 shall be allocated in accordance with section 5340 to provide financial assistance for urbanized areas under section 5307 and other than urbanized areas under section 5311.

''(b) EMERGENCY RELIEF PROGRAM.—There are authorized to be appropriated such sums as are necessary to carry out section 5306.

''(c) CAPITAL INVESTMENT GRANTS.—There are authorized to be appropriated to carry out section 5309, $1,955,000,000 for each of fiscal years 2012 and 2013.

''(d) PAUL S. SARBANES TRANSIT IN THE PARKS.—There are authorized to be appropriated to carry out section 5320, $26,900,000 for each of fiscal years 2012 and 2013.

''(e) FIXED GUIDEWAY STATE OF GOOD REPAIR GRANT PROGRAM.—There are authorized to be appropriated to carry out section 5337(d), $7,463,000 for each of fiscal years 2012 and 2013.

''(f) ADMINISTRATION.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out section 5334, $108,350,000 for each of fiscal years 2012 and 2013.

''(2) SECTION 5329.—Of the amounts authorized to be appropriated under paragraph (1), not less than $10,000,000 shall be available to carry out section 5329.

''(3) SECTION 5326.—Of the amounts made available under paragraph (2), not less than $1,000,000 shall be available to carry out section 5326.

''(g) OVERSIGHT.—

''(1) IN GENERAL.—Of the amounts made available to carry out this chapter for a fiscal year, the Secretary may use not more than the following amounts for the activities described in paragraph (2):

''(A) 0.5 percent of amounts made available to carry out section 5305.

''(B) 0.75 percent of amounts made available to carry out section 5307.

''(C) 1 percent of amounts made available to carry out section 5309.

''(D) 1 percent of amounts made available to carry out section 601 of the Passenger Rail Investment and Improvement Act of 2008 (Public Law 110–432; 126 Stat. 4968).

''(E) 0.5 percent of amounts made available to carry out section 5310.

''(F) 0.5 percent of amounts made available to carry out section 5311.

''(G) 0.5 percent of amounts made available to carry out section 5320.

''(H) 0.75 percent of amounts made available to carry out section 5337(c).

''(2) ACTIVITIES.—The activities described in this paragraph are as follows:

''(A) Activities to oversee the construction of a major capital project.

''(B) Activities to review and audit the safety and security, procurement, management, and financial compliance of a recipient or subrecipient of funds under this chapter.

''(C) Activities to provide technical assistance generally, and to provide technical assistance to correct deficiencies identified in compliance reviews and audits carried out under this section.

''(3) GOVERNMENT SHARE OF COSTS.—The Government shall pay the entire cost of carrying out a contract under this subsection.

''(4) AVAILABILITY OF CERTAIN FUNDS.—Funds made available under paragraph (1)(C) shall be made available to the Secretary before allocating the funds appropriated to carry out any project under a full funding grant agreement.

''(h) GRANTS AS CONTRACTUAL OBLIGATIONS.—

''(1) GRANTS FINANCED FROM HIGHWAY TRUST FUND.—A grant or contract that is approved by the Secretary and financed with amounts made available from the Mass Transit Account of the Highway Trust Fund pursuant to this section is a contractual obligation of the Government to pay the Government share of the cost of the project.

''(2) GRANTS FINANCED FROM GENERAL FUND.—A grant or contract that is approved by the Secretary and financed with amounts appropriated in advance from the General Fund of the Treasury pursuant to this section is a contractual obligation of the Government to pay the Government share of the cost of the project only to the extent that amounts are appropriated for such purpose by an Act of Congress.

''(i) AVAILABILITY OF AMOUNTS.—Amounts made available by or appropriated under this section shall remain available until expended.''.

SEC. 40030. APPORTIONMENTS BASED ON GROWING STATES AND HIGH DENSITY STATES FORMULA FACTORS.

Section 5340 of title 49, United States Code, is amended to read as follows:

"§ 5340. Apportionments based on growing States and high density States formula factors

''(a) DEFINITION.—In this section, the term 'State' shall mean each of the 50 States of the United States.

''(b) ALLOCATION.—Of the amounts made available for each fiscal year under section 5338(a)(2)(N), the Secretary shall apportion—

''(1) 50 percent to States and urbanized areas in accordance with subsection (c); and

''(2) 50 percent to States and urbanized areas in accordance with subsection (d).

''(c) GROWING STATE APPORTIONMENTS.—

''(1) APPORTIONMENT AMONG STATES.—The amounts apportioned under subsection (b)(1) shall provide each State with an amount equal to the total amount apportioned multiplied by a ratio equal to the population of that State forecast for the year that is 15 years after the most recent decennial census, divided by the total population of all States forecast for the year that is 15 years after the most recent decennial census. Such forecast shall be based on the population trend for each State between the most recent decennial census and the most recent estimate of population made by the Secretary of Commerce.

''(2) APPORTIONMENTS BETWEEN URBANIZED AREAS AND OTHER THAN URBANIZED AREAS IN EACH STATE.—

''(A) IN GENERAL.—The Secretary shall apportion amounts to each State under paragraph (1) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the forecast population of all urbanized areas in that State divided by the total forecast population of that State. In making the apportionment under this subparagraph, the Secretary shall utilize any available forecasts made by the State. If no forecasts are available, the Secretary shall utilize data on urbanized areas and total population from the most recent decennial census.

''(B) REMAINING AMOUNTS.—Amounts remaining for each State after apportionment under subparagraph (A) shall be apportioned to that State and added to the amount made available for grants under section 5311.

''(3) APPORTIONMENTS AMONG URBANIZED AREAS IN EACH STATE.—The Secretary shall apportion amounts made available to urbanized areas in each State under paragraph (2)(A) so that each urbanized area receives an amount equal to the amount apportioned under paragraph (2)(A) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336, and made available for grants under section 5307.

''(d) HIGH DENSITY STATE APPORTIONMENTS.—Amounts to be apportioned under subsection (b)(2) shall be apportioned as follows:

''(1) ELIGIBLE STATES.—The Secretary shall designate as eligible for an apportionment under this subsection all States with a population density in excess of 370 persons per square mile.

''(2) STATE URBANIZED LAND FACTOR.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to—

''(A) the total land area of the State (in square miles); multiplied by

''(B) 370; multiplied by

''(C)(i) the population of the State in urbanized areas; divided by

''(ii) the total population of the State.

''(3) STATE APPORTIONMENT FACTOR.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to the difference between the total population of the State less the amount calculated in paragraph (2).

''(4) STATE APPORTIONMENT.—Each State qualifying for an apportionment under paragraph (1) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for the State under paragraph (3) divided by the sum of the amounts calculated under paragraph (3) for all States qualifying for an apportionment under paragraph (1).

''(5) APPORTIONMENTS AMONG URBANIZED AREAS IN EACH STATE.—The Secretary shall apportion amounts made available to each State under paragraph (4) so that each urbanized area receives an amount equal to the amount apportioned under paragraph (4) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. For multistate urbanized areas, the Secretary shall suballocate funds made available under paragraph (4) to each State's part of the multistate urbanized area in proportion to the State's share of population of the multistate urbanized area. Amounts apportioned to each urbanized area shall be made available for grants under section 5307.''.

SEC. 40031. TECHNICAL AND CONFORMING AMENDMENTS.

(a) SECTION 5305.—Section 5305 of title 49, United States Code, is amended—

(1) in subsection (c), by striking ''sections 5303, 5304, and 5306'' and inserting ''sections 5303 and 5304'';

(2) in subsection (d), by striking ''sections 5303 and 5306'' each place that term appears and inserting ''section 5303'';

(3) in subsection (e)(1)(A), by striking ''sections 5304, 5306, 5315, and 5322'' and inserting ''section 5304'';

(4) in subsection (f)—

(A) in the heading, by striking ''GOVERNMENT'S'' and inserting ''GOVERNMENT''; and

(B) by striking ''Government's'' and inserting ''Government''; and

(5) in subsection (g), by striking ''section 5338(c) for fiscal years 2005 through 2011 and for the period beginning on October 1, 2011, and ending on March 31, 2012'' and inserting ''section 5338(a)(2)(A) for a fiscal year''.

(b) SECTION 5313.—Section 5313(a) of title 49, United States Code, is amended—

(1) in the first sentence, by striking ''subsections (a)(5)(C)(iii) and (d)(1) of section 5338'' and inserting section ''5338(a)(2)(H)''; and

(2) in the second sentence, by striking ''of Transportation''.

(c) SECTION 5319.—Section 5319 of title 49, United States Code, is amended, in the second sentence—

(1) by striking ''sections 5307(e), 5309(h), and 5311(g) of this title'' and inserting ''sections 5307(e), 5309(k), and 5311(h)''; and

(2) by striking ''of the United States'' and inserting ''made by the''.

(d) SECTION 5325.—Section 5325 of title 49, United States Code, is amended—

(1) in subsection (b)(2)(A), by striking ''title 48, Code of Federal Regulations (commonly known as the Federal Acquisition Regulation)'' and inserting ''the Federal Acquisition Regulation, or any successor thereto''; and

(2) in subsection (e), by striking ''Government financial assistance'' and inserting ''Federal financial assistance''.

(e) SECTION 5330.—Effective 3 years after the effective date of the final rules issued by the Secretary of Transportation under section 5329(e) of title 49, United States Code, as amended by this division, section 5330 of title 49, United States Code, is repealed.

(f) SECTION 5331.—Section 5331 of title 49, United States Code, is amended by striking ''Secretary of Transportation'' each place that term appears and inserting ''Secretary''.

(g) SECTION 5332.—Section 5332(c)(1) of title 49, United States Code, is amended by striking ''of Transportation''.

(h) SECTION 5333.—Section 5333(a) of title 49, United States Code, is amended by striking ''sections 3141-3144'' and inserting ''sections 3141 through 3144''.

(i) SECTION 5334.—Section 5334 of title 49, United States Code, is amended—

(1) in subsection (c)—

(A) by striking ''Secretary of Transportation'' each place that term appears and inserting ''Secretary''; and

(B) in paragraph (1), by striking ''Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate'' and inserting ''Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives'';

(2) in subsection (d), by striking ''of Transportation'';

(3) in subsection (e), by striking ''of Transportation'';

(4) in subsection (f), by striking ''of Transportation'';

(5) in subsection (g), in the matter preceding paragraph (1)—

(A) by striking ''of Transportation''; and

(B) by striking ''subsection (a)(3) or (4) of this section'' and inserting ''paragraph (3) or (4) of subsection (a)'';

(6) in subsection (h)—

(A) in paragraph (1), in the matter preceding subparagraph (A), by striking ''of Transportation''; and

(B) in paragraph (2), by striking ''of this section'';

(7) in subsection (i)(1), by striking ''of Transportation''; and

(8) in subsection (j), as so redesignated by section 40025 of this division, by striking ''Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate and Committees on Transportation and Infrastructure and Appropriations of the House of Representatives'' and inserting ''Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives''.

(j) SECTION 5335.—Section 5335(a) of title 49, United States Code, is amended by striking ''of Transportation''.

(k) TABLE OF SECTIONS.—The table of sections for chapter 53 of title 49, United States Code, is amended to read as follows:

''Sec.
''5301. Policies, purposes, and goals.
''5302. Definitions.
''5303. Metropolitan transportation planning.
''5304. Statewide and nonmetropolitan transportation planning.
''5305. Planning programs.
''5306. Public transportation emergency relief program.
''5307. Urbanized area formula grants.
''5308. Clean fuel grant program.
''5309. Fixed guideway capital investment grants.
''5310. Formula grants for the enhanced mobility of seniors and individuals with disabilities.
''5311. Formula grants for other than urbanized areas.
''5312. Research, development, demonstration, and deployment projects.
''5313. Transit cooperative research program.
''5314. Technical assistance and standards development.
''5315. National Transit Institute.
''[5316. Repealed.]
''[5317. Repealed.]
''5318. Bus testing facilities.
''5319. Bicycle facilities.
''5320. Alternative transportation in parks and public lands.
''[5321. Repealed.]
''5322. Public transportation workforce development and human resource programs.
''5323. General provisions.
''[5324. Repealed.]
''5325. Contract requirements.
''5326. Transit asset management.
''5327. Project management oversight.
''[5328. Repealed.]
''5329. Public transportation safety program.
''5330. State safety oversight.
''5331. Alcohol and controlled substances testing.
''5332. Nondiscrimination.
''5333. Labor standards.
''5334. Administrative provisions.
''5335. National transit database.
''5336. Apportionment of appropriations for formula grants.
''5337. State of good repair grants.
''5338. Authorizations.
''[5339. Repealed.]
''5340. Apportionments based on growing States and high density States formula factors.''.

SA 1516. Mr. MCCAIN (for himself, Mr. CARPER, Mr. COATS, and Mr. UDALL of Colorado) submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. REDUCE UNNECESSARY SPENDING ACT OF 2012.

(a) SHORT TITLE AND PURPOSES.—

(1) SHORT TITLE.—This section may be cited as the ''Reduce Unnecessary Spending Act of 2012''.

(2) PURPOSE.—The purpose of this section is to create an optional fast-track procedure the President may use when submitting rescission requests, which would lead to an up-or-down vote by Congress on the President's package of rescissions, without amendment.

(b) RESCISSIONS OF FUNDING.—The Impoundment Control Act of 1974 is amended by striking part C and inserting the following:

''PART C—EXPEDITED CONSIDERATION OF PROPOSED RESCISSIONS

''SEC. 1021. APPLICABILITY AND DISCLAIMER.

''The rules, procedures, requirements, and definitions in this part apply only to executive and legislative actions explicitly taken under this part. They do not apply to actions taken under part B or to other executive and legislative actions not taken under this part.

''SEC. 1022. DEFINITIONS.

''In this part:

''(1) The terms 'appropriations Act', 'budget authority', and 'new budget authority' have the same meanings as in section 3 of the Congressional Budget Act of 1974.

''(2) The terms 'account', 'current year', 'CBO', and 'OMB' have the same meanings as in section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985 as in effect on September 30, 2002.

''(3) The term 'days of session' shall be calculated by excluding weekends and national holidays. Any day during which a chamber of Congress is not in session shall not be counted as a day of session of that chamber. Any day during which neither chamber is in session shall not be counted as a day of session of Congress.

''(4) The term 'entitlement law' means the statutory mandate or requirement of the United States to incur a financial obligation unless that obligation is explicitly conditioned on the appropriation in subsequent legislation of sufficient funds for that purpose, and the Supplemental Nutrition Assistance Program.

''(5) The term 'funding' refers to new budget authority and obligation limits except to the extent that the funding is provided for entitlement law.

''(6) The term 'rescind' means to eliminate or reduce the amount of enacted funding.

''(7) The terms 'withhold' and 'withholding' apply to any executive action or inaction that precludes the obligation of funding at a time when it would otherwise have been available to an agency for obligation. The terms do not include administrative or preparatory actions undertaken prior to obligation in the normal course of implementing budget laws.

''SEC. 1023. TIMING AND PACKAGING OF RESCISSION REQUESTS.

''(a) TIMING.—If the President proposes that Congress rescind funding under the procedures in this part, OMB shall transmit a message to Congress containing the information specified in section 1024, and the message transmitting the proposal shall be sent to Congress not later than 45 calendar days after the date of enactment of the funding.

''(b) PACKAGING AND TRANSMITTAL OF REQUESTED RESCISSIONS.—Except as provided in subsection (c), for each piece of legislation that provides funding, the President shall request at most 1 package of rescissions and the rescissions in that package shall apply only to funding contained in that legislation. OMB shall deliver each message requesting a package of rescissions to the Secretary of the Senate if the Senate is not in session and to the Clerk of the House of Representatives if the House is not in session. OMB shall make a copy of the transmittal message publicly available, and shall publish in the Federal Register a notice of the message and information on how it can be obtained.

''(c) SPECIAL PACKAGING RULES.—After enactment of—

''(1) a joint resolution making continuing appropriations;

''(2) a supplemental appropriations bill; or

''(3) an omnibus appropriations bill;

covering some or all of the activities customarily funded in more than 1 regular appropriations bill, the President may propose as many as 2 packages rescinding funding contained in that legislation, each within the 45-day period specified in subsection (a). OMB shall not include the same rescission in both packages, and, if the President requests the rescission of more than one discrete amount of funding under the jurisdiction of a single subcommittee, OMB shall include each of those discrete amounts in the same package.

''SEC. 1024. REQUESTS TO RESCIND FUNDING.

''For each request to rescind funding under this part, the transmittal message shall—

''(1) specify—

''(A) the dollar amount to be rescinded;

''(B) the agency, bureau, and account from which the rescission shall occur;

''(C) the program, project, or activity within the account (if applicable) from which the rescission shall occur;

''(D) the amount of funding, if any, that would remain for the account, program, project, or activity if the rescission request is enacted; and

''(E) the reasons the President requests the rescission;

''(2) designate each separate rescission request by number; and

''(3) include proposed legislative language to accomplish the requested rescissions which may not include—

''(A) any changes in existing law, other than the rescission of funding; or

''(B) any supplemental appropriations, transfers, or reprogrammings.

''SEC. 1025. GRANTS OF AND LIMITATIONS ON PRESIDENTIAL AUTHORITY.

''(a) PRESIDENTIAL AUTHORITY TO WITHHOLD FUNDING.—Notwithstanding any other provision of law and if the President proposes a rescission of funding under this part, OMB may, subject to the time limits provided in subsection (c), temporarily withhold that funding from obligation.

''(b) EXPEDITED PROCEDURES AVAILABLE ONLY ONCE PER BILL.—The President may not invoke the procedures of this part, or the authority to withhold funding granted by subsection (a), on more than 1 occasion for any Act providing funding.

''(c) TIME LIMITS.—OMB shall make available for obligation any funding withheld under subsection (a) on the earliest of—

''(1) the day on which the President determines that the continued withholding or reduction no longer advances the purpose of legislative consideration of the rescission request;

''(2) starting from the day on which OMB transmitted a message to Congress requesting the rescission of funding, 25 calendar days in which the House of Representatives has been in session or 25 calendar days in which the Senate has been in session, whichever occurs second; or

''(3) the last day after which the obligation of the funding in question can no longer be fully accomplished in a prudent manner before its expiration.

''(d) DEFICIT REDUCTION.—

''(1) IN GENERAL.—Funds that are rescinded under this part shall be dedicated only to reducing the deficit or increasing the surplus.

''(2) ADJUSTMENT OF LEVELS IN THE CONCURRENT RESOLUTION ON THE BUDGET.—Not later than 5 days after the date of enactment of an approval bill as provided under this part, the chairs of the Committees on the Budget of the Senate and the House of Representatives shall revise allocations and aggregates and other appropriate levels under the appropriate concurrent resolution on the budget to reflect the repeal or cancellation, and the applicable committees shall report revised suballocations pursuant to section 302(b), as appropriate.

''SEC. 1026. CONGRESSIONAL CONSIDERATION OF RESCISSION REQUESTS.

''(a) PREPARATION OF LEGISLATION TO CONSIDER A PACKAGE OF EXPEDITED RESCISSION REQUESTS.—

''(1) IN GENERAL.—If the House of Representatives receives a package of expedited rescission requests, the Clerk shall prepare a House bill that only rescinds the amounts requested which shall read as follows:

'' 'There are enacted the rescissions numbered [insert number or numbers] as set forth in the Presidential message of [insert date] transmitted under part C of the Impoundment Control Act of 1974 as amended.'

''(2) EXCLUSION PROCEDURE.—The Clerk shall include in the bill each numbered rescission request listed in the Presidential package in question, except that the Clerk shall omit a numbered rescission request if the Chairman of the Committee on the Budget of the House, after consulting with the Chairman of the Committee on the Budget of the Senate, CBO, GAO, and the House and Senate committees that have jurisdiction over the funding, determines that the numbered rescission does not refer to funding or includes matter not permitted under a request to rescind funding.

''(b) INTRODUCTION AND REFERRAL OF LEGISLATION TO ENACT A PACKAGE OF EXPEDITED RESCISSIONS.—The majority leader or the minority leader of the House or Representatives, or a designee, shall (by request) introduce each bill prepared under subsection (a) not later than 4 days of session of the House after its transmittal, or, if no such bill is introduced within that period, any member of the House may introduce the required bill in the required form on the fifth or sixth day of session of the House after its transmittal. If such an expedited rescission bill is introduced in accordance with the preceding sentence, it shall be referred to the House committee of jurisdiction. A copy of the introduced House bill shall be transmitted to the Secretary of the Senate, who shall provide it to the Senate committee of jurisdiction.

''(c) HOUSE REPORT AND CONSIDERATION OF LEGISLATION TO ENACT A PACKAGE OF EXPEDITED RESCISSIONS.—The House committee of jurisdiction shall report without amendment the bill referred to it under subsection (b) not more than 5 days of session of the House after the referral. The committee may order the bill reported favorably, unfavorably, or without recommendation. If the committee has not reported the bill by the end of the 5-day period, the committee shall be automatically discharged from further consideration of the bill and it shall be placed on the appropriate calendar.

''(d) HOUSE MOTION TO PROCEED.—

''(1) IN GENERAL.—After a bill to enact an expedited rescission package has been reported or the committee of jurisdiction has been discharged under subsection (c), it shall be in order to move to proceed to consider the bill in the House. A Member who wishes to move to proceed to consideration of the bill shall announce that fact, and the motion to proceed shall be in order only during a time designated by the Speaker within the legislative schedule for the next calendar day of legislative session or the one immediately following it.

''(2) FAILURE TO SET TIME.—If the Speaker does not designate a time under paragraph (1), 3 or more calendar days of legislative session after the bill has been reported or discharged, it shall be in order for any Member to move to proceed to consider the bill.

''(3) PROCEDURE.—A motion to proceed under this subsection shall not be in order after the House has disposed of a prior motion to proceed with respect to that package of expedited rescissions. The previous question shall be considered as ordered on the motion to proceed, without intervening motion. A motion to reconsider the vote by which the motion to proceed has been disposed of shall not be in order.

''(4) REMOVAL FROM CALENDAR.—If 5 calendar days of legislative session have passed since the bill was reported or discharged under this subsection and no Member has made a motion to proceed, the bill shall be removed from the calendar.

''(e) HOUSE CONSIDERATION.—

''(1) CONSIDERED AS READ.—A bill consisting of a package of rescissions under this part shall be considered as read.

''(2) POINTS OF ORDER.—All points of order against the bill are waived, except that a point of order may be made that 1 or more numbered rescissions included in the bill

would enact language containing matter not requested by the President or not permitted under this part as part of that package. If the Presiding Officer sustains such a point of order, the numbered rescission or rescissions that would enact such language are deemed to be automatically stripped from the bill and consideration proceeds on the bill as modified.

''(3) PREVIOUS QUESTION.—The previous question shall be considered as ordered on the bill to its passage without intervening motion, except that 4 hours of debate equally divided and controlled by a proponent and an opponent are allowed, as well as 1 motion to further limit debate on the bill.

''(4) MOTION TO RECONSIDER.—A motion to reconsider the vote on passage of the bill shall not be in order.

''(f) SENATE CONSIDERATION.—

''(1) REFERRAL.—If the House of Representatives approves a House bill enacting a package of rescissions, that bill as passed by the House shall be sent to the Senate and referred to the Senate committee of jurisdiction.

''(2) COMMITTEE ACTION.—The committee of jurisdiction shall report without amendment the bill referred to it under this subsection not later than 3 days of session of the Senate after the referral. The committee may order the bill reported favorably, unfavorably, or without recommendation.

''(3) DISCHARGE.—If the committee has not reported the bill by the end of the 3-day period, the committee shall be automatically discharged from further consideration of the bill and it shall be placed on the appropriate calendar.

''(4) MOTION TO PROCEED.—On the following day and for 3 subsequent calendar days in which the Senate is in session, it shall be in order for any Senator to move to proceed to consider the bill in the Senate. Upon such a motion being made, it shall be deemed to have been agreed to and the motion to reconsider shall be deemed to have been laid on the table.

''(5) DEBATE.—Debate on the bill in the Senate under this subsection, and all debatable motions and appeals in connection therewith, shall not exceed 10 hours, equally divided and controlled in the usual form. Debate in the Senate on any debatable motion or appeal in connection with such a bill shall be limited to not more than 1 hour, to be equally divided and controlled in the usual form. A motion to further limit debate on such a bill is not debatable.

''(6) MOTIONS NOT IN ORDER.—A motion to amend such a bill or strike a provision from it is not in order. A motion to recommit such a bill is not in order.

''(g) SENATE POINT OF ORDER.—It shall not be in order under this part for the Senate to consider a bill approved by the House enacting a package of rescissions under this part if any numbered rescission in the bill would enact matter not requested by the President or not permitted under this Act as part of that package. If a point of order under this subsection is sustained, the bill may not be considered under this part.''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TABLE OF CONTENTS.—Section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by striking the matter for part C of title X and inserting the following:

''PART C—EXPEDITED CONSIDERATION OF PROPOSED RESCISSIONS

''Sec. 1021. Applicability and disclaimer.
''Sec. 1022. Definitions.
''Sec. 1023. Timing and packaging of rescission requests.
''Sec. 1024. Requests to rescind funding.
''Sec. 1025. Grants of and limitations on presidential authority.
''Sec. 1026. Congressional consideration of rescission requests.''.

(2) TEMPORARY WITHHOLDING.—Section 1013(c) of the Impoundment Control Act of 1974 is amended by striking ''section 1012'' and inserting ''section 1012 or section 1025''.

(3) RULEMAKING.—

(A) 904(a).—Section 904(a) of the Congressional Budget Act of 1974 is amended by striking ''and 1017'' and inserting ''1017, and 1026''.

(B) 904(d)(1).—Section 904(d)(1) of the Congressional Budget Act of 1974 is amended by striking ''1017'' and inserting ''1017 or 1026''.

(d) AMENDMENTS TO PART A OF THE IMPOUNDMENT CONTROL ACT.—

(1) IN GENERAL.—Part A of the Impoundment Control Act of 1974 is amended by inserting at the end the following:

''SEC. 1002. SEVERABILITY.

''If the judicial branch of the United States finally determines that 1 or more of the provisions of parts B or C violate the Constitution of the United States, the remaining provisions of those parts shall continue in effect.''.

(2) TABLE OF CONTENTS.—Section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting at the end of the matter for part A of title X the following:

''Sec. 1002. Severability.''.

(e) EXPIRATION.—Part C of the Impoundment Control Act of 1974 (as amended by this Act) shall expire on December 31, 2015.

SA 1517. Mr. COATS (for himself and Mr. LUGAR) submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

In section 11005(a), in the amendment to section 104(c)(1) of title 23, United States Code, strike ''carry out section 134 shall be determined as follows'' and all that follows through subparagraph (B) and insert the following:

''carry out section 134 shall be a percentage of the total amount available for apportionment to all States that is equal to the proportion that—

''(A) the amount of gas taxes paid by the State for a fiscal year; bears to

''(B) the aggregate amount of gas taxes paid by all States for the fiscal year.

SA 1518. Mr. COATS submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

In section 15007, in the amendment to section 126 of title 23, United States Code, strike subsections (a) and (b) and insert the following:

''Notwithstanding any other provision of law, a State may transfer funds from an apportionment under section 104(b) to any other apportionment of the State under that section.''.

SA 1519. Mr. COATS submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

In 11008, in the amendment to section 133(c) of title 23, United States Code, strike paragraphs (7) through (28) and insert the following:

(7) Highway and transit safety infrastructure improvements and programs, installation of safety barriers and nets on bridges, hazard eliminations, projects to mitigate hazards caused by wildlife, and railway-highway grade crossings.

(8) Highway and transit research and development and technology transfer programs.

(9) Capital and operating costs for traffic and traveler information monitoring, management, and control facilities and programs, including truck stop electrification systems.

(10) Projects and strategies designed to support congestion pricing, including electronic toll collection and travel demand management strategies and programs.

(11) Surface transportation planning.

(12) Maintenance of and improvements to all public roads, including non-State-owned public roads and roads on tribal land—

(A) that are located within 10 miles of the international border between the United States and Canada or Mexico; and

(B) on which federally owned vehicles comprise more than 50 percent of the traffic.

(13) Construction, reconstruction, resurfacing, restoration, rehabilitation, and preservation of, and operational improvements for, any public road if—

(A) the public road, and the highway project to be carried out with respect to the public road, are in the same corridor as, and in proximity to—

(i) a fully access-controlled highway designated as a part of the National Highway System; or

(ii) in areas with a population of less than 200,000, a Federal-aid highway designated as part of the National Highway System;

(B) the construction or improvements will enhance the level of service on the highway described in subparagraph (A) and improve regional traffic flow; and

(C) the construction or improvements are more cost-effective, as determined by benefit-cost analysis, than an improvement to the highway described in subparagraph (A).

SA 1520. Mr. BLUNT (for himself, Mr. MCCONNELL, Mr. JOHANNS, Mr. WICKER, Mr. HATCH, Ms. AYOTTE, Mr. RUBIO, Mr. NELSON of Nebraska, Mr. ROBERTS, Mr. MCCAIN, Mr. KYL, Mr. COATS, Mr. BARRASSO, Mr. TOOMEY, Mr. LUGAR, Mr. CORNYN, Mr. BOOZMAN, Mr. PAUL, Mr. HOEVEN, and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. RESPECT FOR RIGHTS OF CONSCIENCE.

(a) FINDINGS AND PURPOSES.—

(1) FINDINGS.—Congress finds the following:

(A) As Thomas Jefferson declared to New London Methodists in 1809, ''[n]o provision in our Constitution ought to be dearer to man than that which protects the rights of conscience against the enterprises of the civil authority''.

(B) Jefferson's statement expresses a conviction on respect for conscience that is deeply embedded in the history and traditions of our Nation and codified in numerous State and Federal laws, including laws on health care.

(C) Until enactment of the Patient Protection and Affordable Care Act (Public Law 111–148, in this section referred to as ''PPACA''), the Federal Government has not sought to impose specific coverage or care requirements that infringe on the rights of conscience of insurers, purchasers of insurance, plan sponsors, beneficiaries, and other stakeholders, such as individual or institutional health care providers.

(D) PPACA creates a new nationwide requirement for health plans to cover ''essential health benefits'' and ''preventive services'' (including a distinct set of ''preventive services for women''), delegating to the Department of Health and Human Services the authority to provide a list of detailed services under each category, and imposes other new requirements with respect to the provision of health care services.

(E) While PPACA provides an exemption for some religious groups that object to participation in Government health programs generally, it does not allow purchasers, plan sponsors, and other stakeholders with religious or moral objections to specific items or services to decline providing or obtaining coverage of such items or services, or allow health care providers with such objections to decline to provide them.

(F) By creating new barriers to health insurance and causing the loss of existing insurance arrangements, these inflexible mandates in PPACA jeopardize the ability of individuals to exercise their rights of conscience and their ability to freely participate in the health insurance and health care marketplace.

(2) PURPOSES.—The purposes of this section are—

(A) to ensure that health care stakeholders retain the right to provide, purchase, or enroll in health coverage that is consistent with their religious beliefs and moral convictions, without fear of being penalized or discriminated against under PPACA; and

(B) to ensure that no requirement in PPACA creates new pressures to exclude those exercising such conscientious objection from health plans or other programs under PPACA.

(b) RESPECT FOR RIGHTS OF CONSCIENCE.—

(1) IN GENERAL.—Section 1302(b) of the Patient Protection and Affordable Care Act (Public Law 111–148; 42 U.S.C. 18022(b)) is amended by adding at the end the following new paragraph:

''(6) RESPECTING RIGHTS OF CONSCIENCE WITH REGARD TO SPECIFIC ITEMS OR SERVICES.—

''(A) FOR HEALTH PLANS.—A health plan shall not be considered to have failed to provide the essential health benefits package described in subsection (a) (or preventive health services described in section 2713 of the Public Health Service Act), to fail to be a qualified health plan, or to fail to fulfill any other requirement under this title on the basis that it declines to provide coverage of specific items or services because—

''(i) providing coverage (or, in the case of a sponsor of a group health plan, paying for coverage) of such specific items or services is contrary to the religious beliefs or moral convictions of the sponsor, issuer, or other entity offering the plan; or

''(ii) such coverage (in the case of individual coverage) is contrary to the religious beliefs or moral convictions of the purchaser or beneficiary of the coverage.

''(B) FOR HEALTH CARE PROVIDERS.—Nothing in this title (or any amendment made by this title) shall be construed to require an individual or institutional health care provider, or authorize a health plan to require a provider, to provide, participate in, or refer for a specific item or service contrary to the provider's religious beliefs or moral convictions. Notwithstanding any other provision of this title, a health plan shall not be considered to have failed to provide timely or other access to items or services under this title (or any amendment made by this title) or to fulfill any other requirement under this title because it has respected the rights of conscience of such a provider pursuant to this paragraph.

''(C) NONDISCRIMINATION IN EXERCISING RIGHTS OF CONSCIENCE.—No Exchange or other official or entity acting in a governmental capacity in the course of implementing this title (or any amendment made by this title) shall discriminate against a health plan, plan sponsor, health care provider, or other person because of such plan's, sponsor's, provider's, or person's unwillingness to provide coverage of, participate in, or refer for, specific items or services pursuant to this paragraph.

''(D) CONSTRUCTION.—Nothing in subparagraph (A) or (B) shall be construed to permit a health plan or provider to discriminate in a manner inconsistent with subparagraphs (B) and (D) of paragraph (4).

''(E) PRIVATE RIGHTS OF ACTION.—The various protections of conscience in this paragraph constitute the protection of individual rights and create a private cause of action for those persons or entities protected. Any person or entity may assert a violation of this paragraph as a claim or defense in a judicial proceeding.

''(F) REMEDIES.—

''(i) FEDERAL JURISDICTION.—The Federal courts shall have jurisdiction to prevent and redress actual or threatened violations of this paragraph by granting all forms of legal or equitable relief, including, but not limited to, injunctive relief, declaratory relief, damages, costs, and attorney fees.

''(ii) INITIATING PARTY.—An action under this paragraph may be instituted by the Attorney General of the United States, or by any person or entity having standing to complain of a threatened or actual violation of this paragraph, including, but not limited to, any actual or prospective plan sponsor, issuer, or other entity offering a plan, any actual or prospective purchaser or beneficiary of a plan, and any individual or institutional health care provider.

''(iii) INTERIM RELIEF.—Pending final determination of any action under this paragraph, the court may at any time enter such restraining order or prohibitions, or take such other actions, as it deems necessary.

''(G) ADMINISTRATION.—The Office for Civil Rights of the Department of Health and Human Services is designated to receive complaints of discrimination based on this paragraph and coordinate the investigation of such complaints.

''(H) ACTUARIAL EQUIVALENCE.—Nothing in this paragraph shall prohibit the Secretary from issuing regulations or other guidance to ensure that health plans excluding specific items or services under this paragraph shall have an aggregate actuarial value at least equivalent to that of plans at the same level of coverage that do not exclude such items or services.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall be effective as if included in the enactment of Public Law 111–148.

SA 1521. Mr. WICKER (for himself and Mr. VITTER) submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. DOMESTIC OIL AND NATURAL GAS PRODUCTION GOAL.

Section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344) is amended by striking subsection (b) and inserting the following:

''(b) DOMESTIC OIL AND NATURAL GAS PRODUCTION GOAL.—

''(1) IN GENERAL.—In developing a 5-year oil and gas leasing program, the Secretary shall establish a domestic strategic production goal for the development of oil and natural gas under the program that is—

''(A) the best estimate of the potential increase in domestic production of oil and natural gas from the outer Continental Shelf; and

''(B) focused on—

''(i) meeting the demand for oil and natural gas in the United States;

''(ii) reducing the dependence of the United States on foreign energy sources; and

''(iii) the production increases to be achieved by the leasing program at the end of the 15-year period beginning on the effective date of the program.

''(2) 2012–2017 PROGRAM GOAL.—For purposes of the 5-year oil and gas leasing program for fiscal years 2012-2017, the production goal referred to in paragraph (1) shall be an increase by 2027 of—

''(A) not less than 3,000,000 barrels in the quantity of oil produced per day; and

''(B) not less than 10,000,000,000 cubic feet in the quantity of natural gas produced per day.

''(3) REPORTS.—At the end of each 5-year oil and gas leasing program and annually thereafter, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a report that describes the progress of the applicable 5-year program with respect to achieving the production goal established for the program, including—

''(A) any projections for production under the program; and

''(B) identifying any problems with leasing, permitting, or production that would prevent the production goal from being achieved.''.

SA 1522. Mr. NELSON of Nebraska (for himself and Ms. KLOBUCHAR) submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle E of title I, add the following:

SEC. 15___. VEHICLE WEIGHT LIMITATIONS.

Section 127(a)(12) of title 23, United States Code, is amended—

(1) in subparagraph (B), by striking ''400'' and inserting ''550''; and

(2) in subparagraph (C)(ii), by striking ''400-pound'' and inserting ''550-pound''.

SA 1523. Mr. NELSON of Nebraska (for himself and Mr. JOHANNS) submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 408, between lines 3 and 4, insert the following:

SEC. ___. EXEMPTION.

Any road, highway, or bridge that is in operation or under construction in a State and is damaged by an emergency that is declared

by the Governor of the State and concurred in by the Secretary of Homeland Security or declared as an emergency by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)—

(1) may be reconstructed in the same location with the same capacity, dimensions, and design as before the emergency; and

(2) shall be exempt from any environmental reviews, approvals, licensing, and permit requirements under—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) sections 402 and 404 of the Federal Water Pollution Control Act (33 U.S.C. 1342, 1344);

(C) the National Historic Preservation Act (16 U.S.C. 470 et seq.);

(D) the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.);

(E) the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.);

(F) the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.);

(G) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), except when the reconstruction occurs in designated critical habitat for threatened and endangered species;

(H) Executive Order 11990 (42 U.S.C. 4321 note; relating to the protection of wetlands); and

(I) any Federal law (including regulations) requiring no net loss of wetlands.

SA 1524. Mr. PAUL submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. EMERGENCY EXEMPTIONS.

Notwithstanding any other provision of law, with respect to any road, highway, or bridge that is closed or is operating at reduced capacity because of safety reasons—

(1) the road, highway, or bridge may be reconstructed in the same general location as before the disaster; and

(2) such reconstruction shall be exempt from any environmental reviews, approvals, licensing, and permit requirements under—

(A) the National Historic Preservation Act (16 U.S.C. 470 et seq.);

(B) the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.);

(C) the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.);

(D) the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.);

(E) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), except when the reconstruction occurs in designated critical habitat for threatened and endangered species;

(F) sections 402 and 404 of the Federal Water Pollution Control Act (33 U.S.C. 1342, 1344);

(G) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(H) Executive Order 11990 (42 U.S.C. 4321 note; relating to the protection of wetlands); and

(I) any Federal law (including regulations) requiring no net loss of wetlands.

SA 1525. Mr. PAUL submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. EXEMPTIONS FOR PROJECTS CARRIED OUT WITH NON-FEDERAL FUNDS.

Notwithstanding any other provision of law, a road, highway, or bridge project carried out only using State or other non-Federal funds shall be exempt from any environmental reviews, approvals, licensing, and permit requirements under—

(1) the National Historic Preservation Act (16 U.S.C. 470 et seq.);

(2) the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.);

(3) the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.);

(4) the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.);

(5) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), except when the reconstruction occurs in designated critical habitat for threatened and endangered species;

(6) sections 402 and 404 of the Federal Water Pollution Control Act (33 U.S.C. 1342, 1344);

(7) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(8) Executive Order 11990 (42 U.S.C. 4321 note; relating to the protection of wetlands); and

(9) any Federal law (including regulations) requiring no net loss of wetlands.

SA 1526. Mr. PAUL submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. EXEMPTION FROM REVIEW REQUIREMENTS.

Notwithstanding any other provision of law, any request for an approval, such as a request for approval of a permit or license, relating to a transportation project under any Federal law (including a regulation) that is not approved or denied by the date that is 180 days after the date on which the request for the approval is submitted to the Secretary or other appropriate Federal official shall be considered to be approved.

SA 1527. Mr. PAUL submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. JURISDICTION OVER COVERED ENERGY PROJECTS.

(a) DEFINITION OF COVERED ENERGY PROJECT.—In this section, the term ''covered energy project'' means any action or decision by a Federal official regarding—

(1) the leasing of Federal land (including submerged land) for the exploration, development, production, processing, or transmission of oil, natural gas, or any other source or form of energy, including actions and decisions regarding the selection or offering of Federal land for such leasing; or

(2) any action under such a lease, except that this section and Act shall not apply to a dispute between the parties to a lease entered into a provision of law authorizing the lease regarding obligations under the lease or the alleged breach of the lease.

(b) EXCLUSIVE JURISDICTION OVER CAUSES AND CLAIMS RELATING TO COVERED ENERGY PROJECTS.—Notwithstanding any other provision of law, the United States District Court for the District of Columbia shall have exclusive jurisdiction to hear all causes and claims under this section or any other Act that arise from any covered energy project.

(c) TIME FOR FILING COMPLAINT.—

(1) IN GENERAL.—Each case or claim described in subsection (b) shall be filed not later than the end of the 60-day period beginning on the date of the action or decision by a Federal official that constitutes the covered energy project concerned.

(2) PROHIBITION.—Any cause or claim described in subsection (b) that is not filed within the time period described in paragraph (1) shall be barred.

(d) DISTRICT COURT FOR THE DISTRICT OF COLUMBIA DEADLINE.—

(1) IN GENERAL.—Each proceeding that is subject to subsection (b) shall—

(A) be resolved as expeditiously as practicable and in any event not more than 180 days after the cause or claim is filed; and

(B) take precedence over all other pending matters before the district court.

(2) FAILURE TO COMPLY WITH DEADLINE.—If an interlocutory or final judgment, decree, or order has not been issued by the district court by the deadline required under this section, the cause or claim shall be dismissed with prejudice and all rights relating to the cause or claim shall be terminated.

(e) ABILITY TO SEEK APPELLATE REVIEW.—An interlocutory or final judgment, decree, or order of the district court under this section may be reviewed by no other court except the Supreme Court.

(f) DEADLINE FOR APPEAL TO THE SUPREME COURT.—If a writ of certiorari has been granted by the Supreme Court pursuant to subsection (e), the interlocutory or final judgment, decree, or order of the district court shall be resolved as expeditiously as practicable and in any event not more than 180 days after the interlocutory or final judgment, decree, order of the district court is issued.

SA 1528. Mr. PAUL submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. ENVIRONMENTAL IMPACT STATEMENTS.

Title I of the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) is amended by adding at the end the following:

''SEC. 106. COMPLETION AND REVIEW OF ENVIRONMENTAL IMPACT STATEMENTS.

''(a) COMPLETION.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, each review carried out under section 102(2)(C) with respect to any action taken under any provision of law, or for which funds are made available under any provision of law, shall be completed not later than the date that is 180 days after the commencement of the review.

''(2) FAILURE TO COMPLETE REVIEW.—If a review described in paragraph (1) has not been completed for an action subject to section 102(2)(C) by the date specified in paragraph (1)—

''(A) the action shall be considered to have no significant impact described in section 102(2)(C); and

''(B) that classification shall be considered to be a final agency action.

''(3) UNEMPLOYMENT RATE.—If the national unemployment rate is 5 percent or more, the

lead agency conducting a review of an action under this section shall use the most expeditious means authorized under this title to conduct the review.

''(b) LEAD AGENCY.—The lead agency for a review of an action under this section shall be the Federal agency to which funds are made available for the action.

''(c) REVIEW.—

''(1) ADMINISTRATIVE APPEALS.—There shall be a single administrative appeal for each review carried out pursuant to section 102(2)(C).

''(2) JUDICIAL REVIEW.—

''(A) IN GENERAL.—On resolution of the administrative appeal, judicial review of the final agency decision after exhaustion of administrative remedies shall lie with the United States Court of Appeals for the District of Columbia Circuit.

''(B) ADMINISTRATIVE RECORD.—An appeal to the court described in subparagraph (A) shall be based only on the administrative record.

''(C) PENDENCY OF JUDICIAL REVIEW.—After an agency has made a final decision with respect to a review carried out under this subsection, the decision shall be effective during the course of any subsequent appeal to a court described in subparagraph (A).

''(3) CIVIL ACTION.—Each civil action covered by this section shall be considered to arise under the laws of the United States.''.

SA 1529. Mr. PAUL (for himself and Mr. DEMINT) submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE V—REINS ACT

SECTION 5001. SHORT TITLE.

This title may be cited as the ''Regulations From the Executive in Need of Scrutiny Act of 2011'' or the ''REINS Act''.

SEC. 5002. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Section 1 of article I of the United States Constitution grants all legislative powers to Congress.

(2) Over time, Congress has excessively delegated its constitutional charge while failing to conduct appropriate oversight and retain accountability for the content of the laws it passes.

(3) By requiring a vote in Congress, this Act will result in more carefully drafted and detailed legislation, an improved regulatory process, and a legislative branch that is truly accountable to the people of the United States for the laws imposed upon them.

(b) PURPOSE.—The purpose of this Act is to increase accountability for and transparency in the Federal regulatory process.

SEC. 5003. CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.

Chapter 8 of title 5, United States Code, is amended to read as follows:

''CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

''Sec.
''801. Congressional review.
''802. Congressional approval procedure for major rules.
''803. Congressional disapproval procedure for nonmajor rules.
''804. Definitions.
''805. Judicial review.
''806. Exemption for monetary policy.
''807. Effective date of certain rules.

''§ 801. Congressional review

''(a)(1)(A) Before a rule may take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

''(i) a copy of the rule;

''(ii) a concise general statement relating to the rule;

''(iii) a classification of the rule as a major or nonmajor rule, including an explanation of the classification specifically addressing each criteria for a major rule contained within sections 804(2)(A), 804(2)(B), and 804(2)(C);

''(iv) a list of any other related regulatory actions intended to implement the same statutory provision or regulatory objective as well as the individual and aggregate economic effects of those actions; and

''(v) the proposed effective date of the rule.

''(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

''(i) a complete copy of the cost-benefit analysis of the rule, if any;

''(ii) the agency's actions pursuant to title 5 of the United States Code, sections 603, 604, 605, 607, and 609;

''(iii) the agency's actions pursuant to title 2 of the United States Code, sections 1532, 1533, 1534, and 1535; and

''(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

''(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

''(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

''(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

''(3) A major rule relating to a report submitted under paragraph (1) shall take effect upon enactment of a joint resolution of approval described in section 802 or as provided for in the rule following enactment of a joint resolution of approval described in section 802, whichever is later.

''(4) A nonmajor rule shall take effect as provided by section 803 after submission to Congress under paragraph (1).

''(5) If a joint resolution of approval relating to a major rule is not enacted within the period provided in subsection (b)(2), then a joint resolution of approval relating to the same rule may not be considered under this chapter in the same Congress by either the House of Representatives or the Senate.

''(b)(1) A major rule shall not take effect unless the Congress enacts a joint resolution of approval described under section 802.

''(2) If a joint resolution described in subsection (a) is not enacted into law by the end of 70 session days or legislative days, as applicable, beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), then the rule described in that resolution shall be deemed not to be approved and such rule shall not take effect.

''(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a major rule may take effect for one 90-calendar-day period if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

''(2) Paragraph (1) applies to a determination made by the President by Executive order that the major rule should take effect because such rule is—

''(A) necessary because of an imminent threat to health or safety or other emergency;

''(B) necessary for the enforcement of criminal laws;

''(C) necessary for national security; or

''(D) issued pursuant to any statute implementing an international trade agreement.

''(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802.

''(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring—

''(A) in the case of the Senate, 60 session days, or

''(B) in the case of the House of Representatives, 60 legislative days,

before the date the Congress is scheduled to adjourn a session of Congress through the date on which the same or succeeding Congress first convenes its next session, sections 802 and 803 shall apply to such rule in the succeeding session of Congress.

''(2)(A) In applying sections 802 and 803 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

''(i) such rule were published in the Federal Register on—

''(I) in the case of the Senate, the 15th session day, or

''(II) in the case of the House of Representatives, the 15th legislative day,

after the succeeding session of Congress first convenes; and

''(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

''(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

''(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

''§ 802. Congressional approval procedure for major rules

''(a) For purposes of this section, the term 'joint resolution' means only a joint resolution introduced on or after the date on which the report referred to in section 801(a)(1)(A) is received by Congress (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: 'That Congress approves the rule submitted by the __ __ relating to __ __.' (The blank spaces being appropriately filled in).

''(1) In the House, the majority leader of the House of Representatives (or his designee) and the minority leader of the House of Representatives (or his designee) shall introduce such joint resolution described in subsection (a) (by request), within 3 legislative days after Congress receives the report referred to in section 801(a)(1)(A).

''(2) In the Senate, the majority leader of the Senate (or his designee) and the minority

leader of the Senate (or his designee) shall introduce such joint resolution described in subsection (a) (by request), within 3 session days after Congress receives the report referred to in section 801(a)(1)(A).

''(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

''(2) For purposes of this section, the term 'submission date' means the date on which the Congress receives the report submitted under section 801(a)(1).

''(c) In the Senate, if the committee or committees to which a joint resolution described in subsection (a) has been referred have not reported it at the end of 15 session days after its introduction, such committee or committees shall be automatically discharged from further consideration of the resolution and it shall be placed on the calendar. A vote on final passage of the resolution shall be taken on or before the close of the 15th session day after the resolution is reported by the committee or committees to which it was referred, or after such committee or committees have been discharged from further consideration of the resolution.

''(d)(1) In the Senate, when the committee or committees to which a joint resolution is referred have reported, or when a committee or committees are discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

''(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to further limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

''(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

''(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

''(e)(1) In the House of Representatives, if the committee or committees to which a joint resolution described in subsection (a) has been referred have not reported it at the end of 15 legislative days after its introduction, such committee or committees shall be automatically discharged from further consideration of the resolution and it shall be placed on the appropriate calendar. A vote on final passage of the resolution shall be taken on or before the close of the 15th legislative day after the resolution is reported by the committee or committees to which it was referred, or after such committee or committees have been discharged from further consideration of the resolution.

''(2)(A) A motion in the House of Representatives to proceed to the consideration of a resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

''(B) Debate in the House of Representatives on a resolution shall be limited to not more than two hours, which shall be divided equally between those favoring and those opposing the resolution. A motion to further limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to reconsider the vote by which a resolution is agreed to or disagreed to.

''(C) Motions to postpone, made in the House of Representatives with respect to the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

''(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a resolution shall be decided without debate.

''(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply with respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

''(1) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

''(2) the vote on final passage shall be on the joint resolution of the other House.

''(g) The enactment of a resolution of approval does not serve as a grant or modification of statutory authority by Congress for the promulgation of a rule, does not extinguish or affect any claim, whether substantive or procedural, against any alleged defect in a rule, and shall not form part of the record before the court in any judicial proceeding concerning a rule.

''(h) This section and section 803 are enacted by Congress—

''(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

''§ 803. Congressional disapproval procedure for nonmajor rules

''(a) For purposes of this section, the term 'joint resolution' means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: 'That Congress disapproves the nonmajor rule submitted by the __ __ relating to __ __, and such rule shall have no force or effect.' (The blank spaces being appropriately filled in).

''(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

''(2) For purposes of this section, the term 'submission or publication date' means the later of the date on which—

''(A) the Congress receives the report submitted under section 801(a)(1); or

''(B) the nonmajor rule is published in the Federal Register, if so published.

''(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 15 session days after the date of introduction of the joint resolution, such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

''(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

''(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to further limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

''(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

''(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

''(e) In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a nonmajor rule—

''(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

''(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

''(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

''(1) The joint resolution of the other House shall not be referred to a committee.

''(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

''(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

''(B) the vote on final passage shall be on the joint resolution of the other House.

''§ 804. Definitions

''For purposes of this chapter—

''(1) the term 'Federal agency' means any agency as that term is defined in section 551(1);

''(2) the term 'major rule' means any rule, including an interim final rule, that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

''(A) an annual effect on the economy of $100,000,000 or more;

''(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

''(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets;

''(3) the term 'nonmajor rule' means any rule that is not a major rule; and

''(4) the term 'rule' has the meaning given such term in section 551, except that such term does not include—

''(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefore, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

''(B) any rule relating to agency management or personnel; or

''(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of nonagency parties.

''§ 805. Judicial review

''(a) No determination, finding, action, or omission under this chapter shall be subject to judicial review.

''(b) Notwithstanding subsection (a), a court may determine whether a Federal agency has completed the necessary requirements under this chapter for a rule to take effect.

''§ 806. Exemption for monetary policy

''Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

''§ 807. Effective date of certain rules

''Notwithstanding section 801—

''(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping; or

''(2) any rule other than a major rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,

shall take effect at such time as the Federal agency promulgating the rule determines.''.

SA 1530. Mr. PAUL submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, add the following:

SEC. _____. NATIONAL HIGHWAY PERFORMANCE PROGRAM; DEFICIT REDUCTION.

(a) Of the amounts made available under titles II through VI of division I of the Consolidated Appropriations Act, 2012 (Public Law 112–74; 125 Stat. 786), $14,677,000,000 are rescinded and transferred to the general fund of the Treasury and used for deficit reduction.

(b) The authorization of appropriations to carry out the national highway performance program under section 119 of title 23, United States Code (as amended by section 1106) is increased by $7,338,000,000.

(c) The total amount specified in subsection (a) shall be derived from an amount rescinded from programs and projects for which funds are made available under titles II through VI of division I of the Consolidated Appropriations Act, 2012 (Public Law 112–74; 125 Stat. 786), as determined, for each such program or project, by the Secretary of State or the head of any other agency having administrative authority over the program or project.

SA 1531. Mr. PAUL submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. PROHIBITION ON FOREIGN ASSISTANCE TO EGYPT.

Beginning 30 days after the date of the enactment of this Act, no amounts may be obligated or expended to provide any direct United States assistance to the Government of Egypt unless the President certifies to Congress that the Government of Egypt is not holding, detaining, prosecuting, harassing, or preventing the exit from Egypt of any person working for a nongovernmental organization supported by the United States Government, and that the Government of Egypt is not holding any property of any such nongovernmental organization.

SA 1532. Mr. PAUL (for himself, Mr. VITTER, and Mr. ALEXANDER) submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. NONAPPLICATION OF DAVIS-BACON.

None of the funds made available under this Act (or an amendment made by this Act) may be used to administer or enforce the wage-rate requirements of subchapter IV of chapter 31 of part A of subtitle II of title 40, United States Code (commonly referred to as the ''Davis-Bacon Act'') with respect to any project or program funded under this Act (or amendment).

SA 1533. Mr. MENENDEZ (for himself, Mr. KIRK, Mr. DURBIN, and Mr. LAUTENBERG) submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle E of title I of division A, add the following:

SEC. _____. PAY-TO-PLAY REFORM.

Section 112 of title 23, United States Code, is amended by adding at the end the following:

''(h) PAY-TO-PLAY REFORM.—A State transportation department shall not be considered to have violated a requirement of this section solely because the State in which that State transportation department is located, or a local government within that State, has in effect a law or an order that limits the amount of money an individual or entity that is doing business with a State or local agency with respect to a Federal-aid highway project may contribute to a political party, campaign, candidate, or elected official.''.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a field hearing has been scheduled before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources. The hearing will be held on Monday, March 12, 2012, at 2 p.m., at the U.S. Naval Station, Norfolk, Virginia.

The purpose of the hearing is to receive testimony on specific energy and water policies and programs that the U.S. Department of Navy is implementing as it pertains to its operations and facilities.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send it to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150, or by email to Meagan_Gins@energy.senate.gov.

For further information, please contact Jonathan Black at (202) 224–6722 or Meagan Gins at (202) 224–0883.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mrs. BOXER. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on February 9, 2012, at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mrs. BOXER. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on February 9, 2012, at 10 a.m., to conduct a Committee hearing entitled ''State of the Housing Market: Removing Barriers to Economic Recovery.''

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mrs. BOXER. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet during the session of the Senate, on February 9, 2012, at 2:15 p.m. in room 628 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mrs. BOXER. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on February 9, 2012, at 10 a.m., in SD–226 of the Dirksen Senate Office Building, to conduct an executive business meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON NATURAL RESOURCES

Mrs. BOXER. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on February 9, 2012, at 9:30 a.m., in room 366 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mrs. BOXER. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on February 9, 2012, at 2:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask that we proceed to executive session to consider Calendar No. 437.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the nomination.

The assistant legislative clerk read the nomination of Adalberto Jose Jordan, of Florida, to be United States Circuit Judge for the Eleventh Circuit.

CLOTURE MOTION

Mr. REID. I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the nomination of Adalberto Jose Jordan, of Florida, to be United States Circuit Judge for the Eleventh Circuit:

Harry Reid, Joe Manchin III, Sherrod Brown, Tom Udall, Patty Murray, Mark Begich, Herb Kohl, Bill Nelson, Frank R. Lautenberg, Jeanne Shaheen, Richard Blumenthal, Benjamin L. Cardin, Chris Coons, Dianne Feinstein, Patrick J. Leahy, Richard J. Durbin, Joseph I. Lieberman, Charles E. Schumer.

Mr. REID. I ask unanimous consent that on February 13, 2012, at 4:30 p.m., the Senate proceed to executive session to consider Calendar No. 437; that there be an hour of debate equally divided in the usual form prior to the vote; further, that the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. REID. I now ask unanimous consent we resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL SCHOOL COUNSELING WEEK

Mr. REID. Mr. President, I ask unanimous consent we proceed to S. Res. 371.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 371) designating the week of February 6 through 10, 2012, as ''National School Counseling Week.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid on the table, with no intervening action or debate, and any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 371) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 371

Whereas the American School Counselor Association has designated the week of February 6 through 10, 2012, as ''National School Counseling Week'';

Whereas the importance of school counseling has been recognized through the inclusion of elementary- and secondary-school counseling programs in amendments to the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.);

Whereas school counselors have long advocated that the education system of the United States must provide equitable opportunities for all students;

Whereas personal and social growth results in increased academic achievement;

Whereas school counselors help develop well-rounded students by guiding the students through academic, personal, social, and career development;

Whereas school counselors assist with and coordinate efforts to foster a positive school culture resulting in a safer learning environment for all students;

Whereas school counselors have been instrumental in helping students, teachers, and parents deal with personal trauma as well as tragedies in the community and the United States;

Whereas students face myriad challenges every day, including peer pressure, depression, the deployment of family members to serve in conflicts overseas, and school violence;

Whereas school counselors are one of the few professionals in a school building who are trained in both education and mental-health matters;

Whereas the roles and responsibilities of school counselors are often misunderstood;

Whereas the school-counselor position is often among the first to be eliminated to meet budgetary constraints;

Whereas the national average ratio of students to school counselors of 459 to 1 is almost twice that of the ratio of 250 to 1 recommended by the American School Counselor Association, the American Counseling Association, the National Association for College Admission Counseling, and other organizations; and

Whereas the celebration of National School Counseling Week would increase awareness of the important and necessary role school counselors play in the lives of students in the United States: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of February 6 through 10, 2012, as ''National School Counseling Week''; and

(2) encourages the people of the United States to observe the week with appropriate ceremonies and activities that promote awareness of the role school counselors play in the school and the community at large in preparing students for fulfilling lives as contributing members of society.

ORDERS FOR MONDAY, FEBRUARY 13, 2012

Mr. REID. Mr. President, I ask unanimous consent that the Senate adjourn until 2 p.m. on Monday, February 13, 2012; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, and the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate be in a period of morning business until 4:30 p.m., with Senators permitted to speak therein up to 10 minutes each; and that following morning business, the Senate proceed to executive session under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. REID. Mr. President, the next rollcall vote will be at 5:30 p.m. on Monday on the motion to invoke cloture on the Jordan nomination.

ADJOURNMENT UNTIL MONDAY, FEBRUARY 13, 2012, AT 2 P.M.

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 6:33 p.m, adjourned until Monday, February 13, 2012, at 2 p.m.

CONFIRMATION

Executive nomination confirmed by the Senate February 9, 2012:

THE JUDICIARY

CATHY ANN BENCIVENGO, OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA.