

## **A BILL**

To amend chapter 53 of title 49, United States Code, to establish a public transportation safety program.

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

### **SECTION 1. SHORT TITLE.**

This Act may be cited as “The Public Transportation Safety Program Act of 2009.”

### **SEC. 2. PUBLIC TRANSPORTATION SAFETY PROGRAM.**

(a) **IN GENERAL.**—Section 5329 of title 49, United States Code, is amended to read as follows:

#### **“Sec. 5329. Public transportation safety program**

“(a) **RAIL FIXED GUIDEWAY SAFETY.**—

“(1) **PROGRAM.**—The Secretary shall, as soon as practicable, establish and implement a public transportation safety program to improve the safety of, and reduce the number and severity of accidents involving, the design, construction, and revenue service operation of rail fixed guideway public transportation systems that receive financial assistance under this chapter.

“(2) **EXCLUSION.**—This section shall not apply to rail fixed guideway public transportation systems subject to regulation by the Federal Railroad Administration under subtitle V of this title and the Rail Safety Improvement Act of 2008.

“(3) **NATIONAL TRANSPORTATION SAFETY BOARD.**—When promulgating public safety transportation regulations, the Secretary shall, to the extent practicable, take into consideration relevant recommendations of the National Transportation Safety Board.

“(b) **BUS SAFETY.**—The Secretary may establish and implement a public transportation safety program to improve the safety of, and reduce the number and severity of accidents involving, public transportation bus systems that receive financial assistance under this chapter in accordance with the provisions of this section.

“(c) **REGULATIONS AND ORDERS.**—

“(1) **IN GENERAL.**—The Secretary shall promulgate regulations and issue orders for the safe operation of rail fixed guideway public transportation systems, after appropriate consideration of costs and benefits. The Secretary shall ensure that the regulations establish a Federal certification program for employees and contractors who

carry out a State public transportation safety program in compliance with this section and oversee the performance of employees or contractors responsible for performing safety activities identified in such program.

“(2) CONSULTATION BY DHS SECRETARY.—Before prescribing a security regulation or issuing a security order that affects the safety of public transportation design, construction or operations, the Secretary of Homeland Security shall consult with the Secretary.

“(3) WAIVERS.—The Secretary may waive compliance with any part of a regulation promulgated or order issued under this section if the waiver is in the public interest, or a regulation or order issued under this section. The Secretary shall not issue a waiver and shall immediately revoke a waiver if the waiver would not be consistent with the goals and objectives of this section. The Secretary shall make public the reasons for granting or revoking the waiver.

“(d) PREEMPTION.—

“(1) IN GENERAL.—A State may adopt or continue in force a law, regulation, or order related to public transportation safety until the Secretary promulgates a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to public transportation safety only if the law, regulation, or order—

“(A) has a safety benefit;

“(B) is not incompatible with a law, regulation, or order of the United States Government; and

“(C) does not unreasonably burden interstate commerce.

“(2) DAMAGES.—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—

“(A) has failed to comply with the Federal standard of care established by a regulation or order issued by the Secretary under this section;

“(B) has failed to comply with its own program, rule, or standard that it created under a regulation or order issued by the Secretary; or

“(C) has failed to comply with a State law, regulation, or order that is not incompatible with paragraph (1) of this subsection.

“(3) EFFECTIVE DATE.—This subsection shall apply to all State law causes of action arising from events or activities occurring on or after the enactment of this section.

“(4) FEDERAL JURISDICTION.—Nothing in this section creates a Federal cause of action on behalf of an injured party or confers Federal question jurisdiction for State law causes of action.

“(e) SAFETY PROGRAM ACTIVITIES.—

“(1) IN GENERAL.—In carrying out this section, the Secretary may take actions the Secretary considers necessary, including—

“(A) conducting inspections, investigations, audits, examinations, and testing of a public transportation system’s equipment, facilities, rolling stock, operations, and persons engaged in the business of a public transportation system;

“(B) delegating to a public entity or other qualified person the conduct of inspections, investigations, audits, examinations, and testing of a public transportation system’s equipment, facilities, rolling stock, operations, and persons engaged in the business of a public transportation system;

“(C) making reports, issuing subpoenas, requiring the production of documents, taking depositions, and prescribing recordkeeping and reporting requirements; and

“(D) making grants or entering into agreements—

“(i) for research, development, testing and training of every area of public transportation safety; and

“(ii) to assist a public entity or qualified person in carrying out the delegated activities set forth in subparagraph (B) of this paragraph.

“(2) ACCIDENTS AND INCIDENTS.—Activities authorized under this subsection may be engaged in for safety purposes, including accident and incident prevention and investigation.

“(3) COST SHARING.—The Federal share of a grant awarded or an agreement entered into under paragraph (1)(D) of this section may be up to 100 percent.

“(4) ENTRY.—In carrying out this subsection, an officer or employee of the Secretary, or agent designated by the Secretary under paragraph (1)(B) of this subsection, at reasonable times and in a reasonable way, may enter and inspect public transportation equipment, facilities, rolling stock, operations, and relevant records. When requested, the officer, employee, or the designated agent shall display proper credentials. During an inspection, the officer, employee, or designated agent of the Secretary qualifies as an employee of the United States Government under chapter 171 of title 28.

“(f) STATE PARTICIPATION.—

“(1) SAFETY PROGRAM.—A State may establish and implement a State public transportation safety program through statute and regulation that requires, at a minimum, compliance with the regulations and policies issued by the Secretary under this section and complies with subsection (d) of this section.

“(2) GRANTS.—The Secretary may make grants or enter into agreements under this subsection to carry out a State public transportation safety program, including to train employees necessary to administer and manage the program, and to enforce Federal and State public transportation safety laws, regulations and orders, provided that—

“(A) employees responsible for carrying out the safety oversight functions of a State public transportation safety program meet the safety certification criteria established through regulations issued under subsection (c)(1) of this section;

“(B) a State submits its public transportation safety program, which shall provide a right of entry and inspection to carry out the program, to the Secretary for review and written approval prior to implementing the program; and

“(C) a State submits each amendment to its public transportation safety program to the Secretary for review and written decision at least 60 days before the amendment becomes effective. If a State does not receive a written response from the Secretary by the end of the 60-day period, the amendment shall be deemed to be approved.

“(3) MULTI-STATE REQUIREMENTS.—When a single public transportation authority operates in more than one State, the affected States, if establishing and implementing a public transportation safety program as authorized under this subsection, shall—

“(A) establish and implement the program jointly to ensure uniform safety standards and enforcement procedures that shall be, at a minimum, in compliance with this section and the regulations and policies issued by the Secretary under this section; or

“(B) designate an entity (other than the public transportation authority) to carry out the activities and requirements specified by subparagraph (A) of this paragraph.

“(4) CONFLICT OF INTEREST.—A State may not—

“(A) allocate grant funds awarded under paragraph (1) of this subsection to a State agency or local entity that operates a public transportation system that receives Federal transit assistance;

“(B) allow a State agency or local entity that operates a public transportation system to provide funds to a State agency or an entity designated by the State that is responsible for establishing, implementing, or maintaining a State public transportation safety program; or

“(C) allow a State agency or local entity that operates a public transportation system to participate in the oversight of establishing, implementing, or maintaining a State public transportation safety program.

“(5) COST SHARING.—In the case of a State that implements a safety program under this section, the following applies:

“(A) The Secretary shall reimburse the State from a grant made or agreement entered into under this section, an amount that is up to 100 percent of the costs incurred by the State in a fiscal year for developing, implementing and enforcing a State public transportation safety program.

“(B) The Secretary, through regulations promulgated under this section, shall establish a schedule of reimbursable costs that the Secretary shall use to assist the State in defraying the State’s costs of developing, implementing and enforcing a State public transportation safety program.

“(C) To help defray the costs of developing, implementing and enforcing a State public transportation safety program, the State may submit to the Secretary a voucher that does not exceed the amount identified on the schedule of reimbursable costs for an eligible activity.

“(D) The Secretary shall pay the State an amount not more than the Federal Government’s share of costs incurred as of the date of the voucher.

“(6) NOTICE OF WITHDRAWAL.—The Secretary shall ensure that the State is carrying out the State public transportation safety program, as follows:

“(A) If the Secretary finds, after notice and opportunity to comment, that the State transportation safety program previously approved is not being followed or has become inadequate to ensure enforcement of the regulations or orders, the Secretary shall withdraw approval of the program and notify the State.

“(B) A State public transportation safety program shall no longer be in effect upon the State’s receipt of the Secretary’s notice of withdrawal of approval.

“(C) A State receiving notice under subparagraph (A) of this paragraph may seek judicial review of the Secretary’s decision under chapter 7 of title 5, United States Code.

“(D) Notwithstanding the withdrawal, a State may retain jurisdiction in administrative and judicial proceedings begun before the withdrawal if the issues involved are not related directly to the reasons for the withdrawal.

“(g) ENFORCEMENT.—

“(1) IN GENERAL.—The Secretary has the authority—

“(A) to establish, impose and compromise a civil penalty for a violation of a public transportation safety regulation promulgated or order issued under this section;

“(B) to establish, impose and compromise a civil penalty for violation of the alcohol and controlled substances testing provisions under section 5331 of this chapter;

“(C) to request an injunction for a violation of a public transportation safety regulation promulgated or order issued under this section; and

“(D) to notify the Attorney General when the Secretary receives evidence of a possible criminal violation under paragraph (5).

“(2) DEPOSIT OF CIVIL PENALTIES.—An amount collected by the Secretary under this section shall be deposited into the General Fund of the United States Treasury.

“(3) ENFORCEMENT BY THE ATTORNEY GENERAL.—At the request of the Secretary, the Attorney General shall bring a civil action—

“(A) for appropriate injunctive relief to ensure compliance with this section;

“(B) to collect a civil penalty imposed or an amount agreed upon in a compromise under paragraph (1) of this subsection; or

“(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.

“(4) JURISDICTION.—An action under paragraph (3) of this subsection may be brought in a district court of the United States in any State in which the relief is required. On a proper showing, the court shall issue a temporary restraining order or preliminary or permanent injunction. An injunction under this section may order a public transportation agency receiving assistance under this chapter to comply with this section, or a regulation promulgated under this section.

“(5) CRIMINAL PENALTY.—A person who knowingly violates this section or a public transportation safety regulation or order issued under this section shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both; except that the maximum amount of imprisonment shall be 10 years in any case in which the violation results in death or bodily injury to any person. For purposes of this subparagraph—

“(A) a person acts knowingly when—

“(i) the person has actual knowledge of the facts giving rise to the violation; or

“(ii) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge; and

“(B) actual knowledge of the existence of a statutory provision, or a regulation or a requirement required by the Secretary is not an element of an offense under this paragraph.

“(h) EMERGENCY AUTHORITY.—

“(1) ORDERING RESTRICTIONS AND PROHIBITIONS.—If, through testing, inspection, investigation, or research carried out under this section, the Secretary decides that an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death, personal injury, or significant harm to the environment, the Secretary immediately may order restrictions and prohibitions, without regard to section 553 and section 554 of title 5, United States Code, that may be necessary to abate the emergency situation.

“(2) EMERGENCY CONDITION OR PRACTICE.—The order shall describe the condition or practice, or a combination of conditions and practices, that causes the emergency situation and promulgate standards and procedures for obtaining relief from the order. This paragraph does not affect the Secretary's discretion under this subsection to maintain the order in effect for as long as the emergency situation exists.

“(3) REVIEW OF ORDERS.—After issuing an order under this subsection, the Secretary shall provide an opportunity for review of the order under section 554 of title 5, United States Code. If a petition for review is filed and the review is not completed by the end of the 30-day period beginning on the date the order was issued, the order stops being effective at the end of that period unless the Secretary decides in writing that the emergency situation still exists.

“(4) CIVIL ACTIONS TO COMPEL ISSUANCE OF ORDERS.—An employee of a rail fixed guideway public transportation system provider who may be exposed to imminent physical injury during that employment because of the Secretary's failure, without any reasonable basis, to issue an order under paragraph (1) of this subsection, or

the employee's authorized representative, may bring a civil action against the Secretary in a district court of the United States to compel the Secretary to issue an order. The action shall be brought in the judicial district in which the emergency situation is alleged to exist, in which the employing provider has its principal executive office, or in the District of Columbia. The Secretary's failure to issue an order under paragraph (1) of this subsection may be reviewed only under section 706 of title 5, United States Code.

**“(i) EFFECT ON EMPLOYEE QUALIFICATIONS AND COLLECTIVE BARGAINING.—**

This section does not—

“(1) authorize the Secretary to promulgate regulations and issue orders related to qualifications of employees, except qualifications specifically related to safety; or

“(2) prohibit collective bargaining agreements between public transportation agencies and public transportation employees or their representatives, including agreements related to qualifications of the employees that are not inconsistent with regulations and orders promulgated under this section.

**“(j) PUBLIC TRANSPORTATION EMPLOYEE PROTECTIONS.—**Applicable provisions of the public transportation employee protection provisions under section 1142 of title 6, United States Code, apply to direct and indirect recipients of Federal transit assistance under this chapter.

**“(k) JUDICIAL REVIEW.—**A person adversely affected or aggrieved by a final action of the Secretary under this section or under section 5331 of this title may petition for review of the final action in the United States Court of Appeals for the District of Columbia or in the court of appeals for the United States for the circuit in which the person resides and has its principal place of business. Judicial procedures require—

“(1) the petition be filed not more than 60 days after the Secretary’s action becomes final;

“(2) the clerk of the court immediately send a copy of the petition filed under paragraph (3) of this section to the Secretary;

“(3) the Secretary file with the court a record of any proceeding in which the final action was issued as provided in section 2112 of title 28, United States Code; and

“(4) the court to consider an objection to a final action of the Secretary only if the objection was made in the course of the proceeding or review conducted by the Secretary or if there was a reasonable ground for not making the objection in the proceeding.”

**(b) AUTHORIZATIONS.—**Section 5338 of title 49, United States Code, is amended—

(1) by redesignating subsections (e), (f) and (g) as subsections (f), (g) and (h), respectively;

(2) by inserting a new subsection (e) to read as follows:

“(e) SAFETY PROGRAM.--There is authorized to be appropriated such amounts in each fiscal year as necessary to administer section 5329 and to make grants or enter into agreements to carry out section 5329.”; and

(3) in subsection (h), as redesignated, by striking “and (d)” and inserting “(d) and (e)”.

(c) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—Section 5334(b)(1) of title 49, United States Code, is amended by inserting “or for purposes of establishing and enforcing programs to improve the safety of the nation’s public transportation systems, and reducing accidents on rail fixed guideway and bus systems for public transportation,” after “emergency,”.

(d) 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 a new subparagraph (A) following “Secretary of Transportation--” to read as follows:

“(A) shall establish and implement an enforcement program, including the imposition of penalties for failure to comply with this section;”.

(e) CONFORMING AMENDMENT; REPEAL.—

(1) CHAPTER ANALYSIS.—The analysis for chapter 53 of title 49, United States Code, is amended by striking the item relating to section 5329 and inserting the following:

“5329. Public Transportation Safety Program.”.

(2) REPEAL.—Section 5330 of title 49, United States Code, is repealed three years after the effective date of final regulations issued by the Secretary under section 5329 of title 49, as amended by this section.

## ANALYSIS OF PROPOSED PUBLIC TRANSPORTATION SAFETY PROGRAM

Section 1 provides the short title of the bill, “The Public Transportation Safety Program Act of 2009.”

Section 2 of the Act would establish a Public Transportation Safety Program, within the U.S. Department of Transportation, as section 5329 of title 49, United States Code. This new section 5329 would replace the current section 5329, which addresses the investigations of safety hazards and security risks.

Subsection (a) of section 5329 would require the Secretary, as soon as practicable, to establish and implement a Public Transportation Safety program to improve the safety of rail fixed guideway public transportation systems in design, construction, or revenue service that receive Federal financial assistance under chapter 53 of title 49. Section 5329 would not apply to fixed guideway public transportation systems subject to regulation by the Federal Railroad Administration (FRA) under subtitle V of title 49, United States Code, and the Rail Safety Improvement Act of 2008. Paragraph (3) requires the Secretary, to the extent practicable, to take into consideration the recommendations of the National Transportation Safety Board.

Subsection (b) would give the Secretary the option to establish and implement a Public Transportation Safety program for bus public transportation systems that receive Federal financial assistance under chapter 53.

Subsection (c) would require the Secretary to promulgate notice and comment regulations and issue orders for rail fixed guideway public transportation systems not already regulated by FRA to ensure the safe operation of the systems. Paragraph (1) of subsection (c) states that, as a part of the regulatory process, FTA would be required to establish a certification program for employees and contractors who carry out a State public transportation safety program in compliance with the section and oversee the performance of employees and contractors responsible for performing safety activities identified in the State’s program.

Paragraph (2) would ensure that the Department of Homeland Security consults with the Secretary of Transportation before prescribing a security regulation or issuing a security order that affects the safety of public transportation design, construction or operations.

Paragraph (3) of subsection (c) would allow the Secretary to waive compliance with any part of a regulation or order if it were in the public interest. The Secretary would be prohibited from issuing a waiver and must immediately revoke the waiver if the waiver would be inconsistent with the goals and objectives of this section. The Secretary would have to publish the reasons for granting or revoking the waiver.

Subsection (d) deals with preemption. Paragraph (1) of subsection (d) would allow a State to adopt or continue in force a law, regulation, or order related to public transportation safety until the Secretary prescribes a regulation or issues an order covering the subject matter of the State requirement. Regardless, a State could adopt or continue in force an additional or more stringent law, regulation, or order related to public transportation safety when the law, regulation, or order

that has a safety benefit. However, the State directive must not be incompatible with a law, regulation, or order of the United States Government and must not unreasonably burden interstate commerce.

Paragraph (2) of subsection (d) states that this section does not preempt a State action commenced pursuant to its laws seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with the Federal standard of care established by the Secretary through a regulation or order with respect to public transportation safety matters; or has failed to comply with a State's own program, rule, or standard that it created pursuant to a regulation or order issued by the Secretary; or has failed to comply with a State law, regulation, or order that is additional to or more stringent than Federal public transportation safety laws, but yet not inconsistent with those Federal laws. Paragraph (3) would provide that this would apply to all State law causes of action arising from events or activities occurring on or after the enactment of this section. Paragraph (4) states that this section would not create a Federal cause of action on behalf of an injured party or confer Federal question jurisdiction for such State law causes of action.

Subsection (e)(1) would authorize the Secretary to take certain actions the Secretary deems necessary. This includes conducting inspections, investigations, audits, examinations, and testing of a public transportation system's equipment, facilities, rolling stock, operations, and persons engaged in the business of a public transportation system or delegating these functions to a public entity or other qualified person. It also authorizes the Secretary to make reports, issue subpoenas, require the production of documents, take depositions, and prescribe recordkeeping and reporting requirements with respect to public transportation safety regulation compliance.

Paragraph (1) of subsection (e) would also allow the Secretary to make grants, or enter into agreements for research, development, testing and training of every area of public transportation safety and also to assist a delegated public entity or qualified person in carrying out the safety program activities authorized under this subsection.

Paragraph (2) of subsection (e) clarifies that the Secretary or State may engage in safety activities, including for purposes of accident and incident prevention and investigation. The Federal share of research and safety activity grants or agreements could be up to 100 percent under paragraph (3) of subsection (e).

Paragraph (4) of subsection (e) clarifies that an officer or employee of the Secretary, or agent designated by the Secretary, may enter and inspect public transportation equipment, facilities, rolling stock, operations, and relevant records at reasonable times and in a reasonable way. When requested, the officer or employee of the Secretary, or agent designated by the Secretary, would be required to display proper credentials. During an inspection, the officer, employee, or designated agent of the Secretary qualifies as an employee of the United States Government for purposes of tort claims procedures under 28 U.S.C. Chapter 171.

Paragraph (1) of subsection (f) provides for State participation. Under this paragraph, a State may, at its choosing, establish and implement a State public transportation safety program that requires, at a minimum, compliance with the Federal laws and the regulations and policies

related to public transportation safety. A State program would not be limited to rail fixed guideway public transportation systems.

Paragraph (2) of subsection (f) would authorize the Secretary to make grants to carry out a Public Transportation Safety program established by a State, including to train employees necessary to administer and manage a Public Transportation Safety program and to enforce Federal and State public transportation safety laws, regulations and orders. Paragraph (3) would make grants contingent on employees responsible for oversight of the performance of safety functions under the State program meeting the safety certification criteria established through regulations prescribed by the Secretary. In order to receive a grant, a State would have to submit its Public Transportation Safety program to the Secretary for review and written approval prior to implementing the program, and also submit any amendment to its program to the Secretary for review and written approval at least 60 days before the amendment becomes effective. The amendment would be deemed approved absent a written response from the Secretary by the end of the 60-day period.

Paragraph (3) of subsection (f) provides Public Transportation Safety program methodologies when a single public transportation authority operates in more than one State. In this case, the affected States must establish and implement a program jointly to ensure uniform safety standards and enforcement procedures that would have to be, at a minimum, in compliance with Federal public transportation safety law, regulations and policies. Alternatively, the States could designate an entity (other than the public transportation authority) to perform safety activities on the States' behalf.

Paragraph (4) of subsection (f) deals with potential conflicts of interest. First, a State would be prohibited from allocating funds awarded in a grant to carry out a State Public Transportation Safety program to a State agency or local entity that operates a public transportation system. Second, a State could not allow a State agency or local entity operating a public transportation system to provide funds to a State agency or another entity designated to have responsibility for the safety functions by the State. Last, a State agency or local entity that operates a public transportation system would be prohibited from having a role in overseeing a State Public Transportation Safety program.

Paragraph (5) of subsection (f) would authorize up to a 100 percent share in Federal assistance. The Secretary through regulations issued under this section would be required to establish a schedule of reimbursable costs that the Secretary must use to assist a State in defraying its costs of developing, implementing and enforcing a State Public Transportation Safety program. To help defray the costs of developing, implementing and enforcing a State program, a State would submit to the Secretary a voucher that does not exceed the amount identified on the schedule of reimbursable costs for an eligible activity. The Secretary would be required to pay the State an amount not more than the Federal Government's share of costs incurred as of the date of the voucher. Reimbursement to the State would be in an amount not more than the Federal Government's share of costs incurred as of the date of the voucher.

Paragraph (6) requires the Secretary to ensure that the State is carrying out the State Public Transportation Safety program in compliance with Federal law. If the Secretary finds, after

notice and opportunity to comment, that the State program previously approved is not being followed or has become inadequate to ensure enforcement of the regulations or orders, the Secretary must withdraw approval of the program and notify the State. Once the State receives the notification, the State Public Transportation Safety program will no longer be in effect. A State receiving notice of the withdrawal of approval may seek judicial review of the Secretary's decision under chapter 7 of title 5, United States Code (Administrative Procedure Act). Notwithstanding the withdrawal, a State would retain jurisdiction in administrative and judicial proceedings begun before the withdrawal if the issues involved are not related directly to the reasons for the withdrawal. If a State program approval is withdrawn, the Secretary would apply Federal enforcement and oversight.

Subsection (g) authorizes the Secretary to enforce compliance with the public transportation safety program. Under paragraph (1) of this subsection, the Secretary could establish, impose and compromise a civil penalty for a violation of a public transportation safety regulation prescribed or order issued in accordance with this section or for a violation of the alcohol and controlled substances testing provisions under 49 U.S.C. 5331. The Secretary could request an injunction for such violations. Under paragraph (2), civil penalties collected by the Secretary would be deposited into the General Fund of the United States Treasury. The Secretary would notify the Attorney General when the Secretary received evidence of a possible criminal violation under paragraph (5) of this subsection, which is described below.

Paragraph (3) of subsection (g) would allow the Secretary to request that the Attorney General bring a civil action for injunctive relief, to collect a civil penalty, or to enforce the Secretary's subpoena, request for admissions, request for production of documents or other tangible things, or request for testimony by deposition. Under paragraph (4), the action could be brought in U.S. District Court in any State in which relief is sought. The court, based on evidence, would be required to issue a temporary restraining order or preliminary or permanent injunction. The injunction could order a public transportation agency receiving Federal transit assistance to comply with the Federal Public Transportation Safety program laws and regulations.

Paragraph (5) of subsection (g) would authorize criminal penalties when a person is found to have knowingly violated the section or a public transportation safety regulation or order issued under the section. The person would receive a fine consistent with title 18, United States Code, imprisoned for not more than 5 years, or both; except that the maximum amount of imprisonment is 10 years in any case in which the violation results in death or bodily injury to any person. A person acts knowingly when the person has actual knowledge of the facts giving rise to the violation; or a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. Actual knowledge of the existence of a statutory provision, or a regulation or a requirement required by the Secretary is not an element of an offense.

Subsection (h) provides the Secretary with authority to issue an order mandating restrictions or prohibitions without regard to the rulemaking and hearing process that may be required under 5 U.S.C. 553 and 554, when through testing, inspection, investigation or research, an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death, personal injury, or significant harm to the environment. The order must describe the condition or practice, or a combination of conditions and practices,

that causes the emergency situation and prescribe standards and procedures for obtaining relief from the order. The Secretary has the discretion to maintain the order in effect for as long as the emergency situation exists.

After issuing an order under subsection (h), the Secretary must provide an opportunity for review of the order pursuant to the adjudication provisions under 5 U.S.C. 554. If a petition for review is filed and the review is not completed by the end of the 30-day period beginning on the date the order was issued, the order stops being effective unless the Secretary decides in writing that the emergency situation still exists.

Paragraph (4) of subsection (h) permits an employee of rail fixed guideway public transportation system provider who may be exposed to imminent physical injury during that employment because of the Secretary's failure, without any reasonable basis, to issue an emergency order, or the employee's authorized representative, to bring a civil action against the Secretary in a U.S. district court to compel the Secretary to issue an order. The action must be brought in the judicial district in which the emergency situation is alleged to exist, in which the employing provider has its principal executive office, or in the District of Columbia. The Secretary's failure to issue an emergency order can be reviewed only under the Scope of Review provisions set forth in 5 U.S.C. 706.

Subsection (i) would prohibit the Secretary from prescribing regulations or issuing orders related to employee qualifications, unless the qualifications are specifically related to safety. In addition, this subsection would not prohibit collective bargaining agreements between public transportation agencies and public transportation employees or their representatives, including agreements related to employees' qualifications that are not inconsistent with regulations and orders issued under this section.

Subsection (j) clarifies that the public transportation employee protection provisions of 6 U.S.C. 1142 (administered by the Department of Labor) apply to direct and indirect recipients of Federal transit assistance funds.

Subsection (k) would provide for judicial review under the section. A person adversely affected or aggrieved by the final action of the Secretary involving the imposition of a civil penalty for violating this section, the issuance of a regulation or order under this section, the violation of the alcohol and controlled substances testing provisions of 49 U.S.C. 5331, or the issuance of a regulation or order under 49 U.S.C. 5331, may file a petition for review of the final action in the U.S. Court of Appeals for the District of Columbia or in the court of appeals for the United States for the circuit in which the person resides and has its principal place of business. The petition must be filed not more than 60 days after the Secretary's action becomes final. The clerk of the court is required to immediately send a copy of the petition filed to the Secretary. The Secretary must file with the court a record of any proceeding in which the final action was issued as provided in Judiciary and Judicial Procedures for Record on Review and Enforcement of Agency Orders prescribed under 28 U.S.C. 2112. The court may consider an objection to the Secretary's final action only if the objection was made in the course of the proceeding or review conducted by the Secretary or if there was a reasonable ground for not making the objection in the proceeding.

Subsection (b) of section 2 of the Act would amend section 5338 of title 49, United States Code, to authorize such amounts in each fiscal year to be appropriated from the General Fund of the United States Treasury as are necessary to administer section 5329 and make grants or enter into agreements to carry out that section. Section 5338(h) is amended to reflect that the funds are available until expended.

Subsection (c) of section 2 of the Act would amend the current prohibition in Federal law (49 U.S.C. 5334) on regulation of transit operations and service practices to allow for the new Federal transit safety program.

Subsection (d) of section 2 of the Act would amend 49 U.S.C. 5331(b)(2), "Alcohol and Controlled Substances Testing," to require the Secretary to establish and implement an enforcement program, including the imposition of penalties for failure to comply with FTA's Alcohol and Controlled Substances Testing program.

Subsection (e) of section 2 of the Act makes a conforming amendment and provides for a repeal of existing law. It would amend the chapter analysis to reflect the new heading of section 5329 of title 49, United States Code as the "Public Transportation Safety Program." It would also repeal 49 U.S.C. 5330, "State Safety Oversight," three years after the effective date of final regulations issued by the Secretary under section 5329 of title 49, as amended by the Act.