Urban Mass Transportation Act of 1964

As Amended through May 1983 and Related Laws

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of Transportation
Urban Mass Transportation Administration

FOREWORD

This book contains the statutes authorizing and governing the Federal urban mass transportation program and the Urban Mass Transportation Administration (UMTA), as well as other statutory material relevant to mass transportation and government operations generally. It is designed as a guidebook for UMTA staff as well as UMTA grantees and interested members of the general public.

Part I of this volume contains the basic authorizing statute, the Urban Mass Transportation Act of 1964, as amended through July 1983 (the Act). All amendments have been incorporated into the text of the Act. The footnotes offer explanatory material and statutory references, identify related material found in other legislation, and contain provisions of legislation governing the UMTA program that have been amended, superseded, overtaken by events or have expired.

Part I also contains related material from the Urban Mass Transportation Act of 1970, the National Mass Transportation Assistance Act of 1974, the Federal Public Transportation Act of 1978 (Title III of the Surface Transportation Assistance Act of 1978), and the Federal Public Transportation Act of 1982 (Title III of the Surface Transportation Assistance Act of 1982).

Part II sets out the Federal-aid highway laws which are relevant to the UMTA program.

Part III contains an extensive selection of statutory materials relevant to both the substantive aspects of UMTA programs and the administrative operations of the agency.

TABLE OF CONTENTS

PART I—THE FEDERAL URBAN MASS TRANSPORTATION PROGRAM BASIC LAW

	Page
Urban Mass Transportation Act of 1964, as amended	1
Surface Transportation Assistance Act of 1982—Additional Provisions	53
Surface Transportation Assistance Act of 1978—Additional Provisions	56
National Mass Transportation Assistance Act of 1974—Additional Provisions	57
2—Findings	57
107—Safety Hazards	58
108—Fares for Elderly and Handicapped	58
201-07—Fare Free Mass Transportation Demonstration	58
Urban Mass Transportation Act of 1970—Additional Provisions	60

Table of Contents—*Continued*

PART II—FEDERAL-AID HIGHWAY LAWS RELATING TO MASS TRANSPORTATION

Title 23, United States Code (Highways)

Chapter 1—*Federal-Aid Highways* *Page*

103—Federal-aid systems 63
104—Apportionment 70
105—Programs 71
109—Standards 71
120—Federal share payable 73
134—Transportation planning in certain urban areas 74
135—Traffic operations improvement programs 75
137—Fringe and corridor parking facilities 75
142—Public transportation 76
146—Carpool and vanpool projects 78
147—Priority primary routes 79
150—Allocation of urban system funds 79

EXCERPTS FROM FEDERAL-AID HIGHWAY ACT OF 1973 NOT CODIFIED IN TITLE 23, U.S.C.

138—Public mass transportation studies 80
140—Metro accessibility to the handicapped 81
146—High speed transportation demonstration 81
147—Rural highway public transportation demonstration program 81
151—Research and planning 82
164—Financial assistance agreements 82
165—Bus and other project standards 83

Table of Contents—*Continued*

PART III—OTHER MATERIALS RELEVANT TO UMTA OR MASS TRANSPORTATION IN GENERAL

	Page
Transfer of functions and establishment of UMTA (Reorganization Plan No. 2 of 1968)	87
Executive order 12372	89
Protection of Public Lands (Section 4(f) (49 U.S.C. 1653))	92
National Environmental Policy Act (42 U.S.C. 4321, *et seq.*)	93
Federal Railroad Safety Act of 1970 (Excerpt) (45 U.S.C. 421, *et seq.*)	98
Davis-Bacon Act (40 U.S.C. 276a, *et seq.*)	101
Non-Discrimination Provisions	104
Equal Employment Opportunity Act 1972 (Excerpts)	
Civil Rights Act of 1964 (Excerpts)	
Congressional Budget and Impoundment Act of 1974 (Excerpt) (31 U.S.C. 1351)	107
Demonstration Cities and Metropolitan Development Act of 1960 (Excerpts) (42 U.S.C. 3304)	109
Housing Act of 1950 (Excerpt) (12 U.S.C. 1749a)	110
Uniform Relocation Assistance Act of 1970 (42 U.S.C. 4601, *et seq.*)	112
National Historic Preservation Act of 1966 (Excerpt) (16 U.S.C. 470)	126
Rehabilitation Act of 1975, as amended (Excerpt) (29 U.S.C. §§ 794 and 794a)	126

PART I—THE FEDERAL URBAN MASS TRANSPORTATION PROGRAM—BASIC LAW URBAN MASS TRANSPORTATION ACT OF 1964, AS AMENDED

49 U.S.C. 1601 et seq.

An Act

To authorize the Secretary of Transportation [1] to provide additional assistance for the development of comprehensive and coordinated mass transportation systems, both public and private, in metropolitan and other urban areas, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Urban Mass Transportation Act of 1964."

Findings and Purposes [2]

§ 1601 SECTION 2. (a) The Congress finds—

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the welfare and vitality of urban areas, the satisfactory movement of people and goods within such areas, and the effectiveness of housing, urban renewal, highway, and other federally aided programs are being jeopardized by the deterioration or inadequate provision of urban transportation facilities and services, the intensification of traffic congestion, and the lack of coordinated transportation and other development planning on a comprehensive and continuing basis; and

(3) that Federal financial assistance for the development of efficient and coordinated mass transportation systems is essential to the solution of these urban problems.

(b) The purposes of this Act are—

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[1] As originally enacted, the Act vested urban mass transportation functions in the Administrator of the Housing and Home Finance Agency. The Department of Housing and Urban Development Act (Public Law 89–174) transferred those functions to the Secretary of Housing and Urban Development. By section 20 of Public Law 90–19, the Act was amended to read "Secretary of Housing and Urban Development." Reorganization Plan No. 2 of 1968 (see Part III), transferred most urban mass transportation functions to the Secretary of Transportation. Unless otherwise indicated, all references to the Secretary mean the Secretary of Transportation.

[2] See also the statement of findings and purposes contained in section 1 of the Urban Mass Transportation Assistance Act of 1970 and section 2 of the National Mass Transportation Assistance Act of 1974.

(1) to assist in the development of improved mass transportation facilities, equipment, techniques, and methods, with the cooperation of mass transportation companies both public and private;

(2) to encourage the planning and establishment of areawide urban mass transportation systems needed for economical and desirable urban development, with the cooperation of mass transportation companies both public and private; and

(3) to provide assistance to State and local governments and their instrumentalities in financing such systems, to be operated by public or private mass transportation companies as determined by local needs.

Discretionary Grant or Loan Program [3, 4, 5]

§ 1602 SECTION 3.[6] (a)(1) The Secretary is authorized, in accordance with the provisions of this Act and on such terms and conditions as the Secretary may

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[3] The Federal-aid highway law (see Part II) authorizes the use of certain federal-aid highway funds to assist in improving urban mass transportation. Section 142 of title 23 authorizes the use of funds for the construction of highway lanes and other facilities specially designed to enhance urban mass transportation by bus. Section 137 authorizes the use of funds for acquisition and construction of fringe parking facilities if adequate public transportation service is made available for persons using such facilities. Under both sections, Federal funds can be used to pay up to 75 percent of the cost of such projects (Section 108 of Public Law 91–605).

In addition, sec. 121 of the Federal-Aid Highway Act of 1973 amended 23 USC 142 to permit construction of exclusive or preferential bus, truck, and emergency vehicle lanes as part of the Interstate System. Such projects are not subject to the four-lane requirement or other Interstate standard requirements contained in 23 USC 109(b). The Federal share payable for projects pursuant to 23 USC 142(b) is 90 percent—the same Federal-State ratio applicable to other projects on the Interstate System.

[4] Section 301(e) of Public Law 93–87 provided that the "provisions of assistance under the amendments made by this section shall not be construed as bringing within the application of chapter 15 of title 5, United States Code, any nonsupervisory employee of an urban mass transportation system (or of any other agency or entity performing related functions) to whom such chapter is otherwise inapplicable."

[5] In *Qonaar* v. *Metropolitan Atlanta Rapid Transit Authority*. 441 F. Supp. 1168 (N.D.Ga. 1977), the District Court held that a circular promulgated by the Office of Management and Budget applied to UMTA grants despite the fact that UMTA had not adopted regulations to implement the circular.

[6] Subsection 3(a) was substantially amended by section 302 of Public Law 95–599 (November 6, 1978). Former subsection 3(a) read as follows:

"SECTION 3. (a)(1) The Secretary is authorized, in accordance with the provisions of this Act and on such terms and conditions as he may prescribe to make grants or loans (directly, through the purchase of securities or equipment trust certificates, or otherwise) to assist States and local public bodies and agencies thereof in financing (1) the acquisition, construction, reconstruction, and improvement of facilities and equipment for use, by operation or lease or otherwise in mass transportation service in urban areas and on coordinating such service with highway and other transportation in such areas, and (2) the establishment and organization of public or quasi-public transit corridor development corporations or entities. Eligible facilities and equipment may include personal property including buses and other rolling stock and real property including land (but not public highways), within the entire zone affected by the construction and operation of transit improvements, including station sites, needed for any efficient and coordinated mass transportation system which is compatible with socially, economically, and environmentally sound patterns of land use. No grant or loan shall be provided under this section unless the Secretary determines that the applicant has or will have

(A) the legal, financial, and technical capacity to carry out the proposed project; and

(B) satisfactory continuing control, through operation or lease or otherwise, over the use of the facilities and the equipment.

The Secretary may make loans for real property acquisition pursuant to subsection (b) upon a determination, which shall be in lieu of the preceding determination, that the real property is reasonably expected to be required in connection with a mass transportation system and that it will be used for that purpose within a reasonable period. No grant or loan funds shall be used for payment of ordinary governmental or nonproject operating expenses, nor shall any grant or loan funds be used to support procurements utilizing exclusionary or discriminatory specifications.

(2) It is declared to be in the national interest to encourage and promote the development of transportation systems embracing various modes of transport in a manner that will serve the States and local communities

Continued

prescribe, to make grants or loans [7] (directly, through the purchase of securities or equipment trust certificates, or otherwise) to assist States and local public bodies and agencies thereof in financing—[8]

(A) the construction of new fixed guideway systems and extensions to existing fixed guideway systems, including the acquisition of real property, the initial acquisition of rolling stock needed for such systems, the detailed alternative analyses relating to the development of such systems, and the acquisition of rights-of-way, and relocation, for fixed guideway corridor development for projects in advanced stages of any such detailed alternatives analyses or preliminary engineering;[9]

(B) the acquisition, construction, reconstruction, and improvement of facilities and and equipment for use, by operation or lease or otherwise, in mass transportation service and the coordination of such service with highway and other transportation. Eligible facilities and equipment may include personal property such as buses and other rolling stock, and rail and bus facilities, and real property and improvements (but not public highways other than fixed guideway facilities) needed for an efficient and coordinated public transportation system. No project for the replacement or purchase of buses and related equipment or the construction of bus-related facilities shall be approved unless the Secretary finds that such project cannot be

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efficiently and effectively. To accomplish this objective the Secretary shall cooperate with the States in the development of long-range plans and programs which are properly coordinated with plans for improvements in other affected forms of transportation and which are formulated with due consideration to their probable effect on the future development of urban areas of more than fifty thousand population. The development of projects in urbanized areas under this section shall be based upon a continuing, cooperative, and comprehensive planning process covering all modes of surface transportation and carried on by the States and the governing bodies of local communities in accordance with this paragraph. The Secretary shall not approve any project in an urbanized area after July 1, 1976, under this section unless he finds that such project is based on continuing comprehensive transportation planning process carried on in conformance with the objectives of this paragraph."

[7] Three district court cases and one appellate court case have held that until UMTA makes a final decision on a grant application, there is no final agency action; the dispute is not ripe for adjudication; and the court lacks jurisdiction. *Association of Community Organizations for Reform Now* v. *Southeastern Pennsylvania Transportation Authority*, 462 F. supp. 879 (E.D. Pa. 1978), *affirmed without opinion* 605 F.2d 1194 (3rd cir. 1978). *Hudson* v. *Washington Metropolitan Area Transit Authority*, Civil No. 75-0360 (D.D.C. memorandum opinon filed July 8, 1976); and *Hudson Transit Lines* v. *Brinegar*, Civil No. 74-648 (D.N.J. opinion fiied July 25, 1978). In *Friedman Brothers Investment Co.* v. *Lewis*, 676 F.2d 1317 (9th cir. 1982), the Court of Appeals held that where UMTA had issued an environmental categorical exclusion, it had taken enough steps to make the case ripe for judicial review.

In *McDonald* v. *Stockton Metropolitan Transit District*, 36 Cal. App. 3d 436, III Cal. Rptr, 637 (1974), where a transit district had contracted, inter alia, to install bus stop shelters as part of a capital grant project, it was held that where the district had refused to install such shelters as part of the completed project, the Department of Transportation has authority under the Urban Mass Transportation Act of 1964 to either withhold further financial assistance, or to bring suit for damages or for specific performance to enforce the grant contract.

[8] In *AM General Corporation* v. *Department of Transportation*, 433 F. Supp. 1166 (D.D.C. 1977), the court held that the exclusionary and discriminatory specification language of this section did not prohibit the specification of a product improvement simply because one or more competitors chose not to offer such an improvement, but that the statute did prohibit specifications adopted for the purpose of excluding a competitor from bidding without regard to the merits of the product involved.

In the case of *Pullman, Inc:* v. *Adams*, No. 77-1686 (D.D.C. memorandum opinion filed June 14, 1978). the court held that prohibition against utilizing exclusionary or discriminatory specifications did not evince an intention to protect a disappointed bidder who claimed to be the lowest responsive and responsible bidder on a solicitation offered by a grantee under section 3. The bidder was therefore denied standing to sue.

[9] Section 313 of Public Law 97-424 inserted "and the acquisition of rights-of-way, and relocation, for fixed guideway corridor development for projects in advanced stages of and such detailed alternatives analyses or preliminary engineering" after "systems."

reasonably funded out of the apportionments under section 5(a)(4) of this Act;

(C) the introduction into public transportation service of new technology in the form of innovative and improved products;

(D) transportation projects which enhance the effectiveness of any mass transportation project and are physically or functionally related to such mass transportation project or which create new or enhanced coordination between public transportation and other forms of transportation, either of which enhance urban economic development or incorporate private investment including commercial and residential development. The term "eligible costs" includes property acquisition, demolition of existing structures, site preparation, utilities, building foundations, walkways, open space, and the acquisition, construction, and improvement of facilities and equipment for intermodal transfer facilities and transit malls, but does not include the construction of commercial revenue-producing facilities, whether publicly or privately owned, or of those portions of public facilities not related to mass transportation. The Secretary shall require that all grants and loans under this paragraph be subject to such terms, conditions, requirements, and provisions as the Secretary determines 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. The Secretary shall require in all grants and loans under this subparagraph that any person or entity that contracts to occupy space in facilities funded under this subparagraph shall pay a fair share of the costs of such facilities, through rental payments and other means;

(E) the modification of equipment and fixed facilities (other than stations) which the Secretary determines to be necessary to avoid any adverse effects resulting from the implementation of the Northeast Corridor project pursuant to title VII of Public Law 94–210. Notwithstanding the Federal share provisions of section 4(a) of this Act, the Secretary is authorized to make grants for 100 per centum of the net project cost of projects assisted under this subparagraph.

(2)(A) No grant or loan shall be provided under this section unless the Secretary determines that the applicant has or will have—

(i) the legal financial, and technical capacity to carry out the proposed project;[10]

(ii) satisfactory continuing control, through operation or lease or otherwise, over the use of the facilities and the equipment [11] and

(iii) sufficient capability to maintain the facilities and equipment.[12]

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[10] Based upon documents in the record, two district courts have upheld the Secretary's finding of legal and technical capacity as not arbitrary, capricious, or an abuse of discretion. *Parker* v. *Adams*, Civil No. 78–652 (W.D.N.Y. memorandum opinion filed Nov. 15, 1978); *Philadelphia Council of Neighborhood Organizations* v. *Coleman*, 437 F. Supp. 1341 (E.D. Pa. 1977). *aff'd without opinion* 578 F. 2d. 1375 (3rd Cir. 1978).

[11] The purpose of this provision is to assure that the project will become, and will remain, operational. *Philadelphia Council of Neighborhood Organizations v. Coleman*, 437 F. Supp. 1341, 1355 (E.D. Pa. 1977) *aff'd without opinion* 578 F. 2d 1375 (3rd Cir. 1978). Based on material in the record, the Secretary's finding of satisfactory continuing control over the project was held not to be arbitrary, capricious or an abuse of discretion. *id.* at 1356.

[12] Clause (iii) was added by section 304(a) of Public Law 97–424.

(B) The Secretary may make loans for real property acquisition pursuant to subsection (b) upon a determination, which shall be in lieu of the determination required by subparagraph (A), that the real property is reasonably expected to be required in connection with a mass transportation system and that it will be used for that purpose within a reasonable period.

(C) No grant or loan funds shall be used for payment of ordinary governmental or nonproject operating expenses, nor shall any grant or loan funds be used to support procurements utilizing exclusionary or discriminatory specifications.

(3) The Secretary shall not approve a grant or loan for a project under this section unless the Secretary finds that such project is part of an approved program of projects required by section 8 of this Act.[13]

(4) The Secretary is authorized to announce an intention to obligate for a project under this section through the issuance of a letter of intent to the applicant. At least thirty days prior to the issuance of a letter of intent under this paragraph, the Secretary shall notify, in writing, the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, of the proposed issuance of such letter of intent.[14] Such an action shall not be deemed an obligation as defined under section 1311 of the Act of August 26, 1954, as amended (31 U.S.C. 200), nor shall such a letter be deemed an administrative commitment. The letter shall be regarded as an intention to obligate from future available budget authority provided in an appropriation Act not to exceed an amount stipulated as the Secretary's financial participation in the defined project under this section. The amount stipulated in the letter, when issued for a fixed guideway project, shall be sufficient to complete an operable segment. No obligation or administrative commitment may be made pursuant to such a letter of intent except as funds are provided in appropriations Acts. The total estimated amount of future Federal obligations covered by all outstanding letters of intent shall not exceed the amount authorized to carry out section 3 [15] of this Act, less an amount reasonably estimated by the Secretary to be necessary for grants under this section which are not covered by a letter of intent. The total amount covered by new letters issued shall not exceed any limitation that may be specified in an appropriations Act. Nothing in this paragraph shall affect the validity of letters of intent issued prior to the enactment of the Federal Public Transportation Act of 1978.

Funding for projects covered by letters of intent or letters of commitment issued, and full funding contracts executed, prior to the date of enactment of the Federal Public Transportation Act of 1982 should be funded under this section while not precluding the funding of a portion of such projects using section 9 capital funds unless such funding would impair the recipi-

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[13] See footnote 85.

[14] Section 305 of Public Law 97-424 inserted "At least thirty days prior to the issuance of a letter of intent under this paragraph, the Secretary shall notify, in writing, the Committee on Public Works and Trensportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, of the proposed issuance of such letter of intent" after "applicant."

[15] Section 305 of Public Law 97-424 inserted "to carry out section 3" to replace the wording "in section 4(c)."

ent's ability to fund routine capital projects under such section. Notwithstanding the provisions of section 4(a), the Federal share of the total project cost of any project under this section covered by a full funding contract, letter of intent, or letter of commitment in effect on the date of enactment of the Federal Public Transportation Act of 1982, or those projects within the federally agreed upon scope for the Washington, District of Columbia, metropolitan area transit system (as of such date), shall not be altered.[16]

(5) The Secretary shall take into account the adverse effect of decreased commuter rail service in considering applications for assistance under this section for the acquisition of rail lines and all related facilities used in providing commuter rail service which are owned by a railroad subject to reorganization under title 11, United States Code.[17]

(6) In making grants under this section in fiscal year 1983, the Secretary shall, to the extent practicable, emphasize projects that are labor intensive and that can begin construction or manufacturing within the shortest possible time.[18]

(b) The Secretary is authorized to make loans under this section to States or local public bodies and agencies thereof to finance the acquisition of real property and interests in real property for use as rights-of-way, station sites, and related purposes on urban mass transportation systems, including reconstruction, renovation and the net cost of property management pursuant to section 7.[19] Each loan agreement under this subsection shall provide for actual construction of urban mass transportation facilities on acquired real property within a period not exceeding ten years following the fiscal year in which the agreement is made. Each agreement shall provide that in the event acquired real property or interests in real property are not to be used for the purposes for which acquired, an appraisal of current value will be made at the time of that determination, which shall not be later than ten years following the fiscal year in which the agreement is made. Two-thirds of the increase in value, if any, over the original cost of the real property shall be paid to the Secretary for credit to miscellaneous receipts of the Treasury. Repayments of amounts loaned shall be credited to miscellaneous receipts of the Treasury. A loan made under this subsection shall be repayable within ten years from the date of the loan agreement or on the date a grant agreement for actual construction of facilities on the acquired real property is made, whichever date is earlier. A grant agreement for construction of facilities under this Act may

[16] Section 305 of Public Law 97–424 inserted "Funding for projects covered by letters of intent or letters of commitment issued, and full funding contracts executed, prior to the date of enactment of the Federal Public Transportation Act of 1982 should be funded under this section while not precluding the funding of a portion of such projects using section 9 capital funds unless such funding would impair the recipient's ability to fund routine capital projects under such section. Notwithstanding the provisions of section 4(a), the Federal share of the total project cost of any project under this section covered by a full funding contract, letter of intent, or letter of commitment in effect on the date of enactment of the Federal Public Transportation Act of 1982, or those projects within the federally agreed upon scope for the Washington, District of Columbia, metropolitan area transit system (as of such date), shall not be altered." The date of enactment of the Federal Public Transportation Act of 1982 was January 6, 1983.

[17] Paragraph (5) was added by section 305 of Public Law 97–424.

[18] Paragraph (6) was added by section 305 of Public Law 97–424.

[19] Section 302 of Public Law 95–599 inserted "including reconstruction, renovation, and the net cost of property management" to replace the wording "including the net cost of property management and relocation payments."

provide for forgiveness of the repayment of the principal and accrued interest on the loan then outstanding in lieu of a cash grant in the amount thus forgiven, which for all purposes shall be considered a part of the grant and of the Federal portion of the cost of the project. An applicant for assistance under this subsection shall furnish a copy of its application to the comprehensive planning agency of the community affected concurrently with submission to the Secretary. If within thirty days thereafter (or, in a case where the comprehensive planning agency of the community (during such thirty-day period) requests more time, within such longer period as the Secretary may determine) the comprehensive planning agency of the community affected submits comments to the Secretary, the Secretary must consider the comments before taking final action on the application.

(c) No loan shall be made under this section for any project for which a grant is made under this section, except—

(1) loans may be made for projects as to which grants are made for relocation payments; and

(2) project grants may be made even though the real property involved in the project has been or will be acquired as a result of a loan under subsection (b).

Interest on loans made under this section shall be at a rate not less than (i) a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs and probable losses under the program. No loans shall be made, including renewals or extensions thereof, and no securities or obligations shall be purchased which have maturity dates in excess of forty years.

(d) Any application for a grant or loan under this Act to finance the acquisition, construction, reconstruction, or improvement of facilities or equipment which will substantially affect a community or its mass transportation service shall include a certification that the applicant—

(1) has afforded an adequate opportunity for public hearings pursuant to adequate prior notice, and has held such hearings unless no one with a significant economic, social, or environmental interest in the matter requests a hearing;[20]

(2) has considered the economic and social effects of the project and its impact on the environment; and

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[20] The public hearing requirement has been held to apply to demonstration projects funded pursuant to Section 6. *Westport Taxi Service, Inc.* v. *Adams*, 571 F. 2d 697 (2nd Cir 1978) *cert. den.* 439 U.S. 824 (1978). New or supplemental public hearings would not be required unless there is a significant change in the project, *Main-Amherst Business Association, Inc.* v. *Adams*, 461 F. Supp. 1077 (W.D.N.Y. 1978); *Port Authority Trans-Hudson* v. *Baum Bus Co.*, 156 N.J. Super 578 (App. Div. 1978), 384 A2d 209 (1978) and unless all interested parties have not otherwise had an adequate opportunity to be heard, *Main-Amherst Business Association, Inc.* v. *Adams, supra.*

(3) has found that the project is consistent with official plans for the comprehensive development of the urban areas.[21]

Notice of any hearings under this subsection shall include a concise statement of the proposed project, and shall be published in a newspaper of general circulation in the geographic area to be served. If hearings have been held, a copy of the transcript of the hearings shall be submitted with the application.[22]

(e) [23] No financial assistance shall be provided under this Act to any State or local public body or agency thereof for the purpose, directly or indirectly, of acquiring any interest in, or purchasing any facilities or other property of a private mass transportation company, or for the purpose of constructing, improving, or reconstructing any facilities or other property acquired (after the date of the enactment of this Act) from any such company, or for the purpose of providing by contract or otherwise for the operation of mass transportation facilities or equipment in competition with, or supplementary to, the service provided by an existing mass transportation company, unless (1) the Secretary finds [24] that such assistance is essential to the program of projects required by section 8 of this Act,[25] (2) the Secretary finds that such program, to the maximum extent feasible, provides for the participation of private mass transportation companies,[26] (3) just and adequate compensation will be paid to such companies for acquisition of their franchises or property to the extent required by applicable State or local laws,[27] and (4) the Secretary of Labor

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[21] There are several statutory requirements for planning and for Federal, State, and local review and comments as to federally assisted mass transportation projects. Some of these requirements are contained in the following laws:

(1) Sections 3(a) and (d), 4(a), 5, and 14(a) of the Urban Mass Transporation Act of 1964;

(2) Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (see Part III);

(3) Section 401 of the Intergovernmental Cooperation Act of 1968; and

(4) Section 4332 (2)(c) of the National Environmental Policy Act of 1969 (see Part III) and Executive Order 12372 establish procedures which implement the requirements for project notification and review of section 204 of the Demonstration Cities and Metropolitan Develoment Act of 1966 and section 401 of the Intergovernmental Cooperation Act of 1968.

[22] One court has held that these public hearing requirements do not apply to contracts or demontration projects undertaken by or with the Secretary of Transportation directly. *Township of Ridley* v. *Blanchette*, 421 F.Supp. 435 (E.D. Pa. 1976). See also footnotes below to section 14.

[23] Subsection 3(e) was formerly subsection (c), but was redesignated by section 2(1) of Public Law 91-453.

[24] The Secretary of Housing and Urban Development is authorized to assist the Secretary in making determinations under sections 3(e)(1), 4(a), and 5 and to act jointly with the Secretary in establishing the criteria referred to in section 4(a). See section 1(a)(1) of Reorganization Plan No. 2 of 1968 (Part III).

[25] Section 302 of Public Law 95-599 amended subsection 3(e)(1) by making reference to Section 8 of that Act.

[26] In the case of *Westport Taxi Service, Inc.* v. *Adams*, 571 F. 2d 697 (2nd Cir. 1978), *cert. den.* 439 U.S. 829 (1978), the court held that a plaintiff who is "arguably" a private mass transportation company and who is likely to be financially injured by the approval of a grant to a publicly-owned system has standing to sue to enjoin the expenditure of grant funds *Accord, Hudson Bus Transportation* v. *Adams*, Civil No. 79-464 (D.N.J. Sept. 17, 1979), *aff'd without opinion* 622 F. 2d 578 (3rd Cir. 1980). *Contra, South Suburban Safeway Lines Inc.* v. *City of Chicago et al.* 416 F. 2d 535 (7th Cir. 1968)

[27] In the case of *Rose City Transit Co.* v. *City of Portland, Or.* App., 525 P2d 1325 (1974) a proceeding involving the acquisition by the city of the assets of a private transit operator using Federal funds to pay two-thirds of the acquisition cost, it was held that the provisions of section 3(e) requiring just and adequate compensation to be paid to the extent required by applicable State or local laws had no application with respect to the issue of whether or not the plaintiffs were entitled to the going concern value of their franchise to operate a transit business within the boundaries of defendant city. The court also held that the provisions of section 13(c) were intended to protect the interests of affected transit employees only, and were inapplicable to the issue of the plaintiffs' liability for meeting pension claims of former employees. The case was subsequently modified on other grounds. 533 P2d 339 (1975).

certifies that such assistance complies with the requirements of section 13(c) of this Act.

(f) [28] No Federal financial assistance under this Act may be provided for the purchase or operation of buses [29] unless the applicant or any public body receiving such assistance for the purchase or operation of buses, or any publicly owned operator receiving such assistance, shall as a condition of such assistance enter into an agreement with the Secretary that such public body, or any operator of mass transportation for such public body, will not engage in charter bus operations outside the urban area within which it provides regularly scheduled mass transportation service, except as provided in the agreement authorized by this subsection. Such agreement shall provide for fair and equitable arrangements, appropriate in the judgment of the Secretary, to assure that the financial assistance granted under this Act will not enable public bodies and publicly and privately owned operators for public bodies to foreclose private operators from the intercity charter bus industry where such private operators are willing and able to provide such service. In addition to any other remedies specified in the agreement, the Secretary shall have the authority to bar a grantee or operator from the receipt of further financial assistance for mass transportation facilities and equipment where he determines that there has been a continuing pattern of violations of the terms of agreement. Upon receiving a complaint regarding an alleged violation, the Secretary shall investigate and shall determine whether a violation has occurred. Upon determination that a violation has occurred, he shall take appropriate action to correct the violation under the terms and conditions of the agreement.

(g) No Federal financial assistance shall be provided under this Act for the construction or operation of facilities and equipment for use in providing public mass transportation service to any applicant for such assistance unless such applicant and the Secretary shall have first entered into an agreement that such applicant will not engage in schoolbus operations, exclusively for the transportation of students and school personnel, in competition with private schoolbus operators. The subsection shall not apply tc an applicant with respect to operation of a schoolbus program if the applicant operates a school system in the area to be served and operates a separate and exclusive schoolbus program for this school system. This subsection shall not apply unless private schoolbus operators are able to provide adequate transportation, at reasonable rates, and in conformance with applicable safety standards; and this subsection shall not apply with respect to any State or local public body or agency thereof if it (or a direct predecessor in interest from which it acquired the function of so transporting school-children and personnel along with facilities to be used therefor) was so engaged in schoolbus operations any time during the twelve-month period immediately prior to the date of the enactment of this subsection. A violation of an agreement under this subsec-

[28] Added by section 813(a) of Public Law 93-383. See also section 164(a) of the Federal-Aid Highway Act of 1973 (Part II).

[29] Amended to include "operation" of buses by section 109(b) of Public Law 93-503.

410-001 O - 83 - 2 : QL 3

tion shall bar such an applicant from receiving any other Federal financial assistance under this Act.[30, 31]

(h) Notwithstanding any other provision of this Act, the Secretary, upon application by a local public body, may approve a project which utilizes funds available under sections 3 and 5 of this Act, but in any such project, none of the funds available under section 3 may be expended in connection with the acquisition of buses, bus equipment, or bus related facilities unless the combined project includes new buses, bus equipment, or bus related facilities the cost of which is at least equal to the total amount that reasonably could have been provided for such purposes with funds available under section 5(a)(4).[32]

Net Project Cost, Federal Share, and Authorizations [33]

§ 1603 SECTION 4.[34] (a) The Secretary, on the basis of engineering studies, studies of economic feasibility, and data showing the nature and extent of expected utilization of the facilities and equipment, shall estimate what portion of the cost of a project to be assisted under section 3 cannot be reasonably financed from revenues—which portion shall hereinafter be called "net project cost." The Federal grant for any such project to be assisted under section 3 shall be in an amount equal to 75 [35] per centum of the net project cost.[36] The remainder of the net project cost shall be provided, in cash, from sources other than Federal funds. Such remainder may be provided in whole or in part from other than public sources, and any public or private transit

[30] Added by section 109(a) of Public Law 93-503.

[31] In *Bradford School Bus Transit* v. *Chicago Transit Authority*, 537 F. 2d 943 (7th Cir. 1976); *cert. den.* 429 U.S. 1066 (1977), the Court of Appeals held that a private school bus operator claiming injury under this section could not seek judicial review of UMTA's actions to comply with the statute until it had exhausted its administrative remedies under agency complaint procedures established at 49 C.F.R. Part 605.

In *Chicago Transit Authority* v. *Adams*, 607 F. 2d 1284 (7th Cir. 1979); *cert. den.* 446 U.S. 946 (1980), the Court of Appeals upheld UMTA's interpretation of section 3(g) that the term "school bus operations" does not include the daily school transportation of pupils.

[32] This subsection was amended by subsection 302(d) of Public Law 95-599. Prior subsection (h), which was added by Public Law 93-503 read as follows:

"(h) Notwithstanding any other provision of this Act, or of any contract or agreement entered into this Act, up to one-half of any financial assistance provided under this Act (other than under Section 5) to any State or local public body or agency thereof for the fiscal year 1975 or any subsequent fiscal year may, at the option of such State or local body or agency, be used exclusively for the payment of operating expenses (incurred in connection with the provision of mass transportation service in an urban area or areas) to improve or to continue such service, if the Secretary finds (in any case where the financial assistance to be so used was originally provided for another project) that effective arrangements have been made to substitute and, by the end of the fiscal year following the fiscal year for which such sums are used, make available (for such other project) an equal amount of State or local funds (in addition to any State or local funds) otherwise required by this Act to be contributed toward the cost of such project). Any amounts used for the payment of operating expenses pursuant to this subsection shall be subject to such terms and conditions (including the requirement for local matching contributions), required for the payment of operating expenses under other provisions of this Act, as the Secretary may deem necessary and appropriate."

[33] The subtitle of Section 4 was amended by subsection 303(a) of Public Law 95-599.

[34] References to section 3 as it read prior to Public Law 95-599 and some criteria for the Secretary to follow in issuing mass transportation grants were deleted by Public Law 95-599. See section 8 of the Act.

[35] Section 302(b) of Public Law 97-424 inserted "75" to replace "80" thereby reducing the Federal share from 80 to 75 percent. However, the Federal share of projects covered by the last sentence of section 3(a)(4) was not altered by section 302(b) of Public Law 97-424.

[36] Section 301(a) of the Federal-Aid Highway Act of 1973 (Public Law 93-87) raised the Federal grant limitations from a discretionary two-thirds of the net project cost to a mandatory 80 percent; however, the effect of that amendment is limited by the language of section 301(b) which provides that the amendment ". . . shall apply only with respect to projects which were not subject to administrative reservation on or before July 1, 1973."

system funds so provided shall be solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital. No refund or reduction of the remainder of the net project cost shall be made at any time unless there is at the same time a refund of a proportional amount of the Federal grant.[37]

(b) To finance grants under this Act there is hereby authorized to be appropriated at any time after its enactment not to exceed $75,000,000 for fiscal year 1965; $150,000,000 for fiscal year 1966; $150,000,000 for each of the fiscal years 1967, 1968, and 1969; $190,000,000 for fiscal year 1970; and $300,000,000 for fiscal year 1971.[38] Any amount so appropriated shall remain available until expended; and any amount authorized but not appropriated for any fiscal year may be appropriated for any succeeding fiscal year. The Secretary is authorized, notwithstanding the provisions of section 3648 of the Revised Statutes,[39] as amended, to make advance or progress payments on account of any grant or contract[40] made pursuant to this Act.

(c)(1) [41] To finance grants and loans under sections 3, 7(b), and 9 of this Act, the Secretary is authorized to incur obligations on behalf of the United States in the form of grant agreements or otherwise in amounts aggregating not to exceed $10,925,000,000,[42] less amounts appropriated pursuant to section 12(d) of this Act as it read prior to enactment of the Federal Public

[37] In lieu of the last three sentences of section 4(a) and section 5 prior to its amendment by Pub. L. 93-503, these sections of the Act originally read as follows:

"The remainder of the net project cost shall be provided in cash, from sources other than Federal funds, and no refund or reduction of that portion so provided shall be made at any time unless there is at the same time a refund of a proportional amount of the Federal grant."

Section 704 of Public Law 90-448 substituted the following three sentences for the original sentence:

"The remainder of the net project cost shall be provided in cash, from sources other than Federal funds. Not more than 50 per centum of such remainder may be provided from other than public sources, and any public or private transit system funds shall be provided solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital, except that in cases of demonstrated fiscal inability of an applicant actively engaged in preparing an effectuating a program for a unified or officially coordinated urban transportation system as part of the comprehensively planned development of the urban area, such remainder may be provided from other than public sources. No refund or reduction of the remainder of the net project cost shall be made at any time unless there is at the same time a refund of a proportional amount of the Federal grant."

Sections 3(a)(2) and 4(b) of Public Law 91-453 amended these sections to read in their current form. The effect of this change was to delete the requirement (contained in the next to last sentence above) that at least 50 percent of the local share of project cost must come from public sources unless the applicant public body demonstrated its fiscal inability to provide such funds.

[38] Section 1(a) of Public Law 89-562 added authorizations of $150,000,000 for each of fiscal years 1968 and 1969. Section 701 of Public Law 90-448 added the authorization of $190,000,000 for fiscal year 1970. Section 306(a) of Public Law 91-152 added the authorization of $300,000,000 for fiscal year 1971. The following appropriations for urban mass transportation grants have been made pursuant to section 4(b):

(a) $60,000,000 for fiscal year 1965 by Public Law 88-635;

(b) $130,000,000 for each of fiscal years 1966 and 1967 by Public Law 89-128;

(c) $55,000,000 for fiscal year 1968 by Public Law 89-555;

(d) $70,000,000 for fiscal year 1968 by Public Law 89-697;

(e) $175,000,000 for fiscal year 1969 by Public Law 90-121;

(f) $175,000,000 for fiscal year 1970 by Public Law 90-464; and

(g) $214,000,000 for fiscal year 1971 by Public Law 91-168.

[39] Section 3648 of the Revised Statutes (60 Stat. 809, 31 U.S.C. 529) contains a general prohibition against the making of advance payments.

[40] The words "or contract" were inserted in section 4(b) by section 13(a) of Public Law 91-453.

[41] Section 3(b) of Public Law 91-453 added new subsections (c) and (d) to section 4. This subsection was redesignated (c)(1) from (c), with a new subsection (c)(2) added below, by section 303 of Public Law 95-599.

[42] Section 101(a) of Public Law 93-503 substituted $10,925,000,000 for $6,100,000,000, which amount was substituted for $3,100,000,000 by section 301(c) of Public Law 93-87.

Transportation Act of 1978[43] and the amount appropriated to the Urban Mass Transportation Fund by Public Law 91-168. This amount (which shall be in addition to any amounts available to finance such activities under subsection (b) of this section) shall become available for obligation upon the effective date of this subsection and shall remain available until obligated.[44] There are authorized to be appropriated for liquidation of the obligations incurred under this subsection not to exceed $80,000,000 prior to July 1, 1971, which amount may be increased to not to exceed an aggregate of $310,000,000 prior to July 1, 1972, not to exceed an aggregate of $710,000,000 prior to July 1, 1973, not to exceed an aggregate of $1,260,000,000 prior to July 1, 1974, not to exceed an aggregate of $1,860,000,000 prior to July 1, 1975, and not to exceed an aggregate of $6,100,000,000[45] thereafter. The total amounts appropriated under this subsection and section 12(d) of this Act shall not exceed the limitations in the foregoing schedule.[46] Sums so appropriated shall remain available until expended.[47]

(2)[48] Notwithstanding paragraph (1) of this subsection or any other provision of this Act, the unobligated balance of contract authority established pursuant to paragraph (1) shall not be available for administrative commitment after September 30, 1978, and shall lapse on September 30, 1980.

(3)(A) To finance additional grants and loans under section 3 of this Act and to finance grants and contracts under subsection (i) of this section and section 8 of this Act, there are authorized to be appropriated not to exceed $1,375,000,000 for the fiscal year ending September 30, 1979; $1,410,000,000 for the year ending September 30, 1980; $1,515,000,000

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[43] The change "as it read prior to enactment of the Federal Public Transportation Act of 1978" was added by subsection 303(c) of Public Law 95-599. Prior to that Act, subsection 12(d) read "There are hereby authorized to be appropriated, without fiscal year limitation out of any money in the Treasury not otherwise appropriated, the funds necessary to carry out the functions under this Act." Subsection 12(d) had previously been amended by Public Law 91-453.

[44] The Urban Mass Transportation Assistance Act of 1970 (Pub. L. 91-453) added section 4(c) which modified the financial structure of the program by authorizing obligations in advance of appropriations (contract authority) for sections 3 and 9 of the Act. Funds made available for obligation pursuant to section 4(c) may not be obligated until they have been apportioned by the Director of the Office of Management and Budget pursuant to 31 U.S.C. 665 (see Part III). In addition, Congress exercised its authority to limit the level at which the program may be conducted within the authorized ceiling in Public Law 91-294 (as amended by Public Laws 91-370, 91-454, 91-645, and 92-7) and in Public Law 92-74, by providing that none of the funds made available in these respective appropriation acts could be used for administrative expenses in connection with commitments for grants in excess of $600,000,000 and $900,000,000 for fiscal years 1971 and 1972 respectively. For subsequent fiscal years, these ceilings have been as follows: 1973, $1,000,000,000 (Pub. L. 92-398); 1974, $985,550,000 (Pub. L. 93-98); and 1975, $1,445,250,000 (Pub. L. 93-391).

[45] See footnote 42.

[46] The following apporpriations have been made to the Urban Mass Transportation Fund pursuant to the authority contained in subsections 4(c) and 12(d):

(a) $9,300,000 for fiscal year 1971 by Public Law 91-645;

(b) $7,500,000 for fiscal year 1971 by Public Law 92-18;

(c) $221,300,000 for fiscal year 1972 by Public Law 92-74;

(d) $232,000,000 for fiscal year 1973 by Public Law 92-398;

(e) $380,000,000 for fiscal year 1974 by Public Law 93-98;

(f) $400,000,000 for fiscal year 1975 by Public Law 93-391; and

(g) $50,000,000 for fiscal year 1975 by Public Law 94-32.

[47] Subsection 303(c) of Public Law 95-599 deleted a sentence that required that some amount not in excess of $500,000,000 be appropriated to fund "areas other than urbanized areas."

[48] The remaining paragraphs and subsections of section 4 were added by section 303 of Public Law 95-599.

for the year ending September 30, 1981; and [49] $1,515,000,000 [50] for the fiscal year ending September 30, 1982.[51] In any fiscal year not more than five and one-half per centum of such fiscal years appropriation pursuant to this subparagraph shall be used for the purposes of subsection (i) of this section and section 8 of this Act. Appropriations pursuant to the authority of this paragraph and subsection (g) of this section may be in an appropriations Act for a fiscal year preceding the fiscal year in which the appropriation is to be available for obligation and shall remain available for three years following the close of the fiscal year for which such appropriation is made.

(B) In each fiscal year, not more than $200,000,000 of the sums appropriated pursuant to subparagraph (A) shall be available for grants and loans approved under section 3(a)(1)(D) of this Act.

(C) Not more than $45,000,000 of the total sums appropriated pursuant to subparagraph (A) shall be available for grants approved under section 3(a)(1)(E) of this Act.

(D) In each fiscal year, at least $350,000,000 of the sums appropriated pursuant to subparagraph (A) shall be available for grants for the reconstruction and improvement of existing public mass transportation systems.

(d) There are authorized to be appropriated $10,000,000 in each fiscal year for the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981, $5,000,000 for the fiscal year ending September 30, 1984, and $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, and September 30, 1986,[52] to carry out the functions of section 11(b) of this Act. Sums appropriated pursuant to this subsection shall remain available until expended.

(e) To finance grants under section 18 of this Act, there are authorized to be appropriated not to exceed $90,000,000 for the fiscal year ending September 30, 1979; $100,000,000 for the fiscal year ending September 30, 1980; $110,000,000 for the fiscal year ending September 30, 1981; and $120,000,000 for the fiscal year ending September 30, 1982. Sums appropriated pursuant to this subsection shall remain available until expended.

(f) There are authorized to be appropriated to carry out the functions of this Act, other than sections 3, 5, 8, 11(b), 16(b), and 18,[53] not to exceed $90,000,000 for the fiscal year ending September 30, 1979; $95,000,000 for

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[49] The word "and" was added by section 302(c) of Public Law 97-424.

[50] Section 1111(a)(1) of Public Law 97-35 inserted $1,515,000,000 to replace $1,600,000,000.

[51] Section 302(c) of Public Law 97-424 amended section 4(c)(3)(A) by striking out "; and $1,580,000,000 for the fiscal year ending September 30, 1983." However, Public Law 97-369 appropriated $1,606,000 for fiscal year 1983 to finance grants under sections 3, 4(i) and 8. In addition to the fiscal year 1983 appropriation, the following appropriations have been made to the Urban Mass Transportation Fund pursuant to the authority contained in subsection 4(c)(3)(A):

(a) $1,250,000,000 for fiscal year 1979 by Public Law 95-335;

(b) $1,380,000,000 for fiscal year 1980 by Public Law 96-131;

(c) $2,190,000,000 for fiscal year 1981 by Public Law 96-400;

(d) $1,460,500,000 for fiscal year 1982 by Public Law 97-102; and

(e) $15,000,000 for fiscal year 1982 by Public Law 97-257.

[52] Section 306(a) of Public Law 97-424 inserted "and September 30, 1981, $5,000,000 for the fiscal year ending September 30, 1984, and $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, and September 30, 1986." to replace "September 30, 1981, and September 30, 1982."

[53] Section 302(d) of Public Law 97-424 inserted "and 18" to replace "18, 21, and 22,".

the fiscal year ending September 30, 1980; $100,000,000 for the fiscal year ending September 30, 1981; and $105,000,000 for the fiscal year ending September 30, 1982. Sums appropriated pursuant to this subsection for financing projects funded under section 6 of this Act shall remain available until expended.

(g) There are authorized to be appropriated not to exceed $365,000,000 for the fiscal year ending September 30, 1983, $380,000,000 for the fiscal year ending September 30, 1984, $390,000,000 for the fiscal year ending September 30, 1985, and $400,000,000 for the fiscal year ending September 30, 1986,[54] to carry out public transportation projects substituted for Interstate segments withdrawn under section 103(e)(4) of title 23, United States Code except that there are authorized to be appropriated not to exceed $600,000,000 for such projects for the fiscal year ending September 30, 1982.[55]

(h)(1)[56] On or before the twentieth day of each calendar quarter the Secretary shall submit to Congress a report on (1) obligations, commitments, and reservations by State, designated recipient, and applicant, made under authority of this Act; (2) the balance as of the last day of each quarter of the unobligated, uncommitted, and unreserved apportionments made under this Act; (3) the balance of unobligated, uncommitted, and unreserved sums available for expenditure at the discretion of the Secretary under this Act as of the end of such quarter; (4) a listing of letters of intent issued; and (5) a status report on all outstanding letters of intent.

(2) On or before October 1, 1979, the Secretary shall report to Congress on authorization requests for sections 3 and 5 of this Act for fiscal years 1981 through 1984. On or before October 1, 1981, the Secretary shall report to Congress on authorization requests for sections 3 and 5 of this Act for fiscal years 1983 through 1986. Such authorization requests shall contain a description and analysis of the methods used and the assumptions relied upon by the Secretary.

(i) The Secretary is authorized to make grants to States and local public bodies, using sums available pursuant to section 4(c) (3)(A) of this section, for projects for the deployment of innovative techniques and methods in the management and operation of public transportation services. In each fiscal year grants for any one State shall not exceed twelve and one-half per centum of the funds available for the purposes of this subsection.

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[54] The words "not to exceed $365,000,000 for the fiscal year ending September 30, 1984, $390,000,000 for the fiscal year ending September 30, 1985, and $400,000,000 for the fiscal year ending September 30, 1986" were added by section 302(e) of Public Law 97-424.

[55] The words "except that there are authorized to be appropriated not to exceed $600,000,000 for such projects for the fiscal year ending September 30, 1982" were added by section 1111(a) of Public Law 97-35.

[56] This subsection essentially replaces former subsection (d) of this section which, prior to its deletion by Public Law 95-599, read as follows:

"The Secretary shall report annually to the Congress, with respect to outstanding grants or other contractual agreements executed pursuant to subsection (c) of this section."

§ 1604 SECTION 5.[57]

(a)(1)(A) To make grants for construction or operating assistance purposes under this subsection, the Secretary shall apportion for expenditure in fiscal years 1975 through 1980 the sums authorized by subsection (c)(1) of this section and appropriated pursuant to subsection (c)(2) of this section. For subsequent fiscal years, the Secretary shall apportion the sums appropriated pursuant to subparagraph (B) of this paragraph. Such sums shall be made available for expenditure in urbanized areas or parts thereof on the basis of a formula under which urbanized areas or parts thereof will be entitled to receive an amount equal to the sum of—

(i) one-half of the total amount so apportioned multiplied by the ratio which the population of such urbanized area or part thereof, as designated by the Bureau of Census, bears to the total population of all the urbanized areas in all the States as shown by the latest available Federal census; and

(ii) one-half of the total amount so apportioned multiplied by a ratio for that urbanized area determined on the basis of population weighted by a factor of density, as determined by the Secretary.

As used in this section, the term 'density' means the number of inhabitants per square mile.

(B) There are authorized to be appropriated for the purposes of this paragraph, $900,000,000 for the fiscal year ending September 30, 1981, and $850,000,000 for the fiscal year ending September 30, 1982.[58]

(2)(A) To make grants for construction or operating assistance purposes under this subsection, the Secretary shall apportion for expenditure in each

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[57] Subsection 304(a) of Public Law 95-599 substituted new subsections (a) and (b). Former subsection (a) was entirely definitional. Those provisions were shifted to section 12(c) (See footnote 69). Former subsection (b) read as follows:

"(b)(1) The Secretary shall apportion for expenditure in fiscal years 1975 through 1980 the sums authorized by subsection (c). Such sums shall be made available for expenditure in urbanized areas or parts thereof on the basis of a formula under which urbanized areas or parts thereof will be entitled to receive an amount equal to the sum of—

(A) one-half of the total amount so apportioned multiplied by the ratio which the population of such urbanized area or part thereof, as designated by the Bureau of the Census, bears to the total population of all the urbanized areas in all the States as shown by the latest available Federal census; and

(B) one-half of the total amount so apportioned multiplied by a ratio for that urbanized area determined on the basis of population weighted by a factor of density, as determined by the Secretary.

As used in the preceding sentence, the term 'density' means the number of inhabitants per square mile.

(2) The Governor, responsible local officials and publicly-owned operators of mass transportation services, in accordance with the procedures required under section (g)(1), with the concurrence of the Secretary, shall designate a recipient to receive and dispense the funds apportioned under paragraph (1) that are attributable to urbanized areas of two hundred thousand or more population. In any case in which a statewide or regional agency or instrumentality is responsible under State laws for the financing, construction and operation, directly, by lease, contract or otherwise, of public transportation services, such agency or instrumentality shall be the recipient to receive and dispense such funds. The term 'designated recipient' as used in this Act shall refer to the recipient selected according to the procedures required by this paragraph.

(3) Sums apportioned under paragraph (1) not made available for expenditure by designated recipients in accordance with the terms of paragraph (a) shall be made available to the Governor for expenditure in urbanized areas or parts thereof in accordance with the procedures required under subsection (g)(1)."

[58] Section 1111 of Public Law 97-35 inserted "$900,000,000 in the fiscal year ending September 30, 1981 and $850,000,000 for the fiscal year ending September 30, 1982" to replace "$900,000,000 in each fiscal year ending September 30, 1981, and September 30, 1982."

fiscal year the sums appropriated pursuant to subparagraph (C) of this paragraph.

(i) Eighty-five per centum of such sums shall be made available for expenditure in only those urbanized areas or parts thereof with a population of 750,000 or more, and on the basis of a formula under which such urbanized areas or parts thereof will be entitled to receive an amount equal to the sum of—

(1) one-half of the total amount so apportioned multiplied by the ratio which the population of such an urbanized area or part thereof, as designated by the Bureau of the Census, bears to the total population of all such urbanized areas in all the States as shown by the latest available Federal census; and

(2) one-half of the total amount so apportioned multiplied by a ratio for that urbanized area determined on the basis of population weighted by a factor of density, as determined by the Secretary.

As used in the preceding sentence, the term 'density' means the number of inhabitants per square mile.

(ii) Fifteen per centum of such sums shall be made available for expenditure in only those urbanized areas or parts thereof with a population of less than 750,000 and on the basis of a formula under which such urbanized areas or parts thereof will be entitled to receive an amount equal to the sum of—

(1) one-half of the total amount so apportioned multiplied by the ratio which the population of such an urbanized area or part thereof, as designated by the Bureau of the Census, bears to the total population of all such urbanized areas in all the States as shown by the latest available Federal census; and

(2) one-half of the total amount so apportioned multiplied by a ratio for that urbanized area determined on the basis of population weighted by a factor of density, as determined by the Secretary.

As used in the preceding sentence, the term 'density' means the number of inhabitants per square mile.

(B) There are authorized to be appropriated for the purposes of this paragraph $250,000,000 for the fiscal year ending September 30, 1979; $250,000,000 for the fiscal year ending September 30, 1980; $250,000,000 for fiscal year ending September 30, 1981; and $165,000,000 [59] for the fiscal year ending September 30, 1982.

(3)(A) To make grants for construction and operating assistance projects under this subsection involving commuter rail or other fixed guideway systems, the Secretary shall apportion for expenditure in each fiscal year the sums appropriated pursuant to subparagraph (B) of this paragraph. Such sums shall be made available for expenditure in urbanized areas or parts thereof on the basis of a formula under which urbanized areas or parts thereof will be entitled to receive an amount equal to the sum of—

(i) two-thirds of the total amount to be apportioned as follows: one-half multiplied by a ratio which the number of commuter rail train miles operated within or serving the urbanized area in the prior fiscal year

[59] Section 1111 of Public Law 97-35 inserted "$165,000,000" to replace "$250,000,000."

bears to the total number of commuter rail train miles operated in or serving all urbanized areas in the prior fiscal year, and one-half multiplied by a ratio which the number of commuter rail route miles operated within or serving the urbanized area in the prior fiscal year bears to the total number of commuter rail route miles operated in or serving all urbanized areas in the prior fiscal year. No single eligible States's portion of an urbanized area shall receive in any fiscal year less than one-half per centum or more than thirty per centum of the sums appropriated for such fiscal years pursuant to this clause;

(ii) one-third of the total amount to be apportioned multipled by the ratio that the number of fixed guideway system route miles (excluding commuter rail route miles) in the urbanized area in the prior fiscal year bears to the total number of such fixed guideway system route miles (excluding commuter rail route miles) in all urbanized areas in the prior fiscal year. For the purposes of the calculation to be made under this subparagraph, no single State's portion of an urbanized area shall receive more than 30 per centum of the sums appropriated for such fiscal year pursuant to this clause.

Sums apportioned under this paragraph shall be available for expenditure only for capital or operating assistance projects involving commuter rail or other fixed guideway systems.

(B) There are authorized to be appropriated for the purposes of this paragraph, $115,000,000 for fiscal year ending September 30, 1979; $130,000,000 for the fiscal year ending September 30, 1980; $145,000,000 for fiscal year ending September 30, 1981; and $90,000,000 [60] for the fiscal year ending September 30, 1982.

(4)(A) To make grants under this subsection for the purchase of buses and related equipment, or the construction of bus related facilities, the Secretary shall apportion in each fiscal year the sums appropriated pursuant to subparagraph (B) of this paragraph. In fiscal years 1979 and 1980, the apportionments shall be made in accordance with the population density formula set out in subsection (a)(1)(A) of this section. Sums apportioned under this paragraph shall be available only for projects for the purchase of buses and related equipment, in the construction of bus related facilities, except that projects assisted pursuant to section 3(h) of this Act may utilize funds apportioned under this section for any eligible construction project.

(B) There are authorized to be appropriated for the purposes of this paragraph $300,000,000 for fiscal year ending September 30, 1979; $300,000,000 for the fiscal year ending September 30, 1980; $370,000,000, for the fiscal year ending September 30, 1981; and $375,000,000 [61] for the fiscal year ending September 30, 1982.

(b)(1) The Governor, responsible local officials, and publicly owned operators of mass transportation services, in accordance with the planning process required under section 8 of this Act, with the concurrence of the Secretary, shall designate a recipient or recipients to receive and dispense the funds apportioned under subsection (a) that are attributable to urbanized areas of

[60] Section 1111 of Public Law 97-35 inserted $90,000,000 to replace $160,000,000.

[61] Section 1111 of Public Law 97-35 inserted $375,000,000 to replace $455,000,000.

two hundred thousand or more population. In any case in which a statewide or regional agency or instrumentality is responsible under State laws for the financing, construction and operation, directly, by lease, contract or otherwise, of public transportation services, such agency or instrumentality shall be the recipient to receive and dispense such funds. The term 'designated recipient' as used in this section shall refer to the recipient selected according to the procedures required by this paragraph.

(2) Sums apportioned under subsection (a) not made available for expenditure by designated recipients in accordance with the terms of paragraph (1) of this subsection shall be made available to the Governor for expenditures in urbanized areas or parts thereof in accordance with the planning process required under section 8 of this Act and shall be fairly and equitably distributed. The Governor shall submit annually a report to the Secretary concerning the allocation of funds made available under this paragraph.

(c)(1) To finance grants under this section, the Secretary may incur obligations on behalf of the United States in the form of grants, contracts, agreements, or otherwise in an aggregate amount not to exceed $3,975,000,000. There are authorized to be appropriated for liquidation of the obligations incurred under this paragraph not to exceed $300,000,000 prior to the close of fiscal year 1975; not to exceed $500,000,000 prior to the close of fiscal year 1976; not to exceed $650,000,000 prior to the close of fiscal year 1977; not to exceed $775,000,000 prior to the close of fiscal year 1978; not to exceed $850,000,000 prior to the close of fiscal year 1979; and not to exceed $900,000,000 prior to the close of fiscal year 1980. Sums so appropriated shall remain available until expended.

(2)[62] In addition to sums authorized in paragraph (1) of this subsection, there is authorized to be appropriated for the fiscal year ending September 30, 1980, the additional amount of $125,000,000. This amount shall be available for apportionment pursuant to subsection (a)(1) of this section.

(3)[63] Appropriations pursuant to this section shall be available until expended.

(4)[64] Sums apportioned under this section shall be available for obligation by the Governor or designated recipient for a period of three years following the close of the fiscal year for which such sums are apportioned. Any amounts so apportioned remaining unobligated at the end of such period shall be added to the amount available for apportionment under this section for the succeeding fiscal year, except that any funds authorized by section 5(a) (3) and (4) which are so reapportioned shall remain subject to the limitations applicable to the original apportionment of such funds.

(5) Apportionments under this section for fiscal year 1975 shall be deemed to have lapsed on September 30, 1977, and apportionments under

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[62] Section 304(b) of Public Law 95-599 deleted former subsection (c)(2) and replaced it with this provision. Former subsection (c)(2) read as follows:

"(2) Sums apportioned under this section shall be available for obligation by the Governor or designated recipient for a period of two years following the close of the fiscal year for which such sums are apportioned, and any amounts so apportioned remaining unobligated at the end of such period shall lapse and shall be returned to the Treasury for deposit as miscellaneous receipts."

[63] Added by subsection 304(c) of Public Law 95-599.

[64] This subsection, added by subsection 304(c) of Public Law 95-599, revises former subsection (c)(2) as it existed prior to amendment by that Act. See footnote 62.

this section for fiscal year 1976 shall be deemed to have lapsed on September 30, 1978.[65]

(d)(1) The Secretary may approve as a project under this section,[66] on such terms and conditions as he may prescribe, (A) the acquisition, construction, and improvement of facilities and equipment for use, by operation or lease or otherwise, in mass transportation services, and (B) the payment of operating expenses to improve or to continue such service by operation, lease, contract, or otherwise.

(2) The Secretary shall issue such regulations as he deems necessary to administer this subsection and subsection (e), including regulations regarding maintenance of effort by State, local governments, and local public bodies, the appropriate definition of operating expenses, and requirements for improving the efficiency of transit services.

(e) The Federal grant for any construction project under this section shall not exceed 80 per centum of the cost of the construction project, as determined under section 4(a) of this Act. The Federal grant for any project for the payment of subsidies for operating expenses shall not exceed 50 per centum of the cost of such operating expense project. The remainder shall be provided in cash, from sources other than Federal funds or revenues from the operation of public mass transportation systems. Any public or private transit system funds so provided shall be solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital.

(f) [67] Federal funds available for expenditure for mass transportation projects under this section and apportioned for fiscal years ending prior to October 1, 1981, shall be supplementary to and not in substitution for the average amount of State and local government funds and other transit revenues such as advertising concessions, and property lease, excluding reimbursement payments for the transportation of schoolchildren, expended on the operation of mass transportation service in the area involved for the two fiscal years preceding the fiscal year for which the funds are made available: Provided, however, That if such State and local government funds or other transit revenues are reduced, there shall be no loss of Federal assistance under this section if such reduction is offset by an increase in operating revenues through changes in fare structure. Nothing in the preceding sentence shall be construed as preventing State or local tax revenues which are used for the operation of mass transportation service in the area involved from being credited (to the extent necessary) toward the non-Federal share of the cost of the project. Where the Secretary finds that a recipient has reduced operating costs without reducing service levels the recipient shall be entitled

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[65] Added by section 307(1) of Public Law 97-424.

[66] See footnote 7.

[67] This subsection was substantially amended by subsection 304(d) of Public Law 95-599. Former subsection (f) read:

"(f) Federal funds available for expenditure for mass transportation projects under this section shall be supplementary to and not in substitution for the average amount of State and local government funds and other transit revenues such as advertising, concessions, and property leases, expended on the operation of mass transportation service in the area involved for the two fiscal years preceding the fiscal year for which the funds are made available; but nothing in this sentence shall be construed as preventing State or local tax revenues which are used for the operation of mass transportation service in the area involved from being credited (to the extent necessary) toward the non-Federal share of the cost of the project for purposes of the preceding sentence."

to make a proportionate reduction in the amount of transit revenues required to be expended under this subsection.

(g) [68] The Secretary shall not approve a grant or loan for a project under this section unless he finds that such project is part of the approved program of projects required by section 8 of this Act, and that the applicant or responsible agency has or will have—

(1) the legal, financial, and technical capacity to carry out the proposed project; and

(2) satisfactory continuing control, through operation or lease or otherwise, over the use of project facilities and equipment.

(h)(1) The Governor or the designated recipient of the urbanized area shall submit to the Secretary for his approval such surveys, plans, specifications, and estimates for each proposed project as the Secretary may require. The Secretary shall act upon such surveys, plans, specifications, and his entering into a grant or contract agreement with respect to any such project shall be a contractual obligation of the Federal Government for the payment of its proportional contribution thereto.

(2) In approving any project under this section, the Secretary shall assure that possible adverse economic, social, and environmental effects relating to the proposed project have been fully considered in developing the project, and that the final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe, and efficient transportation, public services, and conservation of environment and natural resources, and the costs of eliminating or minimizing any such adverse effects, including—

(A) air, noise, and water pollution;

(B) destruction or disruption of manmade and natural resources, esthetic values, community cohesion, and the availability of public facilities and services;

(C) adverse employment effects, and tax and property value losses;

(D) injurious displacement of people, businesses, and farms; and

(E) disruption of desirable community and regional growth.

(i) Upon submission for approval of a proposed project under this section, the Governor or the designated recipient of the urbanized area shall certify to the Secretary that he or it has conducted public hearings (or has afforded the opportunity for such hearings) and that these hearings included (or were scheduled to include) consideration of the economic and social effects of such project, its impact on the environment, including requirements under the Clean Air Act, the Federal Water Pollution Control Act, and other applicable Federal environmental statutes, and its consistency with the goals and objectives of such urban planning as has been promulgated by the community. Such certification shall be accompanied by (1) a report which indicates the consideration given to the economic, social, environmental, and other effects of the proposed project, including, for construction projects, the effects of its location or design, and the consideration given to the various alternatives

[68] Subsection 304(e) of Public Law 95-599 substitutes this subsection for former subsection (g) which generally required the development of coordinated plans for all projects before their approval by the Secretary. This requirement is now in section 8 of the Act.

which were raised during the hearing or which were otherwise considered, (2) upon the Secretary's request, a copy of the transcript of the hearings,[69] and (3) assurances satisfactory to the Secretary that any public mass transportation system receiving financial assistance under such project will not change any fare and will not substantially change any service except (A) after having held public hearings or having afforded an adequate opportunity for such hearings, after adequate public notice, (B) after having given proper consideration to views and comments expressed in such hearings, and (C) after having given consideration to the effect on energy conservation, and the economic, environmental, and social impact of the change in such fare or such service.[70]

(j)(1) The Secretary may discharge any of his responsibilities under this action,[71] with respect to a project under this section upon the request of any Governor or designated recipient of the urbanized area by accepting a certification by the Governor or his designee, or by the designated recipient of the urbanized area, if he finds that such project will be carried out in accordance with State laws, regulations, directives, and standards establishing requirements at least equivalent to those contained in, or issued pursuant to, this section.

(2) The Secretary shall make a final inspection or review of each such project upon its completion and shall require an adequate report of its estimated and actual cost, as well as such other information as he determines to be necessary.

(3) The Secretary shall promulgate such guidelines and regulations as may be necessary to carry out this subsection.

(4) Acceptance by the Secretary of a certification under this section may be rescinded by the Secretary at any time if, in his opinion, it is necessary to do so.

(5) Nothing in this section shall affect or discharge any responsibility or obligation of the Secretary under any other Federal law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.),[72] section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f),[73] title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d) et seq.),[74] title VIII of the Act of April 11, 1968 (Public Law 90-284, 42 U.S.C. 3601 et seq.),[75] and the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).[76]

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[69] The word "and" and subsection (i)(3) were added to subsection (i) by Public Law 95-599.

[70] At least two courts have held that members of the transit-riding public have a private right of action to enforce section 5(i). *Cohen* v. *Massachusetts Bay Transportation Authority*, 647 F.2d 209 (1st Cir. 1981); *Stavisky* v. *Metropolitan Transit Authority*, 533 F. Supp. 1146 (E.D.N.Y. 1982). A third court while not addressing the private right of action issue, has considered the merits of a claim under section 5(i). *City of Atlanta* v. *Metropolitan Atlanta Rapid Transit Authority*, 636 F.2d 1084 (5th Cir. 1981).

[71] So in original; probably should read "Act."

[72] See Part III.

[73] See Part III.

[74] See Part III.

[75] Section 808(d) of Public Law 90-284 (42 U.S.C. 3608(c)) reads as follows: "(d) All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this Title and shall cooperate with the Secretary to further such purposes."

[76] See Part III.

(k)(1) As soon as practicable after the plans, specifications, and estimates for a specific project under this section have been approved, the Secretary shall enter into a formal project agreement with the Governor, his designee or the designated recipient of the urbanized area. Such project agreement shall make provision for non-Federal funds required for the State's or designated recipient's pro rata share of the cost of the project.

(2) The Secretary may rely upon representations made by the applicant with respect to the arrangements or agreements made by the Governor or the designated recipient where a part of the project involved is to be constructed at the expense of, or in cooperation with, local subdivisions of the State.

(3) The Secretary is authorized, notwithstanding the provisions of section 3648 of the Revised Statutes, as amended, to make advance or progress payments on account of any grant or contract made pursuant to this section, on such terms and conditions as he may prescribe.

(l) The Secretary shall not approve any project under this section unless he finds that such project is needed to carry out a program, meeting criteria established by him, for a unified or officially coordinated urban transportation system as a part of the comprehensively planned development of the urban area, and is necessary for the sound, economic, and desirable development of such area, and that the applicant or responsible agency has the legal, financial, and technical capacity to carry out the proposed project. A project under this section may not be undertaken unless the responsible public officials of the urbanized area in which the project is located have been consulted and, except for projects solely to pay subsidies for operating expenses, their views considered with respect to the corridor, location, and design of the project.

(m) The Secretary shall not approve any project under this section unless the applicant agrees and gives satisfactory assurances, in such manner and form as may be required by the Secretary and in accordance with such terms and conditions as the Secretary may prescribe, that the rates charged elderly and handicapped persons during nonpeak hours for transportation utilizing or involving the facilities and equipment of the project financed with assistance under this section will not exceed one-half of the rates generally applicable to other persons at peak hours, whether the operation of such facilities and equipment is by the applicant or is by another entity under lease or otherwise.[77]

(n)(1) The provisions of section 13(c) and section 3(e)(4) shall apply in carrying out mass transportation projects under this section.

(2) The provision of assistance under this section shall not be construed as bringing within the application of chapter 15 of title 5, United States Code, any nonsupervisory employee of an urban mass transportation system (or of any other agency or entity performing related functions) to whom such chapter is otherwise inapplicable.

(o) [78] Notwithstanding any other provision of this section, any sums apportioned under this section before October 1, 1982, and available for expendi-

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[77] Section 5(m) provides no private right of action on behalf of elderly and handicapped transit riders. *County of Westchester* v. *Koch*, 438 NYS 2d 951 (1981).

[78] Added by section 307 of Public Law 97-424.

ture in any urbanized area or part thereof on such date shall remain available for expenditure in such area or part in accordance with the provisions of this section until September 30, 1985. Any sums so apportioned remaining unobligated on October 1, 1985, shall be added to amounts available for apportionment under section 9 of this Act for the fiscal year ending September 30, 1986.

Research, Development, and Demonstration Projects

§1605 SECTION 6. The Secretary is authorized to undertake research, development, and demonstration projects in all phases of urban mass transportation (including the development, testing, and demonstration of new facilities, equipment, techniques, and methods) which he determines will assist in the reduction of urban transportation needs, the improvement of mass transportation service, or the contribution of such service toward meeting total urban transportation needs at minimum cost. He may undertake such projects independently or by grant or [79] contract (including working agreements with other Federal departments and agencies). In carrying out the provisions of this section, the Secretary is authorized to request and receive such information or data as he deems appropriate from public or private sources.[80, 81]

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[79] The words "grant or" were inserted in Section 13(b) of Public Law 91-453.

[80] Section 6 actually contains four subsections, (a), (b), (c), and (d). The part appearing in the text is subsection (a). The last three subsections have been omitted from the text because they no longer have a significant operative effect. The study called for in (b) has been completed, the limits on authorization for appropriation in (c) are no longer applicable, and the saving provision in (d) is unnecessary as section 602 of the Housing Act of 1956 (70 Stat. 1113) simply authorizes the Secretary of Housing and Urban Development to conduct investigations, analysis, and research into the problem of the availability of housing.

Subsections 6 (b), (c), and (d) read as follows:

"(b) The Secretary shall, in consultation with the Secretary of Transportation, undertake a project to study and prepare a program of research, development, and demonstration of new systems of urban transportation that will carry people and goods within metropolitan areas speedily, safely, without polluting the air, and in a manner that will contribute to sound city planning. The program shall (1) concern itself with all aspects of new systems of urban transportation for metropolitan areas of various sizes, including technological, financial, economic, governmental, and social aspects; (2) take into account the most advanced available technologies and materials; and (3) provide national leadership to efforts of States, localities, private industry, universities, and foundations. The Secretary shall report his findings and recommendations to the President, for submission to the Congress, as rapidly as possible and in any event not later than eighteen months after the effective date of this subsection.

(c) The Secretary may make available to finance projects under this section not to exceed $10,000,000 of the mass transportation grant authorization provided in section 4(b), which limit shall be increased to $20,000,000 on July 1, 1965, to $30,000,000 on July 1, 1966, to $40,000,000 on July 1, 1967, $56,000,000 on July 1, 1968. On or after July 1, 1969, the Secretary may make available to finance projects under this section such additional sums out of grant authorization provided in section 4(b) as he deems appropriate.

(d) Nothing contained in this section shall limit any authority of the Secretary under section 602 of the Housing Act of 1956 or any other provision of law."

Section 6(b) was added by section 3 of Public Law 89-562, which also redesignated subsections (b) and (c) of section 6 as subsections (c) and (d) respectively.

Section 1(b) of Public Law 89-562 amended subsection 6(c) to authorize annual increases of $10,000,000 each for fiscal years 1968 and 1969. Section 701 of Public Law 90-448 authorized an additional $6 million increase for fiscal year 1969. Section 304(b) of Public Law 89-117 repealed the original second sentence of subsection (c), relating to the authorization in section 103(b) of the Housing Act of 1949 (63 Stat. 413) of funds for mass transportation demonstration grants.

The last sentence of subsection 6(c) was added by section 701 of Public Law 90-448.

[81] In the case of *Westport Taxi Service, Inc.* v. *Adams*, 571 F.2d 697 (2nd Cir. 1978), *cert. den.* 439 U.S. 829 (1978), the court held that a demonstration project under this section which has a substantial effect on a community or its mass transportation service must comply with sections 3(d), 49 U.S.C. §1602(d), regarding public hearings, and 3(e), 49 U.S.C. §1602(e), regarding protection of private mass transportation companies.

Relocation Requirements and Payments

§1606 SECTION 7.[82] No financial assistance shall be extended to any project under section 3 unless the Secretary determines that an adequate relocation program is being carried on for families displaced by the project and that there are being or will be provided (in the same area or in other areas generally not less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the displaced families) an equal number of decent, safe and sanitary dwellings available to those displaced families and reasonably accessible to their places of employment.[83]

Planning and Technical Studies [84]

§ 1607 SECTION 8. (a) It is declared to be in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner that will serve the States and local communities efficiently and effectively. To accomplish this objective, the Secretary shall cooperate with the State and local officials in the development

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[82] The part appearing in the text of section 7 was subsection (a).

[83] Section 7(b) was repealed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646). Section 7(b) prior to its repeal read as follows:

> "Notwithstanding any other provision of this Act, financial assistance extended to any project under section 3 may include grants for relocation payments, as herein defined. Such grants may be in addition to other financial assistance for the project under section 3 and no part of the amount of such relocation payments shall be required to be contributed as a local grant. The term 'relocation payment' means payments by the applicant to individuals, families, business concerns, and nonprofit organizations for their reasonable and necessary moving expenses and any actual direct losses of property except goodwill or profit, for which reimbursement or compensation is not otherwise made, resulting from their displacement by the project. Such payments shall be made subject to such rules and regulations as may be prescribed by the Secretary [see footnote 1], and shall not exceed $200 in the case of an individual or family, or $3,000 (or if greater, the total certified actual moving expenses) in the case of a business concern or nonprofit organization. Such rules and regulations may include provisions authorizing payment to individuals and families of fixed amounts (not to exceed $200 in any case) in lieu of their respective reasonable and necessary moving expenses and actual direct losses of property."

The full text of the Uniform Act appears in Part III, and is now the primary statutory authority governing relocation and land acquisition pursuant to the urban mass transportation program, in lieu of section 7 of the Act and the other laws indicated below.

Subsection 220(a) (4), (5), and (8) of the Uniform Act repealed subsection 7(b) of the Act, section 114 of the Housing Act of 1949 (63 Stat. 413), and section 404 of Public Law 89-117 respectively. Section 306 of the 1970 Uniform Act repealed sections 401, 402, and 403 of Public Law 89-117.

These six repealed sections contained the authority and requirements for making relocation and other payments to persons and businesses displaced by certain federally-aided projects and the policies to be adhered to in acquiring land for such projects. New provisions covering these and other requirements designed to protect persons displaced by such projects are contained in the Uniform Act. However, Section 221(b) of the Uniform Act provides that the new requirements will not apply to any applicant for grant assistance to the extent it is legally unable to comply with them prior to July 1, 1972. Until that time the repeals by section 220(a) are not applicable to such applicant.

Subsection 7(a) of the Act has not been repealed although the effect of its provisions has been largely superseded by the requirements of the Uniform Act.

[84] Former Section 8 of the Act was repealed by subsections 305(a) of Public Law 95-599. It read as follows:

> "COORDINATION OF FEDERAL ASSISTANCE FOR HIGHWAYS AND FOR MASS TRANSPORTATION FACILITIES
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> "SECTION 8. In order to assure coordination of highways and other mass transportation planning and development programs in urban aeas, patricularly with respect to the provision of mass transportation facilities in connection with federally assisted highways, the Secretary and the Secretary of Transportation shall consult on general urban transportation policies and programs and shall exchange information on proposed projects in urban areas."

That section was replaced with the current Section 8 by subsection 305(b) of Public Law 95-599.

of transportation plans and programs which are formulated on the basis of transportation needs with due consideration to comprehensive long-range land use plans, development objectives, and overall social, economic, environmental, system performance, and energy conservation goals and objectives, and with due consideration to their probable effect on the future development of urban areas of more than fifty thousand population. The planning process shall include an analysis of alternative transportation system management and investment strategies to make more efficient use of existing transportation facilities. The process shall consider all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate based on the complexity of the transportation problems.

(b)(1) The urbanized area planning process shall be carried on by local officials acting through a metropolitan planning organization in cooperation with the State.

(2) Within one year after enactment of this subsection, in the absence of State law to the contrary, units of general purpose local government within an urbanized area or contiguous urbanized areas for which a metropolitan planning organization has been designated prior to enactment of this subsection, may by agreement of at least 75 per centum of the units of general purpose local government representing at least 90 per centum of the population of such urbanized area or areas and in cooperation with the Governor, redesignate as the metropolitan planning organization any representative organization.

(3) Except as provided in subparagraph (B), after the date of enactment of this subsection, designations of metropolitan planning organizations shall be by agreement among the units of general purpose local government and the Governor.

(c) A program of projects eligible for assistance under this Act shall be submitted for approval to the Secretary. The Secretary shall not approve for an urbanized area any such program of projects in whole or in part unless (1) the Secretary finds that the planning process on which such program is based is being carried on in conformance with the objectives of this section, and (2) the Secretary finds that the program of projects is based on the planning process.[85]

(d) The Secretary is authorized to contract for and make grants to States and local public bodies and agencies thereof for the planning, engineering, designing, and evaluation of public transportation projects, and for other technical studies. Activities assisted under this section may include (1) studies relating to management, operations, capital requirements, and economic feasibility; (2) preparation of engineering and architectural surveys, plans, and specifications; (3) evaluation of previously funded projects; and (4) other similar or related activities preliminary and in preparation for the construction, acquisition, or improved operation of mass transportation systems, facili-

[85] The regulations implementing the transportation planning process which are published at 23 CFR Part 450 and 49 CFR Part 613 have been upheld as a lawful exercise of the Secretary's authority. *County of Los Angeles, California* v. *Coleman*, 423 F. Supp. 496 (D.D.C. 1976) *aff'd* 574 F. 2d 607 (D.C. Cir. 1978). An urbanized area may receive planning certification if it substantially meets the regulatory requirements; the area need not have complied with every requirement of the regulations in order to gain certification and a certfication does not expire until a negative certification decision is made. *Parker* v. *Adams*, Civil No. 76-692 (W.D.N.Y. memorandum opinion filed Nov. 13, 1978).

410-001 O - 83 - 3 : QL 3

ties, and equipment. A grant or contract under this section shall be made in accordance with criteria established by the Secretary.[86]

(e) The plans and programs required by this section shall encourage to the maximum extent feasible the participation of private enterprise. Where facilities and equipment are to be acquired which are already being used in mass transportation service in the urban areas, the program must provide that they shall be so improved (through modernization, extension, addition, or otherwise) that they will better serve the transportation needs of the area.

Block Grants [87]

§ 1607 SECTION 9. (a)(1) Of the amount appropriated from the general fund of the Treasury under section 21(a) of this Act, 8.64 per centum shall be available for expenditure under this section in each fiscal year only in urbanized areas with a population of less than 200,000.

(2) Of the amount appropriated from the general fund of the Treasury under section 21(a) of this Act, 88.43 per centum shall be available for expenditure under this section in each fiscal year only in urbanized areas with a population of 200,000 or more.

(b)(1) Of the funds available under subsection (a)(2) of this section, 33.29 per centum shall be available for expenditure in urbanized areas of 200,000 population or more in accordance with this subsection.

(2) 95.61 per centum of the amount made available under paragraph (1) of this subsection shall be apportioned as follows:

(A) 60 per centum of the amount so apportioned multiplied by the ratio which the number of fixed guideway revenue vehicle miles attributable to the urbanized area, as determined by the Secretary, bears to the total number of all fixed guideway revenue vehicle miles attributable to all such urbanized areas; and

(B) 40 per centum of the amount so apportioned multiplied by the ratio which the number of fixed guideway route miles atrributable to the urbanized area, as determined by the Secretary, bears to the total number of all fixed guideway route miles attributable to all such urbanized areas.

No urbanized area in which commuter rail service is provided and which has a population of 750,000 or more shall receive less than 0.75 per centum of

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[86] In *Atlanta Commission on the Transportation Crisis Inc.* v. *Atlanta Regional Commission*, 599 F. 2d 1333 (5th Cir. 1979), the Court of Appeals held that UMTA's commitment to fund the planning portion of a proposed project in no way commits UMTA to fund the project itself or its construction.

[87] A new section 9, was added by Public Law 97–424. The former section 9 was repealed by Public Law 95–599. It read as follows:

GRANTS FOR TECHNICAL STUDIES

"SECTION 9. The Secretary is authorized to contract for and make grants to States and local public bodies and agencies thereof for the planning, engineering, designing and evaluation of urban mass transportation projects and for other technical studies, to be included, or proposed to be included, in a program (completed or under active preparation) for a unified or officially coordinated urban tranportation system as a part of the comprehensive planned development of the urban area. Activities assisted under this section may include (1) studies relating to management, operations, capital requirements and economic feasibility; (2) preparation of engineering and architectural surveys, plans, and specification; (3) evaluation of previously funded projects; and (4) other similar or related activities preliminary and in preparation for the construction, acquisition, or improved operation to mass transportation systems, facilities, and equipment. A grant or contract under this section shall be made in accordance with criteria established by the Secretary."

This section created by subsection 2(a) of Public Law 89–562, which redesignated prior Section 9 as Section 12.

the sums made available under this paragraph. Under this paragraph, fixed guideway revenue vehicle or route miles provided, and passengers served thereby, in an urbanized area of less than 200,000 population, where such revenue vehicle miles or route miles and passengers served would otherwise be attributable to an urbanized area with a population of 1,000,000 or more in an adjacent State, shall be attributable to the public body in the State in which such urbanized area of less than 200,000 population is located as if the public body were an urbanized area of 200,000 or more so long as such public body contracts, directly or indirectly, for such service. For the purpose of this subsection, the terms 'fixed guideway revenue vehicle miles' and 'fixed guideway route miles' shall include ferry boat operations directly or under contract by the designated recipient.

(3) 4.39 per centum of the amount made available for expenditure among urbanized areas of 200,000 population or more under paragraph (1) of this section shall be apportioned as follows: in the ratio that 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 each such urbanized area bears to the sum of 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 all such urbanized areas. No urbanized area in which commuter rail service is provided and which has a population of 750,000 or more shall receive less than 0.75 per centum of the sums made available under this paragraph.

(c)(1) Of the funds available under subsection (a)(2) of this section, 66.71 per centum shall be available for expenditure in urbanized areas with a population of 200,000 or more in accordance with this subsection.

(2) 90.8 per centum of the amount made available under paragraph (1) of this subsection shall be apportioned as follows:

(A) 73.39 per centum shall be made available for expenditure in only those urbanized areas with a population of 1,000,000 or more, and on the basis of a formula under which such urbanized area will be entitled to receive an amount equal to the sum of—

(i) 50 per centum of the amount available under this subparagraph multiplied by the ratio which the total bus revenue vehicle miles operated in or directly serving such urbanized area bears to the total bus revenue vehicle miles in all such urbanized areas;

(ii) 25 per centum of such amount multiplied by the ratio which the population of such urbanized area bears to the total population of all such urbanized areas as shown by the latest Federal census; and

(iii) 25 per centum of such amount multiplied by a ratio for that urbanized area determined on the basis of population weighted by a factor of density, as determined by the Secretary; and

(B) 26.61 per centum shall be made available for expenditure in only those urbanized areas with a population of less than 1,000,000 and on the basis of a formula under which such urbanized areas will be entitled to receive an amount equal to the sum of—

(i) 50 per centum of the amount available under this subparagraph multiplied by the ratio which the total bus revenue vehicle miles operated

in or directly serving such urbanized area bears to the total bus revenue vehicle miles in all such urbanized areas;

(ii) 25 per centum of such amount multiplied by the ratio which the population of such urbanized area bears to the total population of all such urbanized areas as shown by the latest available Federal census; and

(iii) 25 per centum of such amount multiplied by a ratio for that urbanized area determined on the basis of population weighted by a factor of density, as determined by the Secretary.

(3) 9.2 per centum of the amount made available under paragraph (1) of this subsection shall be apportioned among urbanized areas of 200,000 population or more as follows: in the ratio that the number of bus passenger miles traveled multiplied by the number of bus passenger miles traveled for each dollar of operating cost in each such urbanized area bears to the sum of the number of bus passenger miles traveled multiplied by the number of bus passenger miles traveled for each dollar of operating cost in all such urbanized areas.

(d) Funds available under subsection (a)(1) of this section shall be apportioned on the basis of a formula under which urbanized areas of less than 200,000 population shall be entitled to receive an amount equal to the sum of—

(1) one-half of the total amount so apportioned multiplied by the ratio which the population of such urbanized area bears to the total population of all such urbanized areas as shown by the latest available Federal census; and

(2) one-half of the total amount so apportioned multiplied by a ratio for that urbanized area determined on the basis of population weighted by a factor of density, as determined by the Secretary.

As used in this section, the term 'density' means the number of inhabitants per square mile.

(e)(1) The provisions of sections 3(e), 3(f), 3(g), 5(k)(3), 12(c), 13, and 19 shall apply to this section and to every grant made under this section. No other condition, limitation, or other provision of this Act, other than as provided in this section, shall be applicable to this section and to grants for programs of projects made under this section.

(2) To receive a grant under this section for any fiscal year, a recipient shall, within the time specified by the Secretary, submit a final program of projects prepared pursuant to subsection (f) and the certifications required by paragraph (3).

(3) Each recipient (including any person receiving funds from a Governor under this section) shall submit to the Secretary annually a certification that such recipient—

(A) has or will have the legal, financial, and technical capacity to carry out the proposed program of projects;

(B) has or will have satisfactory continuing control, through operation or lease or otherwise, over the use of the facilities and equipment, and will maintain such facilities and equipment;

(C) will comply with requirements of section 5(m) of this Act;

(D) will give the rate required by section 5(m) of this Act to any person presenting a medicare card duly issued to that person pursuant to title II or title XVIII of the Social Security Act;

(E) in carrying out procurements under this subsection, will use competitive procurements (as defined or approved by the Secretary), will not use procurements utilizing exclusionary or discriminatory specifications, and will carry out procurements in compliance with applicable Buy America provisions;

(F) has complied with the requirements of subsection (f);

(G) has available and will provide the required amount of funds in accordance with subsection (k)(1) of this section and will comply with the requirements of sections 8 and 16 of this Act; and

(H) has a locally developed process to solicit and consider public comment prior to raising fares or implementing a major reduction of transit service.

(f) Each recipient shall—

(1) make available to the public information concerning the amount of funds available under this subsection and the program of projects that the recipient proposes to undertake with such funds;

(2) develop a proposed program of projects concerning activities to be funded in consultation with interested parties, including private transportation providers;

(3) publish a proposed program of projects in such a manner to afford affected citizens, private transportation providers, and as appropriate, local elected officials an opportunity to examine its content and to submit comments on the proposed program of projects and on the performance of the recipient; and

(4) afford an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects.

In preparing the final program of projects to be submitted to the Secretary, the recipient shall consider any such comments and views, particularly those of private transportation providers, and shall, if deemed appropriate by the recipient, modify the proposed program of projects. The final program of projects shall be made available to the public.

(g)(1) The Secretary shall, at least on an annual basis, conduct, or require the recipient to have independently conducted, reviews and audits as may be deemed necessary or appropriate by the Secretary to determine whether—

(A) the recipient has carried out its activities submitted in accordance with subsection (e)(2) in a timely and effective manner and has a continuing capacity to carry out those activities in a timely and effective manner; and

(B) the recipient has carried out those activities and its certifications and has used its Federal funds in a manner which is consistent with the applicable requirements of this Act and other applicable laws.

Audits of the use of Federal funds shall be conducted in accordance with the auditing procedures of the General Accounting Office.

(2) In addition to the reviews and audits described in paragraph (1), the Secretary shall, not less than once every three years, perform a full review and evaluation of the performance of a recipient in carrying out the recipient's program, with specific reference to compliance with statutory and administra-

tive requirements, and consistency of actual program activities with the proposed program of projects required under subsection (e)(2) of this section and the planning process required under section 8.

(3) The Secretary may make appropriate adjustments in the amount of annual grants in accordance with the Secretary's findings under this subsection, and may reduce or withdraw such assistance or take other action as appropriate in accordance with the Secretary's review, evaluation, and audits under this subsection.

(4) No grant shall be made under this section to any recipient in any fiscal year unless the Secretary has accepted a certification for such fiscal year submitted by such person pursuant to subsection (e) of this section.

(h) The provisions of section 1001 of title 18, United States Code, apply to any certification or submission under this section. In addition, if any false or fraudulent statement or related act within the meaning of section 1001 of title 18, United States Code, is made in connection with a certification of [sic] submission under this subsection, the Secretary may terminate and seek appropriate reimbursement of the affected grant or grants directly or by offsetting funds available under this subsection.

(i) A recipient may request the Secretary to approve its procurement system. If, after consultation with the Office of Federal Procurement Policy, the Secretary finds that such system provides for competitive procurement, the Secretary shall approve such system for use for all procurements financed under this section. Such approval shall be binding until withdrawn. A certification from the recipient under subsection (e)(3)(E) is still required.

(j) Grants under this section shall be available to finance the planning, acquisition, construction, improvement, and operating costs of facilities, equipment, and associated capital maintenance items for use, by operation or lease or otherwise, in mass transportation service, including the renovation and improvement of a historic transportation facility with related private investment. As used in this section, the term 'associated capital maintenance items' means any equipment and materials each of which costs no less than 1 per centum of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and materials are to be used.

(k)(1) The Federal grant for any construction project (including capital maintenance items) under this section shall not exceed 80 per centum of the net project cost of such project. The Federal grant for any project for operating expenses shall not exceed 50 per centum of the net project cost of such project. The remainder shall be provided in cash from sources other than Federal funds or revenues from the operation of public mass transportation systems. Any public or private transit system funds so provided shall be solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital.

(2) The amount of funds apportioned under this section which may be used for operating assistance shall not exceed 80 per centum of the amount of funds apportioned in fiscal year 1982 under paragraphs (1)(A), (2)(A), and (3)(A) of section 5(a) of this Act to an urbanized area with a population of 1,000,000 or more, 90 per centum of funds so apportioned to an urbanized area with a population of 200,000 or more and less than 1,000,000 population; and 95 per centum of funds so apportioned to an urbanized area of less

that 200,000 population. Notwithstanding the preceding sentence, an urbanized area that became an urbanized area for the first time under the 1980 census may use not to exceed 40 per centum of its apportionment under this section for operating assistance.

(3) Notwithstanding any other provision of law, the amount of funds apportioned under section 5 of this Act and available for operating assistance in fiscal year 1983 in an urbanized area shall be subject to the limitations set forth in paragraph (2) of this subsection. Subject to the limitations in the preceding sentence, funds apportioned under section 5(a)(4) of this Act in fiscal year 1983 may be used for operating assistance.

(l)(1)(A) Notwithstanding the provisions of subsection (k)(1), any recipient may, in fiscal years 1983 and 1984, transfer, for use for operating assistance, a portion of its apportionment under this section that otherwise is available only for capital assistance, except that the recipient's total operating assistance under this section (including any amounts transferred from its capital apportionment) for the fiscal year in which the transfer occurs shall not exceed the amount of Federal funds such recipient was apportioned under sections 5(a)(1)(A), 5(a)(2)(A), and 5(a)(3)(A) of this Act for the fiscal year ending September 30, 1982. The total operating assistance under this section (including any amounts transferred from its capital apportionment) for a recipient in an urbanized area that became an urbanized area for the first time under the 1980 census may not exceed 50 per centum of its apportionment under this section.

(B) Notwithstanding any other provision of law, a recipient may use its capital apportionment under section 5(a)(4) of this Act in fiscal year 1983 for purposes of carrying out a transfer under this subsection. No source of capital assistance under this Act (other than under section 5(a)(4)) may be used for such a transfer in such fiscal year.

(2) Any recipient that intends to carry out a transfer under this subsection shall, at the time it submits a proposed program of projects to the Secretary under subsection (e)(2)—

(A) certify that it has provided public notice of its intent to transfer its capital apportionment (including notice of the funding reductions resulting from utilization of this subsection and other requirements of this subsection) and provided an opportunity for public comment; and

(B) certify that it has developed a three-year plan to assure that in the fiscal year ending September 30, 1985, it will not need to use and will not use its capital apportionment for operating assistance.

(3) Whenever any recipient transfers its capital apportionment for operating assistance in accordance with the requirements of this subsection, two-thirds of the amount transferred shall be available to the recipient for operating assistance and the remaining one-third amount shall be available to the Secretary to make discretionary grants under this section. In making such discretionary grants, first priority shall be given to any urbanized area that is apportioned an amount under this section in fiscal year 1983 which is less than the amount such urbanized area was apportioned under section 5 of the Act for the fiscal year ending September 30, 1982. Any amounts remaining shall be available for discretionary construction grants under this section subject to the second and third sentences of section 4(a).

(4) The authority of recipients to use the provisions of this paragraph shall terminate on September 30, 1984.

(m)(1) The Governor, responsible local officials, and publicly owned operators of mass transportation services in accordance with the planning process required under section 8 of this Act shall designate a recipient or recipients to receive and dispense the funds appropriated under this section that are attributable to urbanized areas of 200,000 or more population. In any case in which a statewide or regional agency or instrumentality is responsible under State laws for the financing, construction and operation, directly, by lease, contract, or otherwise, of public transportation services, such agency or instrumentality shall be the recipient to receive and dispense such funds. As used in this section, the term 'designated recipient' shall refer to a recipient selected according to the procedures required by this section or to a recipient designated in accordance with section 5(b)(1) of this Act prior to the date of enactment of this section.

(2) Sums apportioned under this subsection not made available for expenditure by designated recipients in accordance with the terms of paragraph (1) shall be made available to the Governor for expenditure in urbanized areas with populations of less than 200,000.

(n)(1) The Governor may transfer an amount of the State's apportionment under subsection (d) to supplement funds apportioned to the State under section 18(a) of this Act, or to supplement funds apportioned to urbanized areas with populations of 300,000 or less under this subsection. The Governor may make such transfers only after consultation with responsible local officials and publicly owned operators of mass transportation services in each area to which the funding was originally apportioned pursuant to subsection (d). The Governor may transfer an amount of the State's apportionment under section 18(a) to supplement funds apportioned to the State under subsection (d). Amounts transferred shall be subject to the capital and operating assistance limitations applicable to the original apportionments of such amounts.

(2) A designated recipient for an urbanized area of 200,000 or more population may transfer its apportionment under this section, or a portion thereof, to the Governor. The Governor shall distribute any such apportionment to urbanized areas in the State, including areas of 200,000 or more population, in accordance with this section. Amounts transferred shall be subject to the capital and operating assistance limitations applicable to the original apportionment of such amounts.

(o) Sums apportioned under this section shall be available for obligation by the recipient for a period of three years following the close of the fiscal year for which such sums are apportioned. Any amounts so apportioned remaining unobligated at the end of such period shall be added to the amount available for apportionment under this section for the succeeding fiscal year.

Mass Transit Account Distribution

§ 1607a-1 SECTION 9A. (a)(1) Of the amount made available from the Mass Transit Account of the Highway Trust Fund under section 21(a) of this Act in fiscal year 1983, 8.64 per centum shall be available for expenditure under this section in such fiscal year only in urbanized areas with a population of less than 200,000.

(2) Of the amount made available from the Mass Transit Account of the Highway Trust Fund under section 21(a) of this Act in fiscal year 1983, 88.43 per centum shall be available for expenditure under this section in such fiscal year only in urbanized areas with 200,000 population or more.

(b)(1) Of the funds available under subsection (a)(2) of this section, 66.71 per centum shall be apportioned among urbanized areas with 200,000 population or more as follows:

(A) 73.39 per centum shall be made available for expenditure in only those urbanized areas with a population of 1,000,000 or more, and on the basis of a formula under which such urbanized area will be entitled to receive an amount equal to the sum of—

(i) 50 per centum of the amount available under this subparagraph multiplied by the ratio which the total bus revenue vehicle miles operated in or directly serving such urbanized area bears to the total bus revenue vehicle miles in all such urbanized areas;

(ii) 25 per centum of such amount multiplied by the ratio which the population of such urbanized area bears to the total population of all such urbanized areas as shown by the latest Federal census; and

(iii) 25 per centum of such amount multiplied by a ratio for that urbanized area determined on the basis of population weighted by a factor of density, as determined by the Secretary; and

(B) 26.61 per centum shall be made available for expenditure in only those urbanized areas with a population of less than 1,000,000 and on the basis of a formula under which such urbanized area will be entitled to receive an amount equal to the sum of—

(i) 50 per centum of the amount available under this subparagraph multiplied by the ratio which the total bus revenue vehicle miles operated in or directly serving such urbanized area bears to the total bus revenue vehicle miles in all such urbanized areas;

(ii) 25 per centum of such amount multiplied by the ratio which the population of such urbanized area bears to the total population of all such urbanized areas as shown by the latest available Federal census; and

(iii) 25 per centum of such amount multiplied by a ratio for that urbanized area determined on the basis of population weighted by a factor of density, as determined by the Secretary.

(2) Of the funds available under subsection (a)(2) of this section, 33.29 per centum shall be apportioned among urbanized areas of 200,000 population or more as follows:

(A) 60 per centum of the amount so apportioned multiplied by the ratio which the number of fixed guideway revenue vehicle miles attributable to the urbanized area, as determined by the Secretary, bears to the total number of all fixed guideway revenue vehicle miles attributable to all such urbanized areas; and

(B) 40 per centum of the amount so apportioned multiplied by the ratio which the number of fixed guideway route miles attributable to the urbanized area, as determined by the Secretary, bears to the total number of all fixed guideway route miles attributable to all such urbanized areas.

No urbanized area in which commuter rail service is provided and which has a population of 750,000 or more shall receive less than 0.75 per centum of the sums made available under this paragraph. Under this paragraph, fixed guideway revenue vehicle or route miles provided, and passengers served thereby, in an urbanized area of less than 200,000 population, where such revenue vehicle miles or route miles and passengers served would otherwise be attributable to an urbanized area with a population of 1,000,000 or more in an adjacent State, shall be attributable to the public body in the State in which such urbanized area of less than 200,000 population is located as if the public body were an urbanized area of 200,000 or more so long as such public body contracts, directly or indirectly, for such service. For the purpose of this paragraph, the terms 'fixed guideway revenue vehicle miles' and 'fixed guideway route miles' shall include ferry boat operations directly or under contract by the designated recipient.

(c) Funds available under subsection (a)(1) of this section shall be apportioned on the basis of a formula under which urbanized areas of less than 200,000 population shall be entitled to receive an amount equal to the sum of—

(1) one-half of the total amount so apportioned multiplied by the ratio which the population of such urbanized area bears to the total population of all such urbanized areas in all the States as shown by the latest available Federal census; and

(2) one-half of the total amount so apportioned multiplied by a ratio for that urbanized area determined on the basis of population weighted by a factor of density, as determined by the Secretary.

As used in this section, the term 'density' means the number of inhabitants per square mile.

(d)(1) The provisions of subsections (e), (f), (g), (h), (i), (m), and (n) of section 9 of this Act shall apply to grants made under this section.

(2)(A) Grants under this section shall be made for the purposes described in subsection (j) of section 9 of this Act, except that such grants may not be used for payment of operating expenses.

(B) The Federal grant for any project under this section shall not exceed 80 per centum of the net project cost of such project.

(3) The provisions of subsection (o) of section 9 shall apply to grants made under this section, except that amounts remaining unobligated at the end of the 3-year period shall be added to the amount available under section 3 for the succeeding fiscal year.

Grants For Training Programs [88]

§ 1607b SECTION 10. The Secretary is authorized to make grants to States, local public bodies, and agencies thereof (and operators of public transportation

[88] Section 10 was created by Public Law 89-562 which redesignated prior section 10 as section 13. Present section 10 was amended by Public Law 93-87 and Public Law 95-599. The latter amendment removed many of the restrictions on training fellowships and raised the maximum fellowship level from $12,000 to $24,000.

Subsection 10(c) has been omitted from the text. This subsection imposes limitations on the amount of funds appropriated pursuant to subsection 4(b) which may be used annually for the activities authorized by section 10. Funds for section 10 are now authorized in subsection 4(f) of the Act which was added by section 303(e) of Public Law 95-599 and so the restrictions in subsection 10(c) are not applicable.

services) to provide fellowships for training of personnel employed in managerial, technical, and professional positions in the public transportation field. Fellowships shall be for not more than one year of training in public or private training institutions offering programs having application in the public transportation industry. The recipient of a fellowship under this section shall be selected by the grantee on the basis of demonstrated ability and for the contribution which the recipient can be reasonably expected to make to an efficient public transportation operation. The assistance under this section toward each fellowship shall not exceed the lesser of $24,000 or 75 per centum of the sum of (1) tuition and other charges to the fellowship recipient, (2) any additional costs incurred by the training institution in connection with the fellowship and billed to the grantee, and (3) the regular salary of the fellowship recipient for the period of the fellowship (to the extent that salary is actually paid or reimbursed by the grantee).

Grants For Research and Training in Urban Transportation Problems [89]

§ 1607c SECTION 11. (a) The Secretary is authorized to make grants to public and private nonprofit institutions of higher learning to assist in establishing or carrying on comprehensive research in the problems of transportation in urban areas. Such grants shall be used to conduct competent and qualified research and investigations into the theoretical or practical problems of urban transportation, or both, and to provide for the training of persons to carry on further research or to obtain employment in private or public organizations which plan, construct, operate, or manage urban transportation systems. Such research and investigations may include, without being limited to, the design and functioning of urban mass transit systems; the design and functioning of urban roads and highways; the interrelationship between various modes of urban and inter-urban transportation; the role of transportation planning in overall urban planning, public preferences in transportation, the economic allocation of transportation resources; and the legal, financial, engineering, and esthetic aspects of urban transportation. In making such grants, the Secretary shall give preference to institutions of higher learning that undertake such research and training by bringing together knowledge and expertise in the various social science and technical disciplines that relate to urban transportation problems.

(b)(1) [90] In addition to grants authorized by subsection (a) of this section, the Secretary is authorized to make grants for the purpose of establishing and operating transportation centers at nonprofit institutions of higher learning.

(2) The institutions receiving assistance under this subsection shall be selected by the Secretary, in coordination with State transportation agencies or departments, on the basis of demonstrated research and extension re-

[89] Section 11 was originally added by section 307 of Public Law 89-562, replacing prior section 11 which was redesignated section 14.

[90] Subsection (b) was amended by section 307 of Public Law 95-599 to replace prior subsection (b) which read:

"The Secretary may make available to finance grants under this section not to exceed $3,000,000 per annum of the grant funds appropriated pursuant to section 4(b)."

sources capable of contributing to the solution of State and regional transportation problems.

(3) The responsibilities and duties of each transportation center shall include, but not be limited to, the conduct of competent research investigations, both scientific and policy oriented, and experiments of either a basic or practical nature in relation to transportation problems.

(4) In order for an institution to receive Federal funds under this subsection, subject to the conditions set forth therein, such institution, in coordination with the State in which the institution is located (or, in the case of multi-institutional programs authorized under paragraph (6) of this subsection, in coordination with the States in which the participating institutions are located) shall submit to the Secretary for his approval a program or programs of proposed projects for the academic year for the utilization of such funds. The Secretary shall act upon programs submitted to him by March 15 preceding the fiscal year for which application for assistance is made (except in the case of fiscal year 1979, for which the Secretary shall act upon programs submitted to him as soon as practicable).

(5) As a condition to project approval, the amount of the Federal grant must be equally matched from other than Federal funds.[91]

(6) Upon the joint application of two or more institutions of higher learning, the Secretary may approve a multi-institutional program to address regional transportation problems, subject to conditions set forth in this subsection.

(7) On or before July 1 of each fiscal year for which funds have been appropriated under this subsection, each participating institution shall submit a report to the Secretary on its activities and progress in solving transportation problems, which include bona fide research and training in urban transportation.[92] On or before October 1 of each such fiscal year, the Secretary shall submit a report to Congress on the activities and progress of the program authorized by this subsection in solving transportation problems and achieving national transportation policy objectives.

General Provisions

§ 1608 SECTION 12. (a) In the performance of, and with respect to, the functions, powers, and duties vested in him by this Act, the Secretary shall (in addition to any authority otherwise vested in him) have the functions, powers, and duties set forth in section 402, except subsections (c)(2) and (f), of the Housing Act of 1950.[93] Funds obtained or held by the Secretary in connec-

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[91] Subsection (5) was amended by section 306(b) of Public Law 97–424. Former subsection (5) read as follows:

"(5) As a condition to project approval, the State in which a selected institution is located must equally match from other than Federal funds, the amount of the Federal grant."

[92] Section 306(c) of Public Law 97–424 amended subsection (f) to add the following language:

", which include bona fide research and training in urban transportation."

[93] In *McDonald* v. *Stockton Metropolitan Transit District*, 36 Cal. App. 3d 436, 111 Cal. Rptr. 637 (1974), where a transit district had contracted, inter alia, to install bus stop shelters as part of a capital grant project, it was held that where the district had refused to install such shelters as part of the completed project, the Department of Transportation has authority under the Urban Mass Transportation Act of 1964 to either withhold further financial assistance, or to bring suit for damages or for specific performance to enforce the grant contract. Also, see Part III.

tion with the performance of his functions under this Act shall be available for the administrative expenses of the Secretary in connection with the performance of such functions.

(b)(1) All contracts for construction, reconstruction, or improvement of facilities and equipment in furtherance of the purposes for which a loan or grant is made under this Act, entered into by applicants under other than competitive bidding procedures as defined by the Secretary, shall provide that the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, for the purpose of audit and examination, have access to any books, documents, papers, and records of the contracting parties that are pertinent to the operations or activities under such contracts.[94]

(2) In lieu of requiring that contracts for the acquisition of rolling stock be awarded based on consideration of performance, standardization, life-cycle costs and other factors, or on the basis of lowest initial capital cost, such contracts may be awarded based on a competitive procurement process. The Secretary shall report to Congress within a year of enactment of the Federal Public Transportation Act of 1982 on any legislative or administrative revisions required to ensure that procurement procedures are fair and competitive.[95]

(c) [96] As used in this Act—

(1) the term 'construction' means the supervising, inspecting, actual building, and all expenses incidental to the acquisition, construction, or reconstruction of facilities and equipment for use in public transportation, including designing, engineering, location surveying, mapping, acquisition of rights-of-way, relocation assistance, acquisition of replacement housing sites, acquisition and rehabilitation, relocation, and construction of replacement housing, and such term also means any bus rehabilitation project which extends the economic life of a bus five years or more; [97]

(2) the term 'fixed guideway' means any public transportation facility which utilizes and occupies a separate right-of-way or rails [98] for the exclusive use of public transportation service including, but not limited to, fixed rail, automated guideway transit, and exclusive facilties for buses and

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[94] A disappointed bidder on a contract awarded by a grantee has no standing to sue the Secretary to enjoin concurrence in the award, and the Secretary's action in concurring therein is not judicially reviewable. *Pullman, Incorporated* v. *Volpe et al.*, 337 F. Supp. 432 (E.D. Pa. (1971)). The same result on the standing issue was reached in *Pullman, Inc.* v. *Adams*, No. 77-1686 (D.D.C. memorandum opinion filed June 14, 1978).

[95] Section 308 of Public Law 97-424 amended subsection (2). Former subsection (2) was added by section 308 of Public Law 95-599 and read as follows:

"(2) After September 30, 1979, contracts for the acquisition of rolling stock, including buses, which will result in the expenditure of Federal financial assistance under this Act, may be awarded based on consideration of performance, standardization, life-cycle costs, and other factors the Secretary may deem relevant, in addition to the consideration of initial capital costs. Where necessary, the Secretary shall assist grantees in making such evaluations."

[96] Subsections (c) (1), (2), (3), (4), (7), and (11) were added by section 308 of Public Law 95-599. Prior subsection (c)(1) was amended and redesignated subsection (c)(9). Prior subsection (c)(2) was amended and redesignated subsection (c)(5). Prior subsection (c)(3) was redesignated subsection (c)(8). Prior subsection (c)(4) was redesignated subsection (c)(10), and prior subsection (c)(5) was amended and redesignated subsection (c)(6).

[97] Section 309(a) of Public Law 97-424 amended subsection (c)(1) to add the following language:

", and such term also means any bus rehabilitation project whch extends the economic life of a bus for five years or more;"

[98] Added by section 309(b) of Public Law 97-424: "or rails."

other high occupancy vehicles, and also means a public transportation facility which uses a fixed catenary system and utilizes a right-of-way usable by other forms of transportation; [99]

(3) the term 'Governor' means the ranking executive officer or his designate for each of the jurisdictions included in the definition of 'State';

(4) the term 'handicapped person' means any individual who by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including any person who is wheelchair bound or has semiambulatory capabilities, is unable without special facilities or special planning or design to utilize public transportation facilities and services effectively. The Secretary may, by regulation, adopt modifications of this definition for purposes of section 5(m) of this Act;

(5) the term 'local public bodies' includes municipalities and other political subdivisions of States; public agencies and instrumentalities of one or more States, municipalities and political subdivisions of States; Indian tribes; and public corporations, boards, and commissions established under the laws of any State;

(6) the term 'mass transportation' means transportation by bus, or rail, or other conveyance, either publicly or privately owned, which provides to the public general or special service (but not including school buses or charter [100] or sightseeing service) on a regular and continuing basis; [101]

(7) the term 'public transportation' means mass transportation;

(8) the term 'Secretary' means the Secretary of Transportation;[102]

(9) the term 'States' means the several States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands;

(10) the term 'urban area' means any area that includes a municipality or other built-up place which is appropriate, in the judgment of the Secretary, for a public transportation system to serve commuters or others in the locality taking into consideration the local patterns and trends of urban growth; and

(11) the term 'urbanized area' means an area so designated by the Bureau of Census, within boundaries which shall be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary, and which shall at a minimum, in case of any such area, encompass the entire urbanized area within a State as designated by the Bureau of Census.

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[99] Section 309(b) of Public Law 97–424 added the following language:

"and also means a public transportation facility which uses a fixed catenary system and utilizes a right-of-way usable by other forms of transportation;"

[100] Equipment purchased under the Act as it read prior to August 13, 1973, must be needed for the provision of urban mass transportation service, but such equipment may also be used in incidental charter service which does not interfere with its regularly scheduled service to the public. Opinion of the Comptroller General of the United States, B–16024, December 7, 1966. But see also the provisions of sections 3(f) and (g).

[101] Section 702 of Public Law 90–448 amended prior subsection 12(c)(5) (now subsection 12(c)(6)) by inserting "which provides to the public general or special service" in lieu of "serving the general public," and inserting "on a regular and continuing basis" in lieu of "and moving over prescribed routes."

[102] See footnote 1.

(d) [103] None of the provisions of this Act shall be construed to authorize the Secretary to regulate in any manner the mode of operation of any mass transportation system with respect to which a grant is made under section 3 or, after such grant is made, to regulate the rates, fares, tolls, rentals, or other charges fixed or prescribed for such system by any local public or private transit agency; but nothing in this subsection shall prevent the Secretary from taking such actions as may be necessary to require compliance by the agency or agencies involved with any undertaking furnished by such agency or agencies in connection with the application for the grant.[104]

(e) [105] None of the provisions of this Act shall be construed to authorize Federal financial assistance for the purpose of financing the acquisition by one public body of land, facilities, or equipment used in mass transportation from another public body in the same geographic area.

(f)(1) [106] A State or local public body may petition the Interstate Commerce Commission for an exemption from part II of the Interstate Commerce Act for mass transportation services provided by such State or local public body or provided to such State or local public body by contract. Not later than one hundred and eighty days after the date such petition is received by the Commission, the Commission shall, after notice and reasonable opportunity for a hearing on such petition, by order, exempt such State or local public body or contractor from part II of the Interstate Commerce Act with respect to such mass transportation services to the extent and for such time as it specifies in such order, unless the Commission finds that—

(A) the public interest would not be served by such exemption,

(B) the exemption requested would result in an undue burden on the interstate or foreign commerce, or

(C) the mass transportation services, including rates, proposed to be exempt are not subject to regulation by any State or local public agency.

(2) Any State or local public body granted an exemption under paragraph (1) of this subsection shall be subject to all applicable Federal laws pertaining to (A) safety, (B) the representation of employees for purposes of collective bargaining, (C) retirement, annuities, and unemployment systems, and (D) all other provisions of law relating to employee-employer relations.

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[103] Prior subsection (d) was repealed by subsection 308(c) of Public Law 95-599 and prior subsection (e) was redesignated subsection (d). Prior subsection (d) reads as follows:

"(d) There are hereby authorized to be appropriated, without fiscal year limitation out of any money in the Treasury not otherwise appropriated, the funds necessary to carry out the functions under this Act."

[104] In *Naito* v. *Tri-County Transit District*, 14 E.R.C. 1807 (D. Ore. 1980), the District Court dismissed an action challenging UMTA's failure to regulate local advertising on Portland, Oregon buses, citing language in *Pullman* v. *Volpe*, 337 F.Supp. 432, 439 (E.D. Pa. 1971), that the UMT Act "emphasizes local solutions" to such problems.

[105] This provision was added by subsection 308(d) of Public Law 95-599. Prior subsection (e) was redesignated subsection (d).

[106] Prior subsection (f) was repealed by section 308 of Public Law 95-599 and replaced with this subsection. Prior subsection (f) read as follows:

"(f) No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this Act or carried on under this Act. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee."

Prior subsection (f) is incorporated into section 19 of the Act.

The Commission, upon its own initiative or upon petition of an interested party, may alter, amend, or revoke any exemption under paragraph (1) of this subsection if it subsequently finds that new evidence, material error, or changed circumstances exist which materially affect its original order.

(g) [107] In the case of any buses acquired with Federal financial assistance provided under this Act, the Secretary shall permit the State or local public body which is acquiring such buses to provide in advertising for bids for passenger seats functional specifications (which equal or exceed the performance specifications prescribed by the Secretary), based on that State or local body's determination of local requirements for safety, comfort, maintenance and life cycle costs. This subsection shall apply to the initial advertising for bids for the acquisition of buses occurring on or after the date of enactment of the Federal Public Transportation Act of 1978.

Labor Standards

§ 1609 SECTION 13. (a) The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of loans or grants under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. The Secretary shall not approve any such loan or grant without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.[108]

(b) The Secretary of Labor shall have, with respect to the labor standards specified in subsection (a), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267; 5 U.S.C. 133z–15), and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c).

(c) It shall be a condition of any assistance under section 3 [109] of this Act that fair and equitable arrangements are made, as determined by the Secretary of Labor,[110] to protect the interests of employees affected by such assistance.

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[107] Added by subsection 308(d) of Public Law 95–599.

[108] UMTA grantees, with UMTA concurrence, may select from the construction wage rate schedules published by the Secretary of Labor in the Federal Register for the metropolitan area where the construction is to be done in the UMTA-assisted project, but if any question or dispute arises as to which published wage rate schedule is appropriate, the matter must be referred to the Secretary of Labor for decision. *North Georgia Building and Construction Trades Council* v. *U.S. Department of Transportation,* 399 F. Supp. 58 (N.D. Ga. 1975). Moreover, if federal funding is anticipated the provisions of the Davis-Bacon Act apply, notwithstanding the fact that such funding has not been formally applied for or approved. *North Georgia Building and Construction Trades Council,* v. *U.S. Department of Transportation,* 621 F.2d 679 (5th Cir. 1980). Davis-Bacon was not applied to a section of the Atlanta subway constructed entirely with local funds. *North Georgia Building and Construction Trades Council* v. *Metropolitan Atlanta Rapid Transit Authority,* Civil No. C82–1518A (N.D. Ga. 1982).

[109] Section 2(b)(2) of Public Law 89–562 amended section 13(c) by substituting the words "under section 3 of the Act" for the words "under this Act." Subsequently, Chairmen of the Committees on Banking and Currency of the House and of the Senate inserted in the Congressional Record statements indicating that there was no intent to exclude the urban mass transportation demonstration program under section 6(a) from the labor-protective requirements of section 13(c). See Congressional Record, October 20, 1966, p 28344, and October 22, 1966, p. 28826 (89th Congress, 2d Session).

[110] The determination of the Secretary of Labor under this section as to what arrangements are "fair and equitable" involves administrative judgment, discretion and expertise, and is not judicially reviewable. *Kendler et al. v. Wirtz et al.,* 388 F. 2d 381 (3rd Cir. 1968); *Accord, City of Macon* v. *Marshall,* 439 F. Supp. 1209

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Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training or returning programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Act of February 4, 1887 (24 Stat. 379), as amended.[111] The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements.[112, 113]

Environmental Protection [114]

§ 1610 SECTION 14. (a) It is hereby declared to be the national policy that special effort shall be made to preserve the natural beauty of the country-side, public park and recreation lands, wildlife and waterfowl refuges, and important historical and cultural assets, in the planning, designing, and construction of urban mass transportation projects for which Federal assistance is provided pursuant to section 3 of this Act. In implementing this policy the Secretary

(M.D. Ga. 1977) See also, *Amalgamated Transit Union* v. *Donovan*, 554 F. Supp. 589 (D.D.C. 1982) in which the District Court for the District of Columbia held that the Secretary of Labor could issue conditional 13(c) certifications and that the Secretary's determination is entitled to deference.

[111] This is a reference to section 5(2)(f) of the Interstate Commerce Act, Title 49, U.S.C., which reads as follows: "(f) As a condition of its approval, under this paragraph, of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees."

[112] In *Jackson Transit Authority* v. *Local Division 285, A.T.U.*, ——— U.S. ———, 102 S. Ct. 2202 (1982), the U.S. Supreme Court held that section 13(c) does not provide unions with a federal cause of action for alleged breaches of 13(c) and collective bargaining agreements. Instead, such breaches must be resolved in state court. This decision resolved a conflict among the Circuit Courts of Appeals and reversed five Circuit Courts that had held 13(c) to provide a federal cause of action.

The U.S. Court of Appeals for the First Circuit held in *Local Division 589, A.T.U.*, v. *Commonwealth of Massachusetts*, 666 F. 2d 618 (1st Cir. 1981), *cert. den.* ——— U.S. ———, *102 S. Ct. 2928 (1982)*, that where there is a conflict between a 13(c) certification or agreement and a later enacted state statute, the state statute prevails. This opinion, incidentally, contains an extensive discussion of section 13(c)'s legislative history.

[113] Subsection (c) does not infringe upon the powers reserved to the States under the Tenth Amendment to the United States Constitution, as a State or local body is free to avoid the conditions required by the subsection by refusing to accept the offer of Federal assistance. *City of Macon* v. *Marshall*, 439 F. Supp. 1209 (M.D. Ga. 1977).

[114] Additional statutory requirements with regard to the environment are contained in the National Environmental Policy Act of 1969 (see Part III), and Section 4(f) of the Department of Transportation Act (See Part III). One court has held that section 14 does not apply to demonstration projects undertaken by the Secretary directly or by contract, *Township of Ridley* v. *Blanchette*, 421 F. Supp. 435 (E.D. Pa. 1976).

410-001 O - 83 - 4 : QL 3

shall cooperate and consult with the Secretaries of Agriculture, Health, Education, and Welfare, Housing and Urban Development, and Interior, and with the Council on Environmental Quality with regard to each project that may have a substantial impact on the environment.

(b) The Secretary shall review each transcript of hearing submitted pursuant to section 3(d) to assure that an adequate opportunity was afforded for the preservation of views by all parties with a significant economic, social, or environmental interest, and that the project application includes a detailed statement on—

(1) the environmental impact of the proposed project,

(2) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(3) alternatives to the proposed project, and

(4) any irreversible and irretrievable impact on the environment which may be involved in the proposed project should it be implemented.[115]

(c) The Secretary shall not approve any application for assistance under section 3 unless he finds in writing, after a full and complete review of the application and of any hearings held before the State or local public agency pursuant to section 3(d), that (1) adequate opportunity was afforded for the presentation of views by all parties with a significant economic, social, or environmental interest, and fair consideration has been given to the preservation and enhancement of the environment and to the interest of the community in which the project is located, and (2) either no adverse environmental effect is likely to result from such project, or there exists no feasible and prudent alternative to such effect and all reasonable steps have been taken to minimize such effect. In any case in which a hearing has not been held before the State or local agency pursuant to section 3(d), or in which the Secretary determines that the record of hearings before the State or local agency is inadequate to permit him to make the findings required under the preceding sentence, he shall conduct hearings, after giving adequate notice to interested persons, on any environmental issues raised by such application. Findings of the Secretary under this subsection shall be made a matter of public record.[116, 117]

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[115] Two courts have held that a change in construction techniques does not require holding additional public hearings or the preparation of a supplemental environmental impact statement. *Main-Amherst Business Association Inc.* v. *Adams*, 461 F. Supp. 1077 (W.D. N.Y. 1981) and *Red Line Alert* v. *Adams*, 14 E.R.C. 1417 (D. Ma. 1980).

[116] This section and section 3 incorporate the policies of the National Environmental Policy Act (NEPA) 42 U.S.C. §§ 4321, *et seq.* into the Urban Mass Transportation Act. *Main-Amherst Business Association* v. *Adams*, 461 F. Supp. 1077 (W.D. N.Y. 1978). Environmental impact statements prepared in connection with UMTA projects have been upheld as adequate in the following cases: *Philadelphia Council of Neighborhood Organizations* v. *Coleman*, 437 F. Supp. 1341 (E.D. Pa. 1977), *aff'd without opinion* 578 F. 2d 1375 (3rd Cir. 1978); *The East 63rd Street Association* v. *Coleman*, 414 F. Supp. 1318 (E.D. N.Y. 1976); *Inman Park Restoration, Inc.* v. *Urban Mass Transportation Administration*, 414 F. Supp. 99 (N.D. Ga. 1975), *aff'd sub nom Save Our Sycamore* v. *Metropolitan Atlanta Rapid Transit Authority*, 576 F. 2d 573 (5th Cir. 1978); *Randolph Civic Association* v. *Washington Metropolitan Area Transit Authority*, 469 F. Supp. 968 (D.D.C. 1979); and *Noe* v. *Metropolitan Atlanta Rapid Transit Authority*, 485 F. Supp. 501 (N.D. Ga. 1980), *aff'd* 644 F. 2d 434 (5th Cir. 1981), *rehearing denied* 650 F. 2d 284 (5th Cir. 1981), *cert. denied* —— U.S. ——, 102 S. Ct. 977 (1981). Two courts have held adequate a negative declaration that UMTA funded projects would have no significant impact on the quality of the human environment within the meaning of NEPA. *Residents Organized for Safer Environment* v. *U.S. Department of Transportation*, No. 79-3995 (E.D. Pa. 1980) and *Township of Ridley* v. *Blanchette*, 421 F. Supp. 435 (E.D. Pa. 1976). *Contra, Pacific Legal Foundation* v. *Burns*, 9 E.R.C. 1399 (C.D. Ca. 1976). One court has

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Reporting System

§ 1611 SECTION 15. (a) The Secretary shall by January 10, 1977, develop, test, and prescribe a reporting system to accumulate public mass transportation financial and operating information by uniform categories and a uniform system of accounts and records. Such systems shall be designed to assist in meeting the need of individual public mass transportation systems, Federal, State, and local governments, and the public for information on which to base planning for public transportation services, and shall contain information appropriate to assist in the making of public sector investment decisions at all levels of government. The Secretary is authorized to develop and test these systems in consultation with interested persons and organizations. The Secretary is authorized to carry out this subsection independently, or by grant or contract (including arrangements with other Federal, State, or local government agencies). The Secretary is authorized to request and receive such information or data as he deems appropriate from public or private sources.

(b) After July 1, 1978, the Secretary shall not make any grants under section 5 or 9 [118] unless the applicant for such grant and any person or organization to receive benefits directly from that grant are each subject to both the reporting system and the uniform system of accounts and records prescribed under subsection (a) of this section.[119]

(c) [120] The Secretary shall, not later than July 1, 1979, report to Congress on the systems prescribed under authority of this section, together with his

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held that the placement of advertising posters on the side of UMTA funded buses is a minor action not triggering NEPA's requirements. *Naito* v. *Tri-County Transit District*, 14 E.R.C. 1807 (D. Ore. 1980).

[117] Section 6 of Public Law 91-453 deleted section 14 in its entirety and inserted the new section 14. The former section 14 (originally section 11, but redesignated by section 2(a) of Public Law 89-562) read as follows:

"AIR POLLUTION CONTROL"

"SECTION 14. In providing financial assistance to any project under section 3, the Secretary shall take into consideration whether the facilities and equipment to be acquired, constructed, reconstructed, or improved will be designed and equipped to prevent and control air pollution in accordance with any criteria established for this purpose by the Secretary of Health, Education, and Welfare."

[118] Section 304(c) of Public Law 97-424 inserted "section 5 or 9" to replace "section 5".

[119] Section 15 was amended by section 111 of Pub. L. 93-503 which deleted provisions relating to limitations upon the number of projects fundable in any one State. The text of section 15 as it read prior to amendment is as follows:

"STATE LIMITATION"

"SECTION 15. Grants made under section 3 on or after July 1, 1970, for projects in any one State may not exceed in the aggregate 12½ per centum of the aggregate amount of grant funds authorized to be obligated under subsection 4(c), except that 15 per centum of the aggregate amount of grant funds authorized to be obligated under subsection 4(c) may be used by the Secretary, without regard to this limitation, for grants in States where more than two-thirds of the maximum amounts permitted under this section, has been obligated. In computing State limitations under this section, grants for relocation payments shall be excluded. Any grant made under section 3 to a local public body or agency in a major metropolitan area which is used in whole or in part to provide or improve urban mass transportation service, pursuant to an interstate compact approved by the Congress, in a neighboring State having within its boundaries population centers within normal commuting distance from such major metropolitan areas, shall, for purposes of computing State limitations under this section, be allocated on an equitable basis, in accordance with regulations prescribed by the Secretary, between the State in which such public body or agency is situated and such neighboring State."

The language of the above-quoted provision, originally section 12 of the Act, but redesignated by section 2(a) of P.L. 89-562, omits the first sentence, which expired by its own terms and applied only to grants made prior to July 1, 1970. Section 7 of P.L. 91-453 had amended this section by inserting the limiting date and by amending the remender of the section.

[120] This subsection was added by section 310 of Public Law 95-599.

recommendations for any further legislation, if any, he deems necessary in connection with such systems.

Planning and Design of Mass Transportation Facilities to Meet Special Needs of the Elderly and the Handicapped [121]

§ 12 SECTION 16. (a) It is hereby declared to be the national policy that elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services; that special efforts shall be made in the planning and design of mass transportation facilities and services so that the availability to elderly and handicapped persons of mass transportation which they can effectively utilize will be assured; and that all Federal programs offering assistance in the field of mass transportation (including the programs under this Act) should contain provisions implementing this policy.

(b) In addition to the grants and loans otherwise provided for under this Act, the Secretary is authorized to make grants and loans—

(1) to States and local public bodies and agencies thereof for the specific purpose of assisting them in providing mass transportation services which are planned, designed, and carried out so as to meet the special needs of elderly and handicapped persons, with such grants and loans being subject to all of the terms, conditions, requirements, and provisions applicable to grants and loans made under section 3(a) and being considered for the purposes of all other laws to have been made under such section; and

(2) to private nonprofit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of elderly and handicapped persons for whom mass transportation services are planned, designed, and carried out under paragraph (1) are unavailable, insufficient, or inappropriate, with such grants and loans being subject to such terms, conditions, requirements, and provisions (similar insofar as may be appropriate to those applicable to grants and loans under paragraph (1)), as the Secretary may determine to be necessary or appropriate for purposes of this paragraph.

Of the total amount authorized to be appropriated pursuant to section 21 (a)(2) of this Act, 3.5 per centum [122] may be set aside and used exclusively to finance the programs and activities authorized by this subsection (including administrative costs). [123]

(c) Of any amounts made available to finance research, development, and demonstration projects under section 6 after the date of the enactment of this section, 1½ per centum may be set aside and used exclusively to increase the information and technology which is available to provide improved transporta-

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[121] Other statutes affecting transit services for the elderly and handicapped include section 165(b) of the Federal-Aid Highway Act of 1973 (see Part II). Reference is also made to section 504 of the Rehabilitation Act of 1973 (see Part III).

[122] Section 16(b) was amended by section 317(a) of Public Law 97-424 by inserting "section 21(a)(2) of this Act, 3.5 per centum" to replace "section 4(c)(3) of this Act, 2 per centum."

[123] This sentence was amended by section 311 of Public Law 95-599. Prior to that Act, it read as follows: "Of the total amount of the obligations which the Secretary is authorized to incur on behalf of the United States under the first sentence of section 4(c), 2 per centum may be set aside and used exclusively to finance the programs and activities authorized by this subsection (including administrative costs)."

tion facilities and services planned and designed to meet the special needs of elderly and handicapped persons.[124, 125]

(c) [126] In carrying out subsection (a) of this section, section 165(b) of the Federal-Aid Highway Act of 1973, and section 504 of the Rehabilitation Act of 1973 (consistent with any applicable Government-wide standards for the implementation of such section 504), the Secretary shall, not later than ninety days after the date of the enactment of this subsection, publish in the Federal Register for public comment, proposed regulations and not later than one hundred and eighty days after the date of such enactment, promulgate final regulations, establishing (1) minimum criteria for the provision of transportation services to handicapped and elderly individuals by recipients of Federal financial assistance under this Act or under any provision of law referred to in section 165(b) of the Federal-Aid Highway Act of 1973, and (2) procedures for the Secretary to monitor recipients' compliance with such criteria. Such regulations shall include provisions for ensuring that organizations and groups representing such individuals are given adequate notice of and opportunity to comment on the proposed activities of recipients for the purpose of achieving compliance with such regulations.

Emergency Operating Assistance [127]

§ 1613 SECTION 17. (a) The Secretary shall provide financial assistance for the purpose of reimbursing—

(1) the Consolidated Rail Corporation, the National Railroad Passenger Corporation, other railroads, and, if applicable, the trustee or trustees of a railroad in reorganization in the region (as defined in section 102 of the

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[124] Subsection 311(b) of Public Law 95-599 deleted subsection (b) which defined "handicapped person." See, however, subsection 12(c)(4) and footnote 96.

[125] In *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981), the Court of Appeals held that Department of Transportation regulations requiring all federally funded buses and subways to be accessible to handicapped persons, went beyond the scope of section 504 of the Rehabilitation Act. The Court left open the question of whether section 16 would permit such a regulation. Several courts have held or implied as valid regulations requiring "special efforts" as an appropriate measure of a transit authority's section 504 obligation. *Dopico* v. *Goldschmidt*, 518 F.Supp. 1161 (S.D.N.Y. 1981), *rev'd in part, aff'd in part*, 687 F.2d 644 (2nd Cir. 1982); *Lloyd* v. *Regional Transportation Authority*, 548 F.2d 415 (7th Cir. 1977), 548 F.Sup 575 (N.D. Ill. 1982); *United Handicapped Federation* v. *Andre*, 558 F.2d 413 (8th Cir. 1977); *Michigan Paralyzed Veterans* v. *Coleman*, 545 F.Supp. 245 (E.D. Mich. 1982); *Atlantis Community Inc.* v. *Adams*, 453 F.Supp. 825 (.D. Col. 1978); *Vanko* v. *Finley*, 440 F.Supp. 656 (N.D. Ohio 1977); *Snowden* v. *Birmingham-Jefferson County Transit Authority*, 407 F.Supp. 394 (N.D. Ala. 1975), *aff'd without opinion* 551 F.2d 862 (5th Cir. 1977), *rehearing denied* 554 F.2d 475 (5th Cir. 1977); *Lucht* v. *Bejarano*, No. Civ. 81-031-TUC-RMB (D. Ariz. Aug. 14, 1981).

In *Baker* v. *Bell*, 630 F.2d 1046, 1056 (5th Cir. 1980), the Court of Appeals suggested that the District Court should apply a "judicial standard of nondiscrimination [under section 504], to be determined by it." *Baker* suggested, however, that the DOT regulation should be considered in determining "the appropriate standard." 630 F.2d at 1057. One court has held that DOT's interim section 504 regulation (1981) is entitled to no deference and ordered the transit authority to place wheelchair lifts and two wheelchair bays on each bus in a pending order for 42 buses. *Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 549 F.Supp. 592 (D.R.I. 1982); *appeal* v. *docketed* No. 82-1771 (1st Cir. 1982).

Three courts have held that handicapped persons do not have a private right of action under section 16. *Dopico* v. *Goldschmidt*, 518 F.Supp. 1161 (S.D.N.Y. 1981), *rev'd in part, aff'd in part*, 687 F.2d 644 (2nd Cir. 1982); *Lloyd* v. *Regional Transportation Authority*, 548 F.Supp. 575 (N.D. Ill. 1982); and *Michigan Paralyzed Veterans* v. *Coleman*, 545 F.Supp. 245 (E.D. Mich. 1982). All of the above cases have either explicitly or implicitly found that handicapped persons have a private right of action under section 504. See also, *Leary* v. *Crapsey*, 566 F.2d 863 (2nd Cir. 1977).

[126] Section 317(c) of Public Law 97-424 added a new section mislabled as (c), at the end of section 16.

[127] Section 17 was added by section 808 of the Rail Revitalization and Regulatory Reform Act of 1976. (Public Law 94-210, Feb. 5, 1976).

Regional Rail Reorganization Act of 1973 (45 U.S.C. 702)) for the costs of rail passenger service operations conducted at a loss during the 180-day mandatory operation period, as required under section 304(e) of such Act (45 U.S.C. 744(e)).[128] Such reimbursement shall cover all costs and otherwise paid by a State or a local or regional transportation authority which would have been payable by such State or authority, pursuant to regulations issued by the Office under section 205(d)(5) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 715) if such regulations had been in effect on the date of conveyance of rail properties under section 303(b)(1) of such Act; and

(2) States, local public bodies, and agencies thereof for additional costs incurred by such States, bodies, and agencies with respect to rail passenger service required by section 304(e)(4) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744. (e)(4)).

(b) Financial assistance under subsection (a) of this section shall not apply to intercity rail passenger service provided pursuant to an agreement with the National Railroad Passenger Corporation which was in effect immediately prior to such date of conveyance.

(c) Financial assistance provided pursuant to subsection (a) of this section shall be subject to such terms, conditions, requirements, and provisions as the Secretary may deem necessary and appropriate with such reasonable exceptions to requirements and provisions otherwise applicable under this Act as the Secretary may deem required by the emergency nature of the assistance authorized by this section. Nothing in this section shall authorize the Secretary to waive the provisions of section 13(c) of this Act.

(d) The Federal share of the costs of any rail passenger service required by subsections (c) and (e) of section 304 of the Regional Rail Reorganization Act of 1974 (45 U.S.C. 744 (c) and (e)) shall be as follows:

(1) 100 percent of the costs eligible under subsections (a)(1) or (a)(2) of this section for the 180-day mandatory operation period required by section 304(e) of such Act;

(2) 100 percent for the 180-day period following the 180-day mandatory operation period;

(3) 90 percent for the 12-month period succeeding the period specified in subparagraph (2) of this subsection; and

(4) 80 percent for the period ending September 30, 1978.[129]

(e) The terms and provisions which are applicable to assistance provided pursuant to this section shall be consistent, insofar as practicable, with the

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[128] See part III.

[129] Section 312 of Public Law 95-599 amended subsection (d)(4) and deleted prior subsection (d)(5). Prior subsections (d)(4) and (d)(5) had been added by Public Law 95-187. They read as follows:

"(4) 80 percent for the 180-day period succeeding the period specified in subparagraph (3) of this subsection; and

(5) 50 percent for the 24-month period succeeding the period specified in subparagraph (4) of this subsection."

Public Law 95-187 also deleted the last sentence of subsection (d) which read as follows:

"No assistance may be provided beyond the time specified in subsection (d)(3) of this section, unless the applicant for such assistance provides satisfactory assurances to the Secretary that the service for which such assistance is sought will be continued after the termination of the assistance authorized by this section."

terms and provisions which are applicable to operating assistance under section 5 of this Act.

(f)[130] To finance assistance under this section, the Secretary may incur obligations on behalf of the United States in the form of grants, contract agreements, or otherwise, in such amounts as are provided in appropriations Acts, in an aggregate amount not to exceed $125,000,000. There are authorized to be appropriated for liquidation of the obligations incurred under this section not to exceed $40,000,000 by September 30, 1976, $95,000,000 by September 30, 1977 and $125,000,000 by September 30, 1978, such sums to remain available until expended.

Formula Grant Program For Areas Other Than Urbanized Areas [131]

§ 1614 SECTION 18. (a) The Secretary shall apportion for expenditure in each fiscal year the sums made available under section 21(a) of this Act to carry out this section.[132] Such sums shall be made available for expenditure for

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[130] This subsection was amended by section 312 of Public Law 95-599. Prior to that Act it read as follows:

"(f) To finance assistance under this section, the Secretary may incur obligations on behalf of the United States in the form of grants, contract agreements, or otherwise, in such amounts as are provided in appropriations Acts, in an aggregate amount not to exceed $185,000,000. There are authorized to be appropriated for liquidation of the obligations incurred under this section not to exceed $40,000,000 by September 30, 1976, $95,000,000 by September 30, 1977, $125,000,000 by September 30, 1978, $155,000,000 by September 30, 1979, and $185,000,000 by September 30, 1980."

[131] Prior section 18, which was added by Public Law 95-187, was repealed by section 312(c) of Public Law 95-599, and replaced with this section 18. Prior section 18 read as follows:

"Section 18 Reimbursement to States"

"(a) The Secretary shall provide financial assistance annually for the purpose of reimbursing States, local public bodies and agencies thereof for the cost of financially supporting or operating rail passenger service provided by railroads designated as class I.

(b) Financial assistance under subsection (a) of this section shall not be available to support (1) intercity rail passenger service provided pursuant to an agreement with the National Railroad Passenger Corporation under section 563(b)(2) of Title 45; and (2) rail passenger service required by section 744(e)(4) of Title 45.

(c) The Secretary shall distribute financial assistance authorized by subsection (a) of this section pro rata on the basis of the passenger-miles attributable to each eligible rail passenger service, except that (1) for the purposes of such apportionment in no case shall any State, local public body or agency thereof supporting or operating rail passenger service eligible for assistance under this section be credited with more than 30 per centum of the total passenger miles eligible for such assistance for the calendar year ending immediately prior to the commencement of the Federal fiscal year for which the distribution is made, and (2) no Federal grant for the payment of subsidies for operating expenses shall exceed 50 per centum of the total operating losses of such service.

(d) Financial assistance authorized by subsection (a) of this section may be applied to the payment of operating expenses or programs to correct deferred maintenance within the meaning of section 744(c)(5)(C) of Title 45, but in no case may it exceed the total of the amounts applied by the grantee from its own funds to the payment of operating expenses and programs to correct deferred maintenance for the same fiscal period.

(e) Financial assistance provided pursuant to subsection (a) of this section shall be subject to such terms, conditions, requirements, and provisions as the Secretary may deem necessary and appropriate.

(f) To finance assistance under this section, the Secretary may incur obligations on behalf of the United States in the form of grants, contract agreements, or otherwise, in such amounts as are provided in appropriations Acts, in an aggregate not to exceed $20,000,000. There are authorized to be appropriated for liquidation of the obligations incurred under this section not to exceed $20,000,000 by September 30, 1979, such sum to remain available until expended."

One court has held that there is no private right of action to enforce section 18 of the UMT Act and, in the facts of that case, that a private taxi operator had no standing to challenge UMTA's award of a section 18 grant to a county board of human services. *Associated Business of Franklin* v. *Warren*, 522 F. Supp. 1015 (S.D. Ohio 1981).

[132] Section 316(a) of Public Law 97-424 amended section 18 by inserting "made available under section 21(a) of this Act to carry out this section" to replace "appropriated pursuant to section 4(e) of this Act."

public transportation projects in areas other than urbanized areas on the basis of a formula under which the Governor of each State will be entitled to receive an amount equal to the total amount so apportioned, multiplied by the ratio which the population of areas other than urbanized areas in such State, as designated by the Bureau of the Census, bears to the total population of areas other than urbanized areas in all the States as shown by the latest available Federal census. Appropriations pursuant to the authority of this section may be made in an appropriation Act for a fiscal year preceding the fiscal year in which the appropriation is to be available for obligation.

(b) Funds made available under this section may be used for public transportation projects which are included in a State program of projects for public transportation services in areas other than urbanized areas. Such program shall be submitted annually to the Secretary for his approval. The Secretary shall not approve the program unless he finds that it provides for a fair and equitable distribution of funds within the State, including Indian reservations within the State, and provides for the maximum feasible coordination of public transportation services assisted under this section with transportation services assisted by other Federal sources.

(c) Sums apportioned under this subsection shall be available for obligation by the Governor for a period of two years [133] following the close of the fiscal year for which the sums are apportioned and any amounts remaining unobligated at the end of such period shall be reapportioned among the States for the succeeding fiscal year. States may utilize sums apportioned under this section for any projects eligible under this Act which are appropriate for areas other than urbanized areas, including purchase of service agreements with private providers of public transportation service, to provide local transportation service, as defined by the Secretary, in areas other than urbanized areas. Eligible recipients may include State agencies, local public bodies and agencies thereof, nonprofit organizations, and operators of public transportation services.

(d) The Secretary may permit an amount, not to exceed 15 per centum of the amount apportioned, to be used by each State for administering this section and for providing technical assistance to recipients of funds under this section. Such technical assistance may include project planning, program development, management development, coordination of public transportation programs (public and private), and such research as the State may deem appropriate to promote effective means of delivering public transportation service in areas other than urbanized areas.

(e) The Federal share under this Act for any construction project under this section shall not exceed 80 per centum of the net cost of such construction project, as determined by the Secretary. The Federal share under this Act for any project for the payment of subsidies for operating expenses, as defined by the Secretary, shall not exceed 50 per centum of the net cost of such operating expense project. At least 50 per centum of the remainder shall be provided in cash, from sources other than Federal funds or revenues from the operation of public mass transportation systems. Any public or private transit system funds so provided shall be solely from undistributed cash surpluses,

[133] Section 316(b) of Public Law 97-424 changed the period of availability from three years to two years.

replacement, or depreciation funds or reserves available in cash or new capital.

(f) Grants under this section shall be subject to such terms and conditions (which are appropriate to the special needs of public transportation in areas other than urbanized areas) as the Secretary may prescribe. The provisions of sections 13(c) and 3(e)(4) of this Act shall apply in carrying out projects under this section. For the purposes of this section, the Secretary of Labor may waive any provisions of section 13(c) of this Act. Nothing under this subsection shall affect or discharge any responsibility of the Secretary under any other provision of Federal law.

(g) The Secretary shall, in cooperation with State regulatory commissions, make an evaluation of the escalation of insurance rates for operators of public transportation in rural areas and for providers of special transportation services for elderly and handicapped persons. The Secretary shall, not later than January 1, 1980, report to Congress the results of this evaluation together with his recommendations for necessary legislation.

Nondiscrimination [134,135]

§ 1615 SECTION 19. (a)(1) *GENERAL.*—No person in the United States shall on the grounds of race, color, creed, national origin, sex, or age be excluded from participation in, or denied the benefits of, or be subject to discrimination under any project, program, or activity funded in whole or in part through financial assistance under this Act. The provisions of this section shall apply to employment and business opportunities and shall be considered to be in addition to and not in lieu of the provisions of title VI of the Civil Rights Act of 1964.

(2) *AFFIRMATIVE ACTION.*—The Secretary shall take affirmative action to assure compliance with subsection (a)(1) of this section.

(3) *COMPLIANCE.*—(A) Whenever the Secretary determines that any person receiving financial assistance, directly or indirectly, under this Act, has failed to comply with subsection (a)(1) of this section, with any Federal civil rights statute, or with any order or regulation issued under such statute, the Secretary shall give notice of such determination and shall require necessary action to be taken to assure compliance with such subsection.

(B) If, within a reasonable period of time after receiving notification pursuant to paragraph (a) of this subsection, such person fails or refuses to comply with subsection (a)(1) of this section, the Secretary shall—

(i) direct that no further Federal financial assistance under this Act be provided to such person;

(ii) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

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[134] One court has held that this section does not authorize Department of Transportation regulations on Minority Business Enterprises, although the regulations were authorized under other statutory provisions. *M. C. West Inc. v. Lewis*, 522 F.Supp. 338 (D. Tn. 1981). In *Jones v. Niagara Frontier Transportation Authority*, 524 F.Supp. 233, 238 (W. D. N.Y. 1981), the District Court stated that "the paramount thrust of [Section 19 as it relates to DOT's Minority Business Enterprise regulations] is to enable minority contractors to 'stick their foot in the door' of the often exclusive enclave of contracting and construction work."

[135] Added by section 314 of Public Law 95-599.

(iii) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); or

(iv) take such other actions as may be provided by law.

(4) *CIVIL ACTION.*—Whenever a matter is referred to the Attorney General pursuant to subsection (a)(3)(B)(ii) of this section, or whenever the Attorney General has reason to believe that any person is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may commence a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(5) *DEFINITION.*—For purposes of this section, the term 'person' includes one or more governmental agencies, political subdivisions, authorities, partnerships, associations, corporations, legal representations, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

Human Resource Programs [136]

§ 1616 SECTION 20. The Secretary is authorized to undertake, or provide financial assistance by grant or contract for, national and local programs that address human resource needs as they apply to public transportation activities. Such programs may include but are not limited to employment training programs; outreach programs to increase minority and female employment in public transportation activities; research on public transportation manpower and training needs; and training and assistance for minority business opportunities. Such assistance may include assistance in seeking venture capital, obtaining surety bonding, obtaining management and technical services, and contracting with public agencies organized for such purposes.

Authorizations of Appropriations [137]

§ 1617 SECTION 21. (a)(1) There is hereby authorized to be appropriated to carry out the provisions of sections 9 and 18 of this Act not to exceed

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[136] Added by section 315 of Pub. L. 95.599.

[137] Section 302(s) of Pub. L. 97-424 deleted former section 21 and replaced it with this provision. Former section 21 read as follows:

Terminal Development Program

SECTION 21. (a) The Secretary is authorized, in accordance with this Act, and on such other terms and conditions as he may prescribe, to make grants to States and local bodies and agencies thereof to acquire, construct, or alter facilities (directly operated, operated through a lease, or otherwise) primarily for use in providing intercity bus service and in coordinating such service with other modes of transportation. Eligible facilities include, but are not limited to, real property, bus terminals, intermodal terminals, and bus passenger loading areas (including shelters). No grants shall be provided under this section unless the Secretary determines the applicant has or will have (1) the legal, financial, and technical capacity to carry out the proposed project, and (2) satisfactory continuing control, through operation, lease, or otherwise, over the use of the facilities.

(b) No financial assistance shall be provided under this section to any State of local public body or agency thereof for the acquisition, construction, or alteration of eligible facilities unless the Secretary finds that fair and equitable arrangements have been made for the use of such facilities by privately owned bus companies. Assistance under this section shall encourage, to the maximum extent feasible, the participation of private enterprise and the use of the facilities assisted under this section by other modes of transportation.

(c) A grant for a project under this section shall be for 80 per centum of the net project cost determined in accordance with section 4(a) of this Act. The remainder of the net project cost shall be provided, in cash, from sources other than Federal funds.

Continued

$2,750,000,000 for the fiscal year ending September 30, 1984, $2,950,000,000 for the fiscal year ending September 30, 1985, and $3,050,000,00 for the fiscal year ending September 30, 1986, and funds appropriated under this subsection shall remain available until expended.

(2)(A) There shall be available from the Mass Transit Account of the Highway Trust Fund only to carry out sections 9A and 18 of this Act $779,000,000 for fiscal year 1983.

(B) There shall be available from the Mass Transit Account of the Highway Trust Fund only to carry out section 3, 4(i), 8, and 16(b) of this Act $1,250,000,000 for fiscal year 1984, $1,100,000,000 for fiscal year 1985, and $1,100,000,000 for fiscal year 1986.

(C) Notwithstanding any other provision of law, approval by the Secretary of a grant with funds made available under subparagraphs (A) and (B) of this paragraph shall be deemed a contractual obligation of the United States for payment of the Federal share of the cost of this project.

(3) In fiscal year 1983, 2.93 per centum of the amount made available from the Mass Transit Account of the Highway Trust Fund under paragraph (2) of this subsection shall be available to carry out section 18 of this Act.

(4) In each of fiscal years 1984, 1985, and 1986, 2.93 per centum of the amount appropriated from the general fund of the Treasury under paragraph (1) of this subsection shall be available to carry out section 18 of this Act and shall remain available until expended.

(5) Of the funds available for obligation under paragraph (2)(B), $50,000,000 shall be used in each of fiscal years 1984, 1985, and 1986 for the purposes of section 8 of this Act. Nothing herein shall prevent the use of additional funds available under this subsection for planning purposes.

(b) There is hereby authorized to be appropriated to carry out section 6, 10, 11(a), 12(a), and 20 of this Act not to exceed $86,250,000 for this fiscal year ending September 30, 1983, $86,000,000 for the fiscal year ending September 30, 1984, and $90,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, and September 30, 1986. Sums appropriated pursuant to this subsection for financing projects funded under section 6 of this Act shall remain available until expended.

Safety Authority[138]

§ 1618 SECTION 22. The Secretary may investigate conditions in any facility, equipment, or manner of operation financed under this Act which the Secre-

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(d) There is authorized to be appropriated to carry out subsection (a) of this section $40,000,000 per fiscal year for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, and September 30, 1982.

(e) The provisions of sections 13(c) and 3(e)(4) of this Act shall apply in carrying out projects under this section.

[138] Added by section 318(b) of Public Law 97-424.

Section 302(a) of Public Law 97-424 deleted former section 22, which read as follows:

Intercity Bus Service

SECTION 22. (a) The Secretary is authorized to make grants for the initiation, improvement, or continuation of intercity bus service for residents of rural areas and residents of urban places designated by the Bureau of the Census as having a population of five thousand or more which are not within an urbanized area as defined in section 12 of this Act. As used in this subsection and subsection (b) of this section, the term 'intercity bus service' means transportation provided to the public as a private bus operator authorized to transport passengers

Continued

tary believes creates a serious hazard of death or injury. The investigation should determine the nature and extent of such conditions and the means which might best be employed to correct or eliminate them. If the Secretary determines that such conditions do create such a hazard, he shall require the local public body which has received funds under this Act to submit a plan for correcting or eliminating such condition. The Secretary may withhold further financial assistance under this Act from the local public body until he approves such plan and the local public body implements such plan.

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in interstate commerce by the Interstate Commerce Commission or in intrastate commerce by a State regulatory commission or comparable State agency (1) between one urban place as designated under this subsection and another such urban place, (2) between an urban place designated in accordance with this subsection and an urbanized area, or (3) between one urbanized area and other urbanized area, through rural areas or urban places, or both. Such term does not include local service.

(b) Grants for the initiation, improvement, or continuation of intercity bus service under subsection (a) of this section shall be made only to States and local public bodies and agencies thereof, only for payment of operating expenses incurred in furnishing such intercity bus service, and shall not exceed 50 per centum of the net cost of such an operating expense project. The remainder of such cost shall be provided in cash from sources other than Federal funds and other than revenues from the operation of such intercity bus service. Such grants shall be subject to such other terms, conditions, and requirements as the Secretary may deem necessary to promote the initiation, improvement, or continuation of privately owned and operated intercity bus service. To the maximum extent feasible assistance shall be distributed by the Secretary only for privately owned intercity bus companies to subsidize deficit operations considering the profitability of the route as a whole. The determination of profitability shall include all income generated by the route and only direct costs of the operation of the route. In making any such grant, preference shall be given to a private bus operator who lawfully has provided intercity bus service to a rural area or urban place during the one-year period preceding the date of application for such a grant over routes or within the general area for which financial assistance is to be provided, over any other operator to provide such service in such area or place.

(c) There is authorized to be appropriated to carry out subsections (a) and (b) of this section not to exceed $30,000,000 per fiscal year for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, and September 30, 1982.

(d) The Secretary shall, in cooperation with States, local public bodies, and intercity bus carriers, make an evaluation of the needs of the intercity bus industry for public subsidy of expenses incurred in the provision of intercity bus service as it serves local transportation needs in areas other than urbanized areas. The Secretary shall, not later than September 30, 1979, report to Congress the results of this evaluation together with his recommendations for necessary legislation.

(e) The provisions of section 13(c) and 3(e)(4) of this Act shall apply in carrying out projects under this section.

ADDITIONAL PROVISIONS OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982

PL 97-424[139]

Authorizations

SECTION 105

* * *

(f) Except to the extent that the Secretary determines otherwise, not less than 10 per centum of the amounts authorized to be appropriated under this Act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals as defined by section 8(d) of the Small Business Act (15 U.S.C. section 637(d)) and relevant subcontracting regulations promulgated pursuant thereto.

Buy America[140]

SECTION 165. (a) Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated by this Act or by any Act amended by this Act or, after the date of enactment of this Act, any funds authorized to be appropriated to carry out this Act, title 23, United States Code, the Urban Mass Transportation Act of 1964, or the Surface Transportation Assistance Act of 1978 and administered by the Department of Transportation, unless steel, cement, and manufactured products used in such project are produced in the United States.

(b) The provisions of subsection (a) of this section shall not apply where the Secretary finds—

(1) that their application would be inconsistent with the public interest;

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[139] The primary provisions of Title III of The Surface Transportation Assistance Act of 1982 (Pub. L. 97-424) amended the Urban Mass Transportation Assistance Act of 1964. The resulting changes have been made to the text of the 1964 Act and are indicated by footnotes. The sections that follow are provisions which do not amend the 1964 Act, but which supplement it.

[140] Section 165 of Public Law 97-424 substantially amended the Buy America provision of Public Law 95-599. The former provision read as follows:

Buy America

SECTION 401. (a) Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated by this Act or by any Act amended by this Act and administered by the Department of Transportation, whose total cost exceeds $500,000 unless only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, and supplies mined, produced, or manufactured, as the case may be, in the United States, will be used in such project.

(b) The provisions of subsection (a) of this section shall not apply where the Secretary determines—

(1) their application would be inconsistent with the public interest;

(2) in the case of acquisition of rolling stock their application would result in unreasonable cost (after granting appropriate price adjustments to domestic products based on that portion of project cost likely to be returned to the United States and to the States in the form of tax revenues;

(3) supplies of the class or kind to be used in the manufacture of articles, materials, supplies that are not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(4) that inclusion of domestic material will increase the cost of the overall project contract by more than 10 per centum.

(2) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(3) in the case of the procurement of bus and other rolling stock (including train control, communication, and traction power equipment) under the Urban Mass Transportation Act of 1964, that (A) the cost of components which are produced in the United States is more than 50 per centum of the cost of all components of the vehicle or equipment described in this paragraph, and (B) final assembly of the vehicle or equipment described in this paragraph has taken place in the United States;

(4) that inclusion of domestic material will increase the cost of the overall project contract by more than 10 per centum in the case of projects for the acquisition of rolling stock, and 25 per centum in the case of all other projects.

(c) For purposes of this section, in calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.

(d) The Secretary of Transportation shall not impose any limitation or condition on assistance provided under this Act, the Urban Mass Transportation Act of 1964, the Surface Transportation Assistance Act of 1978, or title 23, United States Code, which restricts any State from imposing more stringent requirements than this section on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with such assistance or restricts any recipient of such assistance from complying with such State imposed requirements.

(e) Section 401 of the Surface Transportation Assistance Act of 1978 is repealed.

Performance Reports

SECTION 310. (a) The Secretary of Transportation shall report to Congress in January of 1984 and in January of every second year thereafter his estimates of the current performance and condition of public mass transportation systems together with recommendations for any necessary administrative or legislative revisions.

(b) In reporting to Congress pursuant to this section, the Secretary shall prepare a comprehensive assessment of public transportation facilities in the United States. The Secretary shall also assess future needs for such facilities and estimate future capital requirements and operation and maintenance requirements for one-, five-, and ten-year periods at specified levels of service.

Construction Condition [141]

SECTION 311. The Secretary of Transportation shall only make available Federal financial assistance to the Metropolitan Atlanta Rapid Transit Authority for the construction of the proposed fixed rail line from Doraville, Georgia, to the Atlanta Hartsfield International Airport on the condition that the portion of such line extending north from Lenox Station to Doraville and the portion of such line extending south from Lakewood Station to the Atlanta

[141] Section 311 of the Surface Transportation Assistance Act of 1982 was repealed by Public Law 98-6 (March 16, 1983).

Hartsfield International Airport will be constructed simultaneously in usable segments so that revenue passenger service to Doraville and such airport shall commence at approximately the same time. This section shall apply until priorities different from those set forth in the preceding sentence are adopted after September 30, 1983, by a valid act of the Georgia General Assembly and by a valid resolution of the Board of the Metropolitan Atlanta Rapid Transit Authority.

Loan Repayment

SECTION 312. (a) The Massachusetts Bay Transportation Authority shall have no obligation to repay the United States 80 per centum of the principal and the interest owed on the following loans entered into with the Secretary of Transportation under the Urban Mass Transportation Act of 1964 for the acquisition of rights-of-way the loan numbered MA03-9001 entered into on January 26, 1973, and the loan numbered MA23-9010 entered into on December 20, 1976.

(b)(1) The Secretary of Transportation may convert the remaining 20 per centum of the principal and interest owed on the loans described in subsection (a) to grants under the conditions set forth in paragraph (2).

(2) In lieu of the local matching share otherwise required, the grant agreement may provide that State or local funds shall be committed to public transportation projects in the urbanized area, on a schedule acceptable to the Secretary of Transportation, in an amount equal to the local share that would have been required had the amount of principal and interest forgiven under subsection (a) been the Federal share of a capital grant made when the original loan was made. The State or local funds contributed under the terms of the preceding sentence shall be made available for capital projects eligible for funding under section 3(a) of the Urban Mass Transportation Act of 1964 and may not be used to satisfy the local matching requirements for any other grant project.

Feasibility Study

SECTION 314. (a) The Secretary of Transportation shall make a grant to the Massachusetts Bay Transportation Authority to conduct a feasibility study to examine the possibility of replacing either any or all three of the existing electric trolley bus lines (and thereby eliminating the overhead power lines) in Cambridge, Massachusetts, with the more advanced and equally environmentally sound electric bus technology that is being developed in the State of California for the Santa Barbara transit system.

(b) Notwithstanding section 21(a)(2) of the Urban Mass Tranportation Act of 1964, of the amount made available by such section 21(a)(2) for the fiscal year ending September 30, 1983, $500,000 shall be available only to carry out this section and such amount shall remain available until expended.

Study of Long-term Leverage Financing

SECTION 315. The Secretary of Transportation shall conduct a study on the feasibility of providing an assured flow of Federal funds under long-term contracts with local or State transit authorities for use in leveraging further capital assistance from State or local government or private sector sources.

Within six months of the date of enactment of this Act, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Public Works and Transportation of the House a report of such study.

ESTABLISHMENT OF MASS TRANSIT ACCOUNT

SECTION 531

* * *

(e) ESTABLISHMENT OF MASS TRANSIT ACCOUNT.—

(1) CREATION OF ACCOUNT.—There is established in the Highway Trust Fund a separate account to be known as the 'Mass Transit Account' consisting of such amounts as may be transferred or credited to the Mass Transit Account as provided in this subsection or section 9602(b).

(2) TRANSFERS TO MASS TRANSIT ACCOUNT.—The Secretary of the Treasury shall transfer to the Mass Transit Account one-ninth of the amounts appropriated to the Highway Trust Fund under subsection (b) which are attributable to taxes under sections 4041 and 4081 imposed after March 31, 1983.

(3) EXPENDITURES FROM ACCOUNT.—Amounts in the Mass Transit Account shall be available, as provided by appropriation Acts, for making capital expenditures before October 1, 1988 (including capital expenditures for new projects) in accordance with section 21(a)(2) of the Urban Mass Transportation Act of 1964.

(4) LIMITATION.—Rules similar to the rules of subsection (d) shall apply to the Mass Transit Account except that subsection (d)(1) shall be applied by substituting '12-month' for '24-month'.

ADDITIONAL PROVISIONS OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1978

PL 95-599[142]

Loan Forgiveness

SECTION 316. (a) The Secretary of Transportation may convert equipment and facilities loans heretofore made under section 3(a) of the Urban Mass Transportation Act of 1964 or title II of the Housing Amendments of 1955 (42 U.S.C. 14924), to grants under the conditions set forth below. A grant agreement for the acquisition, construction, reconstruction, or improvement of facilities and equipment under section 3(a) of the Urban Mass Transportation Act of 1964 may provide for forgiveness of principal and interest on a loan previously made in lieu of a cash grant in the amount forgiven. Such grant shall be subject to such terms and conditions as the Secretary may deem necessary and appropriate, taking into account the degree of completion of the project financed with the loan.

[142] The primary provisions of Title III of the Surface Transportation Assistance Act (PL 95-599) amended the Urban Mass Transportation Assistance Act of 1964. The resulting changes have been made to the text of the 1964 Act and are indicated by footnotes. The sections that follow are provisions which do not amend the 1964 Act, but which supplement it.

(b) In lieu of the local matching share otherwise required, the grant agreement may provide that State or local funds shall be committed to public transportation projects in the urbanized area, on a schedule acceptable to the Secretary, in an amount equal to the local share that would have been required had the amount of principal and interest forgiven been the Federal share of a capital grant made when the original loan was made. The State or local funds contributed under the terms of the preceding sentence shall be made available for capital projects eligible for funding under section 3(a) of the Urban Mass Transportation Act of 1964 and may not be used to satisfy the local matching requirements for any other grant project.

Waterborne Transportation Demonstration Project

SECTION 320. (a) The Secretary of Transportation shall carry out a demonstration project using high-speed water-borne transportation equipment and facilities and operating in, and in the vicinity of, New York, New York, for the purpose of determining the feasibility of utilizing this technology in providing certain public mass transportation service. The Secretary shall report to Congress the results of such project no later than September 30, 1981, together with his recommendations.

(b) There is authorized to be appropriated to carry out the provisions of subsection (a) not to exceed $25,000,000.

ADDITIONAL PROVISIONS OF THE NATIONAL MASS TRANSPORTATION ASSISTANCE ACT OF 1974 [143]

(P.L. 93-503, 88 Stat. 1565)

An Act

To amend the Urban Mass Transportation Act of 1964 to provide increased assistance for mass transportation systems.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Mass Transportation Assistance Act of 1974".

FINDINGS

SEC. 2. The Congress finds that—

(1) over 70 per centum of the Nation's population lives in urban areas;

(2) transportation is the lifeblood of an urbanized society and the health and welfare of that society depends upon the provision of efficient economical and convenient transportation within and between its urban area [sic];

(3) for many years the mass transportation industry satisfied the transportation needs of the urban areas of the country capably and profitably;

[143] The primary provisions of Public Law 93-503, the National Mass Transportation Assistance Act of 1974, amended the Urban Mass Transportation Act of 1964, and the resulting changes have been made in the text of the 1964 Act, and are indicated by the footnotes. This section sets forth the provisions of the 1974 Act which do not amend the 1964 Act, but which supplement that Act.

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(4) in recent years the maintenance of even minimal mass transportation service in urban areas has become so financially burdensome as to threaten the continuation of this essential public service;

(5) the termination of such service or the continued increase in its cost to the user is undesirable, and may have a particularly serious adverse effect upon the welfare of a substantial number of lower income persons;

(6) some urban areas are now engaged in developing preliminary plans for, or are actually carrying out, comprehensive projects to revitalize their mass transportation operations; and

(7) immediate substantial Federal assistance is needed to enable many mass transportation systems to continue to provide vital service.

TITLE I—INCREASED MASS TRANSPORTATION ASSISTANCE

* * * * *

INVESTIGATION OF SAFETY HAZARDS IN URBAN MASS TRANSPORTATION SYSTEMS

Sec. 107.[144]

FARES FOR ELDERLY AND HANDICAPPED PERSONS

SEC. 108. Nothing contained in this title shall require the charging of fares to elderly and handicapped persons.

* * * * *

TITLE II—FARE-FREE MASS TRANSPORTATION

Demonstrations

SEC. 201. The Secretary of Transportation (hereinafter referred to as the "Secretary") shall enter into such contracts or other arrangements as may be necessary for research and the development, establishment, and operation of demonstration projects to determine the feasibility of fare-free urban mass transportation systems.

SEC. 202. Federal grants or payments for the purpose of assisting such projects shall cover not to exceed 80 per centum of the cost of the project involved, including operating costs and the amortization of capital costs for any fiscal year for which such contract or other arrangement is in effect.

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[144] Section 107 of the National Mass Transportation Assistance Act of 1974 was repealed by section 318(a) of the Surface Transportation Assistance Act of 1982 (Public Law 97-424) section 107 was replaced by section 22 of the UMT Act as amended by Public Law 97-424.

Section 107 read as follows:

INVESTIGATION OF SAFETY HAZARDS IN URBAN MASS TRANSPORTATION SYSTEMS

SEC. 107. The Secretary of Transportation shall investigate unsafe conditions in any facility, equipment, or manner or [sic] operation financed under this Act which creates a serious hazard of death or injury for the purpose of determining its nature and extent and the means which might best be employed to eliminate or correct it. If the Secretary determines that such facility, equipment, or manner of operation is unsafe, he shall require the State or local public body or agency to submit to the Secretary a plan for correcting the unsafe facility, equipment, or manner of operation, and the Secretary may withhold further financial assistance to the applicant until such plan is approved or implemented.

SEC. 203. The Secretary shall select cities or metropolitan areas for such projects in accordance with the following:

(1) to the extent practicable, such cities or metropolitan areas shall have a failing or nonexistent or marginally profitable transit system, a decaying central city, automobile-caused air pollution problems, and immobile central city population;

(2) several projects should be selected from cities or metropolitan areas of differing sizes and populations;

(3) a high level of innovative service must be provided including the provision of crosstown and other transportation service to the extent necessary for central city residents and others to reach employment, shopping, and recreation; and

(4) to the extent practicable, projects utilizing different modes of mass transportation shall be approved.

SEC. 204. The Secretary shall study fare-free systems assisted pursuant to this title, and other financially assisted urban mass transportation systems providing reduced fares for the purpose of determining the following:

(1) the effects of such systems on (i) vehicle traffic and attendant air pollution, congestion, and noise, (ii) the mobility of urban residents, and (iii) the economic viability of central city business;

(2) the mode of mass transportation that can best meet the desired objectives;

(3) the extent to which frivolous ridership increases as a result of reduced fare or fare-free systems;

(4) the extent to which the need for urban highways might be reduced as a result of reduced fare or fare-free systems; and

(5) the best means of financing reduced fare or fare-free transportation on a continuing basis.

SEC. 205. The Secretary shall make annual reports to the Congress on the information gathered pursuant to section 204 of this title and shall make a final report of his findings, including any recommendations he might have to implement such findings, not later than June 30, 1975.

SEC. 206. In carrying out the provisions of this title, the Secretary shall provide advisory participation by interested State and local government authorities, mass transportation systems management personnel, employee representatives, mass transportation riders, and any other persons that he may deem necessary or appropriate.

SEC. 207. There are hereby authorized to be appropriated not to exceed $20,000,000 for each of the fiscal years ending on June 30, 1975, and June 30, 1976, respectively, to carry out the provisions of this title.

* * * * *

ADDITIONAL PROVISIONS OF THE URBAN MASS TRANSPORTATION ASSISTANCE ACT OF 1970[145]

(P.L. 91-453, 84 Stat. 962)

An Act

To provide long-term financing for expanded urban mass transportation programs, and for other purposes.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Congress finds that the rapid urbanization and the continued dispersal of population and activities within urban areas has made the ability of all citizens to move quickly and at a reasonable cost an urgent national problem; that it is imperative, if efficient, safe, and convenient transportation compatible with soundly planned urban areas is to be achieved, to continue and expand the Urban Mass Transportation Act of 1964; and the success will require a Federal commitment for the expenditure of a least $10,000,000,000 over a twelve-year period, to permit confident and continuing local planning and greater flexibility in program administration. It is the purpose of this Act to create a partnership which permits the local community, through Federal assistance, to exercise the initiative necessary to satisfy its urban mass transportation requirements.

SECTION 10. The Secretary of Transportation shall in all ways (including the provision of technical assistance) encourage industries adversely affected by reductions in Federal Government spending on space, military, and other Federal projects to compete for the contracts provided for under sections 3 and 6 of the Urban Mass Transportation Act of 1964, as amended by this Act.

SECTION 11. Nothing in this Act shall affect the authority of the Secretary of Housing and Urban Development to make grants under the authority of sections 6(a), 9, and 11 of the Urban Mass Transportation Act of 1964, as amended and Reorganization Plan Number 2 of 1968,[146] for projects or activities primarily concerned with the relationship of urban transportation systems to the comprehensively planned development of urban areas, of the role of transportation planning in overall urban planning, out of funds appropriated to him for that purpose.

SECTION 12. Section 5316 of title 5, United States Code, is amended by inserting the following after paragraph (129): "(130) Deputy Administrator, Urban Mass Transportation Administration, Department of Transportation."

SECTION 14. This Act may be cited as the "Urban Mass Transportation Assistance Act of 1970."

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[145] The primary provisions of Public Law 91-453, the Urban Mass Transportation Assistance Act of 1970, amended the Urban Mass Transportation Act of 1964, and the resulting changes have been made in the text of the 1964 Act and are indicated by the footnotes. This section sets forth the provisions of the 1970 Act which do not amend the 1964 Act, but which provisions supplement that Act.

[146] Reorganization Plan No. 2 of 1968 is set forth in Part III.

PART II—FEDERAL-AID HIGHWAY LAWS RELATING TO MASS TRANSPORTATION

Title 23, United States Code (Highways)

Chapter 1—*Federal-Aid Highways*

	Page
103—Federal-aid systems	63
104—Apportionment	70
105—Programs	71
109—Standards	71
120—Federal share payable	73
134—Transportation planning in certain urban areas	74
135—Traffic operations improvement programs	75
137—Fringe and corridor parking facilities	75
142—Public transportation	76
146—Carpool and vanpool projects	78
147—Priority primary routes	79
150—Allocation of urban system funds	79

EXCERPTS FROM FEDERAL-AID HIGHWAY ACT OF 1973 NOT CODIFIED IN TITLE 23, U.S.C.

138—Public mass transportation studies	80
140—Metro accessibility to the handicapped	81
146—High speed transportation demonstration	81
147—Rural highway public transportation demonstration program	81
151—Research and planning	82
164—Financial assistance agreements	82
165—Bus and other project standards	83

PART II—FEDERAL-AID HIGHWAY LAWS RELATING TO MASS TRANSPORTATION

TITLE 23, U.S.C. (HIGHWAYS)

CHAPTER 1.—FEDERAL-AID HIGHWAYS

§ 103. Federal-aid systems

(a) For the purposes of this title, the four Federal-aid systems, the primary system, the urban system, the secondary system, and the Interstate System, are established and continued pursuant to the provisions of this section.

(b)(1) The Federal-aid primary system shall consist of an adequate system of connected main highways, selected or designated by each State through its State highway department, subject to the approval of the Secretary as provided by subsection (f) of this section. This system shall not exceed 7 per centum of the total highway mileage of such State, exclusive of mileage within national forests, Indian, or other Federal reservations and within urban areas, as shown by the records of the State highway department on November 9, 1921. Whenever provision has been made by any State for the completion and maintenance of 90 per centum of its Federal-aid primary system, as originally designated, said State through its State highway department by and with the approval of the Secretary is authorized to increase the mileage of its Federal-aid primary system by additional mileage equal to not more than 1 per centum of the total mileage of said State as shown by the records on November 9, 1921. Thereafter, it may make like 1 per centum increases in the mileage of its Federal-aid primary system whenever provision has been made for the completion and maintenance of 90 per centum of the entire system, including the additional mileage previously authorized. This system may be located both in rural and urban areas. The mileage limitations in this paragraph shall not apply to the District of Columbia, Hawaii, Alaska, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(2) After June 30, 1976, the Federal-aid primary system shall consist of an adequate system of connected main roads important to interstate, statewide, and regional travel, consisting of rural arterial routes and their extensions into or through urban areas. The Federal-aid primary system shall be designated by each State acting through its State highway department and where appropriate, shall be in accordance with the planning process pursuant to section 134 of this title, subject to the approval of the Secretary as provided by subsection (f) of this section.

(c)(1) The Federal-aid secondary system shall be selected by the State highway departments and the appropriate local road officials in cooperation with each other, subject to approval by the Secretary as provided in subsec-

tion (f) of this section. In making such selections, farm-to-market roads, rural mail routes, public school bus routes, local rural roads, access roads to airports, county roads, township roads, and roads to the county road class may be included, so long as they are not on the Federal-aid primary system or the Interstate System. This system may be located both in rural and urban areas, but any extension of the system into urban areas shall be subject to the condition that such extension pass through the urban area or connect with another Federal-aid system with the urban area.

(2) After June 30, 1976, the Federal-aid secondary system shall consist of rural major collector routes. The Federal-aid secondary system shall be designated by each State through its State highway department and appropriate local officials in cooperation with each other, subject to the approval of the Secretary as provided in subsection (f) of this section.

(d)(1) The Federal-aid urban system shall be established in each urbanized area, and in such other urban areas as the State highway department may designate. The system shall be so located as to serve the major centers of activity, and shall include high traffic volume arterial and collector routes, including access roads to airports and other transportation terminals. No route on the Federal-aid urban system shall also be a route on any other Federal-aid system. Each route of the system to the extent feasible shall connect with another route on a Federal-aid system. Routes on the Federal-aid urban system shall be selected by the appropriate local officials so as to serve the goals and objective of the community, with the concurrence of the State highway departments, and, in urbanized areas, also in accordance with the planning process under section 134 of this title. Designation of the Federal-aid urban system shall be subject to the approval of the Secretary as provided in subsection (f) of this section. The provisions of chapters 1, 3, and 5 of this title that are applicable to Federal-aid primary highways shall apply to the Federal-aid urban system except as determined by the Secretary to be inconsistent with this subsection.

(2) After June 30, 1976, the Federal-aid urban system shall be located in each urbanized area and such other urban areas as the State highway departments may designate and shall consist of arterial routes and collector routes, exclusive of urban extensions of the Federal-aid primary system. The routes on the Federal-aid urban system shall be designated by appropriate local officials, with the concurrence of the State highway departments, subject to the approval of the Secretary as provided in subsection (f) of this section, and in the case of urbanized areas shall also be in accordance with the planning process required pursuant to the provisions of section 134 of this title.

(e)(1) The Interstate System shall be designated within the United States, including the District of Columbia, and, except as provided in paragraphs (2) and (3) of this subsection, it shall not exceed forty-one thousand miles in total extent. It shall be so located as to connect by routes, as direct as practicable, the principal metropolitan areas, cities, and industrial centers, to serve the national defense, and to the greatest extent possible, to connect at suitable border points with routes of continental importance in the Dominion of Canada and the Republic of Mexico. The routes of the system, to the greatest extent possible, shall be selected by joint action of the State highway depart-

ments of each State and the adjoining States subject to the approval by the Secretary as provided in subsection (f) of this section. All highways or routes included in the Interstate System as finally approved if not already coincident with the primary system, shall be added to said system without regard to the mileage limitation set forth in subsection (b) of this section. This system may be located both in rural and urban areas.

(2) In addition to the mileage authorized by the first sentence of paragraph (1) of this subsection, there is hereby authorized additional mileage for the Interstate System of five hundred miles, to be used in making modifications or revisions in the Interstate System as provided in this paragraph. Upon the request of a State highway department the Secretary may withdraw his approval of any route or portion thereof on the Interstate System within that State selected and approved in accordance with this title if he determines that such route or portion thereof is not essential to completion of a unified and connected Interstate System (including urban routes necessary for metropolitan transportation) and will not be constructed as a part of the Interstate System, and if he receives assurances that the State does not intend to construct a toll road in the traffic corridor which would be served by such route or portion thereof. After the Secretary had withdrawn his approval of any such route or portion thereof the mileage of such route or portion thereof and the additional mileage authorized by the first sentence of the paragraph shall be available for the designation of interstate routes, or portions thereof as provided in this subsection. The provisions of this title applicable to the Interstate System shall apply to all mileage designated under the third sentence of this paragraph. The Secretary shall not designate any Interstate route or portion thereof under authority of this paragraph after the date of enactment of the Federal-Aid Highway Act of 1978.

(3) In addition to the mileage authorized by paragraphs (1) and (2) of this subsection, there is hereby authorized additional mileage of not to exceed 1,500 miles for the designation of routes in the same manner as set forth in paragraph (1), in order to improve the efficiency and service of the Interstate System to better accomplish the purposes of that System.

(4) Upon the joint request of a State Governor and the local governments concerned, the Secretary may withdraw his approval of any route or portion thereof on the Interstate System which was selected and approved in accordance with this title, if he determines that such route or portion thereof is not essential to completion of a unified and connected Interstate System and if he receives assurances that the State does not intend to construct a toll road in the traffic corridor which would be served by the route or portion thereof. When the Secretary withdraws his approval under this paragraph, a sum equal to the Federal share of the cost to complete the withdrawn route or portion thereof, as that cost is included in the latest Interstate System cost estimate approved by Congress, or up to and including the 1983 interstate cost estimate, whichever is earlier, subject to increase or decrease, as determined by the Secretary based on changes in construction costs of the withdrawn route or portion thereof as of the date of approval of each substitute project under this paragraph, or the date of approval of the 1983 interstate cost estimate, whichever is earlier; shall be

available to the Secretary to incur obligations for the Federal share of either public mass transit projects involving the construction of fixed rail facilities or the purchase of passenger equipment including rolling stock, for any mode of mass transit, or both, or projects authorized under any highway assistance program under section 103 of this title; or both, which will serve the area or areas from which the interstate route or portion thereof was withdrawn, which are selected by the responsible local officials of the area or areas to be served, and which are selected by the Governor or the Governors of the State or the States in which the withdrawn route was located if the withdrawn route was not within an urbanized area or did not pass through and connect urbanized areas, and which are submitted by the Governors of the States in which the withdrawn route was located. Substitute projects under this paragraph may not be approved by the Secretary under this paragraph after September 30, 1983, and the Secretary shall not approve any withdrawal of a route under this paragraph after such date, except that this sentence shall not apply to any route which on the date of enactment of the Federal-Aid Highway Act of 1978 is under judicial injunction prohibiting its construction, and except that with respect to any route which on May 12, 1982, is under judicial injunction prohibiting its construction the Secretary may approve substitute projects and withdrawals on such route until September 30, 1985. Approval by the Secretary of the plans, specifications, and estimates for a substitute project shall be deemed to be a contractual obligation of the Federal Government. The Federal share of each substitute project shall not exceed 85 per centum of the cost thereof. The sums apportioned under this paragraph for public mass transit projects shall remain available for the fiscal year for which apportioned and for the succeeding fiscal year. The sums available for obligation under this paragraph for projects under any highway assistance program shall remain available for the fiscal year for which apportioned and for the succeeding fiscal year. Any sums which are apportioned to a State for a fiscal year and are unobligated (other than an amount which, by itself is insufficient to pay the Federal share of the cost of a substitute project which has been submitted by the State to the Secretary for approval) at the end of such fiscal year shall be apportioned among those States which have obligated all sums (other than such an amount) apportioned to them for such fiscal year, in accordance with the latest approved estimate of the cost of completing the appropriate substitute projects in such States. The sums obligated for mass transit projects shall become part of, and be administered through, the Urban Mass Transportation Fund. For the fiscal year ending September 30, 1983, $257,000,000 shall be available out of the Highway Trust Fund for expenditure at the discretion of the Secretary for projects under highway assistance programs. For the fiscal years ending September 30, 1984, September 30, 1985, and September 30, 1986, sums obligated for projects under highway assistance programs shall be paid out of the Highway Trust Fund, and $700,000,000 shall be available for expenditure during each of the fiscal years ending September 30, 1984, and September 30, 1985, and $725,000,000 shall be available for expenditure during the fiscal year ending September 30, 1986. Twenty-five per centum of the funds available from the Highway Trust Fund for each of the

fiscal years ending September 30, 1984, September 30, 1985, and September 30, 1986, for substitute highway projects under this paragraph shall be distributed at the discretion of the Secretary. The remaining 75 per centum of such funds shall be apportioned in accordance with cost estimates approved by Congress. The Secretary shall make an estimate of the cost of completing substitute highway projects under this paragraph and transmit the same to the Senate and the House of Representatives as soon as practicable after the date of enactment of this sentence. Upon approval of such cost estimate by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute highway projects for the fiscal year ending September 30, 1984. The Secretary shall make a revised estimate of the cost of completing substitute highway projects under this paragraph and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1984, and upon approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute highway projects for the fiscal years ending September 30, 1985, and September 30, 1986. There are authorized to be appropriated for liquidation of obligations incurred under this paragraph the sums provided in section 4(g) of the Urban Mass Transportation Act of 1964. Fifty per centum of the funds appropriated for each fiscal year beginning after September 30, 1983, for carrying out substitute transit projects under this paragraph shall be distributed at the discretion of the Secretary. The remaining 50 per centum of such funds shall be apportioned in accordance with cost estimates approved by Congress. The Secretary shall make an estimate of the cost of completing substitute transit projects under this paragraph and transmit the same to the Senate and the House of Representatives as soon as practicable after the date of enactment of this sentence. Upon approval of such cost estimate by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute transit projects for the fiscal year ending September 30, 1984. The Secretary shall make a revised estimate of the cost of completing substitute transit projects under this paragraph and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1984, and upon approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute transit projects for the fiscal years ending September 30, 1985, and September 30, 1986. Unobligated apportionments for the Interstate System in any State where a withdrawal is approved under this paragraph shall, on the date of such approval, be reduced in the proportion that the Federal share of the cost of the withdrawn route or portion thereof bears to the Federal share of the total cost of all Interstate routes in that State as reflected in the latest cost estimate approved by the Congress. In any State where the withdrawal of an Interstate route or portion thereof has been approved under section 103(e)(4) of this title prior to the date of enactment of the Federal-Aid Highway Act of 1976, the unobligated apportionments for the Interstate System in that State on the date of enactment of the Federal-Aid Highway Act of 1976 shall be reduced in the proportion that the Federal share of the cost to complete such route or portion thereof, as shown on the latest

cost estimate approved by Congress prior to such approval of withdrawal, bears to the Federal share of the cost of all Interstate routes in that State, as shown on such cost estimate, except that the amount of such proportional reduction shall be credited with the amount of any reduction in such States's Interstate apportionment which was attributable to the Federal share of any substitute project approved under this paragraph prior to enactment of such Federal-Aid Highway Act. Funds available for expenditure to carry out the purposes of this paragraph shall be supplementary to and not in substitution for funds authorized and available for obligation pursuant to the Urban Mass Transportation Act of 1964, as amended. The provisions of this paragraph as amended by the Federal-Aid Highway Act of 1976, shall be effective as of August 13, 1973. The provisions of section 3(e)(4) of the Urban Mass Transportation Act of 1964, as amended, shall apply in carrying out this paragraph. After the date of enactment of this sentence, the Secretary may not designate any mileage as part of the Interstate System pursuant to this paragraph or under any other provision of law. The preceding sentence shall not apply to a designation made under section 139 of this title. After September 30, 1979, the Secretary shall not withdraw his approval under this paragraph of any route or portion thereof on the Interstate System open to traffic before the date of the proposed withdrawal. Any withdrawal of approval of any such route or portion thereof before September 30, 1979, is hereby determined to be authorized by this paragraph. Any route or segment thereof which was statutorily designed after March 7, 1978, to be on the Interstate System shall not be eligible for withdrawal or substitution under this subsection.

(5) Notwithstanding any other provision of law, in the case of any withdrawal of approval before November 6, 1978—

(A) upon the withdrawal of approval of any route or portion thereof on the Interstate System under this section, a State, subject to the approval of the Secretary, shall not be required to refund to the Highway Trust Fund any sums paid to the State for intangible costs;

(B) refund will not be required for the costs of construction items, materials or rights-of-way of the withdrawn route or portion of the Interstate System which will be or have been applied (i) to a transportation project permissible under this title, (ii) to a public conservation or public recreation purpose, or (iii) to such other public purpose as may be determined by the Secretary to be in the public interest on condition that the State shall make assurances satisfactory to the Secretary that such construction items or materials or rights-of-way have been or will be so applied by the State or any political subdivision thereof to a project under clause (i), (ii), or (iii) within 10 years from the date of the withdrawal of approval; and

(6) Notwithstanding any other provision of law—

(A) in the case of any withdrawal of approval on or after November 6, 1978, of a route or portion thereof on the Interstate System, a State, subject to the approval of the Secretary, shall not be required to refund to the Highway Trust Fund any sums paid to the State for intangible costs;

(B) in the case of any withdrawal of approval on or after November 6, 1978, of any route or portion thereof on the Interstate System under this section, a State shall not be required to refund to the Highway Trust Fund the costs of construction items, materials, or rights-of-way of the withdrawn route or portion thereof if such items, materials, and rights-of-way were acquired before November 6, 1978, if by the date of withdrawal of approval the Secretary has not approved the environmental impact statement required by the National Environmental Policy Act of 1969, and if such construction items, materials, or rights-of-way will be or have been applied (i) to a transportation project permissible under this title, (ii) to a public conservation or public recreation purpose, or (iii) to any other public purpose determined by the Secretary to be in the public interest on condition that the State gives assurances satisfactory to the Secretary that such construction items, materials, or rights-of-way have been or will be so applied by the State, or any political subdivision thereof, to a project under clause (i), (ii), or (iii) within ten years from the date of withdrawal of approval;

(7) In any case where a withdrawal of approval of a route or portion thereof on the Interstate System on or after November 6, 1978, does not come within the provisions of paragraph (6) (B) of this subsection, the State shall refund to the Highway Trust Fund the costs of construction items, materials, and rights-of-way of the withdrawn route or portion thereof, except that if the State gives assurances satisfactory to the Secretary that such items, materials, and rights-of-way have been or will be applied to a transportation project permissible under this title within ten years from the date of withdrawal of approval, the amount of such repayment shall be the difference between the amount received for such items, materials, and rights-of-way and the amount which would be received in accordance with the current Federal share applicable to the transportation project to which such items, materials, and rights-of-way were or are to be applied; and

(8) Nothing in this subsection shall in any way alter rights under State law of persons owning property within the right-of-way immediately prior to such property being obtained by the State. The Federal share of the cost of property sold or otherwise transferred to previous owners under State law shall be refunded and credited to the unobligated balance of the State's apportionment for interstate highways.

(9) Interstate mileage authorized for any State and withdrawn and transferred under the provisions of paragraph (2) of this section after the date of enactment of the Federal-Aid Highway Act of 1976, must be constructed by the State receiving such mileage as part of its Interstate System. Any State receiving such transfer of mileage may not, with respect to that transfer, avail itself of the optional use of Interstate funds under the second sentence of paragraph (4) of this subsection.

(f) The Secretary shall have authority to approve in whole or in part the Federal-aid primary system, the Federal-aid secondary system, the Federal-aid urban system, and the Interstate System, as and when such systems or portions thereof are designated, or to require modifications or revisions thereof. No Federal-aid system or portion thereof shall be eligible for projects in which Federal funds participate until approved by the Secretary.

(g) The Secretary, on July 1, 1974, shall remove from designation as a part of the Interstate System each segment of such system for which a State has not notified the Secretary that such State intends to construct such segment, and which the Secretary finds is not essential to completion of a unified and connected Interstate System. Any segment of the Interstate System, with respect to which a State has not submitted by July 1, 1975, a schedule for the expenditure of funds for completion of construction of such segment or alternative segment within the period of availability of funds authorized to be appropriated for completion of the Interstate System, and with respect to which the State has not provided the Secretary with assurances satisfactory to him that such schedule will be met, shall be removed from designation as a part of the Interstate System. No segment of the Interstate System removed under the authority of the preceding sentence shall thereafter be designated as a part of the Interstate System except as the Secretary finds necessary in the interest of national defense or for other reasons of national interest. This subsection shall not be applicable to any segment of the Interstate System referred to in section 23(a) of the Federal-Aid Highway Act of 1968.

(h) Notwithstanding subsections (e)(2) and (g) of this section, in any case where a segment of the Interstate System was a designated part of such System on June 1, 1973, and is entirely within the boundaries of an incorporated city and such city enters into an agreement with the Secretary to pay all non-Federal costs of construction of such segment, such segment shall be constructed.

§ 104. Apportionment

* * * * *

(f)(1) On October 1 of each fiscal year, the Secretary, after making the deduction authorized by subsection (a) of this section, shall set aside not to exceed one-half per centum of the remaining funds authorized to be appropriated for expenditure upon the Federal-aid systems, for the purpose of carrying out the requirements of section 134 of this title except that in the case of funds authorized for apportionment on the Interstate System, the Secretary shall set aside that portion of such funds (subject to the overall limitation of one-half of 1 per centum) on October 1 of the year next preceding the fiscal year for which such funds are authorized for such System.

(2) These funds shall be apportioned to the States in the ratio which the population in urbanized areas or parts thereof, in each State bears to the total population in such urbanized areas in all the States as shown by the latest available census, except that no State shall receive less than one-half per centum of the amount apportioned.

(3) The funds apportioned to any State under paragraph (2) of this subsection shall be made available by the State to the metropolitan planning organizations designated by the State as being responsible for carrying out the provisions of section 134 of this title, except that States receiving the minimum apportionment under paragraph (2) may, in addition, subject to the approval of the Secretary, use the funds apportioned to finance transportation planning outside of urbanized areas. These funds shall be matched in accordance with section 120 of this title unless the Secretary

determines that the interests of the Federal-aid highway program will be best served without such matching.

(4) The distribution within any State of the planning funds made available to agencies under paragraph (3) of this subsection shall be in accordance with a formula developed by each State and approved by the Secretary which shall consider but not necessarily be limited to, population, status of planning, and metropolitan area transportation needs.

* * * * *

§ 105. Programs

* * * * *

(d) In approving programs for projects on the Federal-aid urban system, the Secretary shall require that such projects be selected by the appropriate local officials with the concurrence of the State highway department of each State and, in urbanized areas, also in accordance with the planning process required pursuant to section 134 of this title.

* * * * *

§ 109. Standards

(a) The Secretary shall not approve plans and specifications for proposed projects on any Federal-aid system if they fail to provide for a facility (1) that will adequately meet the existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance; (2) that will be designed and constructed in accordance with standards best suited to accomplish the foregoing objectives and to conform to the particular needs of each locality.

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

(c) Projects on the Federal-aid secondary system in which Federal funds participate shall be constructed according to specifications that will provide all-weather service and permit maintenance at a reasonable cost.

(d) On any highway project in which Federal funds hereafter participate, or on any such project constructed since December 20, 1944, the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings, and traffic signals installed or placed by any public authority or other agency, shall be subject to the approval of the State highway department with the concurrence of the Secretary, who is directed to

concur only in such installations as will promote the safe and efficient utilization of the highways.

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

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

(g) The Secretary shall issue within 30 days after the day of enactment of the Federal-Aid Highway Act of 1970 guidelines for minimizing possible soil erosion from highway construction. Such guidelines shall apply to all proposed projects with respect to which plans, specifications, and estimates are approved by the Secretary after the issuance of such guidelines.

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

(1) air, noise, and water pollution;

(2) destruction or disruption of man-made and natural resources, esthetic values, community cohesion and the availability of public facilities and services;

(3) adverse employment effects, and tax and property value losses;

(4) injurious displacement of people, businesses and farms; and

(5) disruption of desirable community and regional growth.

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

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

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

(j) The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall develop and promulgate guidelines to assure that highways constructed pursuant to this title are consistent with any approved plan for the implementation of any ambient air quality standard for any air quality control region designated pursuant to the Clean Air Act, as amended.

* * * * *

(n) The Secretary shall not approve any project under this title that will result in the severance or destruction of an existing major route for nonmotorized transportation traffic and light motorcycles, unless such project provides a reasonably alternate route or such a route exists.

* * * * *

§ 120. Federal share payable

(a) Subject to the provisions of subsection (d) of this section, the Federal share payable on account of any project, financed with primary, secondary, or urban funds, on the Federal-aid primary system, the Federal-aid secondary system, and the Federal-aid urban system shall either (A) not exceed 75 per centum of the cost of construction, except that in the case of any State containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments, exceeding 5 per centum of the total area of all lands therein, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is of its total area, or (B) not exceed 75 per centum of the cost of construction, except that in the case of any State containing nontaxable Indian lands, individual and tribal, public domain lands (both reserved and unreserved), national forest, and national parks and monuments, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State is of its total area, except that the Federal share payable on any project in a State shall not exceed 95 per centum of the total cost of any such project. In any case where a State elects to have the Federal share provided in clause (b) of this subsection, the State must enter into an agreement with the Secretary covering a period of not less than one year, requiring such State to use solely for highway construction purposes (other than paying its share of projects approved under this title) during the period covered by such agreement the difference between the State's share as provided in clause (B) and what its share would be if it

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elected to pay the share provided in clause (A) for all projects subject to such agreement.

* * * * *

(c) Subject to the provisions of subsection (d) of this section, the Federal share payable on account of any project on the Interstate System provided for by funds made available under the provisions of section 108(b) of the Federal-Aid Highway Act of 1956 shall be increased to 90 per centum of the total cost thereof, plus a percentage of the remaining 10 per centum of such cost in any State containing unappropriated and unreserved public lands and nontaxable Indian lands, individual and tribal exceeding 5 per centum of the total area of all lands therein, equal to the percentage that the area of such lands in such State is of its total area, except that such Federal share payable on any project in any State shall not exceed 95 per centum of the total cost of such project. Notwithstanding subsection (a) of this section, the Federal share payable on account of any project financed with primary funds on the Interstate System for resurfacing, restoring, rehabilitating, and reconstructing shall be the percentage provided in this subsection.

* * * * *

§ 134. Transportation planning in certain urban areas

(a) It is declared to be in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner that will serve the States and local communities efficiently and effectively. To accomplish this objective, the Secretary shall cooperate with the State and local officials in the development of transportation plans and programs which are formulated on the basis of transportation needs with due consideration to comprehensive long-range land use plans, development objectives and overall social, economic, environmental, system performance, and energy conservation goals and objectives, and with due consideration to their probable effect on the future development of urban areas of more than fifty thousand population. The planning process shall include an analysis of alternative transportation system management and investment strategies to make more efficient use of existing transportation facilities. The process shall consider all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate based on the complexity of the transportation problems. After July 1, 1965, the Secretary shall not approve under section 105 of this title any program for projects in any urban area of more than fifty thousand population unless he finds that such projects are based on a continuing comprehensive transportation planning process carried on cooperatively by States and local communities in conformance with the objectives stated in this section. No highway project may be constructed in any urban area of fifty thousand population or more unless the responsible public officials of such urban area in which the project is located have been consulted and their views considered with respect to the corridor, the location, and design of the project.

(b)(1) Within one year after enactment of this subsection, in the absence of State law to the contrary, units of general purpose local government within an urbanized area or contiguous urbanized areas for which a metropolitan plan-

ning organization has been designated prior to enactment of this subsection, may by agreement of at least 75 per centum of the units of general purpose local government representing at least 90 per centum of the population of such urbanized area or areas, and in cooperation with the Governor, redesignate as the metropolitan planning organization any representative organization.

(2) Except as provided in paragraph (1), after the date of enactment of this subsection designations of metropolitan planning organizations shall be by agreement among the units of general purpose local government and the Governor.

(c) The Secretary may define those contiguous interstate areas of the Nation in which the movement of persons and goods between principal metropolitan areas, cities, and industrial centers has reached, or is expected to reach, a critical volume in relation to the capacity of existing and planned transportation systems to efficiently accommodate present transportation demands and future growth. After consultation with the Governors and responsible local officials of affected States, the Secretary may by regulation designate, for administrative and planning purposes, as a critical transportation region or a critical transportation corridor each of those areas which he determines most urgently require the accelerated development of transportation systems embracing various modes of transport, in accordance with purposes of this section. The Secretary shall immediately notify such Governors and local officials of such designation. The Secretary may, after consultation with the Governors and responsible local officials of the affected States, provide by regulation for the establishment of planning bodies to assist in the development of coordinated transportation planning, including highway planning, to meet the needs of such regions or corridors, composed of representatives of the affected States and metropolitan areas, and may provide assistance including financial assistance to such bodies. There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, not to exceed $500,000 to carry out this subsection.

§ 135. Traffic operations improvement programs

(a) The Congress hereby finds and declares it to be in the national interest that each State shall have a continuing program designed to reduce traffic congestion and facilitate the flow of traffic.

(b) The Secretary may approve under this section any project for improvements on any public road which project will directly facilitate and control traffic flow on any of the Federal-aid systems.

§ 137. Fringe and corridor parking facilities

(a) The Secretary may approve as a project on the Federal-aid urban system the acquisition of land adjacent to the right-of-way outside a central business district, as defined by the Secretary, and the construction of publicly owned parking facilities thereon or within such right-of-way, including the use of the air space above and below the established grade line of the highway pavement, to serve an urban area of fifty thousand population or more. Such parking facility shall be located and designed in conjunction with existing or planned public transportation facilities. In the event fees are charged for the

use of any such facility, the rate thereof shall not be in excess of that required for maintenance and operation (including compensation to any person for operating such facility).

(b) The Secretary shall not approve any project under this section until—

(1) he has determined that the State, or the political subdivision thereof, where such project is to be located, or any agency or instrumentality of such State or political subdivision, has the authority and capability of constructing, maintaining, and operating the facility;

(2) he has entered into an agreement governing the financing, maintenance, and operation of the parking facility with such State, political subdivision, agency, or instrumentality, including necessary requirements to insure that adequate public transportation services will be available to persons using such facility; and

(3) he has approved design standards for constructing such facility developed in cooperation with the State highway department.

(c) The term "parking facilities" for purposes of this section shall include access roads, buildings, structures, equipment, improvements, and interests in lands.

(d) Nothing in this section, or in any rule or regulation issued under this section or in any agreement required by this section, shall prohibit (1) any State, political subdivision, or agency or instrumentality thereof, from contracting with any person to operate any parking facility constructed under this section, or (2) any such person from so operating such facility.

(e) The Secretary shall not approve any project under this section unless he determines that it is based on a continuing comprehensive transportation planning process carried on in accordance with section 134 of this title.

(f)(1) The Secretary may approve for Federal financial assistance from funds apportioned under section 104(b)(5)(B) of this title, projects for designating existing facilities, or for acquisition of rights of way or construction of new facilities, for use as preferential parking for carpools, provided that such facilities (A) are located outside of a central business district and within an interstate highway corridor, and (B) have as their primary purpose the reduction of vehicular traffic on the interstate highway.

(2) Nothing in this subsection, or in any rule or regulation issued under this subsection, or in any agreement required by this subsection, shall prohibit (A) any State, political subdivision, or agency or instrumentality thereof, from contracting with any person to operate any parking facility designated or constructed under this subsection, or (B) any such person from so operating such facility. Any fees charged for the use of any such facility in connection with the purpose of this subsection shall not be in excess of the amount required for operation and maintenance, including compensation to any person for operating the facility.

(3) For the purposes of this subsection, the terms "facilities" and "parking facilities" are synonymous and shall have the same meaning given "parking facilities" in subsection (c) of this section.

§ 142. Public transportation

(a) (1) To encourage the development, improvement, and use of public mass transportation systems operating motor vehicles (other than on rail) on Feder-

al-aid highways for the transportation of passengers (hereafter in this section referred to as "buses"), so as to increase the traffic capacity of the Federal-aid systems for the movement of persons, the Secretary may approve as a project on any Federal-aid system the construction of exclusive or preferential high occupancy vehicle lanes, highway traffic control devices, bus passenger loading areas and facilities (including shelters), and fringe and transportation corridor parking facilities to serve high occupancy vehicle and public mass transportation passengers, and sums apportioned under section 104(b) of this title shall be available to finance the cost of projects under this paragraph. If fees are charged for the use of any parking facility constructed under this section, the rate thereof shall not be in excess of that required for maintenance and operation of the facility and the cost of providing shuttle service to and from the facility (including compensation to any person for operating the facility and for providing such shuttle service).

(2) In addition to the projects under paragraph (1), the Secretary may, beginning with the fiscal year ending June 30, 1975, approve as a project on the Federal-aid urban system, for payment from sums apportioned under section 104(b)(6) of this title, the purchase of buses, and, beginning with the fiscal year ending June 30, 1976, approve as a project on the Federal-aid urban system, for payment from sums apportioned under section 104(b)(6) of this title, the construction, reconstruction, and improvement of fixed rail facilities, including the purchase of rolling stock for fixed rail, except that not more than $200,000,000 of all sums apportioned for the fiscal year ending June 30, 1975, under section 104(b)(6) shall be available for the payment of the Federal share of projects for the purchase of buses.

(b) Sums apportioned in accordance with paragraph (5) of subsection (b) of section 104 of this title shall be available to finance the Federal share of projects for exclusive or perferential high occupancy vehicle, truck, and emergency vehicle routes or lanes. Routes constructed under this subsection shall not be subject to the third sentence of section 109(b) of the title.

(c) Whenever responsible local officials of an urbanized area notify the State highway department that, in lieu of a highway project the Federal share of which is to be paid from funds apportioned under section 104(b)(6) of this title for the fiscal years ending June 30, 1974, and June 30, 1975, their needs require a nonhighway public mass transit project involving the construction of fixed rail facilities, or the purchase of passenger equipment, including rolling stock for any mode of mass transit, or both, and the State highway department determines that such public mass transit project is in accordance with the planning process under section 134 of this title and is entitled to priority under such planning process, such public mass transit project shall be submitted for approval to the Secretary. Approval of the plans, specifications, and estimates for such project by the Secretary shall be deemed a contractual obligation of the United States for payment out of the general funds of its proportional share of the cost of such project in an amount equal to the Federal share which would have been paid if such project were a highway project under section 120(a) of this title. Funds previously apportioned to such State under section 104(b)(6) of this title shall be reduced by an amount equal to such Federal share.

(d) The establishment of routes and schedules of such public mass transportation systems in urbanized areas shall be based upon a continuing comprehensive transportation planning process carried on in accordance with section 134 of this title.

(e)(1) For all purposes of this title, a project authorized by subsection (a)(1) of this section shall be deemed to be a highway project.

(2) 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 shall be subject to, and governed in accordance with, all provisions of this title applicable to projects on the Federal-aid urban system, except to the extent determined inconsistent by the Secretary.

(3) The Federal share payable on account of projects authorized by subsection (a) of this section shall be that provided in section 120 of this title.

(f) No project authorized by this section shall be approved unless the Secretary of Transportation has received assurances satisfactory to him from the State that high occupancy vehicles will fully utilize the proposed project.

(g) In any case where sufficient land exists within the publicly acquired rights-of-way of any Federal-aid highway to accommodate needed rail or nonhighway public mass transit facilities and where this can be accomplished without impairing automotive safety or future highway improvements, the Administrator may authorize a State to make such lands and rights-of-way available without charge to a publicly owned mass transit authority for such purposes wherever he may deem that the public interest will be served thereby.

(h) The provision of assistance under subsection (a)(2) or subsection (c) of this section shall not be construed as bringing within the application of chapter 15 of title 5, United States Code, any nonsupervisory employee of an urban mass transportation system (or of any other agency or entity performing related functions) to whom such chapter is otherwise inapplicable.

(i) Funds available for expenditure to carry out the purposes of subsection (a)(2) and subsection (c) of this section shall be supplementary to and not in substitution for funds authorized and available for obligation pursuant to the Urban Mass Transportation Act of 1964, as amended.

(j) The provisions of section 3(e)(4) of the Urban Mass Transportation Act of 1964, as amended, shall apply in carrying out subsection (a)(2) and subsection (c) of this section.

(k) The Secretary shall not approve any project under subsection (a)(2) of this section in any fiscal year when there has been enacted an Urban Transportion Trust Fund or similar assured funding for both highway and public transportation.

§ 146. Carpool and vanpool projects

(a) In order to conserve fuel, decrease traffic congestion during rush hours, improve air quality, and enhance the use of existing highways and parking facilities, the Secretary may approve for Federal financial assistance from funds apportioned under sections 104(b)(1), 104(b)(2), and 104(b)(6) of this

title, projects designed to encourage the use of carpools and vanpools. (As used hereafter in this section, the term "carpool" includes a vanpool.) Such a project may include, but is not limited to, such measures as providing carpooling opportunities to the elderly and handicapped, systems for locating potential riders and informing them of convenient carpool opportunities, acquiring vehicles appropriate for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use as preferential parking for carpools.

(b) A project authorized by this section shall be subject to and carried out in accordance with all provisions of this title, except those provisions which the Secretary determines are inconsistent with this section.

§ 147. Priority primary routes

(a) High traffic sections of highways on the Federal-aid primary system which connect to the Interstate System shall be selected by each State highway department, in consultation with appropriate local officials, subject to approval by the Secretary, for priority of improvement to supplement the service provided by the Interstate System by furnishing needed adequate traffic collector and distributor facilities. For the purpose of this section such highways shall hereafter in this section be referred to as "priority primary routes".

(b) The Federal share of any project on a priority primary route shall be that provided in section 120(a) of this title. All provisions of this title applicable to the Federal-aid primary system shall be applicable to the priority primary routes selected under this section.

(c) The initial selection of the priority primary routes and the estimated cost of completing such routes shall be reported to Congress on or before July 1, 1974.

(d) There is authorized to be appropriated out of the Highway Trust Fund to carry out this section not to exceed $100,000 for the fiscal year ending June 30, 1974, $200,000,000 for the fiscal year ending June 30, 1975, and $300,000,000 for the fiscal year ending June 30, 1976.

§ 150. Allocation of urban system funds

The funds apportioned to any State under paragraph (6) of subsection (b) of section 104 of this title that are attributable to urbanized areas of 200,000 population or more shall be made available for expenditure in such urbanized areas for projects in programs approved under subsection (d) of section 105 of this title in accordance with a fair and equitable formula developed by the State which formula has been approved by the Secretary. Such formula shall provide for fair and equitable treatment of incorporated municipalities of 200,000 or more population. Whenever such a formula has not been developed and approved for a State, the funds apportioned to any State under paragraph (6) of subsection (b) of section 104 of this title which are attributable to urbanized areas having a population of 200,000 or more shall be allocated among such urbanized areas within such State for projects in programs approved under subsection (d) of section 105 of this title in the ratio that the population within each such urbanized area bears to the population of

all such urbanized areas, or parts thereof, within such State. In the expenditure of funds allocated under the preceding sentence, fair and equitable treatment shall be accorded incorporated municipalities of 200,000 or more population. Funds allocated to an urbanized area under the provisions of this section may, at the request of the Governor and upon approval of the appropriate local officials of the area and the Secretary, be transferred to the allocation of another such area in the State or to the State for use in any urban area.

EXCERPTS FROM FEDERAL-AID HIGHWAY ACT OF 1973 (PUB. L. 93-87) NOT CODIFIED IN TITLE 23, U.S.C.

Public Mass Transportation Studies

SECTION 138. (a) The Secretary shall, in cooperation with the Governor of each State and appropriate local officials, make an evaluation of that portion of the 1972 National Transportation Report, pertaining to public mass transportation. Such evaluation shall include all urban areas. The evaluation shall include but not be limited to the following:

(1) Refining the public mass transportation needs contained in such report.

(2) Developing a program to accomplish the needs of each urban area for public mass transportation.

(3) Analyzing the existing funding capabilities of Federal, State, and local governments for meeting such needs.

(4) Analyzing other funding capabilities of Federal, State, and local governments for meeting such needs.

(5) Determining the operating and maintenance cost relating to the public mass transportation system.

(6) Determining and comparing fare structures of all public mass transportation systems.

The Secretary shall, not later than July 1, 1974, report to Congress the results of this evaluation together with his recommendations for necessary legislation.

(b) The Secretary shall conduct a study of revenue mechanisms, including a tax on fuels used in the provision of urban mass transportation service, and an additional gasoline tax imposed in urban areas, which could be used now or in the future to finance transportation activities receiving financial assistance from the Highway Trust Fund. Such study shall include an analysis of the magnitude of the various potential sources of user tax revenues, the rates at which such taxes could be levied (including possible differential rates), the mechanisms for collection of such taxes, the incidence of such taxes, and the potential impact on transit usage caused by such taxes. The Secretary shall report to the Congress the findings of his study by no later than the 180th day after the date of enactment of this section.

(c) There is hereby authorized not to exceed $10,000,000 to carry out this section.

Metro Accessibility to the Handicapped

SECTION 140. The Secretary of Transportation is authorized to make payments to the Washington Metropolitan Area Transit Authority in amounts sufficient to finance 80 per centum of the cost of providing such facilities for the subway and rapid rail transit system authorized in the National Capital Transportation Act of 1969 (83 Stat. 320) as may be necessary to make such subway and system accessible by the handicapped through implementation of Public Laws 90–480 and 91–205. There is authorized to be appropriated, to carry out this section, not to exceed $65,000,000.

High-Speed Transportation Demonstration

SECTION 146. The Secretary is authorized to undertake a study and demonstration program for high-speed bus service from collection points in the Washington, District of Columbia area to Dulles International Airport, Virginia. Such study and demonstration shall utilize exclusive bus transportation lanes between points of origin and termination of such service, and include, where necessary, the construction of such exclusive bus transportation lanes as well as terminal and parking facilities. Such study and demonstration shall also include the purchase of high-speed buses. As necessary to implement this section, the Secretary shall undertake research into the development of buses designed to maintain high-speed, safe transportation. Not to exceed $10,000,000 of the amount authorized to be apportioned under section 104(b)(6) of title 23, United States Code, for the fiscal year ending June 30, 1975, shall be available to the Secretary to carry out this section and such sum shall be set aside for such purpose prior to the apportionment of such amount for such fiscal year.

Rural Highway Public Transportation Demonstration Program

SECTION 147. (a) To encourage the development, improvement, and use of public mass transportation systems operating vehicles on highways for transportation of passengers within rural areas and small urban areas, and between such areas and urbanized areas, in order to enhance access of rural populations to employment, health care, retail centers, education, and public services, there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1975, and $60,000,000 for the fiscal year ending June 30, 1976, of which $50,000,000 shall be out of the Highway Trust Fund, to the Secretary of Transportation to carry out demonstration projects for public mass transportation on highways in rural areas and small urban areas. Projects eligible for Federal funds under this section shall include highway traffic control devices, the construction of passenger loading areas and facilities, including shelters, fringe and transportation corridor parking facilities to serve bus and other public mass transportation passengers, the purchase of passenger equipment other than rolling stock for fixed rail, and the payment from the General Fund for operating expenses incurred as a result of providing such service. To the extent intercity bus service is provided under the program, preference shall be given to private bus operators who lawfully have provided rural highway passenger transportation over the routes or within the general area of the demonstration project.

(b) Prior to the obligation of any funds for a demonstration project under this section, the Secretary shall provide for public notice of any application for funds under this section which notice shall include the name of the applicant and the area to be served. Within sixty days thereafter a public hearing on the project shall be held within the proposed service area.[147]

Research and Planning

SECTION 151. Subsection (c)(1) of section 307 of title 23, United States Code, is amended to read as follows:

"(c)(1) Not to exceed 1½ per centum of the sums apportioned for each fiscal year beginning with fiscal year 1974 to any State under section 104 of this title shall be available for expenditure upon request of the State highway department, with the approval of the Secretary, with or without State funds, for engineering and economic surveys and investigations; for the planning of future highway programs and local public transportation systems and for planning for the financing thereof; for studies of the economy, safety, and convenience of highway usage and the desirable regulation and equitable taxation thereof; and for research and development, necessary in connection with the planning, design, construction, and maintenance of highways and highway systems, and the regulation and taxation of their use."

Financial Assistance Agreements

SECTION 164. (a) No Federal financial assistance shall be provided under (1) subsection (a) or (c) of section 142, title 23, United States Code, or (2) paragraph (4) of subsection (e) of section 103, title 23, United States Code, for the purchase of buses to any applicant for such assistance unless such applicant and the Secretary of Transportation shall have first entered into an agreement that such applicant will not engage in charter bus operations outside of the urban area (or areas) within which it provides regularly scheduled mass transportation service, except as provided in an agreement authorized and required by section 3(f) of the Urban Mass Transportation Act of 1964, which section shall apply to Federal financial assistance for the purchase of buses under the provisions of title 23, United States Code, referred to in clauses (1) and (2) of this sentence.[148]

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[147] As amended by Federal-Aid Highway Amendments of 1974 (Pub. L. 93-643, § 103, January 4, 1975). The text of section 147 as it read prior to amendments is as follows:

Sec. 147. To encourage the development, improvement, and use of public mass transportation systems operating vehicles on highways for transportation of passengers within rural areas, in order to enhance access of rural populations to employment, health care, retail centers, education, and public services, there are authorized to be appropriated $30,000,000 for the two-fiscal-year period ending June 30, 1976, of which $20,000,000 shall be out of the Highway Trust Fund, to the Secretary of Transportation to carry out demonstration projects for public mass transportation on highways in rural areas. Projects eligible for Federal funds under this section shall include highway traffic control devices, the construction of passenger loading areas and facilities, including shelters, fringe and transportation corridor parking facilities to serve bus and other public mass transportation passengers, and the purchase of passenger equipment other than rolling stock for fixed rail.

[148] Section 164(a) of the Federal-Aid Highway Act of 1973 was amended by section 813(b) of the Housing and Community Development Act of 1974, August 22, 1974 (Pub. L. 93-383, 88 Stat. 633). Prior to its amendment, section 164(a) read as follows:

Continued

(b) No Federal financial assistance shall be provided under (1) subsection (a) or (c) of section 142, title 23, United States Code, (2) paragraph (4) of subsection (e) of section 103, title 23, United States Code, or (3) the Urban Mass Transportation Act of 1964, for the purchase of buses to any applicant for such assistance unless such applicant and the Secretary of Transportation shall have first entered into an agreement that such applicant will not engage in school bus operations, exclusively for the transportation of students and school personnel, in competition with private school bus operators. This subsection shall not apply to an applicant with respect to operation of a school bus program if the applicant operates a school system in the area to be served and operates a separate and exclusive school bus program for this school system. This subsection shall not apply unless private school bus operators are able to provide adequate transportation, at reasonable rates, and in conformance with applicable safety standards, and this subsection shall not apply with respect to any State or local public body or agency thereof if it (or a direct predecessor in interest from which it acquired the function of so transporting school children and personnel along with facilities to be used therefor) was so engaged in school bus operations any time during the twelve-month period immediately prior to the date of the enactment of this subsection. A violation of an agreement under this subsection shall bar such applicant from receiving any other Federal financial assistance under those provisions of law referred to in clauses (1), (2), and (3) of this subsection.

Bus and Other Project Standards

SECTION 165. (a) The Secretary of Transportation shall require that buses acquired with Federal financial assistance under (1) subsection (a) or (c) of section 142 of title 23, United States Code, (2) paragraph (4) of subsection (e) of section 103, title 23, United States Code, or (3) section 147 of the Federal-aid Highway Act of 1973 meet the standards prescribed by the Administrator of the Environmental Protection Agency under section 202 of the Clean Air Act, and under section 6 of the Noise Control Act of 1972, and shall authorize the acquisition, whenever practicable, of buses which meet the special criteria for low-emission vehicles set forth in section 212 of the Clean Air Act, and for low-noise-emission products set forth in section 15 of the Noise Control Act of 1972.

(b) The Secretary of Transportation shall require that projects receiving Federal financial assistance under (1) subsection (a) or (c) of section 142 of title 23, United States Code, (2) paragraph (4) of subsection (e) of section 103, title 23, United States Code, or (3) section 147 of the Federal-Aid Highway

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"SECTION 164(a). No Federal financial assistance shall be provided under (1) subsection (a) or (c) of section 142, title 23, United States Code, (2) paragraph (4) of subsection (e) of section 103, title 23, United States Code, or (3) the Urban Mass Transportation Act of 1964, for the purchase of buses to any applicant for such assistance unless such applicant and the Secretary of Transportation shall have first entered into an agreement that such applicant will not engage in charter bus operations in competition with private bus operators outside of the area within which such applicant provides regularly scheduled mass transportation service. A violation of such agreement shall bar such applicant from receiving any other Federal financial assistance under those provisions of law referred to in clauses (1), (2), and (3) of this subsection."

Section 813(c) of the act requires the Secretary of Transportation to amend any agreements entered into pursuant to section 164(a) to conform to the requirements of the amendments made by that section, and it states that "(t)he effective date of such conformed agreements shall be the effective date of the original agreements entered into pursuant to such section 164(a)".

Act of 1973 shall be planned, designed, constructed, and operated to allow effective utilization by elderly or handicapped persons who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including those who are nonambulatory wheelchair-bound and those with semiambulatory capabilities, are unable without special facilities or special planning or design to utilize such facilities and services effectively. The Secretary shall not approve any program or project to which this section applies which does not comply with the provisions of this subsection requiring access to public mass transportation facilities, equipment, and services for elderly or handicapped persons.[149]

[149] As amended by Federal-Aid Highway Amendments of 1974 (Pub. L. 93-643, § 105, January 4, 1975). Introductory language to this amendment reads as follows:

SEC. 105. TRANSPORTATION FOR ELDERLY AND HANDICAPPED PERSONS

(a) It is hereby declared to be the national policy that elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services; that special efforts shall be made in the planning, design, construction, and operation of mass transportation facilities and services so that the availability to elderly and handicapped persons of mass transportation which they can effectively utilize will be assured; and that all Federal programs offering assistance for mass transportation (including the programs under title 23, United States Code, the Federal-Aid Highway Act of 1973, and this Act) effectively implement this policy.

The text of subsection (b) of section 165 as it read prior to amendment is as follows:

(b) The Secretary of Transportation shall assure that projects receiving Federal financial assistance under (1) subsection (a) or (c) of section 142 of title 23, United States Code, (2) paragraph (4) of subsection (e) of section 103, title 23, United States Code, or (3) section 147 of the Federal-aid Highway Act of 1973 shall be planned and designed so that mass transportation facilities and services can effectively be utilized by elderly and handicapped persons who, by reason of illiness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability are unable without special facilities or special planning or design to utilize such facilities and services as effectively as persons not so affected.

PART III—OTHER MATERIALS RELEVANT TO UMTA OR MASS TRANSPORTATION IN GENERAL

	Page
Transfer of functions and establishment of UMTA (Reorganization Plan No. 2 of 1968)	87
Executive Order 12372	89
Protection of Public Lands (Section 4(f)) (49 U.S.C. 1653)	92
National Environmental Policy Act (42 U.S.C. 4321, *et seq.*)	93
Federal Railroad Safety Act of 1970 (Excerpt) (45 U.S.C. 421, *et seq.*)	98
Davis-Bacon Act (40 U.S.C. 276a, *et seq.*)	101
Non-Discrimination Provisions Equal Employment Opportunity Act 1972 (Excerpts) Civil Rights Act of 1964 (Excerpts)	104
Congressional Budget and Impoundment Act of 1974 (Excerpt) (31 U.S.C. 1351)	107
Demonstration Cities and Metropolitan Development Act of 1960 (Excerpts) (42 U.S.C. 3304)	109
Housing Act of 1950 (Excerpt) (12 U.S.C. 1749a)	110
Uniform Relocation Assistance Act of 1970 (42 U.S.C. 4601, *et seq.*)	112
National Historic Preservation Act of 1966 (Excerpt) (16 U.S.C. 470)	126
Rehabilitation Act of 1975, as amended (Excerpt) (29 U.S.C. §§ 794 and 794a)	126

PART III—OTHER MATERIALS RELEVANT TO UMTA OR MASS TRANSPORTATION IN GENERAL

TRANSFER OF FUNCTIONS FROM HUD TO DOT

Reorganization Plan No. 2 of 1968

(33 Federal Register 6965, 82 Stat. 1369) [150]

Urban Mass Transportation

SECTION 1. Transfer of Functions.—

(a) There are hereby transferred to the Secretary of Transportation:

(1) The functions of the Secretary of Housing and Urban Development and the Department of Housing and Urban Development under the Urban Mass Transportation Act of 1964, except that there is reserved to the Secretary of Housing and Urban Development (i) the authority to make grants for or undertake such projects or activities under sections 6(a), 9, and 11 of that Act as primarily concern the relationship of urban transportation systems to the comprehensively planned development of urban areas, or the role of transportation planning in overall urban planning, and (ii) so much of the functions under sections 3, 4, and 5 of the Act as will enable the Secretary of Housing and Urban Development (A) to advise and assist the Secretary of Transportation in making findings and determinations under clause (1) of section 3(e), the first sentence of section 4(a), and clause (1) of section 5 of the Act, and (B) to establish jointly with the Secretary of Transportation the criteria referred to in the first sentence of section 4(a) of the Act.[151]

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[150] Reorganization Plan No. 2 of 1968 was prepared by the President and transmitted to the Senate and House of Representatives February 26, 1968, pursuant to the provisions of chapter 9 of title 5 of the United States Code.

[151] In addition to the functions reserved to the Secretary of Housing and Urban Development by the provisions of Reorganization Plan No. 2 of 1968, he and the Secretary of Transportation are required to perform the following joint function set forth in section 4(g) of Public Law 89-670 (49 U.S.C. § 1653(g)):

"(g) The Secretary and the Secretary of Housing and Urban Development shall consult and exchange information regarding their respective transportation policies and activities, carry out joint planning, research and other activities; and coordinate assistance for local transportation projects. They shall jointly study how Federal policies and programs can assure that urban transportation systems most effectively serve both national transportation needs and the comprehensively planned development of urban areas. They shall, within one year after the effective date of this Act, and annually thereafter, report to the President, for submission to the Congress, on their studies and other activities under this subsection, including any legislative recommendations which they determine to be desirable. The Secretary and the Secretary of Housing and Urban Development shall study and report within one year after the effective date of this Act to the President and the Congress on the logical and efficient organization and location of urban mass transportation functions in the Executive Branch."

(2) Other functions of the Secretary of Housing and Urban Development, and functions of the Department of Housing and Urban Development or of any agency or officer thereof, all to the extent that they are incidental to or necessary for the performance of the functions transferred by section 1(a)(1) of the reorganization plan, including, to such extent, the functions of the Secretary of Housing and Urban Development and the Department of Housing and the Urban Development under (i) title II of the Housing Amendments of 1955 (69 Stat. 635),[152] insofar as functions thereunder involve assistance specifically authorized for mass transportation facilities or equipment, and (ii) title IV of the Housing and Urban Development Act of 1965 (P.L. 89-117).[153]

(3) The functions of the Department of Housing and Urban Development under section 3(b) of the Act of November 6, 1966 (P.L. 89-774).[154]

(b) Any reference in this reorganization plan to any provision of law shall be deemed to include, as may be appropriate, reference thereto as amended.

SECTION 2. Delegation.—The Secretary of Transportation may delegate any of the functions transferred to him by this reorganization plan to such officers and employees of the Department of Transportation as he designates, and may authorize successive redelegations of such functions.

SECTION 3. Urban Mass Transportation Administration.—

(a) There is hereby established within the Department of Transportation an Urban Mass Transportation Administration.

(b) The Urban Mass Transportation Administration shall be headed by an Urban Mass Transportation Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314). The Administrator shall perform such duties as the Secretary of Transportation shall prescribe and shall report directly to the Secretary.

SECTION 4. Interim Administrator.—The President may authorize any person who immediately prior to the effective date of this reorganization plan holds a position in the executive branch of the government to act as Urban Mass Transportation Administrator until the office of Administrator is for the first time filled pursuant to the provision of section 3(b) of this reorganization plan or by recess appointment, as the case may be. The person so designated shall be entitled to the compensation attached to the position he regularly holds.

SECTION 5. Incidental Transfers.—

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[152] Title II of the Housing Amendments of 1955 (69 Stat. 635, 642), as amended primarily by title V of the Housing Act of 1961 (Pub. L. 87-70, 75 Stat. 149, 173, June 30, 1961), authorized loans to public bodies to assist in financing urban mass transportation capital improvement projects. However, pursuant to the terms of section 202(d) of the 1955 Act the authority to make new commitments expired on July 1, 1963, so that only powers under this statute actually transferred to the Secretary by Reorganization Plan No. 2 of 1968 were those necessary to administer loans which had been made previously.

[153] Title IV of Public Law 89-117 dealt with the authority to provide financial assistance for relocation payments to persons displaced by certain Federally assisted projects. Its pertinent provisions have been repealed (*see* footnote 42).

[154] Section 3(b) of Public Law 89-774 (80 Stat. 1352, November 6, 1966) authorized the Secretary of Housing and Urban Development to receive appropriations for the purpose of making the Federal payments authorized to the Washington Metropolitan Area Transit Authority.

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Secretary of Transportation by this reorganization plan as the Director of the Office of Management and Budget [155] shall determine shall be transferred from the Department of Housing and Urban Development to the Department of Transportation as at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of the Office of Management and Budget shall deem to be necessary in order to effectuate the transfers provided for in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SECTION 6. Effective Date.—The provisions of this reorganization plan shall take effect at the close of June 30, 1968, or at the time determined under the provisions of section 906(a) of title 5 of the United States Code, whichever is later.

EXECUTIVE ORDER 12372 of July 14, 1982

Intergovernmental Review of Federal Programs [156]

47 F.R. 30959

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 401(a) of the Intergovernmen-

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[155] The predecessor agency was the Bureau of the Budget.

[156] Executive Order 12372 revokes OMB Circular A-95. The former provision reads as follows:

OFFICE OF MANAGEMENT AND BUDGET

[Circular No. A-95 Revised]

Evaluation, Review, and Coordination of Federal and Federally Assisted Programs and Projects

JANUARY 2, 1976.

1. *Purpose.* This Circular furnishes guidance to Federal agencies for cooperation with State and local governments in the evaluation, review, and coordination of Federal and federally assisted programs and projects. The Circular promulgates regulations (Attachment A) which provide, in part, for:

a. Encouraging the establishment of a project notification and review system to facilitate coordinated planning on an intergovernmental basis for certain Federal assistance programs in furtherance of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and Title IV of the Intergovernmental Cooperation Act of 1968 (Attachment B).

b. Coordination and direct Federal development programs and projects with State, areawide, and local planning and programs pursuant to Title IV of the Intergovernmental Cooperation Act of 1968.

c. Securing the comments and views of State and local agencies which are authorized to develop and enforce environmental standards on certain Federal or federally assisted projects affecting the environment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Attachment (C)) and regulations of the Council on Environmental Quality.

d. Furthering the objectives of Title VI of the Civil Rights Act of 1964.

This Circular supersedes Circular No. A-95 (Revised), dated November 13, 1973 (Part II, FEDERAL REGISTER, Vol. 38, No. 228, pp. 32874-32881, November 28, 1973). It will become effective February 27, 1976.

2. *Basis.* This Circular has been prepared pursuant to:

a. Section 401(a) of the Intergovernmental Cooperation Act of 1968 which provides, in part, that:

"The President shall * * * establish rules and regulations governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development * * *" and the President's Memorandum of November 8, 1968, to the Director of the Bureau of the Budget ("FEDERAL REGISTER, Vol. 33, No. 221, November 13, 1968) which provides:

"By virtue of the authority vested in me by section 301 of title 3 of the United States Code and section 401(a) of the Intergovernmental Cooperation Act of 1968 (Public Law 90-577), I hereby delegate to you the authority vested in the President to establish the rules and regulations provided for in that section governing

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tal Cooperation Act of 1968 (42 U.S.C. 4231(a)) and Section 301 of Title 3 of the United States Code, and in order to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development, it is hereby ordered as follows:

Section 1. Federal agencies shall provide opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development.

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the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development, including programs providing Federal assistance to the States and localities, to the end that they shall most effectively serve these basic objectives.

"In addition, I expect the Bureau of the Budget to generally coordinate the actions of the departments and agencies in exercising the new authorizations provided by the Intergovernmental Cooperation Act, with the objective of consistent and uniform action by the Federal Government."

b. Title IV, section 403, of the Intergovernmental Cooperation Act of 1968 which provides that:

"The Bureau of the Budget or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this Title."

c. Section 204(c) of the Demonstration Cities and Metropolitan Development Act of 1966 which provides that:

"The Bureau of the Budget, or such other agency as may be designated by the President, shall prescribe such rules and regulations as are deemed appropriate for the effective administration of this section," and

d. Reorganization Plan No. 2 of 1970 and Executive Order No. 11541 of July 1, 1970, which vest all functions of the Bureau of the Budget or the Director of the Bureau of the Budget in the Director of the Office of Management and Budget.

3. *Coverage.* The regulations promulgated by this Circular (Attachment A) will have applicability:

a. Under Part I, to all projects and activities (or significant substantive changes thereto) for which Federal assistance is being sought under the programs listed in Attachment D or Appendix I of the *Catalog of Federal Domestic Assistance* whichever bears the later date. Limitations and provisions for exceptions are noted therein or under paragraph 8 of Part I.

b. Under Part II, to all direct Federal development activities, including the acquisition, use, and disposal of Federal real property; in addition, agencies responsible for granting licenses and permits for developments or activities significantly affecting area and community development or the physical environment are strongly urged to consult with clearinghouses on applications for such licenses or permits.

c. Under Part III, to all Federal programs as listed in Appendix II of the *Catalog of Federal Domestic Assistance*, requiring, by statute or administrative regulation, a State plan as a condition of assistance.

d. Under Part IV, to all Federal programs providing assistance to State, areawide, or local agencies or organizations for multijurisdictional or areawide planning.

4. *"A-95: What It Is—How It Works."* A fuller discussion of the background, purposes, and objectives of the Circular and of the requirements promulgated thereunder may be found in the brochure, "A-95: What It Is—How It Works," obtainable from the Office of Management and Budget or from Federal Regional Councils.

5. *"A-95 Administrative Notes."* From time to time OMB will issue "A-95 Administrative Notes" providing interim determinations or interpretations on matters of national scope relating to administration of the Circular.

6. *Federal Regional Councils.* Federal Councils are responsible for coordinating the implementation of the requirements of this Circular at the Federal regional level. The Office of Management and Budget is responsible for policy oversight of the Circular and liaison with departmental and agency liaison officers on matters of national scale related to the requirements of the Circular.

7. *Federal agency implementing procedures and regulations.* Agencies will develop interim procedures and regulations implementing the requirements of this Circular revision which will become effective on February 27, 1976. The interim procedures and regulations will be published in the FEDERAL REGISTER no later than February 27, 1976. Agencies will promulgate final implementing procedures and regulations no later than April 29, 1976. OMB will assist and cooperate with agencies in developing such procedures and regulations.

8. *Inquiries.* Inquiries concerning this Circular may be addressed to the Regional A-95 Coordinator for the appropriate Federal Regional Council or to the Office of Management and Budget, Washington, D.C. 20503, telephone (202) 395-3031.

JAMES T. LYNN, *Director.*

Sec. 2. To the extent the States, in consultation with local general purpose governments, and local special purpose governments they consider appropriate, develop their own processes or refine existing processes for State and local elected officials to review and coordinate proposed Federal financial assistance and direct Federal development, the Federal agencies shall, to the extent permitted by law:

(a) Utilize the State process to determine official views of State and local elected officials.

(b) Communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.

(c) Make efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner.

(d) Allow the States to simplify and consolidate existing Federally required State plan submissions. Where State planning and budgeting systems are sufficient and where permitted by law, the substitution of State plans for Federally required State plans shall be encouraged by the agencies.

(e) Seek the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas. Existing interstate mechanisms that are redesignated as part of the State process may be used for this purpose.

(f) Support State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a Federally-prescribed membership, which is established for a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

Sec. 3. (a) The State process referred to in Section 2 shall include those where States delegate, in specific instances, to local elected officials the review, coordination, and communication with Federal agencies.

(b) At the discretion of the State and local elected officials, the State process may exclude certain Federal programs from review and comment.

Sec. 4. The Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development. The Office of Management and Budget shall disseminate such lists to the Federal agencies.

Sec. 5. (a) Agencies shall propose rules and regulations governing the formulation, evaluation, and review of proposed Federal financial assistance and direct Federal development pursuant to this Order, to be submitted to the Office of Management and Budget for approval.

(b) The rules and regulations which result from the process indicated in Section 5(a) above shall replace any current rules and regulations and become effective April 30, 1983.

Sec. 6. The Director of the Office of Management and Budget is authorized to prescribe such rules and regulations, if any, as he deems appropriate for the effective implementation and administration of this Order and the Intergovernmental Cooperation Act of 1968. The Director is also authorized to exercise the authority vested in the President by Section 401(a) of that Act (42 U.S.C. 4231(a)), in a manner consistent with this Order.

Sec. 7. The Memorandum of November 8, 1968, is terminated (33 *Fed. Reg.* 16487, November 13, 1968). The Director of the Office of Management and Budget shall revoke OMB Circular A-95, which was issued pursuant to that Memorandum. However, Federal agencies shall continue to comply with the rules and regulations issued pursuant to that Memorandum, including those issued by the Office of Management and Budget, until new rules and regulations have been issued in accord with this Order.

Sec. 8. The Director of the Office of Management and Budget shall report to the President within two years on Federal agency compliance with this Order. The views of State and local elected officials on their experiences with these policies, along with any suggestions for improvement, will be included in the Director's report.

RONALD REAGAN.

THE WHITE HOUSE,

July 14, 1982.

PROTECTION OF PUBLIC LANDS

Excerpt from the Department of Transportation Act

(P.L. 89-670, 80 Stat. 931, 49 U.S.C. 1653)

SECTION 4(f). It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968,[157] the Secretary shall not approve any program or project which requires the use of any publicly-owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area wildlife and waterfowl refuge, or historic site resulting from such use.[158]

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[157] August 23, 1968.

[158] This provision was interpreted and applied by the Supreme Court in *Citizens to Preserve Overton Park, Inc., et al.* v. *Volpe et al.*, 401 U.S. 402. The Court held that the action of the Secretary approving a project covered by this section is subject to judicial review to determine whether the Secretary's determination was arbitrary and capricious.

NATIONAL ENVIRONMENTAL POLICY ACT

42 U.S.C. § 4321 et seq.

§ 4321. Congressional declaration of purpose

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

Pub. L. 91-190, § 2, Jan. 1, 1970, 83 Stat. 852.

Subchapter I.—POLICIES AND GOALS

§ 4331. Congressional declaration of national environmental policy

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Pub. L. 91–190, Title I, § 101, Jan. 1, 1970, 83 Stat. 852.

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic amd technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrevable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action.

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to inititives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

Pub. L. 91–190, Title I, § 102, Jan. 1, 1970, 83 Stat. 853; Pub. L. 94–83, Aug. 9, 1975, 89 Stat. 424.

§ 4333. Conformity of administrative procedures to national environmental policy

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this chapter and shall propose to the President not later then July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this chapter.

Pub. L. 91–190, Title I, § 103, Jan. 1, 1970, 83 Stat. 584.

§ 4334. Other statutory obligations of agencies

Nothing in section 4332 or 4333 of this title shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Pub. L. 91–190, Title I, § 104, Jan. 1, 1970, 83 Stat. 854.

§ 4335. Efforts supplemental to existing authorizations

The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies.

Pub. L. 91–190, Title I, § 105, Jan. 1, 1970, 83 Stat. 854.

Subchapter II.—COUNCIL ON ENVIRONMENTAL QUALITY

§ 4341. Reports to Congress; recommendations for legislation

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Pub. L. 91–190, Title II, § 201, Jan. 1, 1970, 83 Stat. 854.

§ 4342. Establishment; membership; Chairman; appointments

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interest of the

Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Pub. L. 91-190, Title II, § 202, Jan. 1, 1970, 83 Stat. 854.

§ 4343. Employment of personnel, experts and consultants

The Council may employ such officers and employees as may be necessary to carry out its functions under this chapter. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this chapter, in accordance with section 3109 of Title 5 (but without regard to the last sentence thereof).

Pub. L. 91-190, Title II, § 203, Jan. 1, 1970, 83 Stat. 855.

§ 4344. Duties and functions

It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 4341 of this title;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in subchapter I of this chapter, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental qualty;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Pub. L. 91-190, Title II, § 204, Jan. 1, 1970, 83 Stat. 855.

§ 4345. Consultation with the Citizen's Advisory Committee on Environmental Quality and other representatives

In exercising its powers, functions, and duties under this chapter, the Council shall—

(1) consult with the Citizen's Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Pub. L. 91-190, Title II, § 205, Jan. 1, 1970, 83 Stat. 855

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FEDERAL RAILROAD SAFETY ACT (Pub. L. 91-458)

45 U.S.C. § 421 et seq.[159]

TITLE II—RAILROAD SAFETY

§ 201. Short Title

This title may be cited as the "Federal Railroad Safety Act of 1970".

§ 202. Rail Safety Regulations

(a) The Secretary of Transportation (hereafter in this title referred to as the "Secretary") shall (1) prescribe, as necessary, appropriate rules, regulations, orders, and standards for all areas of railroad safety supplementing provisions of law and regulations in effect on the date of enactment of this title, and (2) conduct, as necessary, research, development, testing, evaluation, and training for all areas of railroad safety. However, nothing in this title shall prohibit the bargaining representatives of common carriers and their employees from entering into collective bargaining agreements under the Railway Labor Act, including agreements relating to qualifications of employees, which are not inconsistent with rules, regulations, orders, or standards prescribed by the Secretary under this title. Nothing in this title shall be construed to give the Secretary authority to issue rules, regulations, orders, and standards relating to qualifications of employees, except such qualifications as are specifically related to safety.

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[159] This Act was held applicable to rapid rail transit in *United States* v. *Massachusetts Bay Transportation Authority*. 360 F. Supp. 698 (D.C., Mass. 1973). Where mass transportation activities are involved, the provisions of this Act will be jointly administered by UMTA and The Federal Railroad Administration (FRA) pursuant to Delegation by the Secretary of Transportation (*see* 40 F.R. 6656, Feb. 13, 1975). For other material on safety, *see also* sec. 107, National Mass Transportation Assistance Act of 1974 (part I, p. 27); and sec. 304, Interstate Commerce Act (part III, p. 104).

(b) Hearings shall be conducted in accordance with the provisions of section 553 of title 5 of the United States Code for all rules, regulations, orders, or standards issued by the Secretary including those establishing, amending, revoking, or waiving compliance with a railroad safety rule, regulation, order, or standard under this title, and an opportunity shall be provided for oral presentations.

(c) The Secretary may, after hearing in accordance with subsection (b) of this section, waive in whole or in part compliance with any rule, regulation, order, or standard established under this title, if he determines that such waiver of compliance is in the public interest and is consistent with railroad safety. The Secretary shall make public his reasons for granting any such waiver.

(d) In prescribing rules, regulations orders, and standards under this section, the Secretary shall consider relevant existing safety data and standards and shall, within 180 days after the date of enactment of the Federal Railroad Safety Authorization Act of 1976, take such action as may be necessary to develop and publish rules of practice applicable to all proceedings under this Act. Such rules of practice shall take into consideration the varying nature of proceedings under this Act and shall include specific time limits upon the disposition of all proceedings initiated under this Act. In no event shall the time limit for any proceeding extend for more than 12 months after the date such proceeding is initiated.

(e) The Secretary shall issue initial railroad safety rules, regulations, orders, and standards under this title based upon existing safety data and standards, not later than one year after the date of enactment of this title. The Secretary shall review and, after hearing in accordance with subsection (b) of this section, revise such rules, regulations, orders, and standards as necessary.

(f) Any final agency action taken under this section is subject to judicial review as provided in chapter 7 of title 5 of the United States Code.

(g) The Secretary shall, within 180 days after the date of enactment of this subsection, issue such rules, regulations, orders, and standards as may be necessary to require that—

(1) in any case in which activities of railroad employees (other than train or yard crews) assigned to inspect, test, repair, or service rolling equipment require such employees to work on, under, or between such equipment, each manually operated switch, including any crossover switch, providing access to the track on which such equipment is located must be lined against movement to that track and secured by an effective locking device which may not be removed except by the class or craft of employees performing such inspection, testing, repair, or servicing;

(2) the rear car of all passenger and commuter trains shall have one or more highly visible markers which are lighted during periods of darkness or whenever weather conditions restrict clear visibility; and

(3) the rear car of all freight trains shall have highly visible markers during periods of darkness or whenever weather conditions restrict clear visibility.

Notwithstanding the provisions of section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434), nothing in paragraphs (2) and (3) of this subsection shall prohibit a State from continuing in force any law, rule,

regulation, order or standard in effect on the date of enactment of the Federal Railroad Safety Authorization Act of 1976 relating to lighted markers on the rear car of freight trains except to the extent that such law, rule, regulation, order, or standard would cause such cars to be in violation of this section.

(h)(1)(A) The Secretary shall, within one year after the date of enactment of the Federal Railroad Safety Authorization Act of 1982, issue such initial rules, regulations, orders, and standards as may be necessary to insure that the construction, maintenance, and operation of railroad passenger equipment maximize safety to rail passengers. The Secretary shall, as a part of any such rulemaking, consider comparable Federal regulations and procedures which apply to other modes of transportation, especially those administered and enforced by the Federal Aviation Administration. The Secretary shall also consider relevant differences between commuter and intercity passenger service. The Secretary shall periodically review any such rules, regulations, orders, and standards and shall, after a hearing in accordance with subsection (b) of this section, make such revisions in any such rules, regulations, orders, and standards as may be necessary.

(B) The Secretary shall submit to the Congress a report within one year after the date of enactment of the Federal Railroad Safety Authorization Act of 1982 with respect to rules, regulations, orders, and standards issued under subparagraph (A) of this paragraph which describes any rules, regulations, orders, and standards issued or to be issued under this subsection, explains the reasons for their issuance, and compares them to comparable Federal regulations and procedures which apply to other modes of transportation, especially those administered and enforced by the Federal Aviation Administration.

(2) In issuing initial rules, regulations, orders, and standards under this subsection, and in making any subsequent revisions thereto, the Secretary shall—

(A) concentrate on those areas which, in the judgment of the Secretary, present the greatest opportunity for enhancing the safety of railroad passenger equipment; and

(B) give significant weight to the expenditures that would be necessary to retrofit existing equipment and to alter specifications for equipment on order;

(3) In issuing initial rules, regulations, orders, and standards under this subsection, and in making any subsequent revisions thereto, the Secretary may consult with the National Railroad Passenger Corporation, public authorities that operate passenger service, other rail carriers that transport passengers, organizations of passengers, and organizations of employees. Such consultations shall not be subject to the Federal Advisory Committee Act, but minutes of such consultations shall be placed in the public docket of the rulemaking proceeding.

(4) As used in this subsection, the term "railroad passenger equipment" means all railroad equipment used for the transportation of passengers, whether in commuter or intercity service.

(i) The Secretary shall, within one year after the date of enactment of the Federal Railroad Safety Authorization Act of 1982, issue rules, regulations, orders, and standards to apply appropriate safety principles to track used for

commuter or other short-haul rail passenger service in a metropolitan or suburban area.

(j) The Secretary shall, within 60 days after the date of enactment of the Federal Railroad Safety Authorization Act of 1982, report to the Congress on whether to issue rules, regulations, orders, and standards to require that the leading car of any railroad train in operation after July 1, 1983, be equipped with an acceptable form of mounted oscillating light.

(k) As used in this section, the term "all areas of railroad safety" includes the safety of commuter or other short-haul rail passenger service in a metropolitan or suburban area, including any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979.

* * * * *

DAVIS-BACON ACT (40 U.S.C. § 276a et seq.)

§ 276a. Rate of wages for laborers and mechanics

(a) The advertised specifications for every contract in excess of $2,000, to which the United States or the District of Columbia is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia within the geographical limits of the States of the Union, or the District of Columbia, and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State, in which the work is to be performed, or in the District of Columbia if the work is to be performed there; and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.

(b) As used in sections 276a to 276a—5 of this title the term "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" shall include—

(1) the basic hourly rate of pay; and

(2) the amount of—

(A) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) the rate of costs of the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforcible commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected,

for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits:

Provided, That the obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, insofar as sections 276a to 276a–5 of this title and other Acts incorporating sections 276a to 276a–5 of this title by reference are concerned may be discharged by the making of payments in cash, by the making of contributions of a type referred to in paragraph (2)(A), or by the assumption of an enforcible commitment to bear the costs of a plan or program of a type referred to in paragraph (2)(B), or any combination thereof, where the aggregate of any such payments, contributions, and costs is not less than the rate of pay described in paragraph (1) plus the amount referred to in paragraph (2).

In determining the overtime pay to which the laborer or mechanic is entitled under any Federal law, his regular or basic hourly rate of pay (or other alternative rate upon which premium rate of overtime compensation is computed) shall be deemed to be the rate computed under paragraph (1), except that where the amount of payments, contributions, or costs incurred with respect to him exceeds the prevailing wage applicable to him under sections 276a to 276a–5 of this title, such regular or basic hourly rate of pay (or such other alternative rate) shall be arrived at by deducting from the amount of payments, contributions, or costs actually incurred with respect to him, the amount of contributions or costs of the types described in paragraph (2) actually incurred with respect to him, or the amount determined under paragraph (2) but not actually paid, whichever amount is the greater.

Mar. 3, 1931, c. 411, § 1, 46 Stat. 1494; Aug. 30, 1935, c. 825, 49 Stat. 1011; June 15, 1940, c. 373, § 1, 54 Stat. 399; July 12, 1960, Pub. L. 86–624, § 26, 74 Stat. 418; July 2, 1964, Pub. L. 88–349, § 1, 78 Stat. 238.

§ 276a–1. Termination of work on failure to pay agreed wages; completion of work by Government

Every contract within the scope of sections 276a to 276a–5 of this title shall contain the further provision that in the event it is found by the

contracting officer that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

§ 276a-2. Payments of wages by Comptroller General from withheld payments; listing contractors violating contracts

(a) The Comptroller General of the United States is authorized and directed to pay directly to laborers and mechanics from any accrued payments withheld under the terms of the contract any wages found to be due laborers and mechanics pursuant to sections 276a to 276a-5 of this title; and the Comptroller General of the United States is further authorized and is directed to distribute a list of all departments of the Government giving the names of persons or firms whom he has found to have disregarded their obligations to employees and subcontractors. No contract shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of such persons or firms.

(b) If the accrued payments withheld under the terms of the contract, as aforesaid, are insufficient to reimburse all the laborers and mechanics, with respect to whom there has been a failure to pay the wages required pursuant to sections 276a to 276a-5 of this title, such laborers and mechanics shall have the right of action and/or of intervention against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in such proceedings it shall be no defense that such laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

Mar. 3, 1931, c. 411, § 3, as added Aug. 30, 1935, c. 825, 49 Stat. 1011.

§ 276a-3. Effect on other Federal laws

Sections 276a to 276a-5 of this title shall not be construed to supersede or impair any authority otherwise granted by Federal law to provide for the establishment of specific wage rates.

Mar. 3. 1931, c. 411, § 4, as added Aug. 30, 1935, C. 825, 49 Stat. 1011.

§ 276a-4. Effective date of sections 276a to 276a-5

Sections 276a to 276a-5 of this title shall take effect thirty days after August 30, 1935, but shall not affect any contract then existing or any contract that may thereafter be entered into pursuant to invitations for bids that are outstanding on August 30, 1935.

Mar. 3, 1931, c. 411, § 5, as added Aug. 30, 1935, c. 825, 49 Stat. 1011.

§ 276a–5. Suspension of sections 276a to 276a–5 during emergency

In the event of a national emergency the President is authorized to suspend the provisions of sections 276a to 276a–5 of this title.

Mar. 3, 1931, c. 411, § 6, as added Aug. 30, 1935, c. 825, 49 Stat. 1011.

* * * * * * *

NON-DISCRIMINATION PROVISIONS

EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972 [160]

(P.L. 92–261, 42 U.S.C. § 2000e–16 and 17)

NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

Sec. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies [161] as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall—

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that

[160] *See also*, Executive Order 11478, August 8, 1969, 34 F.R. 12985, as amended by Executive Order 11590, April 23, 1971, 36 F.R. 7831 regarding equal employment opportunity in Federal Government.

[161] Pub. L. 96–191 struck out "(other than the General Accounting Office)" after "executive agencies".

an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

(c) Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e–5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) The provisions of section 2000e–5 (f) through (k) of this title, as applicable, shall govern civil actions brought hereunder.

(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

SPECIAL PROVISION WITH RESPECT TO DENIAL, TERMINATION, AND SUSPENSION OF GOVERNMENT CONTRACTS

Sec. 718. No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of title 5, United States Code, section 554, and the following pertinent sections: *Provided,* That if such employer has deviated

substantially from such previously agreed to affirmative action plan, this section shall not apply: *Provided further,* That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

EXCERPTS FROM CIVIL RIGHTS ACT OF 1964, AS AMENDED

(P.L. 88-352, 78 Stat. 241, 42 U.S.C. 2000d et seq.)

TITLE VI—Nondiscrimination in Federally Assisted Programs [162]

SECTION 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

SECTION 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with the achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such non-compliance has been so found or (2) by any other means authorized by law: *Provided, however,* that no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

SECTION 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by

[162] *See also* Executive order 11246 of September 24, 1965, as amended (30 F.R. 12319, 32 F.R. 14303, 34 F.R. 12986) dealing with equal employment opportunity in work done for, or with financial assistance provided by, the Federal Government.

law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

SECTION 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

SECTION 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

EXCERPTS FROM THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974

(P.L. 93-344; 88 Stat. 317)

(31 U.S.C. 1351)

§ 1351. Bills providing new spending authority

Legislation providing contract or borrowing authority

(a) It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2) (A) or (B) of this section (or any amendment which provides such new spending authority), unless that bill, resolution, or amendment also provides that such new spending authority is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

Legislation providing entitlement authority

(b)(1) It shall not be in order in either the House of Reprsentatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2)(C) of this section (or any amendment which provides such new spending authority) which is to become effective before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.

(2) If any committee of the House of Representatives or the Senate reports any bill or resolution which provides new spending authority described in subsection (c)(2)(C) of this section which is to become effective during a fiscal year and the amount of new budget authority which will be required for such fiscal year if such bill or resolution is enacted as so reported exceeds the appropriate allocation of new budget authority reported under section 1323(b) of this title in connection with the most recently

agreed to concurrent resolution on the budget for such fiscal year, such bill or resolution shall then be referred to the Committee on Appropriations of that House with instructions to report it, with the committee's recommendations, within 15 calendar days (not counting any day on which that House is not in session) beginning with the day following the day on which it is so referred. If the Committee on Appropriations of either House fails to report a bill or resolution referred to it under this paragraph within such 15-day period, the committee shall automatically be discharged from further consideration of such bill or resolution and such bill or resolution shall be placed on the appropriate calendar.

(3) The Committee on Appropriations of each House shall have jurisdiction to report any bill or resolution referred to it under paragraph (2) with an amendment which limits the total amount of new spending authority provided in such bill or resolution.

Definitions

(c)(1) For purposes of this section, the term "new spending authority" means spending authority not provided by law on the effective date of this section, including any increase in or addition to spending authority provided by law on such date.

(2) For purposes of paragraph (1), the term "spending authority" means authority (whether temporary or permanent)—

(A) to enter into contracts under which the United States is obligated to make outlays, the budget authority for which is not provided in advance by appropriation Acts;

(B) to incur indebtedness (other than indebtedness incurred under the Second Liberty Bond Act) for the repayment of which the United States is liable, the budget authority for which is not provided in advance by appropriation Acts; and

(C) to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law.

Such term does not include to insure or guarantee the repayment of indebtedness incurred by another person or government.

Exceptions

(d)(1) Subsections (a) and (b) of this section shall not apply to new spending authority if the budget authority for outlays which will result from such new spending authority is derived—

(A) from a trust fund established by the Social Security Act (as in effect on July 12, 1974); or

(B) from any other trust fund, 90 percent or more of the receipts of which consist or will consist of amounts (transferred from the general fund of the Treasury) equivalent to amounts of taxes (related to the purposes for which such outlays are or will be made) received in the

Treasury under specified provision of the Internal Revenue Code of 1954.

(2) Subsections (a) and (b) of this section shall not apply to new spending authority which is an amendment to or extension of the State and Local Fiscal Assistance Act of 1972, or a continuation of the program of fiscal assistance to State and local governments provided by that Act, to the extent so provided in the bill or resolution providing such authority.

(3) Subsections (a) and (b) of this section shall not apply to new spending authority to the extent that—

(A) the outlays resulting therefrom are made by an organization which is (i) a mixed-ownership Government corporation (as defined in section 856 of this title), (ii) a wholly owned Government corporation (as defined in section 846 of this title) which is specifically exempted by law from compliance with any or all of the provisions of the Government Corporation Control Act; or

(B) the outlays resulting therefrom consist exclusively of the proceeds of gifts or bequests made to the United States for a specific purpose. Pub. L. 93-344, Title IV, § 401, July 12, 1974, 88 Stat. 317.

AREAWIDE PROJECT REVIEW

Excerpts from the Demonstration Cities and Metropolitan Development Act of 1966, as Amended

(42 U.S.C. 3304)

Coordination of Federal Aid in Metropolitan Areas

SECTION 204. (a) All applications made after June 30, 1967, for Federal loans or grants to assist in carrying out open-space land projects or for the planning or construction of hospitals, airports, libraries, water supply and distribution facilities, sewerage facilities and waste treatment works, highways, transportation facilities, law enforcement facilities, and water development and land conservation projects within any metropolitan area shall be submitted for review—

(1) to any areawide agency which is designed to perform metropolitan or regional planning for the area within which the assistance is to be used, and which is, to the greatest practicable extent, composed of or responsible to the elected officials of a unit of areawide government or of the units of general local government within whose jurisdiction such agency is authorized to engage in such planning, and

(2) if made by a special purpose unit of local government, to the units or units of general local government with authority to operate in the area within which the project is to be located.

(b)(1) Except as provided in paragraph (2) of this subsection, each application shall be acompanied (A) by the comments and recommendations with respect to the project involved by the areawide agency and governing bodies of the units of general local government to which the application has been submitted for review, and (B) by a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application. Such comments shall include information concerning

the extent to which the project is consistent with comprehensive planning developed or in the process of development for the metropolitan area or the unit of general local government, as the case may be, and the extent to which such project contributes to the fulfillment of such planning. The comments and recommendations and the statement referred to in this paragraph shall, except in the case referred to in paragraph (2) of this subsection, be reviewed by the agency of the Federal Government to which such application is submitted for the sole purpose of assisting it in determining whether the application is in accordance with the provisions of Federal law which govern the making of the loans or grants.

(2) An application for a Federal loan or grant need not be accompanied by the comments and recommendations and the statements referred to in paragraph (1) of this subsection if the applicant certifies that a plan or description of the project, meeting the requirements of such rules and regulations as may be prescribed under subsection (c), or such application has lain before an appropriate areawide agency or instrumentality or unit of general local government for a period of sixty days without comments or recommendations thereon being made by such agency or instrumentality.

(3) The requirements of paragraphs (1) and (2) shall also apply to any amendment of the application which, in light of the purpose of this title, involves a major change in the project covered by the application prior to such amendment.

(c) The Office of Management and Budget [163] or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this section.

EXCERPT FROM HOUSING ACT OF 1950

(12 U.S.C. 1749a)

§ 1749a. Powers and duties of Secretary—Preparation and submission of budget; maintenance of accounts

(a) In the performance of, and with respect to, the functions, powers, and duties vested in him by this subchapter, the Secretary, notwithstanding the provisions of any other law, shall—

(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by the Government Corporation control Act, [164] as amended; and

(2) maintain a set of accounts which shall be audited by the Comptroller General in accordance with the provisions of the Accounting and Auditing Act of 1950: *Provided*, That such financial transactions of the Administrator as the making of loans and vouchers approved by the Administrator in connection with such financial transactions shall be final and conclusive upon all officers of the Government.

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[163] See footnote 155.

[164] The Government Corporation Control Act (P.L. 79-248, 59 Stat. 597) is codified at 31 U.S.C. 841 et seq.

Disposition of funds; administrative expenses

(b) Funds made available to the Secretary pursuant to the provisions of this subchapter shall be deposited in a checking account or accounts with the Treasurer of the United States. Receipts and assets obtained or held by the Secretary in connection with the performance of his functions under this subchapter, and all funds available for carrying out the functions of the Secretary under this subchapter (including appropriations therefor, which are authorized), shall be available, in such amounts as may from year to year be authorized by the Congress, for the administrative expenses of the Secretary in connection with the performance of such functions.

General Functions of Secretary

(c) In the performance of, and with respect to, the functions, powers, and duties vested in him by this subchapter, the Secretary, notwithstanding the provisions of any other law, may—

(1) prescribe such rules and regulations as may be necessary to carry out the purposes of this subchapter;

(2) * * *

(3) sue and be sued;

(4) foreclose on any property or commence any action to protect or enforce any right conferred upon him by any law, contract, or other agreement, and bid for and purchase at any foreclosure or any other sale any property in connection with which he has made a loan pursuant to this subchapter. In the event of any such acquisition, the Secretary may, notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, complete, administer, remodel and convert, dispose of, lease and otherwise deal with, such property: *Provided*, That any such acquisition of real property shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction in and over such property or impair the civil rights under the State or local laws of the inhabitants on such property;

(5) enter into agreements to pay annual sums in lieu of taxes to any State or local taxing authority with respect to any real property so acquired or owned;

(6) sell or exchange at public or private sale, or lease, real or personal property, and sell or exchange any securities or obligations, upon such terms as he may fix;

(7) obtain insurance against loss in connection with property and other assets held;

(8) subject to the specific limitations in this subchapter, consent to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, security, or any other term of any contract or agreement to which he is a party or which has been transferred to him pursuant to this subchapter; and

(9) include in any contract or instrument made pursuant to this subchapter such other covenants, conditions, or provisions as he may deem necessary to assure that the purposes of this subchapter will be achieved.

* * * * *

Applicability of other laws

(e) The provisions of section 870 of Title 31,[165] which are applicable to corporations or agencies subject to the Government Corporation Control Act, shall also be applicable to the activities of the Secretary under this subchapter.

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Apr. 20, 1950, c. 94, Title IV, § 402, 64 Stat. 78; 1953, Reorg. Plan No. 1, § 5, eff, Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 23, 1959, Pub. L. 86-372, Title VI, § 602, 73 Stat. 681; May 25, 1967, Pub. L. 90-19, § 8, (a), (b), 81 Stat. 22; Jan. 2, 1975, Pub. L. 93-604, Title VII, § 705(b).

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 AS AMENDED

(Pub. L. 91-646, 84 Stat. 1894, 42 U.S.C. 4601 et seq.)

SUBCHAPTER I—GENERAL PROVISIONS

§ 4601. Definitions

(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), and wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve banks and branches thereof.

(2) The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(3) The term "State agency" means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States.

(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia.

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[165] 31 U.S.C. 870 (63 Stat. 662) reads as follows:

"CONSOLIDATION OF BANKING AND CHECKING ACCOUNTS OF CORPORATIONS AND AGENCIES"

"After June 30, 1949, the corporations or agencies subject to this chapter, are authorized, with the approval of the Comptroller General, to consolidate, notwithstanding the provisions of any other law, into one or more accounts for banking and checking purposes all cash, including amounts appropriated from whatever source derived: *Provided*, That such cash, including amounts appropriated, of such corporations or agencies shall be expended in accordance with the applicable terms of their respective enabling acts and other acts applicable to their transactions."

(5) The term "person" means any individual, partnership, corporation, or association.

(6) The term "displaced person" means any person who, on or after the effective date of this Act, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 202 (a) and (b) and 205 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

(7) The term "business" means any lawful activity, excepting a farm operation, conducted primarily—

(A) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public;

(C) by a nonprofit organization; or

(D) solely for the purposes of section 202(a) of this title, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(8) The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(9) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

Pub. L. 91-646, Title I, § 101, Jan. 2, 1971, 84 Stat. 1894.

§ 4602. Effect Upon Property Acquisition

(a) The provisions of section 301 of title III of this Act create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this Act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to the date of enactment of this Act.

Pub. L. 91-646, Title I, § 102, Jan. 2, 1971, 84 Stat. 1895.

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§ 4603. Additional appropriations for moving costs, relocation benefits and other expenses incurred in acquisition of lands for National Park System; waiver of benefits

(a) In all instances where authorizations of appropriations for the acquisition of lands for the National Park System enacted prior to January 9, 1971, do not include provisions therefor, there are authorized to be appropriated such additional sums as may be necessary to provide for moving costs, relocation benefits, and other expenses incurred pursuant to the applicable provisions of this chapter. There are also authorized to be appropriated not to exceed $8,400,000 in addition to those authorized in Public Law 92-272 to provide for such moving costs, relocation benefits, and other related expenses in connection with the acquisition of lands authorized by Public Law 92-272.

(b) Whenever an owner of property elects to retain a right of use and occupancy pursuant to any statute authorizing the acquisition of property for purposes of a unit of the National Park System, such owner shall be deemed to have waived any benefits under sections 4623, 4624, 4625, and 4626 of this title, and for the purposes of those sections such owner shall not be considered a displaced person as defined in section 4601(6) of this title.

Pub. L. 93-477, Title IV, § 405, Oct. 26, 1974, 88 Stat. 1448.

SUBCHAPTER II—UNIFORM RELOCATION ASSISTANCE

§ 4621. Declaration of policy

The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

Pub. L. 91-646, Title II, § 201, Jan. 2, 1971, 84 Stat. 1895.

§ 4622. Moving and related expenses

General provision

(a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

Displacement from dwelling; election of payment; moving expense and dislocation allowance

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense allowance, determined according to a schedule established by the head of the Federal agency, not to exceed $300; and a dislocation allowance of $200.

Displacement from business or farm operation; election of payment; limitations; eligibility for business payments; average annual net earnings defined

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than $2,500 nor more than $10,000. In the case of a business no payment shall be made under this subsection unless the head of the Federal agency is satisfied that the business (1) cannot be relocated without a substantial loss of its existing patronage, and (2) is not a part of a commercial enterprise having at least one other establishment not being acquired by the United States, which is engaged in the same or similar business. For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the head of such agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.

Pub. L. 91-646, Title II, § 202, Jan. 2, 1971, 84 Stat. 1895.

§ 4623. Replacement housing for homeowner; mortgage insurance

(a)(1) In addition to payments otherwise authorized by this subchapter, the head of the Federal agency shall make an additional payment not in excess of $15,000 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(A) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the Federal agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subparagraph shall be made in accordance with standards established by the head of the Federal agency making the additional payment.

(B) The amount, if any, which will compensate such displaced person for any increased interest costs which such person in required to pay for financing the acquisiton of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the Federal agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(C) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this subsection shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one year period beginning on the date on which he receives from the Federal agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage.

Pub. L. 91-646, Title II, § 203, Jan. 2, 1971, 84 Stat. 1896.

Replacement Housing for Tenants and Certain Others

§ 4624. In addition to amounts otherwise authorized by this title, the head of the Federal agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 203 which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquistion of such dwelling. Such payment shall be either—

(1) the amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed $4,000, or

(2) the amount necessary to enable such person to make a downpayment (including incidental expenses described in section 203(a)(1)(C) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed $4,000, except that if such amount exceeds $2,000, such person must equally match any such amount in excess of $2,000, in making the downpayment.

Pub. L. 91-646, Title II, § 204, Jan. 2, 1971, 84 Stat. 1897.

§ 4625. Relocation Assistance Advisory Services

SECTION 205. (a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after the effective date of this section, the head of such agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (c) of this section. If such agency head determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

(b) Federal agencies administering programs which may be of assistance to displaced persons covered by this Act shall cooperate to the maximum extent feasible with the Federal or State agency causing the displacement to assure that such displaced persons receive the maximum assistance available to them.

(c) Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

(1) determine the need, if any, of displaced persons, for relocation assistance;

(2) provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(3) assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by such Federal agency head, equal in number to the number of and available to such displaced persons who require such dwelling and reasonably accessible to their places of employment, except that the head of that Federal agency may prescribe by regulation situations when such assurances may be waived;

(4) assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) The heads of Federal agencies shall coordinate relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs.

Pub. L. 91-646, Title II, § 205, Jan. 2, 1971, 84 Stat. 1897.

Housing Replacement by Federal Agency as Last Resort

§ 4626. (a) If a Federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the Federal agency determines that such housing cannot otherwise be made available he may take action as is necessary or appropriate to provide such housing by use of funds authorized for such project.

(b) No person shall be required to move from his dwelling on or after the effective date of this title, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 205(c)(3), is available to such person.

Pub. L. 91-646, Title II, § 206, Jan. 2, 1971, 84 Stat. 1898.

State Required to Furnish Real Property Incident to Federal Assistance (Local Cooperation)

§ 4627. Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the program or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by section 210 and 305 of this Act. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first $25,000 of the cost of providing such payments and assistance.

Pub. L. 91-646, Title II, § 207, Jan. 2, 1971, 84 Stat. 1898.

State Acting as Agent for Federal Program

§ 4628. Whenever real property is acquired by a State agency at the request of a Federal agency for a Federal program or project, such acquisition shall, for the purposes of this Act, be deemed an acquisition by the Federal agency having authority over such program or project.

Pub. L. 91-646, Title II, § 208, Jan. 2, 1971, 84 Stat. 1899.

Public Works Programs and Projects of the Government of the District of Columbia and of the Washington Metropolitan Area Transit Authority

§ 4629. Whenever real property is acquired by the government of the District of Columbia or the Washington Metropolitan Area Transit Authority for a program or project which is not subject to sections 210 and 211 of this title, and such acquisition will result in the displacement of any person on or

after the effective date of this Act, the Commissioner of the District of Columbia or the Washington Metropolitan Area Transit Authority, as the case may be, shall make all relocation payments and provide all assistance required of a Federal agency by this Act. Whenever real property is acquired for such a program or project on or after such effective date, such Commissioner or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a Federal agency by Title III of this Act.

Pub. L. 91-646, Title II, § 209, Jan. 2, 1971, 84 Stat. 1899.

Requirements for Relocation Payments and Assistance of Federally Assisted Program; Assurance of Availability of Housing

§ 4630. Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a State agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this title, unless he receives satisfactory assurances from such State agency that—

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

(2) relocation assistance programs offering the services described in section 205 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings will be available to displaced persons in accordance with section 205(c)(3).

Pub. L. 91-646, Title II, § 210, Jan. 2, 1971, 84 Stat. 1899.

Federal Share of Costs

§ 4631. (a) The cost to a State agency of providing payments and assistance pursuant to sections 206, 210, 215, and 305, shall be included as part of the cost of a program or project for which Federal financial assistance is available to such State agency, and such State agency shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs, except that, notwithstanding any other law in the case where the Federal financial assistance is by grant or contribution the Federal agency shall pay the full amount of the first $25,000 of the cost to a State agency of providing payments and assistance for a displaced person under sections 206, 210, 215, and 305, on account of any acquisition or displacement occurring prior to July 1, 1972, and in any case where such Federal financial assistance is by loan, the Federal agency shall loan such State agency the full amount of the first $25,000 of such cost.

(b) No payment or assistance under sections 210 or 305 shall be required or included as a program or project cost under this section, if the displaced person receives a payment required by the State law of eminent domain which is determined by such Federal agency head to have substantially the same purpose and effect as such payment under this section, and to be part of the cost of the program or project for which Federal financial assistance is available.

(c) Any grant to, or contract or agreement with, a State agency executed before the effective date of this title, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this Act, shall be amended to include the cost of providing payments and services under sections 210 and 305. If the head of a Federal agency determines that it is necessary for the expeditious completion of a program or project he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to sections 206, 210, 215, and 305.

Pub. L. 91-646, Title II, § 211, Jan. 2, 1971, 84 Stat. 1900.

Administration—Relocation Assistance in Programs Receiving Federal Financial Assistance

§ 4632. In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under sections 206, 210, and 215 of this title, a State agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this title through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs. Such State agency shall, in carrying out the relocation assistance activities described in section 206, whenever practicable, utilize the services of State or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

Pub. L. 91-646, Title II, § 212, Jan. 2, 1971, 84 Stat. 1900.

Regulations and Procedures

§ 4633. (a) In order to promote uniform and effective administration of relocation assistance and land acquisition of State or local housing agencies, or other agencies having programs or projects by Federal agencies or programs or projects by State agencies receiving Federal financial assistance, the heads of Federal agencies shall consult together on the establishment of regulations and procedures for the implementation of such programs.

(b) The head of each Federal agency is authorized to establish such regulations and procedures as he may determine to be necessary to assure—

(1) that the payments and assistance authorized by this Act shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this title be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this Act, or the amount of a payment, may have his application reviewed by the head of the Federal agency having authority over the applicable program or project, or in the case of a program or project receiving Federal financial assistance, by the head of the State agency.

(c) The head of each Federal agency may prescribe such other regulations and procedures, consistent with the provisions of this Act, as he deems necessary or appropriate to carry out this Act.

Pub. L. 91-646, Title II, § 213, Jan. 2, 1971, 84 Stat. 1900.

Annual Report

§ 4634. The head of each Federal agency shall prepare and submit an annual report to the President on the activities of such agency with respect to the programs and policies established or authorized by this Act, and the President shall submit such reports to the Congress not later than January 15 of each year, beginning January 15, 1972, and ending January 15, 1975, together with his comments or recommendations. Such reports shall give special attention to: (1) the effectiveness of the provisions of this Act assuring the availability of comparable replacement housing, which is decent, safe, and sanitary, for displaced homeowners and tenants; (2) actions taken by the agency to achieve the objectives of the policies of Congress, declared in this Act to provide uniform and equal treatment, to the greatest extent practicable, for all persons displaced by, or having real property taken for, Federal or federally assisted programs; (3) the views of the Federal agency head on the progress made to achieve such objectives in the various programs conducted or administered by such agency, and among the Federal agencies; (4) any indicated effects of such programs and policies on the public; and (5) any recommendations he may have for further improvements in relocation assistance and land acquisition programs, policies, and implementing laws and regulations.

Pub. L. 91-646, Title II, § 214, Jan. 2, 1971, 84 Stat. 1901.

Planning and Other Preliminary Expenses for Additional Housing

§ 4635. In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from dwellings because of any Federal or Federal financially assisted project, the head of the Federal agency administering such project is authorized to make loans as a part of the cost of any such project, or to approve loans as a part of the cost of any such project receiving Federal financial assistance, to nonprofit, limited dividend, or cooperative organizations or to public bodies, for necessary and reasonable expenses, prior to construction, for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing for such displaced persons. Notwithstanding the preceding sentence, or any other law, such loans shall be available for not to exceed 80 per centum of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing, prior to the availability of such financing, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering, preliminary achitectural fees, site acquisition, application and mortgage commitments fees, and construction loan fees and discounts. Loans to an organization established for profits shall bear interest at a market rate established by the head of such Federal agency. All other loans shall be without interest. Such Federal agency head shall require repayment of loans made under this section, under such terms and conditions

as he may require, upon completion of the project or sooner, and except in the case of a loan to an organization established for profit, may cancel any part or all of a loan if he determines that a permanent loan to finance the rehabilitation or the construction of such housing cannot be obtained in an amount adequate for repayment of such loan. Upon repayment of any such loan, the Federal share of the sum repaid shall be credited to the account from which such loan was made, unless the Secretary of the Treasury determines that such account is no longer in existence, in which case such sum shall be returned to the Treasury and credited to miscellaneous receipts.

Pub. L. 91-646, Title II, § 215, Jan. 2, 1971, 84 Stat. 1901.

Payments Not To Be Considered as Income

§ 4636. No payment received under this title shall be considered as income for the purpose of the Internal Revenue Code of 1954; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

Pub. L. 91-646, Title II, § 216, Jan. 2, 1971, 84 Stat. 1902.

Displacement by Code Enforcement, Rehabilitation, and Demolition Programs Receiving Federal Assistance

§ 4637. A person who moves or discontinues his business, or moves other personal property, or moves from his dwelling on or after the effective date of this Act, as a direct result of any project or program which receives Federal financial assistance under title I of the Housing Act of 1949, as amended, or as a result of carrying out a comprehensive city demonstration program under title I of the Demonstration Cities and Metropolitan Development Act of 1966 shall, for the purposes of this title, be deemed to have been displaced as the result of the acquisition of real property.

Pub. L. 91-646, Title II, § 217, Jan. 2, 1971, 84 Stat. 1902.

Transfers of Surplus Property

§ 4638. The Administrator of General Services is authorized to transfer to a State agency for the purpose of providing replacement housing required by this title, any real property surplus to the needs of the United States within the meaning of the Federal Property and Administrative Services Act of 1949, as amended. Such transfer shall be subject to such terms and conditions as the Administrator determines necessary to protect the interests of the United States and may be made without monetary considerations, except that such State agency shall pay to the United States all amounts received by such agency from any sale, lease, or other disposition of such property for such housing.

Pub. L. 91-646, Title II, § 218, Jan. 2, 1971, 84 Stat. 1902.

SUBCHAPTER III—UNIFORM REAL PROPERTY ACQUISITION POLICY

Uniform Policy on Real Property Acquisition Practices

§ 4651. In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the

courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every possible effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during this inspection of the property.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 1 of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. 258a), for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by title II will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property.

Pub. L. 91-646, Title III, § 301, Jan. 2, 1971, 84 Stat. 1904.

Buildings, Structures, and Improvements

§ 4652. (a) Notwithstanding any other provision of law, if the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other inprovements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

(b)(1) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the United States all his right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection.

Pub. L. 91-646, Title III, § 302, Jan. 2, 1971, 84 Stat. 1905.

Expenses Incidental to Transfer of Title To United States

§ 4653. The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for—

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier.

Pub. L. 91-646, Title III, § 303, Jan. 2, 1971, 84 Stat. 1906.

Litigation Expenses

§ 4654. (a) The Federal court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if—

(1) the final judgment is that the Federal agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the United States.

(b) Any award made pursuant to subsection (a) of this section shall be paid by the head of the Federal agency for whose benefit the condemnation proceedings was [sic] instituted.

(c) The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of title 28, United States Code, awarding compensation for the taking of property by a Federal agency, or the Attorney General effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

Pub. L. 91-646, Title III, § 304, Jan. 2, 1971, 84 Stat. 1906.

Requirements for Uniform Land Acquisition Policies; Payments of Expenses Incidential to Transfer of Real Property to State; Payment of Litigation Expenses in Certain Cases

§ 4655. Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after the effective date of this title, unless he receives satisfactory assurances from such State agency that—

(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 301 and the provisions of section 302, and

(2) property owners will be paid or reimbursed for necessary expenses as specified in section 303 and 304.

Pub. L. 91-646, Title III, § 305, Jan. 2, 1971, 84 Stat. 1906.

HISTORIC PRESERVATION

Excerpts from the National Historic Preservation Act of 1966

(P.L. 89-665, 80 Stat. 915, 16 U.S.C. 470)

SECTION 106. The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under sections 470i to 470t of this title a reasonable opportunity to comment with regard to such undertaking.

As amended by Pub. L. 94-422, Title II, § 201(3), Sept. 28, 1976, 90 Stat. 1320.

REHABILITATION ACT OF 1973 (29 U.S.C. §§ 794-794a)

Excerpts, Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 394; As Amended by Pub. L. 95-602, Nov. 6, 1978, 92 Stat. 2955

§ 504 Nondiscrimination under Federal grants and programs (29 U.S.C. 794)

No otherwise qualified handicapped individual in the United States, as defined in section 706(7) of this title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

§ 505 Remedies and Attorneys' Fees (29 U.S.C. 794a)

(a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e-5 (f) through (k)), shall be available, with respect to any complaint under section 501 of this Act, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefor or

other appropriate relief in order to achieve an equitable and appropriate remedy.

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 504 of this Act.

(b) In any action or proceeding to enforce or charge a violation of a provision of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

U.S. GOVERNMENT PRINTING OFFICE : 1983 O - 410-001 : QL 3