FOREWORD

This is the 5th edition of the text of statutes authorizing and governing the Federal mass transportation program and the Federal Transit Administration (FTA), formerly the Urban Mass Transportation Administration (UMTA). It is designed to be a quick reference for staff at the FTA, recipients of FTA funds, and others interested in mass transportation.

Part I of this book contains the FTA's authorizing legislation, the Federal Transit Act (formerly the Urban Mass Transportation Act of 1964), as it has been amended through June 1992. The footnotes provide explanatory material with reference to case law and legislative history. All legislative histories refer to applicable sections of Public Laws. Appendix 2 provides complete citations for the Public Laws referenced in the footnotes.

Part II contains those provisions of FTA authorizing legislation that are applicable to the Federal mass transportation program but were not specific amendments to the Federal Transit Act. It also includes selected provisions of Title 23 of the United States Code, Highways and other Federal-aid highway law related to the Federal mass transportation program.

Part III contains other selected Federal laws affecting the Federal mass transportation program.

Appendix 1 carries, for historical purposes, Reorganization Plan No. 2 of 1968, which transferred the functions of the Department of Housing and Urban Development under the Urban Mass Transportation Act of 1964 to the Department of Transportation.

Appendix 2 is a listing of the Public Laws which have amended the Federal Transit Act since its enactment as the Urban Mass Transportation Act of 1964. Appendix 2 includes the Statutes-At-Large citations, the dates of enactment, and the short title, if applicable, of each Public Law listed.

This book also contains a subject matter/key word index.

[This book is not an official source for citation purposes. It is published periodically as a quick reference only. For legal documents refer to an up-to-date source of the relevant statutes such as the United States Code.]

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PART I
FEDERAL TRANSIT ACT, as amended through June 1992

PART I—FEDERAL TRANSIT ACT, as amended through June 1992

(49 U.S.C. app. § 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,

Short Title[2]

SECTION 1. This Act may be cited as the "Federal Transit Act".

Findings and Purposes[3]

(49 U.S.C. app. § 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 pro-

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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 Appendix 1), 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] Section 3003(a) of Public Law 102–240 substituted the title "Federal Transit Act" for "Urban Mass Transportation Act of 1964" as originally enacted by Public Law 88–365.

Section 3003(b) of Public Law 102–240 deems any reference to the Urban Mass Transportation Act of 1964 in a law, map, regulation, document, paper, or other record to be a reference to the Federal Transit Act.

Section 3004(a) of Public Law 102–240 redesignates the Urban Mass Transportation Administration the Federal Transit Administration.

Section 3004(b) of Public Law 102–240 deems any reference to the Urban Mass Transportation Administration in a law, map, regulation, document, paper or other record to be a reference to the Federal Transit Administration.

[3] 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 (See Part II).

grams 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;

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

(4) that significant transit improvements are necessary to achieve national goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly persons, persons with disabilities, and economically disadvantaged persons in urban and rural areas of the country.[4]

(b) The purposes of this Act are—

(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 area wide urban mass transportation systems needed for economical and desirable urban development, with the cooperation of mass transportation companies both public and private;[5]

(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; and[6]

(4) to provide financial assistance to State and local governments and their instrumentalities to help implement national goals relating to mobility for elderly persons, persons with disabilities, and economically disadvantaged persons.[7]

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[4] Section 3005(a) of Public Law 102–240 added subsection (a)(4).

[5] One court has held that this provision "does not purport to confer on local residents private rights [of action] in the development of mass transit systems." *Rapid Transit Advocates* v. *Southern California Rapid Transit District*, 752 F.2d 373, 377 (9th Cir. 1985).

[6] "The UMT Act does not create a private right of action and none can be implied." *City of Evanston* v. *Regional Transportation Authority*, 825 F.2d 1121 (7th Cir. 1987); *ABC Bus Lines, Inc.* v. *Urban Mass Transportation Administration*, No. 87–1235 (1st Cir. 10–19–87). See also *Rapid Transit Advocates* v. *Southern California Rapid Transit District*, 752 F.2d 373, 377, (9th Cir. 1985); *Associated Business of Franklin* v. *Warren County Board*, 522 F. Supp. 1015, 1018–20 (S.D. Ohio 1981); *Dopico* v. *Goldschmidt*, 518 F. Supp. 1161, 1172–73 (S.C. N.Y. 1981), Aff'd in part, Rev'd in part, 687 F.2d 644 (2d Cir. 1982).

[7] Section 3005(b) of Public Law 102–240 added subsection (b)(4).

Discretionary Grant or Loan Program[8][9]

(49 U.S.C. app. § 1602)

SECTION 3.[10] (a)(1) The Secretary is authorized, in accordance with the provisions of this act and on such terms and conditions as the Secretary may prescribe, to make grants or loans[11] (directly, through the purchase of securities or equipment trust certificates, or otherwise) to assist States and local public bodies and agencies thereof in financing—[12]

(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;[13]

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[8] 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."

[9] 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.

[10] Subsection (a) has been amended by sections 302 and 309 of Public Law 100–17; by sections 302, 304, 305 and 313 of Public Law 97–424; by section 302(a) of Public Law 95–599; by sections 101, 102, 104 and 106 of Public Law 93–503; by section 2(2) of Public Law 91–453; and by Public Law 90–19.

[11] 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 opinion filed July 8, 1976); and *Hudson Transit Lines* v. *Brinegar*, Civil No. 74–648 (D.N.J. opinion filed 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.

[12] 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.

[13] 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."

(B) the acquisition, construction, reconstruction, and improvement of facilities 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 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) transit projects which are planned, designed, and carried out to meet the special needs of elderly persons and persons with disabilities; and [14]

(F) the development of corridors to support fixed guideway systems, including protection of rights-of-way through acquisition, construction of dedicated bus and high occupancy vehicle lanes, construction of park and ride lots, and any other nonvehicular capital improvements

[14] Section 3006(a) of Public Law 102–240 replaced the prior subparagraph (E) with this language. The prior subparagraph (E) was added by section 302(a) of Public Law 95–599.

that the Secretary may determine would result in increased transit usage in the corridor.[15]

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

(i) has or will have the legal, financial, and technical capacity to carry out the proposed project;[16]

(ii) has or will have satisfactory continuing control, through operation or lease or otherwise, over the use of the facilities and the equipment; and[17]

(iii) has or will have sufficient capability to maintain the facilities and equipment, and will maintain such facilities and equipment.[18]

(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.[19]

(4)[20] (A) 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,

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[15] Section 3006(b) of Public Law 102–240 added subparagraph (F).

[16] 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).

[17] 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.

[18] Section 309(e) of Public Law 100–17 amended section 3(a)(2)(A) by moving the phrase "has or will have" to after the subclause designation (i), (ii), and (iii), and by adding to subclause (iii) the phrase "and will maintain such facilities and equipment." Subclause (iii) was originally added to section 3(a)(2)(A) by section 304(a) of Public Law 97–424.

[19] See footnote 102.

[20] Section 3006(c) of Public Law 102–240 provides that title III of Public Law (Federal Transit Act Amendments of 1991) "shall not be construed to affect the validity of any existing letter of intent, full funding grant agreement, or letter of commitment issued under Section 3(a)(4) of the Federal Transit Act before the date of enactment of the Federal Transit Act Amendments of 1991." (December 18, 1991.)

Section 3007(1) of Public Law 102–240 adds the paragraph (A) designation.

and Urban Affairs of the Senate, of the proposed issuance of such letter of intent.[21] 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),[22] 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 specified in law[23] 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 not less than[24] 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.[25]

(B) The Secretary is authorized to enter into a full funding grant agreement with an applicant, which agreement shall—

(i) establish the terms and conditions of Federal financial participation in a project under this section;

(ii) establish the maximum amounts of Federal financial assistance for such project;

(iii) cover the period of time to completion of the project, including any period that may extend beyond the period of any authorization; and

(iv) facilitate timely and efficient management of such project in accordance with Federal law.

(C) An agreement under subparagraph (B) shall obligate an amount of available budget authority specified in law and may include a commitment, contingent upon the future availability of budget authority, to obligate an additional amount or additional amounts from future available budget authority specified in law. The agreement shall specify that the contingent commitment does not constitute an obligation of the United States. The future availability of budget authority referred to in the first sentence of this subparagraph shall be amounts to be specified in law in advance for commitments entered into under subparagraph (B). Any interest and other financing costs of efficiently carrying out the project or a portion thereof within a reasonable period of time shall be considered as a cost of carrying out the project under a full funding grant agreement; except that eligible costs shall not be greater than the costs of the most favorable financing terms reasonably

[21] 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 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" after "applicant."

[22] Public Law 97–258 codified section 1311 of the Act of August 26, 1954 at sections 1108, 1501, and 1502 of title 31, United States Code.

[23] Section 302 of Public Law 100–17 inserted "specified in law" to replace the wording "specified in an appropriations Act."

[24] Section 3007(2) of Public Law 102–240 inserted the words "not less than".

[25] Section 3007(3) of Public Law 102–240 adds paragraphs (B), (C) and (D).
Section 3007(4) of Public Law 102–240 designates the remainder of Section 3(a)(4) as paragraph (E).

available for the project at the time of borrowing. The applicant shall certify, in a form satisfactory to the Secretary, that the applicant has shown due diligence in seeking the most favorable financing terms. The total of amounts stipulated in a full funding grant agreement for a fixed guideway project shall be sufficient to complete not less than an operable segment.

(D) The Secretary is authorized to enter into an early systems work agreement with an applicant if a record of decision pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued on the project and the Secretary determines that there is reason to believe—

(i) a full funding grant agreement will be entered into for the project; and

(ii) the terms of the early systems work agreement will promote ultimate completion of the project more rapidly and at less cost.

The early systems work agreement shall obligate an amount of available budget authority specified in law and shall provide for reimbursement of preliminary costs of project implementation, including land acquisition, timely procurement of system elements for which specifications are determined, and other activities that the Secretary determines to be appropriate to facilitate efficient, long-term project management. An early systems work agreement shall cover such period of time as the Secretary deems appropriate, which period may extend beyond the period of current authorization. The interest and other financing costs of carrying out the early systems work agreement efficiently and within a reasonable period of time shall be considered as a cost of carrying out the agreement; except that eligible costs shall not be greater than the costs of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a form satisfactory to the Secretary, that the applicant has shown due diligence in seeking the most favorable financing terms. If an applicant fails to implement the project for reasons within the applicant's control, the applicant shall repay all Federal payments made under the early systems work agreement plus such reasonable interest and penalty charges as the Secretary may establish in the agreement.

(E) The total estimated amount of future Federal obligations, and contingent commitments to incur obligations,[26] covered by all outstanding letters of intent, early systems work agreements, and full funding grant agreements,[27] shall not exceed the amount authorized to carry out Section 3[28] of this Act or 50 percent of the uncommitted cash balance remaining in the Mass Transit Account of the Highway Trust Fund, including amounts received from taxes and interest earned in

[26] Section 3007(5)(A) of Public Law 102–240 added the words ", and contingent commitments to incur obligations,".

[27] Section 3007(5)(B) of Public Law 102–240 added the words ", early systems work agreements, and full funding grant agreements,".

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

excess of amounts that have been previously obligated, whichever is greater,[29] 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 and contingent commitments included in early systems work agreements and full funding grant agreements[30] shall not exceed any limitation that may be specified in law.[31] 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 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.[32]

(5)[33] 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.

(6)[34] ASSURED TIMETABLE FOR PROJECTS IN ALTERNATIVES ANALYSIS, PRELIMINARY ENGINEERING, OR FINAL DESIGN STAGES.—

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[29] Section 3007(5)(C) of Public Law 102–240 added the words "or 50 percent of the uncommitted cash balance remaining in the Mass Transit Account of the Highway Trust Fund, including amounts received from taxes and interest earned in excess of amounts that have been previously obligated, whichever is greater".

[30] Section 3007(6) of Public Law 102–240 added the words "and contingent commitments included in early systems work agreements and full funding grant agreements".

[31] Section 302 of Public Law 100–17 inserted "specified in law" to replace the wording "provided in an appropriation Act".

[32] 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 provision 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.

[33] Section 305 of Public Law 97–424 added paragraph (5).

[34] Section 3011(a) of Public Law 102–240 replaced the prior paragraph (6) which was added by section 305 of Public Law 97–424.

(A) ALTERNATIVES ANALYSIS STAGE.—For any new fixed guideway project that the Secretary permits to advance into the alternative analysis stage of project review, the Secretary shall cooperate with the applicant in alternatives analysis and in preparation of a draft environmental impact statement, and shall approve the draft environmental impact statement for circulation not later than 45 days after the date on which such draft is submitted to the Secretary by the applicant.

(B) PRELIMINARY ENGINEERING STAGE.—Following circulation of the draft environmental impact statement and not later than 30 days after selection by the applicant of a locally preferred alternative, the Secretary shall permit the project to advance to the preliminary engineering phase if the Secretary finds the project is consistent with the criteria set forth in subsection (i).

(C) FINAL DESIGN STAGE.—The Secretary shall issue a record of decision and permit a project to advance to the final design stage of construction not later than 120 days after the date of completion of the final environmental impact statement for such project.

(D) FULL FUNDING GRANT AGREEMENT.—The Secretary shall negotiate and enter into a full funding grant agreement for a project not later than 120 days after the date on which such project has entered the final design stage of construction. Such full funding grant agreement shall provide for a Federal share of the cost of construction that is not less than the Federal share estimated in the Secretary's most recent report required under section 3(j) or an update thereof unless otherwise requested by an applicant.

(7) PERMITTED DELAYS IN PROJECT REVIEW.—

(A) IN GENERAL.—Advancement of a project under the timetables specified under paragraph (6) shall be delayed only—

(i) for such period of time as the applicant, solely at the applicant's discretion, may request; or

(ii) during such period of time as the Secretary finds, after reasonable notice and opportunity for comment, that the applicant has failed, for reasons solely attributable to the applicant, to comply substantially with requirements of this Act with respect to the project.

(B) EXPLANATION OF DELAY.—Not more than 10 days after imposing any delay under subparagraph (A)(ii), the Secretary shall provide the applicant with a written statement that (i) explains the reasons for such delay, and (ii) describes all steps which the applicant must take to end the period of delay.

(C) REPORTS.—The Secretary shall report, not less frequently than once every 6 months, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate in any case in which the Secretary—

(i) fails to meet a deadline established by paragraph (6); or

(ii) delays the application of a deadline under subparagraph (A)(ii).

Such report shall explain the reasons for the delay and include a plan for achieving timely completion of the Secretary's review of the project.

(8) TREATMENT OF PROGRAMS OF INTERRELATED PROJECTS.—

(A) FULL FUNDING GRANT AGREEMENT.—In accordance with the timetables established by paragraph (6) or as otherwise provided by law, the Secretary shall enter into 1 or more full funding grant agreements for each program of interrelated projects described in subparagraph (C). Such full funding grant agreements shall include commitments to advance each of the applicant's program elements (in the program of interrelated projects) through the appropriate stages of project review in accordance with the timetables established by paragraph (6) or as otherwise provided for a project by law, and to provide Federal funding for each such program element. Such full funding grant agreements may also be amended, if appropriate, to include design and construction of particular program elements. Inclusion of a nonfederally funded program element in a program of interrelated projects shall not be construed as imposing Federal requirements which would not otherwise apply to such program element.

(B) CONSIDERATIONS.—When reviewing any project in a program of interrelated projects, the Secretary shall consider the local financial commitment, transportation effectiveness, and other assessment factors of all program elements to the extent that such consideration expedites project implementation.

(C) PROGRAMS OF INTERRELATED PROJECTS.—For the purposes of this paragraph, programs of interrelated projects shall include the following:

(i) The New Jersey Urban Core Project as defined by the Federal Transit Act Amendments of 1991.

(ii) The San Francisco Bay Area Rail Extension Program, which consists of not less than the following elements: an extension of the San Francisco Bay Area Rapid Transit District to the San Francisco International Airport (Phase 1a to Colma and Phase 1b to San Francisco Airport), the Santa Clara County Transit District Tasman Corridor Project, and any other program element designated by any modification to Metropolitan Transportation Commission Resolution No. 1876, as well as program elements financed entirely with non-Federal funds, including the BART Warm Springs Extension, Dublin Extension, and West Pittsburgh Extension.

(iii) The Los Angeles Metro Rail Minimum Operable Segment-3 Program, which consists of 7 stations and approximately 11.6 miles of heavy rail subway on the following lines:

(I) 1 line running west and northwest from the Hollywood/Vine station to the North Hollywood station, with 2 intermediate stations;

(II) 1 line running west from the Wilshire/Western station to the Pico/San Vicente station, with 1 intermediate station; and

(III) the East Side Extension, consisting of an initial line of approximately 3 miles in length, with at least 2 stations, beginning at Union Station and running generally east.

(iv) The Baltimore-Washington Transportation Improvements Program, which consists of the following elements: 3 extensions of the Baltimore Light Rail to Hunt Valley, Penn Station and Baltimore-Washington Airport; MARC extensions to Frederick and Waldorf, Maryland; and an extension of the Washington Subway system to Largo, Maryland.

(v) The Tri-County Metropolitan Transportation District of Oregon Westside Light Rail Program, which consists of the following elements: the locally preferred alternative for the Westside Light Rail Project, including system related costs, set forth in Public Law 101–516 and as defined in House Report 101–584; and the Hillsboro extension to the Westside Light Rail Project as set forth in Public Law 101–516.[34A]

(vi) The Queens Local/Express Connector Program which consists of the following elements: the locally preferred alternative for the connection of the 63rd Street tunnel extension to the Queens Boulevard lines; the bell-mouth portion of the connector which would allow for future access by both commuter rail trains and other subway lines to the 63rd Street tunnel extension; planning elements for connecting both upper and lower level to commuter and subway lines in Long Island City; and planning elements for providing a connector for commuter rail service to the East side of Manhattan and subway lines to the proposed Second Avenue subway.

(vii) The Dallas Area Rapid Transit Authority light rail elements of the New System Plan, which consists of the following elements: the locally preferred alternative for the South Oak Cliff corridor; the South Oak Cliff corridor extension-Camp Wisdom; the West Oak Cliff corridor-Westmoreland; the North Central corridor-Park Lane; the North Central corridor-Richardson, Plano and Garland

[34A] Section 328 of Public Law 101–516 states: "WESTSIDE LIGHT RAIL.—Notwithstanding any other provision of law, the Secretary shall, with regard to the Discretionary Grants program of the Urban Mass Transportation Administration, by September 30, 1991, issue a letter of intent and enter into a full funding agreement for the Westside Light Rail extension, including systems related costs, between downtown Portland, Oregon, and S.W. 185th Avenue. That full funding agreement shall provide for a future amendment under the same terms and conditions set forth above, for the extension known as the Hillsboro project which extends from S.W. 185th Avenue to the Transit Center in the City of Hillsboro, Oregon. Subject to a regional decision documented in the Hillsboro project's preferred alternatives report, the Secretary shall enter into an agreement with the Tri-County Metropolitan Transportation District in Portland, Oregon, to initiate preliminary engineering on the Hillsboro project, which shall proceed independent of and concurrent with the project between downtown Portland, Oregon, and S.W. 185th Avenue."

extensions; the Pleasant Grove corridor-Buckner; and the Carrollton corridor-Farmers Branch and Las Colinas terminal.

(viii) Such other programs as may be designated in law or by the Secretary.[35] [36]

(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.[37] 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 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.

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[35] Section 3011(a) of Public Law 102–240 added paragraphs (7) and (8).

[36] Section 3011(b) of Public Law 102–240 states "In the case of a project (including programs of interrelated projects) that, as of the date of enactment of this Act, has reached a particular stage of a project review under section 3(a)(6) of the Federal Transit Act, the timetables applicable to subsequent stages of project review contained in such section shall take effect on the date of enactment of this Act." Public Law 102–240 was enacted December 18, 1991.

[37] 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."

(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;[38]

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

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

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

[38] 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.*

hearings have been held, a copy of the transcript of the hearings shall be submitted with the application.[39] [40]

(e)[41] 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[42] that such assistance is essential to the program of projects required by section 8 of this Act,[43] (2) the Secretary finds that such program, to the maximum extent feasible, provides for the participation of private mass transportation companies,[44] (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,[45] and (4) the Secretary of Labor certifies that

[39] The language in these provisions has been held to not create rights for a benefitted class of persons. The "legislative history indicates that Congress was interested in ensuring that local officials consider the local effects of their decisions but not at the expense of delaying projects unduly." *City of Evanston* v. *Regional Transportation Authority*, 825 F.2d 1121 7th Cir. (1987); See also *Rapid Transit Advocates* v. *Southern California Rapid Transit District*, 752 F.2d. 373, 377 (sections 3(d) (2) and (3) "are primarily spending directives to the Secretary of Transportation, specifying conditions under which grants may be made").

[40] One court has held that these public hearing requirements do not apply to contracts or demonstration 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.

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

[42] The Secretary of Housing and Urban Development is authorized to assist the Secretary in making determination under section 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 (Appendix 1).

[43] Section 302 of Public Law 95–599 inserted the words "the program of projects required by section 8 of this Act," to replace "a program proposed or under active preparation, for a unified or officially coordinated urban transportation system as part of the comprehensively planned development of the urban area."

[44] Several courts have held that mass transportation providers are not within the class of persons for whose benefit the UMT Act was enacted. *A.B.C. Bus Lines, Inc.* v. *Urban Mass Transportation Administration*, CA No. 86–0569S, (D.R.I. 2–24–87) aff'd. No. 87–1235 (1st Cir. 10–19–87); *Associated Business of Franklin* v. *Warren County Board of County Commissioners*, 522 F. Supp. 1015 (S.D. Ohio 1981). 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).

[45] In the case of *Rose City Transit Co.* v. *City of Portland*, Or. Ct. App. 525 P.2d 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.

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

(f)[46] No Federal financial assistance under this Act may be provided for the purchase or operation of buses[47] 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.[47A]

(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 to 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,

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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 P.2d 339(1975).

[46] Section 813(a) of Public Law 93-383 added subsection (f). See also section 164(a) of the Federal-Aid Highway Act of 1973 (Part II).

[47] Section 109(b) of Public Law 93-503 amended this sentence to include "operation" of buses.

[47A] Section 330(a) of Public Law 100-457 states: "UMTA CHARTER SERVICE RULE.—Notwithstanding any other provision of law or regulation, the Urban Mass Transportation Administration charter service rule (49 CFR Part 604—charter service) and any subsequent Federal regulations governing charter service shall not apply to the Long Beach Public Transportation Company."

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 schoolchildren 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 subsection shall bar such an applicant from receiving any other Federal financial assistance under this Act.[48] [49]

(h) FIXED GUIDEWAY MODERNIZATION APPORTIONMENTS.—The Secretary shall apportion the sums made available for fixed guideway modernization under this section for each of fiscal years 1992, 1993, 1994, 1995, 1996, and 1997 as follows:

(1) The first $455,000,000 made available shall be apportioned for expenditure in the following urbanized areas according to the following percentages:

(A) Baltimore, 1.84 percent.
(B) Boston, 8.56 percent.
(C) Chicago/Northwestern Indiana, 17.18 percent.
(D) Cleveland, 2.09 percent.
(E) New York, 35.57 percent.
(F) Northeastern New Jersey, 9.04 percent.
(G) Philadelphia/Southern New Jersey, 12.41 percent.
(H) San Francisco, 7.21 percent.
(I) Southwestern Connecticut, 6.10 percent.

(2) The next $42,700,000 made available shall be apportioned for expenditure in the following urbanized areas according to the following percentages:

(A) New York, 33.2341 percent.
(B) Northeastern New Jersey, 22.1842 percent.
(C) Philadelphia and Southern New Jersey, 5.7594 percent.
(D) San Francisco, 2.7730 percent.
(E) Pittsburgh, 31.9964 percent.
(F) New Orleans, 4.0529 percent.

(3) The next $70,000,000 made available shall be apportioned for expenditure—

(A) 50 percent in the urbanized areas listed in paragraphs (1) and (2) according to the apportionment formula contained in section 9(b)(2); and

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[48] Section 109(a) of Public Law 93–503 added subsection (g).

[49] 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.

(B) 50 percent in other urbanized areas eligible for assistance under section 9(b)(2) of this Act which contain a fixed guideway system placed in revenue service not less than 7 years prior to the fiscal year in which funds are made available and in other urbanized areas which before the first day of the fiscal year demonstrate to the satisfaction of the Secretary that the urbanized area has modernization needs which cannot be adequately met with amounts received under section 9(b)(2) according to the apportionment formula contained in such section.

(4) Any remaining amounts made available in a fiscal year shall be apportioned for expenditure in each urbanized area eligible for assistance under paragraphs (1), (2), and (3) in accordance with the apportionment formula contained in section 9(b)(2).

(5) In any fiscal year in which the full amounts authorized under paragraphs (1) and (2) are not made available, the Secretary shall reduce on a pro rata basis the apportionments of all urbanized areas eligible under either paragraph to adjust for the shortfall.

(6) Notwithstanding any other provision of law, rail modernization funds allocated to the New Jersey Transit Corporation under this paragraph may be spent in any urbanized area in which the New Jersey Transit Corporation operates rail service regardless of the urbanized area which generates the funding.[50] [51]

(i)[52] [53] NEW START CRITERIA.—

(1) DETERMINATIONS.—A grant or loan for construction of a new fixed guideway system or extension of any fixed guideway system may not be made under this section unless the Secretary determines that the proposed project—

(A) is based on the results of an alternatives analysis and preliminary engineering;

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[50] Section 3008 of Public Law 102–240 replaced subsection (h). The prior subsection (h) was added by Section 302(d) of Public Law 95–599.

[51] Subsection 302(d) of Public Law 95–599 amended subsection (h). Prior subsection (h) was added by Public Law 93–503.

[52] Section 3010 of Public Law 102–240 replaced subsection (i). The prior subsection (i), which was added by Section 303(a) of Public Law 100–17 read as follows:

"(i) CRITERIA FOR NEW STARTS.—No grant or loan for construction of a new fixed guideway system or extension of any fixed guideway system may be made under this section unless the Secretary determines that the proposed project—

(1) is based on the results of an alternatives analysis and preliminary engineering;

(2) is cost-effective; and

(3) is supported by an acceptable degree of local financial commitment, including evidence of stable and dependable funding sources to construct, maintain, and operate the system or extension.

In making grants and loans under this section, the Secretary may also consider such other factors as the Secretary deems appropriate. The Secretary shall issue guidelines that set forth the means by which the Secretary will evaluate cost-effectiveness, results of alternatives analysis, and degree of local financial commitment."

[53] Section 303(b) of Public Law 100–17 provided that the prior subsection (i) added by Section 303(a) of Public Law 100–17 "shall not apply to any project—

(1) for which a letter of intent or full funding contract has been issued under section 3(a)(4) of the Urban Mass Transportation Act of 1964 before the date of enactment of this Act; or

(2) which was in the preliminary engineering, final design, or construction stage as of January 1, 1987."

(B) is justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, and operating efficiencies; and

(C) is supported by an acceptable degree of local financial commitment, including evidence of stable and dependable funding sources to construct, maintain, and operate the system or extension.

(2) CONSIDERATIONS.—In making determinations under this subsection, the Secretary—

(A) shall consider the direct and indirect costs of relevant alternatives;

(B) shall account for costs related to such factors as congestion relief, improved mobility, air pollution, noise pollution, congestion, energy consumption, and all associated ancillary and mitigation costs necessary to implement each alternative analyzed; and

(C) shall identify and consider transit supportive existing land use policies and future patterns, and consider other factors including the degree to which the project increases the mobility of the transit dependent population or promotes economic development, and other factors that the Secretary deems appropriate to carry out the purposes of this Act.

(3) GUIDELINES.—

(A) IN GENERAL.—The Secretary shall issue guidelines that set forth the means by which the Secretary shall evaluate results of alternatives analysis, project justification, and degree of local financial commitment for the purposes of paragraph (1).

(B) PROJECT JUSTIFICATION.—Project justification criteria shall be adjusted to reflect differences in local land costs, construction costs, and operating costs.

(C) FINANCIAL COMMITMENT.—The degree of local financial commitment shall be considered acceptable only if—

(i) the proposed project plan provides for the availability of contingency funds that the Secretary determines to be reasonable to cover unanticipated cost overruns;

(ii) each proposed local source of capital and operating funding is stable, reliable, and available within the proposed project timetable; and

(iii) local resources are available to operate the overall proposed transit system (including essential feeder bus and other services necessary to achieve the projected ridership levels) without requiring a reduction in existing transit services in order to operate the proposed project.

(D) STABILITY ASSESSMENT.—In assessing the stability, reliability, and availability of proposed sources of local funding, the Secretary shall consider—

(i) existing grant commitments;

(ii) the degree to which funding sources are dedicated to the purposes proposed; and

(iii) any debt obligations which exist or are proposed by the recipient for the proposed project or other transit purposes.

(4) PROJECT ADVANCEMENT.—No project shall be advanced from alternatives analysis to preliminary engineering unless the Secretary finds that the proposed project meets the requirements of this section and there is a reasonable chance that the project will continue to meet these requirements at the conclusion of preliminary engineering.

(5) EXCEPTIONS.—

(A) IN GENERAL.—A new fixed guideway system or extension shall not be subject to the requirements of this subsection and the simultaneous evaluation of such projects in more than one corridor in a metropolitan area shall not be limited if (i) the project is located within an extreme or severe nonattainment area and is a transportation control measure, as defined by the Clean Air Act, that is required to carry out an approved State Implementation Plan, or (ii) assistance provided under this section accounts for less than $25,000,000 or less than ⅓ of the total cost of the project or an appropriate program of projects as determined by the Secretary.

(B) EXPEDITED PROCEDURES.—In the case of a project that is (i) located within a nonattainment area that is not an extreme or severe nonattainment area, (ii) a transportation control measure, as defined in the Clean Air Act, and (iii) required to carry out an approved State Implementation Plan, the simultaneous evaluation of projects in more than one corridor in a metropolitan area shall not be limited and the Secretary shall make determinations under this subsection with expedited procedures that will promote timely implementation of the State Implementation Plan.

(C) EXCLUSION FOR CERTAIN PROJECTS.—That portion of a project (including any commuter rail service project on an existing right-of-way) financed entirely with highway funds made available under the Federal-Aid Highway Act of 1991 shall not be subject to the requirements of this subsection.

(6) PROJECT IMPLEMENTATION.—A project funded pursuant to this subsection shall be implemented by means of a full funding grant agreement.

(j)[54] REPORT ON FUNDING LEVELS AND ALLOCATIONS OF FUNDS.—Not later than 30 days after the date of enactment of this subsection and each January 20 thereafter, the Secretary shall prepare and transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate—

(1) a proposal of the total amount of funds which should be made available in accordance with subsection (k)(1)(D) of this section to finance for the fiscal year beginning on October 1 of such year grants and loans for each of the following:

[54] Section 304 of Public Law 100–17 added subsection (j).

(A) the replacement, rehabilitation, and purchase of buses and related equipment and the construction of bus related facilities,

(B) rail modernization, and

(C) construction of new fixed guideway systems and extensions to fixed guideway systems; and

(2) a proposal of the allocation of the funds to be made available to finance grants and loans for the construction of new fixed guideway systems and extensions to fixed guideway systems among applicants for such assistance.

(k) ALLOCATIONS.—[55] [56]

(1) IN GENERAL.—Subject to paragraph (3), of the amounts available for grants and loans under this section for fiscal years 1992, 1993, 1994, 1995, 1996, and 1997—

(A) 40 percent shall be available for fixed guideway modernization;

(B) 40 percent shall be available for construction of new fixed guideway systems and extensions to fixed guideway systems; and

(C) 20 percent shall be available for the replacement, rehabilitation, and purchase of buses and related equipment and the construction of bus-related facilities.[56]

(2) ELIGIBILITY.—(A) The receipt of, or application for, assistance for a project described in subparagraph (A), (B), or (C) of paragraph (1) shall not preclude eligibility for assistance for a project described in any other such subparagraph.

(B) Prior to the expiration of the 2-year period beginning on the date of enactment of this subsection, the Secretary may not change program administration regarding eligibility for assistance for rail modernization.

(3)[57] AREAS OTHER THAN URBANIZED AREAS.—At least 5.5 percent of the amounts available for grants and loans under subsection (k)(1)(C) for fiscal years 1992, 1993, 1994, 1995, 1996, and 1997 shall be available for areas other than urbanized areas.

(l)[58] ADVANCE CONSTRUCTION.—

(1) APPROVED PROJECT.—Upon application of a State or local public body which carries out a project described in this section or a substitute transit project described in section 103(e)(4) of title 23, United States Code, or portion of such a project without the aid of Federal funds in accordance with all procedures and requirements applicable to such a project and upon the Secretary's approval of such application, the Secretary may pay to such applicant the Federal share of the net project costs if, prior to carrying out such project or portion, the Secretary approves the plans and specifications there-

[55] Section 305 of Public Law 100–17 added subsection (k).

[56] Section 3006(d)(1) of Public Law 102–240 replaced the prior paragraph (k)(1).

[57] Section 3006(d)(2) of Public Law 102–240 added paragraph (k)(3).

[58] Section 306(a) of Public Law 100–17 added subsection (l).

fore in the same manner as other projects under this section or such section 103(e)(4), as the case may be.

(2) BOND INTEREST.—

(A) ELIGIBLE COST.—Subject to the provision of this paragraph, the cost of carrying out a project or portion thereof, the Federal share of which the Secretary is authorized to pay under this subsection, shall include the amount of any interest earned and payable on bonds issued by the State or local public body to the extent that the proceeds of such bonds have actually been expended in carrying out such project or portion.

(B) LIMITATION ON AMOUNT.—In no event shall the amount of interest considered as a cost of carrying out a project or portion thereof under subparagraph (A) be greater than the most favorable interest terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a form satisfactory to the Secretary, that the applicant has shown due diligence in seeking the most favorable financial terms.[59]

(C) CHANGES IN CONSTRUCTION COST INDICES.—The Secretary shall consider changes in construction cost indices in determining the amount under subparagraph (B)(i).

(m)[60] BUS TESTING.—Of the amounts made available for replacement, rehabilitation, and purchase of buses and related equipment and the construction of bus related facilities by subsection (k)(1)(C), the Secretary shall make available $1,500,000 in fiscal year 1992, $2,000,000 in fiscal year 1993, the lesser of $2,000,000 or an amount the Secretary determines to be necessary per fiscal year in each of fiscal years 1994, 1995, and 1996, and the lesser of $3,000,000 or an amount the Secretary determines to be necessary in fiscal year 1997. Such amounts shall be available to the Secretary to pay 80 percent of the cost of testing a vehicle at the facility established under section 317 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (49 U.S.C. App. 1608). The Secretary shall make such payments by contract with the operator of the facility. The remaining 20 percent of the cost of testing a vehicle shall be paid to the operator of the facility by the entity having the vehicle tested.

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[59] Section 3006(e) of Public Law 102–240 replaced the words after "be greater than." The prior words were as follows "be greater than the excess of—

(i) the amount which would be the estimated cost of carrying out the project or portion if the project or portion were to be carried out at the time the project or portion is converted to a regularly funded project, over

(ii) the actual cost of carrying out such project or portion (not including such interest)."

[60] Section 3009 of Public Law 102–240 added subsection (m).

SECTION 4

Net Project Cost, Federal Share, and Authorization[61]

(49 U.S.C. app. § 1603)

SECTION 4.[62] (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."[64] The Federal grant for any such project to be assisted under section 3 shall be in an amount equal to 80 percent of the net project cost, unless the recipient of the grant requests a lower Federal grant percentage.[63 64 65] 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 systems 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.[66] The remainder of the net project cost of a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the applicant demonstrates to the satisfaction of the Secretary that—

(1) such purchase was made soley with non-Federal funds; and

(2) such purchase was made for use on the extension.[67]

(b) [68 69] QUARTERLY REPORTS.—(1) Not later than 30 days after the last day of each calendar quarter, the Secretary shall transmit to the Committee on Public Works and Transportation and the Committee

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

[62] 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.

[63] Section 3006(f) of Public Law 102–240 inserted "80 percent of the net project cost, unless the recipient of the grant requests a lower Federal grant percentage" to replace "75 per centum of the net project cost."

[64] 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 94–424.

[65] 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.

[66] 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.

[67] Section 3006(g) of Public Law 102–240 added this sentence.

[68] Section 3006(h) of Public Law 102–240 repealed prior subsections (b), (c), (d), (e), (f), and (g), and redesignated the prior subsection (h) as subsection (b).

[69] Section 307 of Public Law 100–17 amended subsection (h)(1) which is now subsection (b)(1).

on Appropriations of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate a report on—

(A) obligations, commitments, and reservations by State, designated recipient, and applicant, made under authority of this Act during that quarter;

(B) the balance as of the last day of that quarter of the unobligated, uncommitted, and unreserved apportionments made under this Act;

(C) the balance of unobligated, uncommitted, and unreserved sums available for expenditure at the discretion of the Secretary under this Act as of the close of that quarter;

(D) a listing of letters of intent issued during that quarter;

(E) a status report on all letters of intent outstanding as of the close of that quarter; and

(F) a status report on the execution of grant contracts and the establishment of a letter of credit or other reimbursement authority for sums already obligated for each State, designated recipient, and applicant.

(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.

(c)[70] The Secretary is authorized to make grants to states and local public bodies for projects for the deployment of innovative techniques and methods in the management and operation of public transportation services.[71] 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.

(d)[72] FISCAL CAPACITY CONSIDERATIONS.—If the Secretary gives priority consideration to the funding of projects which include more than the non-Federal share required by subsection (a), the Secretary shall give equal consideration to differences in the fiscal capacity of State and local governments.

[70] Section 3006(h) of Public Law 102–240 redesignated former subsection (i) as subsection (c).

[71] Section 320 of Public Law 100–17 amended this sentence by striking the wording, "using sums available pursuant to Section 4(c)(3)(A) of this section".

[72] Section 3006(h)(2) added subsection (d).

SECTION 5

Urban Mass Transit Program

(49 U.S.C. app. § 1604)

SECTION 5.[73] (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.[74]

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

[73] 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).

[74] 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."

lation 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 years ending September 30, 1979; $250,000,000 for the fiscal year ending September 30, 1980; $250,000,000 for the fiscal year ending September 30, 1981; and $165,000,000 [75] 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 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 State'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;

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

(ii) one-third of the total amount to be apportioned multiplied 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, except that such sums may also be available for expenditure for bus and bus related facilities if there are no commuter rail or fixed guideway systems in operation and attributable to the urbanized area in the fiscal year of apportionment.[76]

(B) There are authorized to be appropriated for the purposes of this paragraph, $115,000,000 for the fiscal year ending September 30, 1979; $130,000,000 for the fiscal year ending September 30, 1980; $145,000,000 for the fiscal year ending September 30, 1981; and $90,000,000[77] 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[78] 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 200,000 or more population. In any case in which a statewide or regional agency or instrumentality is responsible

[76] Section 1604 of Public Law 98–396 added the words after the comma to this sentence.

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

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

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. Any funds apportioned for fiscal year 1982 or 1983 under subsection (a) of this section for expenditure in an urbanized area with a population of less than 200,000 may be expended in an urbanized area with a population of 200,000 or more.[79] 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)[80] 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)[81] Appropriations pursuant to this section shall be available until expended.

(4)[82] 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

[79] Section 101(e) of Public Law 99-190 added this sentence regarding expenditure of funds apportioned for fiscal year 1982 or 1983 under subsection (a).

[80] Section 304(b) of Public Law 95-599 deleted former subsection (c)(2) and replaced it with this provision.

[81] Section 304(c) of Public Law 95-599 added Subsection (c)(3).

[82] Section 304(c) of Public Law 95-599 added Subsection (c)(4).

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)[83] Apportionments under this section for fiscal year 1975 shall be deemed[84] to have lapsed on September 30, 1977, and apportionments under this section for fiscal year 1976 shall be deemed to have lapsed on September 30, 1978.[85]

(d)(1) The Secretary may approve as a project under this section, 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)[86] 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 school children, 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

[83] Section 307(1) of Public Law 97–424 added Subsection (c)(5).

[84] Reserved

[85] Reserved

[86] Section 304(d) of Public Law 95–599 substantially amended subsection (f).

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

(g)[87] 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

[87] 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.

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 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,[88] 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.[89]

(j)(1) The Secretary may discharge any of his responsibilities under this section[90] 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.), section 4(f) of the Department of Transportation Act (49 U.S.C.

[88] Section 304(f) of Public Law 95–599 added the word "and" and subsection (i)(3) to subsection (i).

[89] 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. *Metroplitan Atlanta Rapid Transit Authority*, 636 F.2d 1084 (5th Cir. 1981).

[90] Section 327 of Public Law 100–17 amended subsection (j)(1) by striking "action," and replacing it with "section."

1653(f)), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d) et seq.), title VIII of the Act of April 11, 1968 (Public Law 90–284, 42 U.S.C. 3601 et seq.),[91] and the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(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, a local subdivision 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.[92]

(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

[91] Section 808(d) of Public Law 90–284 (42 U.S.C. 3608(d)) 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."

[92] This provision is stated as a directive to the Secretary and "not as a grant of substantive private rights enforceable in private litigation." *Rapid Transit Advocates* v. *Southern California Rapid Transit District*, 752 F.2d 373, 377 (9th Cir. 1985).

at peak hours, whether the operation of such facilities and equipment is by the applicant or is by another entity under lease or otherwise.[93]

(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 and section 9[94] 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)[95] Notwithstanding any other provision of this section, any sums apportioned under this section before October 1, 1982, and available for expenditure 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

(49 U.S.C. app. § 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[96] 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.[97] [98]

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[93] The definition of "individual with handicaps" in the Rehabilitation Act does not determine eligibility for the half-fare benefit. The Federal Transit Act's own definition of "handicapped person" is determinative. *Marsh* v. *Skinner*, 922 F.2d 112 (2nd Cir. 1990). 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).

[94] Section 327 of Public Law 100–17 inserted the words "and section 9".

[95] Section 307 of Public Law 97–424 added subsection (o).

[96] The words "grant or" were inserted by section 13(b) of Public Law 91–453.

[97] Section 6 contains four subsections. The text above is subsection (a). Subsections (b), (c) and (d) were omitted because they no longer have significant operative effect.

Subsection (b) called for the Secretary of Transportation to undertake a study and report his findings and recommendations to Congress by March 8, 1968. Section 3 of Public Law 89–562 added subsection (b) and redesignated the original subsections (b) and (c) as (c) and (d).

Subsection (c), as amended by Section 304(b) of Public Law 89–117, Sections 1(b) and 3 of Public Law 89–562 and Section 701 of Public Law 90–448, authorized funds through fiscal year 1969.

Subsection (d) was a saving provision regarding section 602 of the Housing Act of 1956.

Relocation Requirements and Payments

(49 U.S.C. app. § 1606)

SECTION 7.[99] 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.

Metropolitan Planning[100] [101] [102]

(49 U.S.C. app. § 1607)

SECTION 8. (a) GENERAL REQUIREMENTS.—It is in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner which will efficiently maximize mobility of people and goods within and through urbanized areas and minimize transportation-related fuel consumption and air pollution. To accomplish this objective, metropolitan planning organizations, in cooperation with the State, shall develop transportation plans and programs for urbanized areas of the State. Such plans and programs shall provide for the development of transportation facilities (including pedestrian walkways and bicycle transportation facilities) which will function as an intermodal transportation system for the State, the metropolitan areas, and the Nation. The process for developing such plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehen-

[98] 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.

[99] Section 7 contained two subsections. The text above is subsection (a). Subsection (b) was repealed by Public Law 91–646, the Uniform Assistance and Real Property Acquisition Policies Act of 1970.

[100] Section 3012 of Public Law 102–240 replaced the prior Section 8 which was entitled "Planning and Technical Studies". The prior section 8, as added by Section 305(b) of Public Law 95–599 and amended by Section 310 of Public Law 100–17 replaced the original Section 8 which was entitled "Coordination of Federal Assistance for Highways and for Mass Transportation Facilities".

[101] 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. Sup. 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 certification 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).

[102] 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.

sive to the degree appropriate, based on the complexity of the transportation problems.

(b) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

(1) IN GENERAL.—To carry out the transportation planning process required by this section, a metropolitan planning organization shall be designated for each urbanized area of more than 50,000 population by agreement among the Governor and units of general purpose local government which together represent at least 75 percent of the affected population (including the central city or cities as defined by the Bureau of the Census) or in accordance with procedures established by applicable State or local law.

(2) MEMBERSHIP OF CERTAIN MPO'S.—In a metropolitan area designated as a transportation management area, the metropolitan planning organization designated for such area shall include local elected officials, officials of agencies which administer or operate major modes of transportation in the metropolitan area (including all transportation agencies included in the metropolitan planning organization on June 1, 1991) and appropriate State officials. This paragraph shall only apply to a metropolitan planning organization which is redesignated after the date of the enactment of this section.

(3) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on the date of the enactment of this section, of a public agency with multimodal transportation responsibilities to—

(A) develop plans and programs for adoption by a metropolitan planning organization; and

(B) develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

(4) CONTINUING DESIGNATION.—Designations of metropolitan planning organizations, whether made under this section or other provisions of law, shall remain in effect until redesignated under paragraph (5) or revoked by agreement among the Governor and units of general purpose local government which together represent at least 75 percent of the affected population or as otherwise provided under State or local procedures.

(5) REDESIGNATION.—

(A) PROCEDURES.—A metropolitan planning organization may be redesignated by agreement among the Governor and units of general purpose local government which together represent at least 75 percent of the affected population (including the central city or cities as defined by the Bureau of the Census) as appropriate to carry out this section.

(B) CERTAIN REQUESTS TO REDESIGNATE.—A metropolitan planning organization shall be redesignated upon request of a unit or units of general purpose local government representing at least 25 percent of the affected population (including the central city or cities as defined by the Bureau of the Census) in any urbanized

area (i) whose population is more than 5,000,000 but less than 10,000,000, or (ii) which is an extreme nonattainment area for ozone or carbon monoxide as defined under the Clean Air Act. Such redesignation shall be accomplished using procedures established by subparagraph (A).

(6) TREATMENT OF LARGE URBAN AREAS.—More than 1 metropolitan planning organization may be designated within an urbanized area as defined by the Bureau of the Census only if the Governor determines that the size and complexity of the urbanized area make designation of more than 1 metropolitan planning organization for such area appropriate.

(c) METROPOLITAN AREA BOUNDARIES.—For the purposes of this section, the boundaries of a metropolitan area shall be determined by agreement between the metropolitan planning organization and the Governor. Each metropolitan area shall cover at least the existing urbanized area and the contiguous area expected to become urbanized within the 20-year forecast period and may encompass the entire Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area, as defined by the Bureau of the Census. For areas designated as nonattainment areas for ozone or carbon monoxide under the Clean Air Act, the boundaries of the metropolitan area shall at least include the boundaries of the nonattainment area, except as otherwise provided by agreement between the metropolitan planning organization and the Governor.

(d) COORDINATION IN MULTI-STATE AREAS.—

(1) IN GENERAL.—The Secretary shall establish such requirements as the Secretary considers appropriate to encourage Governors and metropolitan planning organizations with responsibility for a portion of a multi-State metropolitan area to provide coordinated transportation planning for the entire metropolitan area.

(2) COMPACTS.—The consent of Congress is hereby given to any 2 or more States to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as such activities pertain to interstate areas and localities within such States and to establish such agencies, joint or otherwise, as such States may deem desirable for making such agreements and compacts effective.

(e) COORDINATION OF MPO'S.—If more than 1 metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act, each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans and programs required by this section.

(f) FACTORS TO BE CONSIDERED.—In developing transportation plans and programs pursuant to this section, each metropolitan planning organization shall, at a minimum, consider the following:

(1) Preservation of existing transportation facilities and, where practical, ways to meet transportation needs by using existing transportation facilities more efficiently.

(2) The consistency of transportation planning with applicable Federal, State, and local energy conservation programs, goals, and objectives.

(3) The need to relieve congestion and prevent congestion from occurring where it does not yet occur.

(4) The likely effect of transportation policy decisions on land use and development and the consistency of transportation plans and programs with the provisions of all applicable short- and long-term land use and development plans.

(5) The programming of expenditure on transportation enhancement activities as required in section 133.

(6) The effects of all transportation projects to be undertaken within the metropolitan area, without regard to whether such projects are publicly funded.

(7) International border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation areas, monuments and historic sites, and military installations.

(8) The need for connectivity of roads within the metropolitan area with roads outside the metropolitan area.

(9) The transportation needs identified through use of the management systems required by section 303 of this title.

(10) Preservation of rights-of-way for construction of future transportation projects, including identification of unused rights-of-way which may be needed for future transportation corridors and identification of those corridors for which action is most needed to prevent destruction or loss.

(11) Methods to enhance the efficient movement of freight.

(12) The use of life-cycle costs in the design and engineering of bridges, tunnels, or pavement.

(13) The overall social, economic, energy, and environmental effects of transportation decisions.

(14) Methods to expand and enhance transit services and to increase the use of such services.

(15) Capital investments that would result in increased security in transit systems.

(g) DEVELOPMENT OF LONG RANGE PLAN.—

(1) IN GENERAL.—Each metropolitan planning organization shall prepare, and update periodically, according to a schedule that the Secretary determines to be appropriate, a long range plan for its metropolitan area in accordance with the requirements of this subsection.

(2) LONG RANGE PLAN.—A long range plan under this section shall be in a form that the Secretary determines to be appropriate and shall, at a minimum:

(A) Identify transportation facilities (including but not necessarily limited to major roadways, transit, and multimodal and intermodal facilities) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions. In formulating the long range plan, the metropolitan planning organization shall consider factors described in subsection (f) as such factors relate to a 20-year forecast period.

(B) Include a financial plan that demonstrates how the long-range plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out plan, and recommends any innovative financing techniques to finance needed projects and programs, including such techniques as value capture, tolls and congestion pricing.

(C) Assess capital investment and other measures necessary to—

(i) ensure the preservation of the existing metropolitan transportation system, including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit facilities; and

(ii) make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods.

(D) Indicate as appropriate proposed transportation enhancement activities.

(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas which are in nonattainment for ozone or carbon monoxide under the Clean Air Act, the metropolitan planning organization shall coordinate the development of a long range plan with the process for development of the transportation control measures of the State Implementation Plan required by the Clean Air Act.

(4) PARTICIPATION BY INTERESTED PARTIES.—Before approving a long range plan, each metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, and other interested parties with a reasonable opportunity to comment on the long range plan, in a manner that the Secretary deems appropriate.

(5) PUBLICATION OF LONG RANGE PLAN.—Each long range plan prepared by a metropolitan planning organization shall be—

(i) published or otherwise made readily available for public review; and

(ii) submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

(h) TRANSPORTATION IMPROVEMENT PROGRAM.—

(1) DEVELOPMENT.—The metropolitan planning organization designated for a metropolitan area, in cooperation with the State and affected transit operators, shall develop a transportation improvement program for the area for which such organization is designated. In developing the program, the metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, other affected employee representatives, private providers of transportation, and other interested parties with a reasonable opportunity to comment on the proposed program. The program shall be updated at least once every 2 years and shall be approved by the metropolitan planning organization and the Governor.

(2) PRIORITY OF PROJECTS.—The transportation improvement program shall include the following:

(A) A priority list of projects and project segments to be carried out within each 3-year period after the initial adoption of the transportation improvement program.

(B) A financial plan that demonstrates how the transportation improvement program can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any innovative financing techniques to finance needed projects and programs, including value capture, tolls, and congestion pricing.

(3) SELECTION OF PROJECTS.—Except as otherwise provided in subsection (i)(4), project selection in metropolitan areas for projects involving Federal participation shall be carried out by the State in cooperation with the metropolitan planning organization and shall be in conformance with the transportation improvement program for the area.

(4) MAJOR CAPITAL INVESTMENTS.—Not later than 6 months after the date of enactment of this section, the Secretary shall initiate a rulemaking proceeding to conform review requirements for transit projects under the National Environmental Policy Act of 1969 to comparable requirements under such Act applicable to highway projects. Nothing in this section shall be construed to affect the applicability of such Act to transit or highway projects.

(5) INCLUDED PROJECTS.—A transportation improvement program for a metropolitan area developed under this subsection shall include projects within the area which are proposed for funding under this title and the Federal Transit Act and which are consistent with the long range plan developed under subsection (g) for the area. The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available

for the project within the time period contemplated for completion of the project.

(6) NOTICE AND COMMENT.—Before approving a transportation improvement program, a metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, and other interested parties with reasonable notice of and an opportunity to comment on the proposed program.

(i) TRANSPORTATION MANAGEMENT AREAS.—

(1) DESIGNATION.—The Secretary shall designate as transportation management areas all urbanized areas over 200,000 population. The Secretary shall designate any additional area as a transportation management area upon the request of the Governor and the metropolitan planning organization designated for such area or the affected local officials. Such additional areas shall include upon such a request the Lake Tahoe Basin as defined by Public Law 96–551.

(2) TRANSPORTATION PLANS AND PROGRAMS.—Within a transportation management area, transportation plans and programs shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and transit operators.

(3) CONGESTION MANAGEMENT SYSTEM.—Within a transportation management area, the transportation planning process under this section shall include a congestion management system that provides for effective management of new and existing transportation facilities eligible for funding under this title and the Federal Transit Act through the use of travel demand reduction and operational management strategies. The Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section.

(4) SELECTION OF PROJECTS.—All projects carried out within the boundaries of a transportation management area with Federal participation pursuant to this title (excluding projects undertaken on the National Highway System and pursuant to the Bridge and Interstate Maintenance programs) or pursuant to the Federal Transit Act shall be selected by the metropolitan planning organization designated for such area in consultation with the State and in conformance with the transportation improvement program for such area and priorities established therein. Projects undertaken within the boundaries of a transportation management area on the National Highway System or pursuant to the Bridge and Interstate Maintenance programs shall be selected by the State in cooperation with the metropolitan planning organization designated for such area and shall be in conformance with the transportation improvement program for such area.

(5) CERTIFICATION.—The Secretary shall assure that each metropolitan planning organization in each transportation management area is carrying out its responsibilities under applicable provisions of Federal law, and shall so certify at least once every 3 years. The Sec-

retary may make such certification only if (1) a metropolitan planning organization is complying with the requirements of section 134 and other applicable requirements of Federal law, and (2) there is a transportation improvement program for the area that has been approved by the metropolitan planning organization and the Governor. If after September 30, 1993, a metropolitan planning organization is not certified by the Secretary, the Secretary may withhold, in whole or in part, the apportionment under section 104(b)(3) attributed to the relevant metropolitan area pursuant to section 133(d)(3) and capital funds apportioned under the formula program under section 9 of the Federal Transit Act. If a metropolitan planning organization remains uncertified for more than 2 consecutive years after September 30, 1994, 20 percent of the apportionment attributed to that metropolitan area under section 133(d)(3) and capital funds apportioned under the formula program under section 9 of the Federal Transit Act shall be withheld. The withheld apportionments shall be restored to the metropolitan area at such time as the metropolitan planning organization is certified by the Secretary. The Secretary shall not withhold certification under this section based upon the policies and criteria established by a metropolitan planning organization or transit grant recipient for determining the feasibility of private enterprise participation in accordance with section 8(o) of the Federal Transit Act.

(j) ABBREVIATED PLANS AND PROGRAMS FOR CERTAIN AREAS.—For metropolitan areas not designated as transportation management areas under this section, the Secretary may provide for the development of abbreviated metropolitan transportation plans and programs that the Secretary determines to be appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems, including transportation related air quality problems, in such areas. In no event shall the Secretary provide abbreviated plans or programs for metropolitan areas which are in nonattainment for ozone or carbon monoxide under the Clean Air Act.

(k) TRANSFER OF FUNDS.—Funds made available for a transit project under title 23, United States Code, shall be transferred to and administered by the Secretary in accordance with the requirements of this Act. Funds made available for a highway project under this Act shall be transferred to and administered by the Secretary in accordance with the requirements of title 23, United States Code.

(l) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—Notwithstanding any other provisions of this Act or title 23, United States Code, for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be programmed in such area for any transit project that will result in a significant increase in carrying capacity for single occupant vehicles unless the project is part of an approved congestion management system.

(m) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed—

(1) to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project not eligible under this title or the Federal Transit Act; or

(2) to intervene in the management of a transportation agency.

(n) GRANTS.—

(1) ELIGIBILITY.—The Secretary is authorized to contract for and make grants to States and local public bodies and agencies thereof, or enter into agreements with other Federal departments and agencies, for the planning, engineering, design, and evaluation of public transportation projects, and for other technical studies. Activities assisted under this section may include—

(A) studies relating to management, operations, capital requirements, and economic feasibility;

(B) evaluation of previously funded projects; and

(C) other similar or related activities preliminary to and in preparation for the construction, acquisition, or improved operation of facilities and equipment.

(2) CRITERIA.—A grant, contract, or working agreement under this section shall be made in accordance with criteria established by the Secretary.

(o) PRIVATE ENTERPRISE.—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 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.

(p) USE FOR COMPREHENSIVE PLANNING.—

(1) IN GENERAL.—The Secretary shall ensure, to the extent practicable, that amounts made available under section 21(c)(1) for the purposes of this section area used to support balanced and comprehensive transportation planning that takes into account the relationships among land use and all transportation modes, without regard to the programmatic source of the planning funds.

(2) FORMULA ALLOCATION TO ALL METROPOLITAN AREAS.—The Secretary shall apportion 80 percent of the amount made available under section 21(c)(1) to States in the ratio that the population in urbanized areas, in each State, bears to the total population in urbanized areas, in all the States as shown by the latest available decennial census, except that no State shall receive less than ½ of 1 percent of the amount apportioned under this paragraph. Such funds shall be allocated to metropolitan planning organizations designated under section 8 by a formula, developed by the State in cooperation with metropolitan planning organizations and approved by the Secretary, that con-

siders population in urbanized areas and provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in section 8 of this Act. The State shall make such funds available promptly to eligible metropolitan planning organizations according to procedures approved by the Secretary.

(3) SUPPLEMENTAL ALLOCATION.—The Secretary shall apportion 20 percent of the amounts made available under section 21(c)(1) to States to supplement allocations under subparagraph (B) for metropolitan planning organizations. Such funds shall be allocated according to a formula that reflects the additional costs of carrying out planning, programming, and project selection responsibilities under this section in such areas.

(4) HOLD HARMLESS.—The Secretary shall ensure, to the maximum extent practicable, that no metropolitan planning organization is allocated less than the amount it received by administrative formula under section 8 in fiscal year 1991. To comply with the previous sentence, the Secretary is authorized to make a pro rata reduction in other amounts made available to carry out section 21(c).

(5) FEDERAL SHARE PAYABLE.—The Federal share payable for activities under this paragraph shall be 80 percent except where the Secretary determines that it is in the Federal interest not to require a State or local match.

Block Grants [103]

(49 U.S.C. app. § 1607a)

SECTION 9. (a)(1) Of the amounts made available or appropriated under section 21(g), 9.32 percent shall be available for expenditure under this section in each fiscal year only in urbanized areas with a population of less than 200,000.[104]

(2) Of the amounts made available or appropriated under section 21(g), 90.68 percent shall be available for expenditure under this section in each fiscal year only in urbanized areas with a population of 200,000 or more.[105]

(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.

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[103] Section 303 of Public Law 97–424 added section 9. The prior section 9, which was entitled "Grants for Technical Studies", was added by Section 2(a) of Public Law 89–562 and repealed by Section 305(a) of Public Law 95–599. Section 2(a) of Public Law 89–562 redesignated the original Section 9, which was entitled "General Provisions", as Section 12.

[104] Section 3013(a)(1) of Public Law 102–240 replaced the words "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."

[105] Section 3013(a)(2) of Public Law 102–240 replaced the words "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 less than 200,000 or more."

(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 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 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.

(4) ENERGY AND OPERATING EFFICIENCIES.—If a recipient under this section demonstrates to the satisfaction of the Secretary that energy or operating efficiencies would be achieved by actions that reduce revenue vehicle miles but provide the same frequency of revenue service to the same number of riders, the recipient's apportionment under paragraph (2)(A) shall not be reduced as a result of such actions.[106]

[106] Section 3013(b) of Public Law 102–240 added paragraph (4).

(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, 19 and 22[107] 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). Such certifications and any additional certifications required by law to be submitted to the Secretary may be consolidated into a single document to be submitted annually as part of the grant application under this section. The Secretary shall annually publish in conjunction with the publication required under subsection (q) a list of all certifications required under this Act.[108] A grant may be made under this section to carry out, in whole or in part, a program of projects.[109]

(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);

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[107] Section 3013(c) of Public Law 102–240 added reference to section 22.

[108] Section 3013(d) of Public Law 102–240 added these last two sentences.

[109] Section 312(a) of Public Law 100–17 added this sentence.

(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; and

(I)[110] (i) will expend for each fiscal year not less than 1 percent of the funds received by the recipient for each fiscal year under this section for transit security projects; or

(ii) that such expenditures for such security systems are not necessary.

For the purposes of subparagraph (I), transit security projects may include increasing lighting within or adjacent to transit systems, including bus stops, subway stations, parking lots, and garages; increasing camera surveillance of areas within and adjacent to such systems; providing emergency telephone lines to contact law enforcement or security personnel in areas within or adjacent to such systems; and any other project intended to increase the security and safety of existing or planned transit systems.

(4)[111] Each recipient (including any person receiving funds from a Governor under this section) shall submit to the Secretary annually a report on the revenues such recipient derives from the sale of advertising and concessions.

(5)[112] 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 this subsection.

(6) STREAMLINED ADMINISTRATIVE PROCEDURES.—The Secretary shall establish streamlined administrative procedures to govern compliance with the certification requirement under paragraph (3)(B) with respect to track and signal equipment used in ongoing operations.[113]

(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;

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[110] Section 3013(f) of Public Law 102–240 added paragraph (I).

[111] Section 312(b)(2) of Public Law 100–17 added paragraph (4) to section 9(e).

[112] Section 312(f)(1) of Public Law 100–17 added paragraph (5) to section 9(e).

[113] Section 3013(e) of Public Law 102–240 added paragraph (6).

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

(5)[114] assure that the proposed program of projects provides for the coordination of transit services assisted under this section with transportation services assisted from other Federal sources.

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 administrative 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.[115]

(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

[114] Section 3013(g) of Public Law 102–240 added paragraph (5).

[115] Section 312(f)(2) of Public Law 100–17 amended subsection (g) by striking paragraph (4). Paragraph (4) read as follows:

"(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."

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)[116] (1) 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. In a transportation management area designated pursuant to section 8, funds which cannot be used for payment of operating expenses under this section also shall be available for highway projects if—

(A) such use is approved by the metropolitan planning organization in accordance with section 8 after appropriate notice and opportunity for comment and appeal is provided to affected transit providers; and

(B) in the determination of the Secretary, such funds are not needed for investments required by the Americans with Disabilities Act of 1990.[117]

Grants for construction projects under this section shall also be available to finance the leasing of facilities and equipment for use in mass transportation service, subject to regulations limiting such grants to leasing arrangements which are more cost effective than acquisition or construction.[118] The Secretary shall publish regulations under the preceding sentence in proposed form in the Federal Register for public comment not later than 60 days after the date of enactment of this sentence, and shall promulgate such regulations in final form not later than 240 days after such date of enactment.[119] As used in this section, the term "associated capital maintenance items" means any equipment, tires, tubes,[120] and materials each of which costs no less than ½ of

[116] Section 309(b)(3) of Public Law 100–17 amended subsection (j) designating the prior subsection (j) as (j)(1).

[117] Section 3013(h)(1) of Public Law 102–240 added this sentence.

[118] Section 308 of Public Law 100–17 added this sentence to subsection (j) regarding grants for the leasing of facilities and equipment.

[119] Section 308 of Public Law 100–17 added this sentence to subsection (j) regarding regulations governing grants for the leasing of facilities and equipment. The date of enactment of this sentence is April 2, 1987.

[120] Section 309(b)(1) of Public Law 100–17 amended subsection (j) by adding "tires" and "tubes" to the definition of "associated capital maintenance items".

1 percent [121] of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and materials are to be used.

(2) [122] A project for the reconstruction (whether by employees of the grant recipient or by contract) of any equipment and materials each of which, after reconstruction, will have a fair market value no less than ½ of 1 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and materials are to be used shall be considered a project for construction of an associated capital maintenance item under this section.

(3) [123] Funds under this section may be available for highway projects under title 23, United States Code, only if funds used for the State or local share of such highway projects are eligible to fund either highway or transit projects.

(k)(1) The Federal grant for any construction project (including any project for the acquisition or construction of an associated capital maintenance item) [124] under this section shall be [125] 80 per centum of the net project cost of such project; however, a recipient is permitted to provide additional local match at its option.[126] 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.[126A] For purposes of the preceding sentence, "revenues from the operation of a public mass transportation system" shall not include the amount of any revenues derived by such system from the sale of advertising and concessions which is in excess of the amount of such revenues derived by such system from the sale of advertising and concessions in fiscal year 1985.[127] 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)(A) [128] The amount of funds apportioned under this section which may be used for operating assistance shall not exceed 80 per centum

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[121] Section 309(b)(2) of Public Law 100–17 amended subsection (j) by replacing the wording "1 per centum" with the wording "½ of 1 percent".

[122] Section 309(b)(4) of Public Law 100–17 added subsection (j)(2).

[123] Section 3013(h)(2) of Public Law 102–240 added paragraph (3).

[124] Section 309(f) of Public Law 100–17 amended subsection (k)(1) by substituting the words "any project for the acquisition or construction of an associated capital maintenance item" for "capital maintenance items."

[125] Section 309(c) of Public Law 100–17 amended subsection (k)(1) by substituting the words "shall be" for "shall not exceed."

[126] Section 309(d) of Public Law 100–17 amended subsection (k)(1) by inserting the words "however, a recipient is permitted to provide additional local match at its option."

[126A] Public Law 102–302 states: "For fiscal years 1992 and 1993, funds provided under section 9 of the Federal Transit Act shall be exempt from requirements for any non-Federal share, in the same manner as specified in section 1054 of Public Law 102–204."

[127] Section 312(b) of Public Law 100–17 amended subsection (k)(1) by adding this sentence.

[128] Section 312(c)(1) of Public Law 100–17 amended subsection (k)(2) by designating the prior subsection (k)(2) as (k)(2)(A).

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 than 200,000 population. Notwithstanding the preceding sentence, an urbanized area that first became an urbanized area under the 1980 census or thereafter may use each fiscal year for operating assistance not to exceed an amount equal to ⅔ of its apportionment during the first full year it received funds under this section.[129] [130]

(B)[131] Beginning on October 1, 1991,[132] the amount of funds apportioned under this section that may be used for operating assistance by urbanized[133] areas shall be increased on October 1 of each year by an amount determined by multiplying the amount applicable to each such urbanized area as determined under subparagraph (A) (excluding any increases under this subparagraph) by the percentage of the increase (if any) in the Consumer Price Index during the most recent calendar year; except that such increase may not exceed the percentage increase of the funds made available under section 21(g) in the current fiscal year and the funds made available under section 21(g) in the previous fiscal year.[134] The amount of funds apportioned under this section that each urbanized area of less than 200,000 population that was a recipient of funds under this section during fiscal year 1987 may use for operating assistance shall be increased by 32.2 percent on October 1, 1987. The increases provided for by this subparagraph shall be cumulative.

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[129] Section 312(c)(2) of Public Law 100–17 amended subsection (k)(2) by striking the last sentence and inserting this sentence. The former last sentence read as follows:

"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."

[130] Section 334(c) of Public Law 101–164 contained the following provision which the FTA has interpreted to be permanent law applicable to Section 9(k)(2)(A).

STATEWIDE OPERATING ASSISTANCE.—Section 9(2)(A).—In any case in which a statewide agency or instrumentality is responsible under State laws for the financing, construction and operation, directly by lease, contract or otherwise, of public transportation services, and when such statewide agency or instrumentality is the designated recipient of UMTA funds, and when the statewide agency or instrumentality provides service among two or more urbanized areas, the statewide agency or instrumentality shall be allowed to apply for operating assistance up to the combined total permissible amount of all urbanized areas in which it provides service, regardless of whether the amount for any particular urbanized area is exceeded. In doing so, UMTA shall not reduce the amount of operating assistance allowed for any other State, or local transit agency or instrumentality within the urbanized areas affected. This provision shall take effect with the fiscal year 1990 section 9 apportionment.

[131] Section 312(c)(3) of Public Law 100–17 amended subsection (k)(2) by adding this subparagraph (B).

[132] Section 3013(i)(1) of Public Law 102–240 substituted "1991" for "1988."

[133] Section 3013(i)(2) of Public Law 102–240 deleted the words "of less than 200,000 population."

[134] Section 3013(i)(3) of Public Law 102–240 added the words after the semicolon.

(C)[135] As used in subparagraph (B), the term "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(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)[136] reserved]

(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 under this subsection.[137] 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. Any amounts of a State's apportionment that remain available for obligation at the beginning of the 90-day period before the expiration of the period of availability of such

[135] Section 312(c)(3) of Public Law 100–17 amended subsection (k)(2) by adding subparagraph (C).

[136] Section 312(f)(3) of Public Law 100–17 repealed subsection (l), which was added by Section 303 of Public Law 97–424.

[137] Section 312(d)(1) of Public Law 100–17 amended subsection (n)(1) by striking the words "with populations of three hundred thousand or less" from the first sentence.

amounts shall be available to the Governor for use throughout the State.[138]

(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 3 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 not later than 30 days after the end of such period.[139]

(p) [140] ADVANCE CONSTRUCTION.—

(1) APPROVED PROJECT.—When a recipient has obligated all funds apportioned to it under this section and proceeds to carry out any project described in this section (other than a project for operating expenses) or portion of such a project without the aid of Federal funds in accordance with all procedures and all requirements applicable to such a project, except insofar as such procedures and requirements limit a State to carrying out projects with the aid of Federal funds previously apportioned to it, the Secretary, upon application by such recipient and his approval of such application, is authorized to pay to such recipient the Federal share of the costs of carrying out such project or portion when additional funds are apportioned to such recipient under this section if, prior to carrying out such project or portion, the Secretary approves the plans and specifications therefor in the same manner as other projects under this section.

(2) LIMITATION ON PROJECTS.—The Secretary may not approve an application under this subsection unless an authorization for this section is in effect for the fiscal year for which the application is sought beyond the currently authorized funds for such recipient. No application may be approved under this subsection which will exceed—

(A) the recipient's expected apportionment under this section if the total amount of funds authorized to be appropriated to carry out this section for such fiscal year were so appropriated, less

[138] Section 312(d)(2) of Public Law 100–17 amended subsection (n)(1) by adding this sentence.

[139] Section 311 of Public Law 100–17 amended subsection (o) by adding the words "not later than 30 days after the end of such period."

[140] Section 306(b) of Public Law 100–17 added subsection (p).

(B) the maximum amount of such apportionment which could be made available for projects for operating expenses under this section.

(3) BOND INTEREST.—

(A) ELIGIBLE COST.—Subject to the provisions of this paragraph, the cost of carrying out a project or portion thereof, the Federal share of which the Secretary is authorized to pay under this subsection, shall include the amount of any interest earned and payable on bonds issued by the recipient to the extent that the proceeds of such bonds have actually been expended in carrying out such project or portion.

(B) LIMITATION ON AMOUNT.—In no event shall the amount of interest considered as a cost of carrying out a project or portion under subparagraph (A) be greater than the excess of—

(i) the amount which would be the estimated cost of carrying out the project or portion if the project or portion were to be carried out at the time the project or portion is converted to a regularly funded project, over

(ii) the actual cost of carrying out such project or portion (not including such interest).

(C) CHANGES IN CONSTRUCTION COST INDICES.—The Secretary shall consider changes in construction cost indices in determining the amount under subparagraph (B)(i).

(q)[141] DATE OF APPORTIONMENT.—The Secretary shall apportion funds appropriated to carry out this section for any fiscal year in accordance with the provisions of this section not later than the 10th day following the date on which such funds are appropriated or October 1 of such fiscal year, whichever is later. The Secretary shall publish apportionments of such appropriated funds, including amounts attributable to each urbanized area above 50,000 population as well as the amount attributable to each State of the multistate urbanized area, on the apportionment date established by the preceding sentence.

(r)[142] FERRY SERVICES.—A vessel used in ferryboat operations funded under this section that is part of a State-operated ferry system may occasionally be operated outside of the urbanized area in which service is provided to accommodate periodic maintenance if existing ferry service is not thereby significantly reduced.

(s)[143] GRANDFATHER OF CERTAIN URBANIZED AREAS.—Any area designated as an urbanized area under the 1980 census which is not so designated under the 1990 census—

(1) for fiscal year 1992, shall be treated as an urbanized area for purposes of section 12(c)(11) of the Federal Transit Act; and

(2) for fiscal year 1993, shall be eligible to receive 50 percent of the funds which the area would have received if the area were

[141] Section 312(e) of Public Law 100–17 added subsection (q).

[142] Section 3013(j) of Public Law 102–240 added subsection (r).

[143] Section 3013(j) of Public Law 102–240 added subsection (s).

[SECTION 9A. Mass Transit Account Distribution.—repealed [145]]

treated as an urbanized area for purposes of such section 12(c)(11) and an amount equal to 50 percent of the funds which the State in which the area is located would have received if the area were treated as an area other than an urbanized area.

(t) [144] ADJUSTMENTS OF APPORTIONMENTS.—Provided that sufficient funds are available, in each fiscal year beginning after September 30, 1991, the Secretary shall adjust apportionments under this section between the Mass Transit Account of the Highway Trust Fund and the general fund of the Treasury to assure that each recipient receives from the general fund of the Treasury not less than the amount of operating assistance made available each fiscal year under this section that such recipient is eligible to receive.

[SECTION 9A. Mass Transit Account Distribution.—repealed [145]]

Mass Transit Account Block Grants

(49 U.S.C. app. § 1607a–2)

SECTION 9B. [146] (a) APPORTIONMENT AND ADMINISTRATION.—The amount made available by subsections (b) and (c) of section 21 of this Act to carry out this section shall be made available in accordance with the provisions of subsections (a) through (j), (m), and (n) of section 9 of this Act.

(b) AVAILABILITY FOR CONSTRUCTION PROJECTS.—Grants under this section shall be available only for the purpose of construction projects (including capital maintenance items) and shall be subject to the limitations contained in section 9(k) of this Act applicable to such projects.

(c) USE OF UNOBLIGATED AMOUNTS.—Sums apportioned under this section shall be available for obligation by the recipient for a period of 3 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 not later than 30 days after the end of such period.

Grants For Training Programs [147]

(49 U.S.C. app. § 1607b)

SECTION 10. The Secretary is authorized to make grants to States, local public bodies, and agencies thereof (and operators of public trans-

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[144] Section 3013(k) of Public Law 102–240 added subsection (t).

[145] Section 3015 of Public Law 102–240 repealed Section 9A which was added by Section 303 of Public Law 97–424. Section 9A related to Mass Transit Account distribution in fiscal year 1983.

[146] Section 313 of Public Law 100–17 added section 9B.

[147] 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 restated by section 306 of Public Law 95–599.

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

portation 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 1 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[148]

(49 U.S.C. app. § 1607c)

SECTION 11. (a) GRANT PROGRAM.[149]—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.

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added by section 303(e) of Public Law 95–599 and so the restrictions in subsection 10(c) are not applicable.

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

[149] Section 314(b) of Public Law 100–17 amended section 11 by inserting the wording "Grant Program—".

(b)[150] UNIVERSITY TRANSPORTATION CENTERS.—

(1) GRANTS FOR ESTABLISHMENT AND OPERATION.—In addition to grants authorized by subsection (a) of this section, the Secretary shall make grants to one or more nonprofit institutions of higher learning to establish and operate one regional transportation center in each of the 10 Federal regions which comprise the Standard Federal Regional Boundary System.

(2) RESPONSIBILITIES.—The responsibilities of each transportation center established under this subsection shall include, but not be limited to, the conduct of infrastructure research concerning transportation and research and training concerning transportation safety and[151] transportation of passengers and property and the interpretation, publication, and dissemination of the results of such research. The responsibilities of one of such centers may include research on the testing of new model buses. The program of research at all research centers should cover more than one mode of transportation, and should take into consideration the proportion of funding for this subsection from funding available to carry out urban mass transportation projects under this Act and from the Highway Trust Fund.

(3) APPLICATION.—Any nonprofit institution of higher learning interested in receiving a grant under this subsection shall submit to the Secretary an application in such form and containing such information as the Secretary may require by regulation.

(4) SELECTION CRITERIA.—The Secretary shall select recipients of grants under this subsection on the basis of the following criteria:

(A) The regional transportation center shall be located in a State which is representative of the needs of the Federal region for improved transportation services and facilities.

(B) The demonstrated research and extension resources available to the grant recipient for carrying out this subsection.

(C) The capability of the grant recipient to provide leadership in making national and regional contributions to the solution of both long range and immediate transportation problems.

(D) The grant recipient shall have an established transportation program or programs encompassing several modes of transportation.

(E) The grant recipient shall have a demonstrated commitment to supporting ongoing transportation research programs with regularly budgeted institutional funds of at least $200,000 per year.

(F) The grant recipient shall have a demonstrated ability to disseminate results of transportation research and educational programs through a statewide or regionwide continuing education program.

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[150] Section 314(a) of Public Law 100–17 replaced prior subsection (b) which was added by section 307 of the Public Law 89–562.

[151] Section 6023(a) of Public Law 102–240 added the words "transportation safety and".

(G) The projects which the grant recipient proposes to carry out under the grant.

(5) MAINTENANCE OF EFFORT.—No grant may be made under this section in any fiscal year unless the recipient of such grant enters into such agreements with the Secretary as the Secretary may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional transportation center and related research activities at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of this subsection.

(6) FEDERAL SHARES.—The Federal share of a grant under this subsection shall be 50 percent of the cost of establishing and operating the regional transportation center and related research activities carried out by the grant recipient.

(7) NATIONAL CENTER.—To accelerate the involvement and participation of minority individuals and women in transportation-related professions, particularly in the science, technology, and engineering disciplines, the Secretary shall make grants under this section to Morgan State University to establish a national center for transportation management, research, and development. Such center shall give special attention to the design, development, and implementation of research, training and technology transfer activities to increase the number of highly skilled minority individuals and women entering the transportation workforce.

(8) CENTER FOR TRANSPORTATION AND INDUSTRIAL PRODUCTIVITY.—

(A) IN GENERAL.—The Secretary shall made grants under this section to the New Jersey Institute of Technology to establish and operate a center for transportation and industrial productivity. Such center shall conduct research and development activities which focus on methods to increase surface transportation capacity, reduce congestion, and reduce costs for transportation system users and providers through the use of transportation management systems.

(B) JAMES AND MARLENE HOWARD TRANSPORTATION INFORMATION CENTER.—

(i) GRANT.—The Secretary shall make a grant to Monmouth College, West Long Branch, New Jersey, for modification and reconstruction of Building Number 500 at Monmouth College.

(ii) ASSURANCES.—Before making a grant under clause (i), the Secretary shall receive assurances from Monmouth College that—

(I) the building referred to in clause (i) will be known and designated as the "James and Marlene Howard Transportation Information Center"; and

(II) transportation-related instruction and research in the fields of computer science, electronic engineering, mathematics, and software engineering conducted at the building referred to in clause (i) will be coordinated with the Center for Trans-

portation and Industrial Productivity at the New Jersey Institute of Technology.

(iii) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) $2,242,000 in fiscal year 1992 for making the grant under clause (i).

(iv) APPLICABILITY OF TITLE 23.—Funds authorized by clause (iii) shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that the Federal share of the cost of activities conducted with the grant under clause (i) shall be 80 percent and such funds shall remain available until expended. Funds authorized by clause (iii) shall not be subject to any obligation limitation.

(9) NATIONAL RURAL TRANSPORTATION STUDY CENTER.—The Secretary shall make grants under this section to the University of Arkansas to establish a national rural transportation center. Such a center shall conduct research, training, and technology transfer activities in the development, management, and operation of intermodal transportation systems in rural areas.

(10) NATIONAL CENTER FOR ADVANCED TRANSPORTATION TECHNOLOGY.—

(A) IN GENERAL.—The Secretary shall make grants under paragraph (10) to the University of Idaho to establish a National Center for Advanced Transportation technology. Such center shall be established and operated in partnership with private industry and shall conduct industry driven research and development activities which focus on transportation-related manufacturing and engineering processes, materials and equipment.

(B) GRANTS.—The Secretary shall make grants to the University of Idaho, Moscow, Idaho, for planning, design, and construction of a building in which the research and development activities of the National Center for Advanced Transportation Technology may be conducted.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) $2,500,000 for fiscal year 1992, $3,000,000 for fiscal year 1993, and $2,500,000 for fiscal year 1994 for making the grants under subparagraph (B).

(D) APPLICABILITY OF TITLE 23.—Funds authorized by subparagraph (C) shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share of the cost of activities conducted with the grant under subparagraph (B) shall be 80 percent and such funds shall remain available until expended. Funds authorized by subparagraph (B) shall not be subject to any obligation limitation.

(E) APPLICABILITY OF GRANT REQUIREMENTS.—Any grant entered into under this paragraph shall not be subject to the requirements of subsection (b) of this section.

(11) PROGRAM COORDINATION.—

(A) IN GENERAL.—The Secretary shall provide for the coordination of research, education, training, and technology transfer activities carried out by grant recipients under this subsection, the dissemination of the results of such research, and the establishment and operation of a clearinghouse between such centers and the transportation industry. The Secretary shall review and evaluate programs carried out by such grant recipients at least annually.

(B) FUNDING.—Not to exceed 1 percent of the funds made available from Federal sources to carry out this subsection may be used by the Secretary to carry out this paragraph.

(12) OBLIGATION CEILING.—Amounts authorized out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection shall be subject to obligation limitations established by section 102 of the Intermodal Surface Transportation Efficiency Act of 1991.

(13) AUTHORIZATIONS.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $5,000,000 for fiscal year 1992 and $6,000,000 for each of the fiscal years 1993 through 1997. Notwithstanding any other provision of law, approval by the Secretary of a grant under this section shall be deemed a contractual obligation of the United States for payment of the Federal share of the cost of the project.[152]

(14) ALLOCATION OF FUNDS.—The Secretary shall allocate funds made available to carry out this subsection equitably among the Federal regions.

(15) TECHNOLOGY TRANSFER SET-ASIDE.—Not less than 5 percent of the funds made available to carry out this subsection for any fiscal year shall be available to carry out technology transfer activities.

(c)[153] UNIVERSITY RESEARCH INSTITUTES.—

(1) INSTITUTE FOR NATIONAL SURFACE TRANSPORTATION POLICY STUDIES.—The Secretary shall made grants under this section to San Jose State University to establish and operate an institute for national surface transportation policy studies. Such institute shall—

(A) include both male and female students of diverse socioeconomic and ethnic backgrounds who are seeking careers in the development and operations of surface transportation programs; and

[152] Section 6023(b) of Public Law 102–240 repealed prior paragraphs (7) and (8), redesignated paragraphs (9) and (10) as (14) and (15) and added paragraphs (7) through (13).

[153] Section 6024 of Public Law 102–240 added subsection (c).

(B) conduct research and development activities to analyze ways of improving aspects of the development and operation of the Nation's surface transportation programs.

(2) INFRASTRUCTURE TECHNOLOGY INSTITUTE.—The Secretary shall make grants under this section to Northwestern University to establish and operate an institute for the study of techniques to evaluate and monitor infrastructure conditions, improve information systems for infrastructure construction and management, and study advanced materials and automated processes for construction and rehabilitation of public works facilities.

(3) URBAN TRANSIT INSTITUTE.—The Secretary shall make grants under this section to North Carolina A. and T. State University through the Institute for Transportation Research and Education and the University of South Florida and a consortium of Florida A and M, Florida State University, and Florida International University to establish and operate an interdisciplinary institute for the study and dissemination of techniques to address the diverse transportation problems of urban areas experiencing significant and rapid growth.

(4) INSTITUTE FOR INTELLIGENT VEHICLE-HIGHWAY CONCEPTS.—The Secretary shall make grants under this section to the University of Minnesota, Center for Transportation Studies, to establish and operate a national institute for intelligent vehicle-highway concepts. Such institute shall conduct research and recommend development activities which focus on methods to increase roadway capacity, enhance safety, and reduce negative environmental effects of transportation facilities through the use of intelligent vehicle-highway systems technologies.

(5) INSTITUTE FOR TRANSPORTATION RESEARCH AND EDUCATION.—The Secretary shall make grants under this section to the University of North Carolina to conduct research and development and to direct technology transfer and training for State and local transportation agencies to improve the overall surface transportation infrastructure.

(6) FUNDING.—There is authorized to be appropriated out of the Highway Trust Fund, other than the Mass Transit Account, for each of fiscal years 1992, 1993, 1994, 1995, 1996, and 1997 $250,000 per fiscal year to carry out paragraph (1), $3,000,000 per fiscal year to carry out paragraph (2), $1,000,000 per fiscal year to carry out paragraph (3), $1,000,000 per fiscal year to carry out paragraph (4), and $1,000,000 per fiscal year to carry out paragraph (5).

(7) APPLICABILITY OF TITLE 23.—Funds authorized by this subsection shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code.

General Provisions

(49 U.S.C. app. § 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.[154] Funds obtained or held by the Secretary in connection with 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) CONTRACT REQUIREMENTS.—

(1) NONCOMPETITIVE BID CONTRACTS.—[155] 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.[156]

(2) ROLLING STOCK ACQUISITION CONTRACTS.—[157] 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.[158]

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[154] 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 IV.

[155] Section 315(b) (1), (2), and (4) of Public Law 100–17 amended subsection (b)(1) by adding the headings and realigning the paragraph.

[156] 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).

[157] Section 315(b) (3) and (4) of Public Law 100–17 amended subsection (b)(2) by adding the heading and realigning the paragraph.

[158] Section 308 of Public Law 97–424 replaced the prior paragraph (b)(2) which was added by section 308 of Public Law 95–599.

(3)[159] SOLE SOURCE PROCUREMENT CONTRACTS.—Any recipient of a grant under section 9 of this Act who is procuring an associated capital maintenance item under section 9(j) of this Act may, without receiving prior approval of the Secretary, contract directly with the original manufacturer or supplier of the item to be replaced if such recipient first certifies in writing to the Secretary—

(A) that such manufacturer or supplier is the only source for such item; and

(B) that the price of such item is no higher than the price paid for such item by like customers.

(4)[160] CONTRACTING FOR ENGINEERING AND DESIGN SERVICES.—Each contract for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping or related services with respect to a project for which a loan or grant is made under this Act shall be awarded in the same manner as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 or equivalent State qualifications-based requirement. This paragraph shall apply except to the extent any State adopts or has adopted by statute a formal procedure for the procurement of such services.

(c)[161] 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 (A)[162] any bus rehabilitation project which extends the economic life of a bus 5 years or more,[163] (B) any bus remanufacturing project which extends the economic life of the bus 8 years or more, and (C) any project for the overhaul of rail rolling stock (whether or not such overhaul increases the useful life of the rolling stock);[164]

(2) the term "fixed guideway" means any public transportation facility which utilizes and occupies a separate right-of-way or rails[165]

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[159] Section 315(a) of Public Law 100–17 amended subsection (b) by adding this paragraph.

[160] Section 316 of Public Law 100–17 amended subsection (b) by adding this paragraph.

[161] 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 designated subsection (c)(8). Prior subsection (c)(4) was redesignated subsection (c)(10), and prior subsection (c)(5) was amended and redesignated subsection (c)(6).

[162] Section 309(a) of Public Law 100–17 amended subsection (c)(1) by adding the designation of clause (A).

[163] 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 which extends the economic life of a bus for five years or more;"

[164] Section 309(a) of Public Law 100–17 amended subsection (c)(1) by adding clauses (B) and (C).

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

for the exclusive use of public transportation service including, but not limited to, fixed rail, automated guideway transit, and exclusive facilities for buses and 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; [166]

(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 [167] or sightseeing service) on a regular and continuing basis; [168]

(7) the term "public transportation" and "transit" [169] mean mass transportation;

(8) the term "Secretary" means the Secretary of Transportation; [170]

(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 commut-

[166] 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;".

[167] 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).

[168] 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."

[169] Section 3016 of Public Law 102–240 added the term "transit" to the definition of mass transportation.

[170] See footnote 1.

ers or others in the locality taking into consideration the local patterns and trends of urban growth;

(11) the term "urbanized area" means an area so designated by the Bureau of the 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 the Census;

(12)[171] the term "rule" means the whole or part of the Secretary's statement of general or particular applicability designed to implement, interpret, or prescribe law or policy in carrying out provisions of this Act; and

(13)[172] the term "emergency rule" means a rule which is temporarily effective prior to the expiration of the otherwise specified periods of time for public notice and comment under this section and which was promulgated by the Secretary pursuant to a finding that a delay in the effective date thereof would (A) seriously injure an important public interest, (B) substantially frustrate legislative policy and intent, or (C) seriously damage a person or class of persons without serving any important public interest.

(d)[173] 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.[174]

(e)[175] 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)[176] 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

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[171] Section 318(b) of Public Law 100–17 amended subsection (c) by adding paragraph (12).

[172] Section 318(b) of Public Law 100–17 amended subsection (c) by adding paragraph (13).

[173] Prior subsection (d) was repealed by subsection 308(c) of Public Law 95–599 and prior subsection (e) was redesignated subsection (d).

[174] 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.

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

[176] Prior subsection (f) was repealed by section 308 of Public Law 95–599 and replaced with this subsection. Prior subsection (f) is incorporated into section 19 of the Act.

or local public body or provided to such State or local public body by contract. Not later than 180 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. 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)[177] 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.

(h)[178] BUS TESTING.—

(1) REQUIREMENT.—No funds appropriated or made available pursuant to this Act after September 30, 1989, may be obligated or expended for the acquisition of a new bus model (including any model using alternative fuels)[179] unless a bus of such model has been tested at a facility established under section 317(b) of the Federal Mass Transportation Act of 1987.

(2) NEW BUS MODEL DEFINED.—As used in this subsection, the term "new bus model" means a bus model which has not been used in mass transportation service in the United States before the

[177] Subsection 308(d) of Public Law 95–599 added subsection (g).

[178] Section 317(a) of Public Law 100–17 amended section 12 by adding subsection (h).

[179] Section 6021(a) of Public Law 102–240 added "(including any model using alternative fuels)".

date of production of such model or a bus model which has been used in such service but which is being produced with a major change in configuration or components.

(i)[180] RULEMAKING PROCEDURES.—

(1) PROCEDURES.—The Secretary shall prepare an agenda listing all areas in which the Secretary intends to propose rules governing activities under this Act within the following 12-month period. The Secretary shall publish the proposed agenda in the Federal Register as part of the Secretary's semiannual rulemaking agenda which lists rulemaking activities of the Urban Mass Transportation Administration. The Secretary shall also transmit the agenda required by the first sentence of this paragraph to the Committee on Public Works and Transportation and the Committee on Appropriations of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate on the day that the Secretary's semi-annual rulemaking agenda is published in the Federal Register.

(2) VIEWS.—Except for emergency rules, the Secretary shall give interested parties not less than 60 days to participate in any rulemaking under this Act through submission of written data views, or arguments with or without the opportunity for oral presentation, except when the Secretary for good cause finds that public notice and comment are unnecessary due to the routine nature or matter or insignificant impact of the rule, or that an emergency rule should be promulgated. The Secretary may extend the 60-day period if the Secretary determines that such period is insufficient to permit diligent persons to prepare comments or that other circumstances justify an extension of such period. An emergency rule shall terminate 120 days after the date on which it is promulgated.

(3) LIMITATION.—The Secretary shall propose or implement rules governing activities under this Act only in accordance with this section except for routine matters and matters with no significant impact.[181]

(j)[182] PREAWARD AND POSTDELIVERY AUDIT OF BUS PURCHASES.—For the purpose of assuring compliance with Federal motor vehicle safety requirements, the requirements of section 165 of the Surface Transportation Assistance Act of 1982 (relating to purchases of American products), and bid specifications requirements of recipients of grants under this Act, the Secretary shall issue regulations requiring a preaward and post delivery audit with respect to any grant under this Act for the purchase of buses and other rolling stock. For the purposes of such audit, manufacturer certification shall not be sufficient, and independent inspections and auditing shall be required.

(k)[183] TRANSFER OF CAPITAL ASSET.—

[180] Section 318(a) of Public Law 100–17 amended section 12 by adding subsection (i).

[181] Section 3017 of Public Law 102–240 added paragraph (3).

[182] Section 319 of Public Law 100–17 amended Section 12 by adding subsection (j).

[183] Section 3018 of Public Law 102–240 added subsection (k).

(1) AUTHORIZATION.—If a recipient of assistance under this Act determines that facilities and equipment and other assets (including land) acquired, in whole or part, with such assistance are no longer needed for the purposes for which they were acquired, the Secretary may authorize the transfer of such assets to any public body to be used for any public purpose with no further obligation to the Federal Government.

(2) DETERMINATIONS.—The Secretary may authorize a transfer under paragraph (1) for any public purpose other than transit only if the Secretary first determines—

(A) that the asset being transferred will remain in public use for not less than 5 years after the date of the transfer;

(B) that there are no purposes eligible for assistance under this Act for which the asset should be used;

(C) the overall benefit of allowing the transfer outweighs the Federal Government's interest in liquidation and return of the Federal financial interest in the asset, after consideration of fair market value and other factors; and

(D) that, in any case in which the asset is a facility or land, there is no interest in acquiring the asset for Federal use.

The determination under subparagraph (D) shall be made through an appropriate screening or survey process.

(3) DOCUMENTATION.—Determinations required by paragraph (2) shall be made, in writing, and shall include the rationale for such determinations.

(4) RELATION TO OTHER PROVISIONS.—The provisions of this section shall be in addition to and not in lieu of any other provision of law governing use and disposition of facilities and equipment under an assistance agreement.

(l)[184] SPECIAL PROCUREMENT INITIATIVES.—

(1) TURNKEY SYSTEM PROCUREMENTS.—

(A) IN GENERAL.—In order to advance new technologies and lower the cost of constructing new transit systems, the Secretary shall allow the solicitation for a turnkey system project to be funded under this Act to be conditionally awarded before Federal requirements have been met on the project so long as the award is made without prejudice to the implementation of those Federal requirements. Federal financial assistance under this Act may be made available for such a project when the recipient has compiled with relevant Federal requirements.

(B) INITIAL DEMONSTRATION PHASE.—In order to develop regulations applying generally to turnkey system projects, the Secretary is authorized to approve not less than 2 projects for an initial demonstration phase. The results of such demonstration projects (and any other projects currently using this procurement method)

[184] Section 3019 of Public Law 102–240 added subsection (l).

shall be taken into consideration in the development of the regulations implementing this subsection.

(C) TURNKEY SYSTEM PROJECT DEFINED.—As used in this subsection, the term "turnkey system project" means a project under which a recipient contracts with a consortium of firms, individual firms, or a vendor to build a transit system that meets specific performance criteria and which is operated by the vendor for a period of time.

(2) MULTIYEAR ROLLING STOCK PROCUREMENTS.—

(A) IN GENERAL.—A recipient procuring rolling stock with Federal financial assistance under this Act may enter into a multiyear agreement for the purchase of such rolling stock and replacement parts pursuant to which the recipient may exercise an option to purchase additional rolling stock or replacement parts for a period not to exceed 5 years from the date of the original contract.

(B) CONSORTIA.—The Secretary shall permit 2 or more recipients to form a consortium (or otherwise act on a cooperative basis) for purposes of procuring rolling stock in accordance with this paragraph and other Federal procurement requirements.

(3) EFFICIENT PROCUREMENT.—A recipient may award to other than the lowest bidder in connection with a procurement under this Act when such award furthers objectives which are consistent with purposes of this Act, such as improved long-term operating efficiency and lower long-term costs. Not later than 90 days after the date of the enactment of this Act, the Secretary shall (A) make such modifications to current procedures as are appropriate to make the policy set forth in this paragraph readily practicable for all transit agencies, including smaller and medium sized agencies, and (B) issue guidance clarifying and implementing such policy.

(m)[185] FEDERAL SHARE FOR CERTAIN PROJECTS.—A Federal grant for a project to be assisted under this Act that involves the acquisition of vehicle-related equipment required by the Clean Air Act or the Americans with Disabilities Act of 1990 shall be 90 percent of the net project cost of such equipment attributable to compliance with such Acts. The Secretary shall have discretion to determine, through practicable administrative procedures, the costs attributable to equipment specified in the preceding sentence.

Labor Standards

(49 U.S.C. app. § 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 construc-

[185] Section 3020 of Public Law 102–240 added subsection (m).

tion 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.[186]

(b) The Secretary of Labor shall have, with respect to the labor standards specified in subsection (a), the authority and function 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[187] of this Act that fair and equitable arrangements are made, as determined by the Secretary of Labor,[188] to protect the interests of employees affected by such assistance. 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 respects 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

[186] If a question arises as to which wage rate schedule published by the Department of Labor applies to an FTA-assisted construction project, 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). If federal funding is anticipated, the Davis-Bacon Act applies, notwithstanding the fact that it 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). Questions about the applicability of Davis-Bacon requirements to a specific portion of a recipients' public work are resolved by the U.S. Department of Labor. *North Georgia Building and Construction Trades Council* v. *Metropolitan Atlanta Rapid Transit Authority*, Civil N. C82–1518A (N.D. Ga. 1982). In a 2–1 decision, the Department of Labor Wage Appeals Board held that Davis-Bacon requirements did not apply to a section of the Atlanta subway constructed entirely with local funds. *In the Matter of MARTA Contracts CN–710 & CN 730 and Options thereto, No. Georgia Bldg. Trades Council*, WB Case No. 83–9, May 1984.

[187] 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).

[188] The determination of the Secretary of Labor to certify that a labor protective agreement is "fair and equitable" within the meaning of this section is judicially reviewable. *Amalgamated Transit Union* v. *Donovan*, 767 F.2d 939 (D.C. Cir. 1985). See also, *Amalgamated Transit Union* v. *Brock*, 809 F.2d 909 (D.C. Cir. 1987) (holding that the Secretary of Labor exceeded his statutory authority by issuing conditional certifications.) But see, *Kendler* v. *Wirtz*, 388 F.2d 381 (3rd Cir. 1968) (holding that the determination of the Secretary of Labor as to what arrangements are "fair and equitable" involves administrative judgment, discretion and expertise, and is not judicially reviewable).

5(2)(f) of the Act of February 4, 1887 (24 Stat. 379), as amended.[189] The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements.[190] [191] [192]

Environmental Protection [193]

(49 U.S.C. app. § 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 shall cooperate and consult with the Secretaries of Agriculture, Health, Education, and Welfare, Housing and Urban Development, and Interior, and with the Council

[189] Public Law 95–473 codified section 5(2)(f) of the Act of February 4, 1887 at section 11347 of title 31, United States Code. Section 5(2)(f) of the Interstate Commerce Act, Title 49, U.S.C. read 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."

[190] In *Jackson Transit Authority* v. *Local Division 285, A.T.U.*, 457 U.S. 15 (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. 457 U.S. 1117 (1982), that where there is a conflict between a 13(c) certification or agreement and a later enacted state statue, the state statute prevails. This opinion, incidentally, contains an extensive discussion of section 13(c)'s legislative history.

[191] 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).

[192] Section 13(c)'s requirement that labor protective agreements provide for "the continuation of collective bargaining rights" means, at a minimum, that transit workers are entitled to good faith negotiations with their employers over wages, hours, and other terms and conditions of employment. Although transit workers are not entitled to any particular form of arbitration in the event of an impasse, section 13(c) does require some process, such as mandatory fact-finding with recommendations, that avoids unilateral control by an employer over mandatory subjects of collective bargaining. *Amalgamated Transit Union* v. *Donovan*, *supra*.

[193] Additional statutory requirements with regard to the environment are contained in the National Environmental Policy Act of 1969, and section 4(f) of the Department of Transportation Act. 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).

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.[194]

(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.[195] [196] [197]

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[194] 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).

[195] 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

Continued

SECTION 15

Reporting System

(49 U.S.C. app. § 1611)

SECTION 15.[198] (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[199] 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.

(c)[200] The Secretary shall, not later than July 1, 1979, report to Congress on the systems prescribed under authority of this section, together with his recommendations for any further legislation, if any, he deems necessary in connection with such systems.

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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 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).

[196] 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) was entitled "AIR POLLUTION CONTROL."

[197] Subsections (b) and (c) do not create private rights enforceable in private litigation. *Rapid Transit Advocates* v. *Southern California Rapid Transit District*, 752 F.2d 373 (1985).

[198] Section III of Public Law 93–503 replaced the former section 15. The prior sec. 15 was originally sec. 12 of Public Law 88–365 but redesignated sec. 15 by section 2(a) of Public Law 89–562. Section 7 of Public Law 91–453 amended the prior sec. 15.

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

[200] Section 310 of Public Law 95–599 amended section 15 by adding subsection (c).

Planning and Design of Mass Transportation Facilities to Meet Special Needs of Elderly Persons and Persons with Disabilities[201]

(49 U.S.C. app. § 1612)

SECTION 16. (a) It is hereby declared to be the national policy that elderly and handicapped persons with disabilities[202] 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 persons and persons with disabilities 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 persons and persons with disabilities, 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;

(2) to the Governor of each State for allocation[203] to private nonprofit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of elderly persons and persons with disabilities for whom mass transportation services are planned, designed, and carried out under paragraph (1) are unavailable, insufficient or inappropriate or to public bodies approved by the State to coordinate services for elderly persons and persons with disabilities or to public bodies which certify to the Governor that no nonprofit corporations or associations are readily available in an area to provide the service under this subsection,[204] 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

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

[202] Section 3021(1)(a) of Public Law 102–240 replaced the words "elderly and handicapped persons" with the words "elderly persons and persons with disabilities" throughout the section.

[203] Section 3021(2) of Public Law 102–240 added the words "to the Governor of each State for allocation".

[204] Section 3021(3) of Public Law 102–240 added the reference to public bodies.

(1)), as the Secretary may determine to be necessary or appropriate for purposes of this paragraph; and

(3)[205] eligible capital expenses under this section may include, at the option of the recipient, the acquisition of transportation services under a contract, lease, or other arrangement.

Of the total amount authorized to be appropriated pursuant to section 21(a)(2) of this Act 3.5 per centum[206] may be set aside and used exclusively to finance the programs and activities authorized by this subsection (including administrative costs).[207]

(c)[208] APPORTIONMENT AND USE OF FUNDS.—

(1) STATE PROGRAM OF PROJECTS.—Funds made available for purposes of subsection (b) may be used for transportation projects to assist in the provision of transportation services for elderly persons and persons with disabilities which are included in a State program of projects. Such programs shall be submitted annually to the Secretary for approval and shall contain an assurance that the program provides for maximum feasible coordination of transportation services assisted under this section with transportation services assisted by other Federal sources.

(2) APPORTIONMENT.—Sums made available for expenditure for purposes of subsection (b) shall be apportioned to the States on the basis of a formula administered by the Secretary which shall take into consideration the number of elderly persons and persons with disabilities in each State.

(3) TRANSFER OF AMOUNT.—Any amounts of a State's apportionment under this subsection that remain available for obligation at the beginning of the 90-day period before the expiration of the period of availability of such amounts shall be available to the Governor for transfer to supplement funds apportioned to the State under section 18(a) or section 9(d).

(4) LEASING OF VEHICLES.—The Secretary shall, not later than 60 days following the enactment of the Federal Transit Act, issue regulations to allow vehicles purchased under this section to be leased to local public bodies and agencies for the purpose of improving transportation services designed to meet the special needs of elderly persons and persons with disabilities.

(d)[209] 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 transportation facilities and services

[205] Section 3021(4) of Public Law 102–240 added paragraph (3).

[206] Section 317(a) of Public Law 97–424 replaced the words "section 4(c)(3) of this Act, 2 per centum" with the words "section 21(a)(2) of this Act, 3.5 per centum."

[207] This sentence was amended by section 311 of Public Law 95–599.

[208] Section 3021(6) of Public Law 102–240 inserted new subsection (c).

[209] Section 3021(5) of Public Law 102–240 redesignated former subsection (c) as (d), and former subsection (d) as (e).

planned and designed to meet the special needs of elderly persons and person with disabilities.[210] [211] [212]

(e)[213] 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.[214]

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[210] Subsection 311(b) of Public Law 95–599 deleted subsection (b) which defined "handicapped person." See, however, subsection 12(c)(4).

[211] In *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981), the Court of Appeals held that Department of Transportation 1979 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. Supp. 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 opinon 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). DOT's 1981 interim regulations implementing this section and 504 were entitled to deference. *Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F.2d 490, 946, M–10 (1st Cir. 1983); See also *Disabled in Action of Baltimore* v. *Bridwell*, No. M–81–2979 D. MD. 1984; appeal dismissed as moot. No. 84–2275 (1st Cir. 1987).

[212] Handicapped persons do not have a private right of action under section 16. *Dopico* v. *Goldschmidt*, 518 F. Supp. 116 (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 explicity 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).

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

[214] Since UMTA imposes more explicit affirmative burdens than does section 504 [of the Rehabilitation Act], DOT understandably determined that satisfaction of the requirements under UMTA would suffice to meet the less well-defined requirements of section 504. *Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F2d 490 at 494 n. 5 (1st Cir. 1983).

(f)[215] MEAL DELIVERY SERVICE TO HOMEBOUND PERSONS.—Transit service providers receiving assistance under this section or section 18(a) may coordinate and assist in providing meal delivery service for homebound persons on a regular basis if the meal delivery services do not conflict with the provision of transit services or result in a reduction of service to transit passengers.

Emergency Operating Assistance[216]

(49 U.S.C. app. § 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 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)).[217] 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;

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[215] Section 3021(7) of Public Law 102–240 deleted former subsection (e) as added by Sec. 321 of Public Law 100–17 and added new subsection (f).

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

[217] Reserved.

(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.[218]

(e) The terms and provisions which are applicable to assistance provided pursuant to this section shall be consistent, insofar as practicable, with the terms and provisions which are applicable to operating assistance under section 5 of this Act.

(f)[219] 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, and $125,000,000 by September 30, 1978, such sums to remain available until expended.

Formula Grant Program for Areas Other Than Urbanized Areas[220]

(49 U.S.C. app. § 1614)

SECTION 18.[221] (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.[222] Such sums shall be made available for expenditure for 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

[218] 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. Public Law 95–187 also deleted the last sentence of subsection (d).

[219] This subsection was amended by section 312 of Public Law 95–599.

[220] This section 18 was added by section 313(a) of Public Law 95–599. Prior section 18, which was added by Public Law 95–187, was repealed by section 312(c) of Public Law 95–599.

[221] 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).

[222] 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."

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, the population estimate prepared by the Secretary of Commerce following the 4th year after the date of publication of such Federal census, or the population estimate prepared by the Secretary of Commerce following the 8th year after such date of publication, whichever is the most recent.[223] 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 programs 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[224] 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. A State administering a program of operating assistance under this section may not limit the level or extent of use of the Federal share for the payment of operating expenses except as provided in this section.[225] [226]

(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

[223] Section 3024 of Public Law 102–240 added the clarification of federal census in this sentence.

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

[225] Section 322 of Public Law 100–17 amended subsection (c) by adding this sentence.

[226] Subsections (b) and (c) do not create rights enforceable in private litigation. *Rapid Transit Advocates* v. *Southern California Rapid Transit District*, 752 F.2d 373 (1985).

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, replacement, or depreciation funds or reserves available in cash or new capital. For the purpose of this subsection, the term "Federal funds or revenues" does not include funds received by a recipient of funds under this section pursuant to a service agreement with a State or local service agency or a private social service organization.[227]

(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) TRANSFER OF FACILITIES AND EQUIPMENT.—A State may transfer facilities and equipment acquired with assistance under this section or section 16(b) to any recipient eligible to receive assistance under this Act with the consent of the recipient currently in possession of such facilities or equipment, if the facility or equipment will continue to be used in accordance with the requirements of this section or section 16(b), as the case may be.[228]

(h) RURAL TRANSIT ASSISTANCE PROGRAM.—The Secretary shall establish and carry out a rural transit assistance program in nonurbanized areas. In carrying out this subsection, the Secretary is authorized to make grants and to enter into direct contracts for transit research, technical assistance, training, and related support services in nonurbanized areas.[229]

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[227] Section 326 of Public Law 99–190 amended subsection (e) by adding this sentence.

[228] Section 3022 of Public Law 102–240 replaced the prior subsection (g) which was added by section 313(a) of Public Law 95–599, with this subsection.

[229] Section 323 of Public Law 100–17 amended section 18 by adding subsection (h).

(i)[230] INTERCITY BUS TRANSPORTATION.—

(1) FUNDING OF PROGRAM.—Subject to paragraph (2), a State shall expend not less than 5 percent of the amounts made available to such State under this section in fiscal year 1992, 10 percent of such amounts in fiscal year 1993, and 15 percent of such amounts in fiscal year 1994 and each fiscal year beginning thereafter to carry out a program for the development and support of intercity bus transportation. Eligible activities under such a program include planning and marketing for intercity bus transportation, capital grants for intercity bus shelters, joint-use stops and depots, operating grants through purchase-of-service agreements, user-side subsidies and demonstration projects, and coordination of rural connections between small transit operations and intercity bus carriers.

(2) CERTIFICATION.—A State shall not be required to comply with paragraph (1) in any fiscal year in which the Governor certifies to the Secretary that the intercity bus service needs of the State are being adequately met.

(3) SPECIAL RULE.—For fiscal year 1992, a State may meet the requirement of paragraph (1) by expending to carry out the program described in paragraph (1) at least 50 percent of the increase in the amount allocated to the State under this section between fiscal year 1991 and fiscal year 1992.

Nondiscrimination[231] [232]

(49 U.S.C. app. § 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

[230] Section 3023 of Public Law 102–240 added subsection (i).

[231] Section 314 of Public Law 95–599 added Section 19.

[232] 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."

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;

(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, corporation, legal representations, mutual companies, joint-stock companies, trust, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

Human Resource Programs[233]

(49 U.S.C. app. § 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[234]

(49 U.S.C. app. § 1617)

SECTION 21. (a) FORMULA GRANT PROGRAMS.—

[233] Section 315 of Public Law 95–599 added Section 20.

[234] Section 3025 of Public Law 102–240 replaced the prior sec. 21 with this section. The prior sec. 21 was added by Section 328 of Public Law 100–17 which replaced the sec. 21 added by sec. 302(s) *Continued*

SECTION 21

(1) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund only to carry out sections 9B, 11(b), 12(a), 16(b), 18, 23, and 26 of this Act, $1,150,000,000 for fiscal year 1993, $1,190,000,000 for fiscal year 1994, $1,150,000,000 for fiscal year 1995, $1,110,000,000 for fiscal year 1996, and $1,920,000,000 for fiscal year 1997, to remain available until expended.

(2) FROM GENERAL FUNDS.—In addition to the amounts specified in paragraph (1), there are authorized to be appropriated to carry out sections 9, 11(b), 12(a), 16(b), 18, 23, and 26 of this Act, and substitute transit projects under section 103(e)(4) of title 23, United States Code, $2,055,000,000 for fiscal year 1993, $1,885,000,000 for fiscal year 1994, $1,925,000,000 for fiscal year 1995, $1,965,000,000 for fiscal year 1996, and $2,430,000,000 for fiscal year 1997, to remain available until expended.

(3) FISCAL YEAR 1992.—There shall be available from the Mass Transit Account of the Highway Trust Fund for fiscal year 1992, $409,710,000 to carry out section 9B of this Act, to remain available until expended.

(b) SECTION 3 DISCRETIONARY AND FORMULA GRANTS.—

(1) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund only to carry out section 3 of this Act, $1,725,000,000 for fiscal year 1993, $1,785,000,000 for fiscal year 1994, $1,725,000,000 for fiscal year 1995, $1,665,000,000 for fiscal year 1996, and $2,880,000,000 for fiscal year 1997, to remain available until expended.

(2) FROM GENERAL FUNDS.—In addition to the amounts specified in paragraph (1), there are authorized to be appropriated to carry out section 3 of this Act, $305,000,000 for fiscal year 1993, $265,000,000 for fiscal year 1994, $325,000,000 for fiscal year 1995, $385,000,000 for fiscal year 1996, and $20,000,000 for fiscal year 1997, to remain available until expended.

(3) FISCAL YEAR 1992.—There shall be available from the Mass Transit Account of the Highway Trust Fund for fiscal year 1992—

(A) $1,345,000,000 to carry out section 3 of this Act;

(B) $43,780,000 to carry out section 8 of this Act;

(C) $55,000,000 to carry out section 16 of this Act;

(D) $19,460,000 to carry out section 26(a) of this Act;

(E) $20,050,000 to carry out section 26(b) of this Act of which $12,000,000 shall be available only for part C of title VI of the Intermodal Surface Transportation Efficiency Act of 1991; and

(F) $7,000,000 to carry out section 11(b) of this Act.

Such sums shall remain available until expended.

(4) CONTRACTUAL OBLIGATIONS.—Approval by the Secretary of a grant or contract with funds made available under subsection (a)(1),

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of Public Law 97–424. sec. 302(s) of Public Law 97–424 replaced the original sec. 21 which was entitled "Terminal Development Program" and added by section 322 of Public Law 95–599.

(a)(3), (b)(1), or (b)(3) shall be deemed a contractual obligation of the United States for payment of the Federal share of the cost of the project. Approval by the Secretary of a grant or contract with funds made available under subsection (a)(2) or (b)(2) shall be deemed a contractual obligation of the United States for payment of the Federal share of the cost of the project only to the extent that amounts are provided in advance in appropriations Acts.

(c) SET-ASIDE FOR PLANNING, PROGRAMMING, AND RESEARCH.—Before apportionment in each fiscal year of the funds made available or appropriated under subsection 8(p), an amount equivalent to 3.0 percent of funds made available or appropriated under subsections (a) and (b) shall be made available until expended as follows:

(1) 45 percent of such funds shall be made available for metropolitan planning activities under section 8(f);

(2) 5 percent of such funds shall be made available to carry out section 18(h);

(3) 20 percent of such funds shall be made available to carry out the State program under section 26(a); and

(4) 30 percent of such funds shall be made available to carry out the national program under section 26(b).

(d) OTHER SET-ASIDES.—Before apportionment in each fiscal year of the funds made available or appropriated under subsection (a), of the funds made available or appropriated under subsections (a) and (b)—

(1) not to exceed an amount equivalent to .96 percent shall be available for administrative expenses to carry out section 12(a) of this Act and shall be available until expended;

(2) not to exceed an amount equivalent to 1.34 percent shall be available for transportation services to elderly persons and persons with disabilities pursuant to the formula under section 16(b) of this Act and shall be available until expended; and

(3) $7,000,000 shall be available for the purposes of section 11(b) relating to university transportation centers for each of fiscal years 1993 through 1996.

(e) COMPLETION OF INTERSTATE TRANSFER TRANSIT PROJECTS.—Of the amounts remaining available each year under subsections (a) and (b), after allocation pursuant to subsections (c) and (d), for substitute transit projects under section 103(e)(4) of title 23, United States Code, there shall be available $160,000,000 for fiscal year 1992 and $164,843,000 for fiscal year 1993.

(f) SET-ASIDE FOR RURAL TRANSPORTATION.—An amount equivalent to 5.5 percent of the amounts remaining available each year under subsection (a), after allocation pursuant to subsections (c), (d), and (e), shall be available pursuant to the formula under section 18. Such sums shall remain available until expended.

(g) SECTION 9 FUNDING.—The funds remaining available each year under subsection (a), after allocation pursuant to subsections (c), (d), (e) and (f), shall be available under section 9.

Safety Authority[235] [236]

(49 U.S.C. app. § 1618)

SECTION 22. (a) IN GENERAL.—The Secretary may investigate conditions in any facility, equipment, or manner of operation financed under this Act which the Secretary 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.

(b)[237] REPORT.—Not later than 180 days after the date of the enactment of this subsection, the Secretary shall transmit to Congress a report containing—

(1) actions taken to identify and investigate conditions in any facility, equipment, or manner of operation as part of the findings and determinations required of the Secretary in providing grants and loans under this Act;

(2) actions taken by the Secretary to correct or eliminate any conditions found to create a serious hazard of death or injury as a condition for making funds available through grants and loans under this Act;

(3) a summary of all passenger-related deaths and injuries resulting from unsafe conditions in any facility, equipment, or manner of operation of such facilities and equipment financed in whole or in part under this Act;

(4) a summary of all employee-related deaths and injuries resulting from unsafe conditions in any facility, equipment, or manner of operation of such facilities and equipment financed in whole or in part under this Act;

(5) a summary of all actions taken by the Secretary to correct or eliminate the unsafe conditions to which such deaths and injuries were attributed;

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[235] Section 318(b) of Public Law 97–424 added this sec. 22. Section 302(a) of Public Law 97–424 deleted the prior sec. 22 which was entitled 'Intercity Bus Service' and added by section 323 of Public Law 95–599. Section 3026(1) of Public Law 102–240 added the subsection (a) designation.

[236] This section does not authorize the FTA to address mass transit safety hazards through general safety regulations such as the FTA's November 21, 1988 Anti-Drug Regulation. *Amalgamated Transit Union* v. *Skinner*, 894 F.2d 1362 (D.C. Cir. 1990).

[237] Section 3026(2) of Public Law 102–240 added subsection (b).

(6) a summary of those actions taken by the Secretary to alert transit operators of the nature of the unsafe conditions which were found to create a serious hazard of death or injury; and

(7) recommendations to the Congress by the Secretary of any legislative or administrative actions necessary to ensure that all recipients of funds under this Act will institute the best means available to correct or eliminate hazards of death or injury, including—

(A) a timetable for instituting actions,

(B) an estimate of the capital and operating cost to take such actions, and

(C) minimum standards for establishing and implementing safety plans by recipients of funds under this Act.

Project Management Oversight[238]

(49 U.S.C. app. § 1619)

SECTION 23. (a) AUTHORITY TO USE FUNDS.—Beginning October 1, 1987, the Secretary may use not to exceed ½ of 1 percent of the funds made available for any fiscal year to carry out sections 3, 9, or 18 of this Act, or interstate transfer transit projects under section 103(e)(4) of title 23, United States Code, as in effect on September 30, 1991, or a project under the National Capital Transportation Act of 1969 to contract with any person to oversee the construction of any major project under any such section. In addition to such amounts, the Secretary may as necessary use not more than ¼ of 1 percent of the funds made available in any fiscal year to carry out a major project under section 3 to contract with any person to oversee the construction of such major project.[239]

(b) FEDERAL SHARE.—Any contract entered into under this subsection shall provide for the payment by the Secretary of 100 percent of the cost of carrying out the contract.

(c) ACCESS TO SITES AND RECORDS.—Each recipient of assistance under this Act or section 14(b) of the National Capital Transportation Act of 1969 shall provide the Secretary and a contractor chosen by the Secretary in accordance with subsection (a) such access to its construction sites and records as may be reasonably required.

(d) REQUIREMENT FOR PLAN.—As a condition of Federal financial assistance for a major capital project under this Act or the National Capital Transportation Act of 1969, the Secretary shall require the recipient to prepare, and, after approval by the Secretary, implement a project management plan which meets the requirements of subsection (e).

(e) CONTENTS OF PLAN.—A project management plan shall, as required in each case by the Secretary, provide for—

[238] Section 324(a) of Public Law 100–17 added section 23.

[239] Section 3027 of Public Law 102–240 deleted paragraphs (1)–(5) of subsection (a) and replaced them with the words following "½ of 1 percent of".

(1) adequate recipient staff organization complete with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

(2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and such miscellaneous payments as the recipient may be prepared to justify;

(3) a construction schedule;

(4) a document control procedure and recordkeeping system;

(5) a change order procedure which includes a documented, systematic approach to the handling of construction change orders;

(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

(7) quality control and quality assurance functions, procedures, and responsibilities for construction and for system installation and integration of system components;

(8) materials testing policies and procedures;

(9) internal plan implementation and reporting requirements;

(10) criteria and procedures to be used for testing the operational system or its major components;

(11) periodic updates of the plan, especially with respect to such items as project budget and project, schedule, financing, ridership estimates, and where applicable, the status of local efforts to enhance ridership in cases where ridership estimates are contingent, in part, upon the success of such efforts; and

(12) the recipient's commitment to make monthly submissions of project budget and project schedule to the Secretary.

(f) REGULATIONS.—The Secretary shall promulgate such regulations as may be necessary to implement the provisions of this section. Such regulations shall be published in proposed form for comment in the Federal Register and shall be submitted for review to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than 60 days after the date of enactment of this section, and shall be promulgated in final form not later than 180 days after the date of enactment of this section.[240] Such regulations shall, at a minimum, include the following:

(1) A definition of the term "major capital project" for the purpose of subsection (a). Such definition shall exclude projects for the acquisition of vehicles or other rolling stock, or for the performance of vehicle maintenance or rehabilitation.

(2) A requirement that, in order to maximize the transportation benefits and cost savings associated with project management oversight, such oversight shall begin during the preliminary engineering stage of a project. The requirement of this paragraph shall not apply

[240] Date of enactment of this section was April 2, 1987.

if the Secretary finds that it is more appropriate to initiate such oversight during another stage of the project.

(g) APPROVAL.—The Secretary shall approve a plan submitted pursuant to subsection (d) within 60 days following its submittal. In the event that approval cannot be completed within 60 days, the Secretary shall notify the recipient that approval cannot be completed within 60 days, explain the reasons for the delay, and estimate how much additional time will be required for completion. If a plan is disapproved, the Secretary shall inform the recipient of the reasons.

(h)[241] SAFETY, FINANCIAL AND PROCUREMENT COMPLIANCE REVIEWS.—In addition to the purposes provided for under subsection (a), the funds made available under subsections (a) (1) through (5) may be used by the Secretary to contract with any person to provide safety, procurement, management and financial compliance reviews, and audits of any recipient of funds under any such subsection. Any contract entered into under this subsection shall not be subject to the requirements of subsection (d), (e), (f), or (g).

Crime Prevention and Security[242]

(49 U.S.C. app. § 1620)

SECTION 24. From funds made available pursuant to section 21 of this Act, the Secretary is authorized to make capital grants to public mass transit systems for crime prevention and security. None of the provisions of this Act may be construed to prohibit the financing of projects under this section where law enforcement responsibilities are vested in a local public body other than the grant applicant.

Bicycle Facilities[243]

(49 U.S.C. app. § 1621)

SECTION 25. (a) ELIGIBILITY.—For purposes of this Act, a project to provide access for bicycles to mass transportation facilities, to provide shelters and parking facilities for bicycles in or around mass transportation facilities, or to install racks or other equipment for transporting bicycles on mass transportation vehicles shall be deemed to be a construction project eligible for assistance under sections 3, 9, and 18 of this Act.

(b) FEDERAL SHARE.—Notwithstanding sections 4(a), 9(k), and 18(e), the Federal share under this Act for any project to provide access for bicycles to mass transportation facilities, to provide shelters and parking facilities for bicycles in or around mass transportation facilities, or to install racks or other equipment for transporting bicycles on mass transportation vehicles shall be 90 percent of the cost of such project.

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[241] Section 340 of Public Law 101-164 added subsection (h).

[242] Section 325 of Public Law 100-17 added section 24.

[243] Section 326 of Public Law 100-17 added section 25.

SECTION 26

Planning and Research Program[244]

(49 U.S.C. app. § 1622)

SECTION 26. (a) STATE PROGRAM.—The funds made available under section 21(c)(3) shall be available for State programs as follows:

(1) TRANSIT COOPERATIVE RESEARCH PROGRAM.—50 percent of that amount shall be available for the transit cooperative research program to be administered as follows:

(A) INDEPENDENT GOVERNING BOARD.—The Secretary shall establish an independent governing board for such program to recommend mass transportation research, development, and technology transfer activities as the Secretary deems appropriate.

(B) NATIONAL ACADEMY OF SCIENCES.—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities as the Secretary determines are appropriate.

(2) STATE PLANNING AND RESEARCH.—The remaining 50 percent of that amount shall be apportioned to the States for grants and contracts consistent with the purposes of sections 6, 8, 10, 11, and 20 of this Act.

(A) APPORTIONMENT FORMULA.—Amounts shall be apportioned to the States in the ratio which the population in urbanized areas in each State bears to the total population in urbanized areas, in all the States as shown by the latest available decennial census, except that no State shall receive less than ½ of 1 percent of the amount apportioned under this section.

(B) ALLOCATION WITHIN A STATE.—A State may authorize a portion of its funds made available under this subsection to be used to supplement funds available under subsection (a)(1), as the State deems appropriate.

(b) NATIONAL PROGRAM.—

(1) IN GENERAL.—The funds made available under section 21(c)(4), shall be available to the Secretary for grants or contracts for the purposes of section 6, 8, 10, 11, or 20 of this Act, as the Secretary deems appropriate.

(2) COMPLIANCE WITH ADA.—Of the amounts available under paragraph (1), the Secretary shall make available not less than $2,000,000 to provide transit-related technical assistance, demonstration programs, research, public education, and other activities that the Secretary deems appropriate to help transit providers achieve compliance with the Americans with Disabilities Act of 1990. To the extent practicable, the Secretary shall carry out this subsection through contract with a national nonprofit organization serving persons with disabilities with demonstrated capacity to carry out these activities.

(3) SPECIAL INITIATIVES.—Of the amounts available under paragraph (1), an amount not to exceed 25 percent shall be available

[244] Section 3030 of Public Law 102–240 added Sec. 26.

to the Secretary for special demonstration initiatives subject to such terms, conditions, requirements, and provisions as the Secretary deems consistent with the requirements of this Act, except that the provisions of section 3(e)(4) shall apply to operational grants funded for purposes of section 6. For nonrenewable grants that do not exceed $100,000, the Secretary shall provide expedited procedures governing compliance with requirements of this Act.

(4) TECHNOLOGY DEVELOPMENT.—

(A) PROGRAM.—The Secretary is authorized to undertake a program of transit technology development in coordination with affected entities.

(B) INDUSTRY TECHNICAL PANEL.—The Secretary shall establish an Industry Technical Panel consisting of representatives of transportation suppliers and operators and others involved in technology development. A majority of the Panel members shall represent the supply industry. The Panel shall assist the Secretary in the identification of priority technology development areas and in establishing guidelines for project development, project cost sharing, and project execution.

(C) GUIDELINES.—The Secretary shall develop guidelines for cost sharing in technology development projects funded under this section. Such guidelines shall be flexible in nature and reflect the extent of technical risk, market risk, and anticipated supplier benefits and pay back periods.

(5) ADVANCED FARE COLLECTION TECHNOLOGY PILOT PROJECT.—From amounts authorized under section 21(c)(4), the Secretary shall make available $1,000,000 in fiscal year 1992 for the purpose of conducting a pilot project to evaluate, develop, and test advanced fare technology systems. Such project shall be carried out by the Washington Metropolitan Transit Authority.

(6) INERTIAL NAVIGATION TECHNOLOGY TRANSFER.—

(A) PROJECT.—There is authorized to be appropriated from amounts made available under section 21(c), $1,000,000 for fiscal year 1992 to support an inertial navigation system demonstration project for the purpose of determining the safety, economic, and environmental benefits of deploying inertial navigation tracking and control systems in urban and rural environments.

(B) PUBLIC-PRIVATE SECTOR PARTICIPANTS.—The project described in subparagraph (A) shall be conducted by the Transit Safety Research Alliance, a nonprofit public-private sector consortium based in Pittsburgh, Pennsylvania.

(7) SUPPLEMENTARY FUNDS.—The Secretary may use funds appropriated under this subsection to supplement funds available under subsection (a)(1), as the Secretary deems appropriate.

(8) FEDERAL SHARE.—Where there would be a clear and direct financial benefit to an entity under a grant or contract funded under

this subsection or subsection (a)(1), the Secretary shall establish a Federal share consistent with that benefit.

(c) SUSPENDED LIGHT RAIL SYSTEM TECHNOLOGY PILOT PROJECT.—

(1) FULL FUNDING GRANT AGREEMENT.—Not later than 60 days after the fulfillment of the requirements under paragraph (5), the Secretary shall negotiate and enter into a full funding grant agreement under section 3 with a public entity selected under paragraph (4) for construction of a suspended light rail system technology pilot project.

(2) PROJECT PURPOSE.—The purpose of the project under this subsection shall be to assess the state of new technology for a suspended light rail system and to determine the feasibility and costs and benefits of using such a system for transporting passengers.

(3) PROJECT DESCRIPTION.—The project under this subsection shall—

(A) utilize new rail technology with individual vehicles on a prefabricated, elevated steel guideway;

(B) be stability seeking with a center of gravity for the detachable passenger vehicles located below the point of wheel-rail contact; and

(C) utilize vehicles which are driven by overhead bogies with high efficiency, low maintenance electric motors for each wheel, operating in a slightly sloped plane from vertical for both the wheels and the running rails, to further increase stability, acceleration, and braking performance.

(4) COMPETITION.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall conduct a national competition to select a public entity with which to enter into a full funding grant agreement under paragraph (1) for construction of the project under this subsection.

(B) PUBLICATION OF NOTICE.—Not later than 30 days after the date of the enactment of this Act, the Secretary shall publish in the Federal Register notice of the competition to be conducted under this paragraph, together with procedures for public entities to participate in the competition.

(C) SELECTION OF FINALISTS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall select 3 public entities to be finalists in the competition under this paragraph.

(D) AWARD OF GRANTS.—The Secretary shall award grants to each of the finalists selected under subparagraph (C). Such grants shall be used by the finalists to participate in the final phase of the competition under this paragraph in accordance with procedures to be established by the Secretary. The amount of such grants shall not exceed 80 percent of the costs of such participation. No finalists may receive more than ⅓ of the amount made available under paragraph (9)(C).

(E) SELECTION OF WINNER.—Not later than 210 days after the date of the enactment of this Act, the Secretary shall select from among the finalists selected under subparagraph (C) the public entity with which to enter into a full funding grant agreement under paragraph (1).

(F) CONSIDERATIONS.—In conducting the competition and selecting public entities under this paragraph, the Secretary shall consider the following:

(i) The public entity's demonstrated understanding and knowledge of the project under this section.

(ii) The public entity's technical, managerial, and financial capacity to undertake construction, management, and operation of the project.

(iii) Maximization of potential contributions to the cost of the project by State, local, and private sector entities, including the donation of in-kind services and materials.

(5) EXPEDITED PROCEDURES.—Not later than 270 days after the date of selection of a public entity under paragraph (4), the Secretary shall approve and publish in the Federal Register a notice announcing either (A) a finding of no significant impact, or (B) a draft environmental impact statement for the project under this subsection. The alternative analysis for the project shall include a determination as to whether or not to actually construct such project. If a draft environmental impact statement is published, the Secretary shall, not later than 180 days after the date of such publication, approve and publish in the Federal Register a notice of completion of a final environmental impact statement. The project shall not be subject to the major capital investment policy of the Federal Transit Administration.

(6) NOTICE TO PROCEED WITH CONSTRUCTION.—Not later than 30 days following the execution of the full funding grant agreement under paragraph (1), the Secretary shall issue a notice to proceed with construction.

(7) OPTION NOT TO CONSTRUCT.—Not later than the 30th day following the completion of preliminary engineering and design for the project, the public entity selected under paragraph (1) will make a determination of whether or not to proceed to actual construction of the project. If such public entity makes a determination not to proceed to such actual construction—

(A) the Secretary shall not enter into the grant agreement under paragraph (1);

(B) any remaining sums received shall be returned to the Secretary and credited to the Mass Transit Account of the Highway Trust Fund; and

(C) the Secretary shall use the amount so credited and all other amounts to be provided under this section to award to entities

selected under paragraph (4)(E) grants under section 3 for construction of the project described in paragraph (1).

Any grants under subparagraph (C) shall be awarded after completion of a competitive process for selection of a grant recipient. Such process shall be completed not later than the 60th day following the date of the determination under this subsection.

(8) OPERATING COST DEFICITS.—The full funding grant agreement under paragraph (1) shall provide that—

(A) the system vendor for the project under this section shall fund 100 percent of any deficit incurred in operating the project in the first two years of revenue operations of the project; and

(B) the system vendor for the project under this section shall fund 50 percent of any deficit incurred in operating the project in the third year of revenue operations of the project.

(9) FUNDING.—

(A) PRECONSTRUCTION.—If the systems planning, alternatives analysis, preliminary engineering, and design and environmental impact statement are required by law for the project under this subsection, the Secretary shall pay by grant the Federal share of such costs (as determined under section 3) from amounts provided under such section as follows: not less than $4,000,000 for fiscal year 1993. Such funds shall remain available until expended.

(B) CONSTRUCTION.—The grant agreement under paragraph (1) shall provide that the Federal share of the construction costs of the project under this section shall be paid by the Secretary from amounts provided under section 3 as follows: not less than $30,000,000 for fiscal year 1994. Such funds shall remain available until expended.

(C) GRANTS.—Grants under paragraph (4) shall be paid by the Secretary from amounts provided under section 3 as follows: not less than $1,000,000 for fiscal year 1992. Any amounts not expended for such grants shall be available for the Federal share of costs described in subparagraphs (A) and (B).

(D) OPERATION.—Notwithstanding any other provision of law, the grant agreement under paragraph (1) shall provide with respect to the third year of revenue operations of the project under this subsection that the Federal share of operating costs of the project shall be paid by the Secretary from amounts provided under this section in a sum equal to 50 percent of any deficit incurred in operating the project in such year of revenue operations or $300,000, whichever is less.

(10) FEDERAL SHARE.—The Federal share of the cost of construction of the project under this subsection shall be 80 percent of the net cost of the project.

(11) REPORT.—Not later than January 30, 1993, and annually thereafter, the Secretary shall transmit to Congress a report on the progress and results of the project under this subsection.

Needs Survey and Transferability Study[245]

(49 U.S.C. app. § 1623)

SECTION 27. (a) NEEDS SURVEY.—In January 1993 and in January of every second year thereafter, the Comptroller General shall transmit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Public Works and Transportation of the House of Representatives a report containing an evaluation of the extent to which current transit needs are adequately addressed and an estimate of the future transit needs of the Nation, including transit needs in rural areas (particularly access to health care facilities). Such report shall include the following:

(1) An assessment of needs related to rail modernization, guideway modernization, replacement, rehabilitation, and purchase of buses and related equipment, construction of bus related facilities, and construction of new fixed guideway systems and extensions to fixed guideway systems.

(2) A 5-year projection of the maintenance and modernization needs that will result from aging of existing equipment and facilities, including the need to overhaul or replace existing bus fleets and rolling stock used on fixed guideway systems.

(3) A 5-year projection of the need to invest in the expansion of existing transit systems to meet changing economic, commuter, and residential patterns.

(4) An estimate of the level of expenditure needed to satisfy the needs identified above.

(5) An examination of existing Federal, State, and local resources as well as private resources that are or can reasonably be expected to be made available to support public transit.

(6) The gap between the level of expenditure estimated under paragraph (4) and the level of resources available to meet such needs identified under paragraph (5).

(b) TRANSFERABILITY STUDY.—

(1) IN GENERAL.—In January 1993 and in January of every second year thereafter, the Comptroller General shall transmit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Public Works and Transportation of the House of Representatives a report on implementation of the transferability provisions of section 9(j)(3) of this Act.

(2) CONTENTS.—The report shall identify, by State, the amount of transit funds transferred for nontransit purposes under such sections during the previous fiscal year and shall include an assessment of the impact of such transfers on the transit needs of individuals and communities within the State. Specifically, the report shall assess the impact of such transfers (A) on the State's ability to meet the transit needs of elderly individuals and individuals with disabilities,

[245] Section 3028 of Public Law 102-240 added sec. 27.

(B) on efforts to meet the objectives of the Americans With Disabilities Act of 1990 and the Clean Air Act, and (C) on the State's efforts to extend public transit services to unserved rural areas. The report shall also include an examination of the relative levels of Federal transit assistance and services in urban and rural areas in fiscal year 1991 and the extent to which such assistance and service has increased or decreased in subsequent fiscal years as a result of transit resources made available under this Act and the Intermodal Surface Transportation Efficiency Act of 1991.

State Responsibility for Fixed Guideway System Safety[246]

(49 U.S.C. app. § 1624)

SECTION 28. (a) WITHHOLDING OF FUNDS FOR NONCOMPLIANCE.—The Secretary may withhold up to 5 percent of the amount required to be apportioned for use in any State or urbanized area in such State under section 9 for any fiscal year beginning after September 30, 1994, if the State in the previous fiscal year has not met the requirements of subsection (b) and the Secretary determines that the State is not making adequate efforts to comply with such subsection.

(b) STATE REQUIREMENTS.—A State meets the requirements of this section if—

(1) the State establishes and is implementing a safety program plan for each fixed guideway transit system in the State which establishes, at a minimum, safety requirements, lines of authority, levels of responsibility and accountability, and methods of documentation for such systems;

(2) the State designates an agency of the State with responsibility to—

(A) require, review and approve, and monitor implementation of such plans; and

(B) investigate hazardous conditions and accidents on such systems and require corrective actions to correct or eliminate such conditions; and

(3) in any case in which more than 1 State would be subject to this section in connection with a single transit agency, the affected States may designate an entity other than the transit agency to ensure uniform safety standards and enforcement and to meet the requirements of this subsection.

(c) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NON-COMPLIANCE.—

(1) PERIOD OF AVAILABILITY OF WITHHELD FUNDS.—Any funds withheld under subsection (a) from apportionment for use in any State in a fiscal year, shall remain available for apportionment for use in such State until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

[246] Section 3029 of Public Law 102-240 added sec. 28.

(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds withheld under subsection (a) from apportionment are to remain available for apportionment for use in a State under paragraph (1), the State meets the requirements of subsection (b), the Secretary shall, on the first day on which the State meets the requirements of subsection (b), apportion to the State the funds withheld under subsection (a) that remain available for apportionment for use in the State.

(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—Any funds apportioned pursuant to paragraph (2) shall remain available for expenditure until the end of the third fiscal year succeeding the fiscal year in which such funds are apportioned pursuant to paragraph (2). Sums not obligated at the end of such period shall be apportioned for use in other States under section 9 of this Act.

(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under subsection (a) from apportionment are available for apportionment for use in a State under paragraph (1), the State does not meet the requirements of subsection (b), such funds shall be apportioned for use in other States under section 9 of this Act.

(d) LIMITATION ON APPLICABILITY.—This section only applies to States that have rail fixed guideway mass transportation systems which are not subject to regulation by the Federal Railroad Administration.

(e) REGULATIONS.—Not later than 1 year after the date of the enactment of this section, the Secretary shall issue regulations which set forth the requirements for complying with subsection (b).

National Transit Institute[247]

(49 U.S.C. app. § 1625)

SECTION 29. (a) ESTABLISHMENT.—The Secretary shall make grants to Rutgers University to establish a national transit institute. The institute shall develop and administer, in cooperation with the Federal Transit Administration, State transportation departments, public transit agencies, and national and international entities, training programs of instruction for Federal, State, and local transportation employees, United States citizens, and foreign nationals engaged or to be engaged in Federal-aid transit work. Such programs may include courses in recent developments, techniques, and procedures relating to transit planning, management, environmental factors, acquisition and joint use of rights-of-way, engineering, procurement strategies for transit systems, turnkey approaches to implementing transit systems, new technologies, emission reduction technologies, means of making transit accessible to individuals with disabilities, construction, maintenance, contract administration, and inspection. The Secretary shall delegate to the institute the

[247] Section 6022 of Public Law 102-240 added Sec. 29.

authority vested in the Secretary for the development and conduct of educational and training programs relating to transit.

(b) FUNDING.—Not to exceed one-half of 1 percent of all funds made available for a fiscal year beginning after September 30, 1991, to a State or public transit agency in the State for carrying out sections 3 and 9 of the Federal Transit Act shall be available for expenditure by the State and public transit agencies in the State, subject to approval by the Secretary, for payment of not to exceed 80 percent of the cost of tuition and direct educational expenses in connection with the education and training of State and local transportation department employees as provided in this section.

(c) PROVISION OF TRAINING.—Education and training of Federal, State, and local transportation employees authorized by this section shall be provided—

(1) by the Secretary at no cost to the States and local governments for those subject areas which are a Federal program responsibility; or

(2) in any case where such education and training are to be paid for under subsection (b) of this section, by the State, subject to the approval of the Secretary, through grants and contracts with public and private agencies, other institutions, individuals, and the institute.

(d) FUNDING.—The Secretary shall make available in equal amounts from funds provided under section 21(c)(3) and 21(c)(4) $3,000,000 per fiscal year for each of fiscal years 1992, 1993, 1994, 1995, 1996, and 1997 for carrying out this section. Notwithstanding any other provision of law, approval by the Secretary of a grant with funds made available under this subsection shall be deemed a contractual obligation of the United States for payment of the Federal share of the cost of the project.

PART II
OTHER FEDERAL MASS TRANSPORTATION STATUTES

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

Title III

(Federal Transit Act Amendments of 1991)

Title VI—Research

Part C—Advanced Transportation Systems and Electric Vehicles

OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT OF 1991

SURFACE TRANSPORTATION AND UNIFORM RELOCATION ASSISTANCE ACT OF 1987

SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982

SURFACE TRANSPORTATION ASSISTANCE ACT OF 1978

NATIONAL MASS TRANSPORTATION ASSISTANCE ACT OF 1974

FEDERAL-AID HIGHWAY AMENDMENTS OF 1974

FEDERAL-AID HIGHWAY ACT OF 1973

URBAN MASS TRANSPORTATION ACT OF 1970

TITLE 23, UNITED STATES CODE, HIGHWAYS

Selected Provisions

INTERMODAL SURFACE TRANSPORTATION AND EFFICIENCY ACT OF 1991

(Public Law 102–240, December 18, 1991)

SECTION 1. Short Title.

This Act may be cited as the "Intermodal Surface Transportation Efficiency Act of 1991".

SECTION 2. Declaration of Policy: Intermodal Surface Transportation Efficiency Act.

It is the policy of the United States to develop a National Intermodal Transportation System that is economically efficient and environmentally sound, provides the foundation for the Nation to compete in the global economy, and will move people and goods in any energy efficient manner.

The National Intermodal Transportation System shall consist of all forms of transportation in a unified, interconnected manner, including the transportation systems of the future, to reduce energy consumption and air pollution while promoting economic development and supporting the Nation's preeminent position in international commerce.

The National Intermodal Transportation System shall include a National Highway System which consists of the National System of Interstate and Defense Highways and those principal arterial roads which are essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings.

The National Intermodal Transportation System shall include significant improvements in public transportation necessary to achieve national goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly persons, persons with disabilities, and economically disadvantaged persons in urban and rural areas of the country.

The National Intermodal Transportation System shall provide improved access to ports and airports, the Nation's link to world commerce.

The National Intermodal Transportation System shall give special emphasis to the contributions of the transportation sectors to increased productivity growth. Social benefits must be considered with particular attention to the external benefits of reduced air pollution, reduced traffic congestion and other aspects of the quality of life in the United States.

The National Intermodal Transportation System must be operated and maintained with insistent attention to the concepts of innovation, competition, energy efficiency, productivity, growth, and accountability. Practices that resulted in the lengthy and overly costly construction of the Interstate and Defense Highway System must be confronted and ceased.

The National Intermodal Transportation System shall be adapted to "intelligent vehicles", "magnetic levitation systems", and other new technologies wherever feasible and economical, with benefit cost estimates given special emphasis concerning safety considerations and techniques for cost allocation.

The National Intermodal Transportation System, where appropriate, will be financed, as regards Federal apportionments and reimbursements, by the Highway Trust Fund. Financial assistance will be provided to State and local governments and their instrumentalities to help implement national goals relating to mobility for elderly persons, persons with disabilities, and economically disadvantaged persons.

The National Intermodal Transportation System must be the centerpiece of a national investment commitment to create the new wealth of the Nation for the 21st century.

The Secretary shall distribute copies of this Declaration of Policy to each employee of the Department of Transportation and shall ensure that such Declaration of Policy is posted in all offices of the Department of Transportation.

SECTION 3. Secretary Defined.

As used in this Act, the term "Secretary" means the Secretary of Transportation.

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SECTION 1003. Authorization of Appropriations.

* * *

(b) DISADVANTAGED BUSINESS ENTERPRISES.—

(1) GENERAL RULE.—Except to the extent that the Secretary determines otherwise, not less than 10 percent of the amounts authorized to be appropriated under titles I (other than part B), III, V, and VI of this Act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

(2) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

(A) SMALL BUSINESS CONCERN.—The term "small business concern" has the meaning such term has under section 3 of the Small Business Act (15 U.S.C. 632); except that such term shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has average annual gross receipts over the preceding 3 fiscal years in excess of $15,370,000, as adjusted by the Secretary for inflation.

(B) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term "socially and economically disadvantaged individuals" has the meaning such term has under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and relevant subcontracting regulations promulgated pursuant thereto; except that women shall be presumed to be socially and economically disadvantaged individuals for purposes of this subsection.

(3) ANNUAL LISTING OF DISADVANTAGED BUSINESS ENTERPRISES.—Each State shall annually survey and compile a list of the small business concerns referred to in paragraph (1) and the location of such concerns in the State and notify the Secretary in writing, of the percentage of such concerns which are controlled by women, by socially and economically disadvantaged individuals (other than women), and by individuals who are women and are also otherwise socially and economically disadvantaged individuals.

(4) UNIFORM CERTIFICATION.—The Secretary shall establish minimum uniform criteria for State governments to use in certifying whether a concern qualifies for purposes of this subsection. Such minimum uniform criteria shall include but not be limited to on-site visits, personal interviews, licenses, analysis of stock ownership, listing of equipment, analysis of bonding capacity, listing of work completed, resume of principal owners, financial capacity, and type of work preferred.

* * *

SECTION 1054. Temporary Matching Fund Waiver.

(a) WAIVER OF MATCHING SHARE.—Notwithstanding any other provision of law, the Federal share of any qualifying project approved by the Secretary under title 23, United States Code, and of any qualifying project for which the United States becomes obligated to pay under title 23, United States Code, during the period beginning on October 1, 1991, and ending September 30, 1993, shall be the percentage of the construction cost as the State requests, up to and including 100 percent.

(b) REPAYMENT.—The total amount of increases in the Federal share made pursuant to subsection(a) for any State shall be repaid to the United States by the State on or before March 30, 1994. Payments shall be deposited in the Highway Trust Fund and repaid amounts shall be credited to the appropriate apportionment accounts of the State.

(c) DEDUCTION FROM APPORTIONMENTS.—If a State has not made the repayment as required by subsection (b), the secretary shall deduct from funds apportioned to the State under title 23, United States Code, in each of the fiscal years 1995 and 1996, a pro rata share of each category of apportioned funds. The amount which shall be deducted in each fiscal year shall be equal to 50 percent of the amount needed for repayment. Any amount deducted under this subsection shall be reapportioned for fiscal years 1995 and 1996 in accordance with title 23, United States Code, to those States which have not received a

higher Federal share under this section and to those States which have made the repayment required by subsection (b).

(d) QUALIFYING PROJECT DEFINED.—For purposes of this section, the term "qualifying project" means a project approved by the Secretary after the effective date of this title, or a project for which the United States becomes obligated to pay after such effective date, and for which the Governor of the State submitting the project has certified in accordance with regulations established by the Secretary, that sufficient funds are not available to pay the cost of the non-Federal share of the project.

* * *

TITLE III—Federal Transit Act Amendments of 1991 [248]

* * *

SECTION 3031. New Jersey Urban Core Project.

(a) CONTRACTUAL COMMITMENTS.—

(1) FULL FUNDING GRANT AGREEMENT.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall negotiate and enter into a full funding grant agreement under section 3 of the Federal Transit Act for those elements of the New Jersey Urban Core Project which can be fully funded in fiscal years 1992 through 1997. Such grant agreement shall not preclude the allocation of Federal funds for those elements of the project not covered under such grant agreement.

(2) PAYMENT.—The grant agreement under paragraph (1) shall provide that the Federal share of the cost of the New Jersey Urban Core Project shall be paid by the Secretary from amounts provided under section 3 of the Federal Transit Act as follows:

(A) Not less than $95,900,000 for fiscal year 1992.

(B) Not less than $71,700,000 for fiscal year 1993.

(C) Not less than $64,800,000 for fiscal year 1994.

(D) Not less than $146,000,000 for fiscal year 1995.

(E) Not less than a total of $256,000,000 for fiscal years 1996 and 1997.

Nothing in this section shall be construed as precluding other Federal funds from being committed to the project.

(b) NON-FEDERAL SHARE.—Notwithstanding any other provision of law, for the purpose of calculating non-Federal contributions to the net cost of New Jersey Urban Core Project, the Secretary shall include all non-Federal contributions made on or after January 1, 1987, for construction of any element of the project. Non-Federal funds committed to one element of the project may be used to meet the non-Federal share requirement for any other element of the project.

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[248] The primary provisions of Title III of the Intermodal Surface Transportation and Efficiency Act of 1991 amended the Federal Transit Act. Changes to the Federal Transit Act have been incorporated into the text in Part I. The sections that follow are provisions which did not amend the Federal Transit Act or other Acts as set out in this part.

(c) EXEMPTION FROM CERTAIN REQUIREMENTS.—The requirements contained in section 3(i) of the Federal Transit Act (relating to criteria for new starts) shall not apply with respect to the New Jersey Urban Core Project; except that an alternative analysis and draft environmental impact statement shall be completed with respect to the Hudson River Waterfront element of the project and the Secretary shall approve the recommended locally preferred alternative for such element. No element of the project shall be subject to the major capital investment policy of the Federal Transit Administration.

(d) ELEMENTS OF URBAN CORE PROJECT.—For the purposes of this section, the New Jersey Urban Core Project consists of the following elements: Secaucus Transfer, Kearny Connection, Waterfront Connection, Northeast Corridor Signal System, Hudson River Waterfront Transportation System, Newark-Newark International Airport-Elizabeth Transit Link, a rail connection between Penn Station Newark and Broad Street Station, Newark, New York Penn Station Concourse, and the equipment needed to operate revenue service associated with improvements made by the project. The project includes elements advanced with 100 percent non-Federal funds.

SECTION 3032. Multiyear Funding for San Francisco Bay Area Rail Extension Program.

(a) DRAFT ENVIRONMENTAL IMPACT STATEMENT.—

(1) COMPLETION DEADLINE.—Not later than 60 days after the date of the enactment of this Act and in accordance with the National Environmental Policy Act of 1969, the Secretary shall complete a draft environmental impact statement for an extension of the San Francisco Bay Area Rapid Transit District (hereinafter in this section referred to as "BART") to the San Francisco International Airport.

(2) NOTICE OF AVAILABILITY AND REPORTING.—The Secretary shall publish a notice of availability of the draft environmental impact statement for public review. If the Secretary has not published such notice on or before the 60th day following the date of the enactment of this Act, the Secretary shall report to Congress on the status of the completion of such draft environmental impact statement. The Secretary shall continue to report to such committees every 30 days on the status of the completion of the draft environmental impact statement, including any proposed revisions to the statement or to the work plan, until a notice of availability of such document is published in the Federal Register.

(b) PRELIMINARY ENGINEERING GRANT.—

(1) TO BART.—Not later than 30 days after the date of submittal of a locally preferred alternatives report and notwithstanding any other provision of law, the Secretary shall make a grant to BART to conduct preliminary engineering and to complete an environmental impact statement on the locally preferred alternative for the extension of BART to the San Francisco International Airport. The amount of such grant shall be 75 percent of preliminary engineering costs, unless the matching percentage is increased by a modification to

Metropolitan Transportation Commission Resolution No. 1876 in a manner that would allow such Federal share to be increased to 80 percent.

(2) TO SANTA CLARA COUNTY.—Not later than 30 days after the date of the enactment of this Act and notwithstanding any other provision of the law, the Secretary shall make a grant to the Santa Clara County Transit District (hereinafter in this section referred to as "SCCTD") to conduct preliminary engineering and to complete an environmental impact statement in accordance with the National Environmental Policy Act of 1969 on the locally preferred alternative for the Tasman Corridor Project. The amount of such grant shall be $12,750,000; except that the Federal share for all project costs may not exceed 50 percent, unless the matching percentage is increased by a modification to Metropolitan Transportation Commission Resolution No. 1876 in a manner that would allow such Federal share to be increased to 80 percent. Local funds expended on the Tasman Corridor Project after the locally preferred alternative was approved by the Metropolitan Transportation Commission on July 31, 1991, shall be considered eligible project costs under the Federal Transit Act.

(c) CONTRACTUAL COMMITMENTS.—

(1) APPROVAL OF CONSTRUCTION.—Notwithstanding any other provision of law, the Secretary shall approve the construction of the locally preferred alternative for the BART San Francisco International Airport Extension (Phase 1a to Colma and Phase 1b to San Francisco Airport) and the Tasman Corridor Project according to the following schedule; provided that the Secretary does not grant approval under subparagraphs (A), (B), and (C) before the 30th day after completion of the environmental impact statement:

(A) Not later than 90 days after the date of the enactment of this Act, the Secretary shall approve such construction for BART Phase 1a to Colma.

(B) Not later than 90 days after the date of the completion of preliminary engineering, the Secretary shall approve such construction for BART Phase 1b to San Francisco International Airport.

(C) Not later than 90 days after the date of the completion by SCCTD of preliminary engineering, the Secretary shall approve such construction for the Tasman Corridor Project.

(2) EXECUTION OF CONTRACT.—Upon approving construction under paragraph (1), the Secretary shall execute a multiyear grant agreement with BART to permit the expenditure of funds for the construction of the BART San Francisco International Airport Extension (Phase 1a and Phase 1b) and with SCCTD for the construction of the Tasman Corridor Project.

(d) FEDERAL SHARE.—

(1) BART EXTENSION.—The grant agreement under subsection (c)(2) shall provide that the Federal share of the project cost for the locally preferred alternative for the BART San Francisco International Air-

port Extension (Phase 1a and Phase 1b) shall be 75 percent, unless the matching percentage is increased by a modification to Metropolitan Transportation Commission Resolution No. 1876 in a manner that would allow such Federal share to be increased to 80 percent.

(2) TASMAN CORRIDOR PROJECT.—The grant agreement under subsection (c)(2) shall provide that the Federal share of the project cost for the locally preferred alternative for the Tasman Corridor Project, including costs for preliminary engineering, shall be 50 percent, unless that matching percentage is increased by a modification to Metropolitan Transportation Commission Resolution No. 1876 in a manner that would allow such Federal share to be increased to 80 percent.

(e) PAYMENT.—The grant agreement under subsection (c)(2) shall provide that the Federal share of the cost of the projects shall be paid by the Secretary from amounts provided under section 3 of the Federal Transit Act for construction of new fixed guideway systems and extensions to fixed guideway systems, as follows:

(1) Not less than $28,500,000 for fiscal year 1990.

(2) Not less than $40,000,000 for fiscal year 1991.

(3) Not less than $100,000,000 for each of fiscal years 1992 through 1995.

(4) Not less than $100,000,000 for fiscal years 1996 and 1997. Apportionment of payments between BART and SCCTD shall be consistent with the Metropolitan Transportation Commission Resolution No. 1876.

(f) ADVANCE CONSTRUCTION.—The grant agreements under subsection (c)(2) shall provide that the Secretary shall reimburse BART and SCCTD from any amounts provided under section 3 of the Federal Transit Act for fiscal years 1992 through 1997 for the Federal share of the net project costs incurred by BART and SCCTD under subsections (c)(1) and (c)(2), including the amount of any interest earned and payable on bonds as provided in section 3(l)(2) of the Federal Transit Act, as follows:

(1) Not later than September 30, 1994, the Secretary shall reimburse BART and SCCTD a total of $368,500,000 (plus such interest), less amounts provided under subsection (e) for fiscal years 1992 through 1994.

(2) Not later than September 30, 1997, the Secretary shall reimburse BART and SCCTD a total of $568,500,000 (plus such interest), less amounts provided under subsection (e) for fiscal years 1992 through 1997.

(g) FULL FUNDING GRANT AGREEMENTS.—

(1) SCHEDULE.—Notwithstanding any other provision of law, the Secretary shall negotiate and execute full funding grant agreements that are consistent with Metropolitan Transportation Commission Resolution No. 1876 with BART for Phase 1a to Colma and Phase 1b to the San Francisco International Airport, and with SCCTD for the Tasman Corridor Project according to the following schedule:

(A) Not later than 90 days after the date of completion by SCCTD of preliminary engineering, the Secretary shall execute such agreement for the Tasman Corridor Project.

(B) Upon completion by BART of 85 percent of final design, the Secretary shall execute such agreement for Phase 1a to Colma.

(C) Upon completion by BART of 85 percent of final design, the Secretary shall execute such agreement for Phase 1b to the San Francisco International Airport.

(2) ADDITIONAL AMOUNTS.—In addition to the $568,500,000 provided under this section, the Secretary shall, subject to annual appropriations, issue full funding grant agreements to complete the projects utilizing the full amount of the unobligated balance in the Mass Transit Account of the Highway Trust Fund.

(h) ALTERNATIVES ANALYSIS.—The Secretary shall permit the Santa Clara Country Transit District, in cooperation with the Metropolitan Transportation Commission, to conduct an Alternatives Analysis to examine transit alternatives including a possible BART extension from southern Alameda County through downtown San Jose to Santa Clara, California.

SECTION 3033. Queens Local/Express Connection.

(a) FULL FUNDING GRANT AGREEMENT.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall negotiate and enter into a full funding grant agreement under section 3 of the Federal Transit Act for those elements of the Queens Local/Express Connection which can be fully funded in fiscal years 1992 through 1997. Such grant agreement shall not preclude the allocation of Federal funds for those elements of the project not covered under such grant agreement.

(b) PAYMENT.—The grant agreement under subsection (a) shall provide that the Federal share of the cost of the Queens Local/Express Connection shall be paid by the Secretary from amounts provided under section 3(k)(1)(B) of the Federal Transit Act as follows:

(1) Not less than $11,000,000 for fiscal year 1992.

(2) Not less than $18,700,000 for fiscal year 1993.

(3) Not less than $77,800,000 for fiscal year 1994.

(4) Not less than $76,800,000 for fiscal year 1995.

(5) Not less than $121,800,000 for fiscal year 1996.

Nothing in this section shall be construed as precluding other Federal funds from being committed to the project.

SECTION 3034. Multiyear Contract for Metro Rail Project.

(a) SUPPLEMENTAL EIS.—Not later than April 1, 1992, and in accordance with the National Environmental Policy Act of 1969, the Secretary shall complete preparation of a final supplemental environmental impact statement for Minimum Operable Segment-3 (other than the East Side Extension) and publish a notice of the completion of such statement in the Federal Register. Such statement shall reflect any alignment changes in the Los Angeles Metro Rail Project and any determination

of an amended locally preferred alternative for the project. In preparing such statement, the Secretary shall rely, to the maximum extent feasible, upon existing environmental studies and analyses conducted with respect to the project, including the Draft Supplemental Environmental Impact Statement (dated November 1987) and the Final Supplemental Environmental Impact Statement (dated July 1989).

(b) AMENDMENT TO CONTRACT TO INCLUDE CONSTRUCTION OF MOS–3.—

(1) NEGOTIATION.—Not later than April 1, 1992, the Secretary shall begin negotiation with the Commission on an amendment to the full funding contract under section 3 of the Federal Transit Act (dated April 1990) for construction of Minimum Operable Segment-2 of the Los Angeles Metro Rail Project in order to include construction of Minimum Operable Segment-3 (including the commitment described in paragraph (4) to provide Federal funding for the East Side Extension) in such contract.

(2) EXECUTION.—Not late than October 15, 1992, the Secretary shall—

(A) complete negotiations and execute the amended contract under paragraph (1); and

(B) issue a record of decision approving the construction of Minimum Operable Segment-3 (other than the East Side Extension).

(3) PAYMENT OF FEDERAL SHARE.—

(A) FEDERAL SHARE.—The amended contract under paragraph (1) shall provide that the Federal share of the cost of construction of Minimum Operable Segment-3 for fiscal years 1993 through 1997 shall be $695,000,000.

(B) PAYMENT.—The amended contract under paragraph (1) shall provide that the Federal share of the cost of construction of Minimum Operable Segment-3 shall be paid by the Secretary from amounts available under section 3 of the Federal Transit Act in accordance with a schedule for annual payments set forth in such contract.

(4) EAST SIDE EXTENSION.—The amended contract under paragraph (1) shall include a commitment to provide Federal funding for the East Side Extension, subject to completion of alternatives analysis and satisfaction of Federal environmental requirements.

(5) ADVANCE CONSTRUCTION.—

(A) IN GENERAL.—The amended contract under paragraph (1) shall provide that the Commission may construct any portion of Minimum Operable Segment-3 in accordance with section 3(1) of the Federal Transit Act.

(B) AMOUNT.—The Commission may use advance construction authority in an amount not to exceed the sum of $535,000,000 plus the difference (if any) between the Federal share specified in paragraph (3) for fiscal years 1993 through 1997 and the amount of Federal funds actually provided in those fiscal years.

(C) CONVERSION TO GRANTS.—In the event the Commission uses advance construction authority under this paragraph, the Secretary

shall convert that authority into a grant and shall reimburse the Commission, from funds available under section 3 of the Federal Transit Act, for the Federal share of the amounts expended. Such conversion and reimbursement shall be made by the Secretary in fiscal years 1998, 1999, and 2000 and shall be equal to the Federal share of the amounts expended by the Commission pursuant to this paragraph (plus any eligible bond interest under section 3(l)(2) of the Federal Transit Act).

(c) FURTHER AMENDMENT TO CONTRACT.—Not later than October 15, 1996, the Secretary shall negotiate and enter into a further amendment to the contract described in subsection (b)(1) in order to provide Federal funding for Minimum Operable Segment-3 for fiscal years 1998 through 2000. The amended contract shall include provisions for the use and reimbursement of advance construction in the manner set forth in subsection (b)(5).

(d) CONTINUING PRELIMINARY ENGINEERING.—Before the date on which an amended contract is executed under subsection (b), the Secretary shall, upon receipt of an application from the Commission, make a grant to the Commission from amounts available under section 3 of the Federal Transit Act for continuing preliminary engineering and environmental analysis work for Minimum Operable Segment-3.

(e) ADDITION OF EAST SIDE EXTENSION.—

(1) ALTERNATIVES ANALYSIS AND ENVIRONMENTAL REVIEW.—The Secretary shall cooperate with the Commission in alternatives analysis and environmental review, including preparation of a draft environmental impact statement, for the East Side Extension. Upon receipt of an application from the Commission, the Secretary shall make a grant to the Commission, from amounts available under section 3 of the Federal Transit Act, for preliminary engineering, design, and related expenses for the East Side Extension, in an amount equal to 50 percent of the cost of such activities. Such funds shall be provided from the amounts made available by the Secretary under subsection (b)(3).

(2) SUPPLEMENTAL EIS.—Not later than December 1, 1993, and in accordance with the National Environmental Policy Act of 1969, the Secretary shall complete preparation of a final supplemental environmental impact statement for the East Side Extension and shall publish a notice of completion of such statement in the Federal Register.

(3) AMENDMENT TO CONTRACT TO INCLUDE EAST SIDE EXTENSION.—

(A) NEGOTIATION.—Immediately upon the completion of alternatives analysis and preliminary engineering for the East Side Extension, the Secretary shall begin negotiations with the Commission on a further amendment to the contract referred to in subsection (b)(1) in order to include construction of the East Side Extension.

(B) EXECUTION.—Not later than June 1, 1994, the Secretary shall—

(i) complete negotiations and execute the amended contract under subparagraph (A); and

(ii) issue a record of decision approving the construction of the East Side Extension.

(C) CONTENTS.—The amended contract under subparagraph (A) shall be consistent with the commitment made under subsection (b)(4) and shall include appropriate changes to the existing scope of work to include the East Side.

(f) APPLICABILITY OF FEDERAL REQUIREMENTS.—The amended contracts under this section shall provide that any activity under Minimum Operable Segment-3 that is financed entirely with non-Federal funds shall not be subject to any Federal statute, regulation, or program guidance, unless the Federal statute or regulation in question, by its terms, otherwise applies to and covers such activity.

(g) CRITERIA FOR NEW STARTS.—Minimum Operable Segment-3 shall be deemed to be a project described in and covered by section 303(b) of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

(h) NOTIFICATION OF NONCOMPLIANCE.—If the Secretary is unable to comply with a deadline established by this section, the Secretary shall report to Congress on the reasons for the noncompliance and shall provide such Committees a firm schedule for taking the action required.

(i) DEFINITIONS.—For the purposes of this section, the following definitions apply:

(1) COMMISSION.—The term "Commission" means the Los Angeles County Transportation Commission (or any successor thereto).

(2) EAST SIDE EXTENSION.—The term "East Side Extension" means that portion of Minimum Operable Segment-3 described in paragraph (3)(C).

(3) MINIMUM OPERABLE SEGMENT-3.—The term "Minimum Operable Segment-3" means that portion of the Los Angeles Metro Rail Project which consists of 7 stations and approximately 11.6 miles of heavy rail subway on the following lines:

(A) One line running west and northwest from the Hollywood/Vine station to the North Hollywood station, with 2 intermediate stations.

(B) One line running west from the Wilshire/Western station to the Pico/San Vicente station, with one intermediate station.

(C) One line consisting of an initial line of approximately 3 miles in length, with at least 2 stations, beginning at Union Station and running generally east.

SECTION 3035. Miscellaneous Multiyear Contracts.

(a) HAWTHORNE, NEW JERSEY-WARWICK, NEW YORK, SERVICE.—No later than 120 days after the date of the enactment of this Act, the Secretary shall negotiate and sign a multiyear grant agreement with the New Jersey Transit Corporation which includes not less than $35,710,000 in fiscal year 1992 and not less than $11,156,000 in fiscal year 1993 from funds made available under section 3(k)(1)(B) of the Federal Transit Act to carry out the construction of a project to provide

commuter rail service from Hawthorne, New Jersey, to Warwick, New York (including a connection with the New Jersey Transit Main Line in Hawthorne, New Jersey, and improvements to the New Jersey Transit Main Line station in Paterson, New Jersey). Such agreement shall provide that amounts provided under the agreement may be used for purchasing equipment and for rehabilitating and constructing stations, parking facilities, and other facilities necessary for the restoration of such commuter rail service.

(b) WESTSIDE LIGHT RAIL PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Tri-County Metropolitan Transportation District of Oregon which includes $515,000,000 from funds made available under section 3(k)(1)(B) of the Federal Transit Act at the Federal share contained in House Report 101–584 to carry out the construction of the locally preferred alternative for the Westside Light Rail Project, including system related costs, set forth in Public Law 101–516 and as defined in House Report 101–584. Such agreement shall also provide for the completion of alternatives analysis, the final Environmental Impact Analysis, and preliminary engineering for the Hillsboro extension to the Westside Project as set forth in Public Law 101–516.

(c) NORTH BAY FERRY SERVICE.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the City of Vallejo, California, which includes $8,000,000 in fiscal year 1992 and $9,000,000 in fiscal year 1993 from funds made available under section 3(k)(1)(B) of the Federal Transit Act to carry out capital improvements under the North Bay Ferry Service Demonstration Program.

(d) STATEN ISLAND-MIDTOWN MANHATTAN FERRY SERVICE.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the New York City Department of Transportation in New York, New York, which includes $1,000,000 in fiscal year 1992 and $11,000,000 in fiscal year 1993 from funds made available under section 3(k)(1)(B) of the Federal Transit Act to carry out capital improvements under the Staten Island-Midtown Ferry Service Demonstration Program.

(e) CENTRAL AREA CIRCULATOR PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the City of Chicago, Illinois, which includes $260,000,000 from funds made available under section 3(k)(1)(B) of the Federal Transit Act to carry out the construction of the locally preferred alternative for the Central Area Circulator Project. Such grant agreement shall provide that the Federal share of the cost of such project shall be paid by the Secretary from amounts provided under such section 3(k)(1)(B) as follows:

(1) Not less than $21,000,000 for fiscal year 1992.

(2) Not less than $55,000,000 for fiscal year 1993.

(3) Not less than $70,000,000 for fiscal year 1994.

(4) Not less than $62,000,000 for fiscal year 1995.

(5) Not less than a total of $52,000,000 for fiscal years 1996 and 1997.

(f) SALT LAKE CITY LIGHT RAIL PROJECT.—Not later than August 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Utah Transit Authority, which includes $131,000,000 from funds made available under section 3(k)(1)(B) of the Federal Transit Act to carry out the construction of the initial segment of the locally preferred alternative for the Salt Lake City Light Rail Project, including feeder bus and other system related costs.

(g) LOS ANGELES-SAN DIEGO (LOSSAN) RAIL CORRIDOR IMPROVEMENT PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Los Angeles-San Diego Rail Corridor Agency which includes not less than $10,000,000 for fiscal year 1992 and not less than $5,000,000 in each of fiscal years 1993 and 1994 from funds made available under section 3(k)(1)(B) of the Federal Transit Act to provide for capital improvements to the rail corridor between Los Angeles and San Diego, California.

(h) SAN JOSE-GILROY-HOLLISTER COMMUTER RAIL PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the responsible operating entity for the San Francisco Peninsula Commute Service which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, $13,000,000 for capital improvements and trackage rights related to the extension of commuter rail service from San Jose, through Gilroy, to Hollister, California. The Secretary shall allocate to the Santa Clara County Transit District in fiscal year 1992, from funds made available under such section 3(k)(1)(B), $8,000,000 for the purpose of a one-time purchase of perpetual trackage rights between the existing terminus in San Jose and Gilroy, California, to run passenger rail service.

(i) DALLAS LIGHT RAIL PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with Dallas Area Rapid Transit which includes $160,000,000 from funds made available under section 3(k)(1)(B) of the Federal Transit Act to carry out the construction of the locally preferred alternative for the initial 6.4 miles and 10 stations of the South Oak Cliff light rail line. Non-Federal funds used to acquire rights-of-way and to plan, design, and construct any of the elements of such light rail line on or after August 13, 1983, may be used to meet the non-Federal share funding requirements for financing construction of any of such elements.

(j) SOUTH BOSTON PIERS TRANSITWAY/LIGHT RAIL PROJECT.—No later than June 1, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Massachusetts Bay Transportation Authority which includes $278,000,000 from funds made available under section 3(k)(1)(B) of the Federal Transit Act to carry out the construction of the South Station to World Trade Center segment of the locally preferred alternative for the South Boston Piers Transitway/Light Rail Project. Not laster than February 28, 1992, the Secretary shall allocate from such $278,000,000 such sums as may be necessary to carry out preliminary engineering and design for the entirety of such preferred

alternative. Section 330 of the Department of Transportation and Related Agencies Appropriations Act, 1992, is amended by striking "—", by striking "(a)", by striking "; and" at the end of paragraph (a) and all that follows through the period at the end of such section and inserting a period, and by running in the remaining matter of paragraph (a) following "Administration".

(k) KANSAS CITY LIGHT RAIL PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Kansas City Area Transportation Authority which includes, from funds made available under section 3(k)((1)(B) of the Federal Transit Act, $1,500,000 in fiscal year 1992, and $4,400,000 in fiscal year 1993 to provide for the completion of alternatives analysis and preliminary engineering for the Kansas City Light Rail Project.

(l) ORLANDO STREETCAR (OSCAR) DOWNTOWN TROLLEY PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the City of Orlando, Florida, which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, $5,000,000 to provide for the completion of alternatives analysis and preliminary engineering for the Orlando Streetcar (OSCAR) Downtown Trolley Project.

(m) DETROIT LIGHT RAIL PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and enter into a multiyear grant agreement with the city of Detroit, Michigan, which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, not less than $10,000,000 for fiscal year 1992, and not less than $10,000,000 for fiscal year 1993, to provide for the completion of alternatives analysis and preliminary engineering for the Detroit Light Rail Project.

(n) BUS AND BUS RELATED EQUIPMENT PURCHASES IN ALTOONA, PENNSYLVANIA.—No later than April 30, 1992, the Secretary shall enter into a grant agreement with Altoona Metro Transit for $2,000,000 for fiscal year 1992 from funds made available under section 3(k)(1)(C) of the Federal Transit Act to provide for the purchases of 10 buses, a fuel storage tank, a bus washer and 2 service vehicles.

(o) LONG BEACH METRO LINK FIXED RAIL PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Los Angeles County Transportation Commission which includes $4,000,000 from funds made available under section 3(k)(1)(B) of the Federal Transit Act to provide for the completion of alternatives analysis and preliminary engineering for the Metro Link Project in Long Beach, California.

(p) LAKEWOOD-FREEHOLD-MATAWAN OR JAMESBURG RAIL PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the New Jersey Transit Corporation, which includes, from funds made available to the Northeastern New Jersey urbanized area under section 3(k)(1)(B) of the Federal Transit Act, $1,800,000 in fiscal year 1992 and $3,000,000 in each of fiscal years 1993 and 1994 to provide for the completion of alternatives analysis, preliminary engineering, and environmental impact statement for the Lakewood-Freehold-Matawan or Jamesburg Rail Project.

(q) SAN FRANCISCO, CALIFORNIA.—No later than April 30, 1992, the Secretary shall enter into a grant agreement for $2,500,000 from funds made available under section 3(k)(1)(C) for fiscal year 1992 to construct a parking facility as part of a multimodal transportation facility in the vicinity of California Pacific Medical Center, San Francisco, California.

(r) CHARLOTTE LIGHT RAIL STUDY.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the City of Charlotte, North Carolina, which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, $125,000 in fiscal year 1992 and $375,000 in fiscal year 1993 to provide for the completion of systems planning and alternatives analysis for a priority light rail corridor in the Charlotte metropolitan area.

(s) BUCKHEAD PEOPLE MOVER CONCEPTUAL ENGINEERING STUDY.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Atlanta Regional Commission which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, $200,000 in fiscal year 1992, to provide for the completion of a conceptual engineering study for a people mover system in Atlanta, Georgia.

(t) CLEVELAND DUAL HUB RAIL PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Greater Cleveland Regional Transit Authority which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, $2,000,000 in fiscal year 1992, $2,000,000 in fiscal year 1993, and $1,000,000 in fiscal year 1994, to provide for the completion of alternatives analysis on the Cleveland Dual Hub Rail Project.

(u) SAN DIEGO MID COAST LIGHT RAIL PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the San Diego Metropolitan Transit Development Board which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, $2,000,000 in fiscal year 1992 and $5,000,000 in fiscal year 1993, and $20,000,000 in fiscal year 1994, to provide for the completion of alternatives analysis and the final environmental impact statement, and to purchase right-of-way, for the San Diego Mid Coast Light Rail Project.

(v) CHATTANOOGA DOWNTOWN TROLLEY PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Chattanooga Area Regional Transportation Authority which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, $1,000,000 in fiscal year 1992 and $1,000,000 in fiscal year 1993 to provide for the completion of alternatives analysis on a proposed trolley circulator in downtown Chattanooga, Tennessee.

(w) NORTHEAST OHIO COMMUTER RAIL FEASIBILITY STUDY.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Northeast Ohio Areawide Coordinating Agency which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, $800,000 in fiscal year 1992 and $800,000

in fiscal year 1993 to study the feasibility of providing commuter rail service connecting urban and suburban areas in northeast Ohio.

(x) RAILTRAN COMMUTER RAIL PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Cities of Dallas and Forth Worth, Texas, which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, $2,480,000, in fiscal year 1992, and $3,200,000 in fiscal year 1993 to provide for preliminary engineering and construction of improvements to the Dallas/Fort Worth RAILTRAN System.

(y) BUS AND BUS RELATED EQUIPMENT PURCHASES IN JOHNSTOWN, PENNSYLVANIA.—No later than April 30, 1992, the Secretary shall enter into a grant agreement with the Cambria County Transit Authority for $1,600,000 for fiscal year 1992 from funds made available under section 3(k)(1)(C) of the Federal Transit Act to provide for the purchase of 6 midsize buses; spare engines, transmissions, wheels, tires; wheelchair lifts for urban buses; 20 2-way radios; 29 electronic fareboxes and related equipment; computer hardware and software; and shop tools, equipment and parts for the Cambria County Transit System; and a new 400 HP electric motor and related components; cable replacement; hillside erosion control; park-and-ride facilities; and a handicapped pedestrian crosswalk for the Johnstown Inclined Plane.

(z) BUS PURCHASE FOR EUREKA SPRINGS, ARKANSAS.—No later than April 30, 1992, the Secretary shall enter into a grant agreement with Eureka Springs Transit for $63,600 for fiscal year 1992 from funds made available under section 3(k)(1)(C) of the Federal Transit Act to provide for the purchase of an electrically powered bus which is accessible to and usable by individuals with disabilities.

(aa) TUCSON DIAL-A-RIDE PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a grant agreement with the City of Tucson, Arizona, which includes, from funds made available under section 3(k)(1)(C) of the Federal Transit Act, $8,000,000 in fiscal year 1992 to make capital improvements related to the Tucson Dial-a-Ride Project.

(bb) LONG BEACH BUS FACILITY PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a grant agreement with the Long Beach Transportation Company to include, from funds made available under section 3(k)(1)(C) of the Federal Transit Act, $13,875,000 in fiscal year 1992, to provide for the construction of a bus maintenance facility in the service area of such company.

(cc) PARK-AND-RIDE LOT.—No later than April 30, 1992, the Secretary shall negotiate and sign a grant agreement with the Southeastern Pennsylvania Transportation Authority which include, from funds made available under section 3(k)(1)(C) of the Federal Transit Act, $4,000,000 in fiscal year 1992 to construct a park-and-ride lot in suburban Philadelphia, Pennsylvania.

(dd) NASHVILLE INTERMODAL TERMINAL.—No later than April 30, 1992, the Secretary shall negotiate and sign a grant agreement with the City of Nashville, Tennessee, which includes, from funds made available under section 3(k)(1)(C) of the Federal Transit Act, $3,700,000

in fiscal year 1992 to provide for the construction of an intermodal passenger terminal in Nashville, Tennessee.

(ee) MAIN STREET TRANSIT MALL.—No later than April 30, 1992, the Secretary shall negotiate and sign a grant agreement with the City of Akron, Ohio, which includes, from funds made available to that State under section 3(k)(1)(C) of the Federal Transit Act, $1,450,000 in fiscal year 1992 to provide for preliminary engineering and construction of an extension to the Main Street Transit Mall.

(ff) PEOPLE MOBILIZER.—No later than April 30, 1992, the Secretary shall negotiate and sign a grant agreement with PACE which includes, from funds made available to the suburban Chicago urbanized area under section 3(k)(1)(C), $2,300,000 in fiscal year 1992 to make capital purchases necessary for implementing the people mobilizer project in such area. The limitation on operating assistance which but for this section would apply to the people mobilizer project for fiscal year 1992 under section 9(k)(2)(A) of the Federal Transit Act shall be increased by $700,000.

(gg) CENTRE AREA TRANSPORTATION AUTHORITY REIMBURSEMENT.—Notwithstanding any other provision of law, the Secretary shall reimburse the Centre Area Transportation Authority in State College, Pennsylvania, from funds made available under section 3(k)(1)(C) of the Federal Transit Act, $1,000,000 in fiscal year 1992 for costs incurred by the Centre Area Transportation Authority between August 1989 and October 1991 in connection with the construction of an administrative maintenance and bus storage facility.

(hh) KEY WEST, FLORIDA.—Not later than April 30, 1992, the Secretary shall negotiate and enter into a grant agreement with the city of Key West, Florida, which includes, from funds made available under section 3(k)(1)(C) of the Federal Transit Act, $239,666 in fiscal year 1992 for the cost of purchasing 3 buses.

(ii) BOSTON, MASSACHUSETTS.—The Secretary shall conduct at a cost of $250,000 in fiscal year 1992 from funds made available under section 3(k)(1)(B) of the Federal Transit Act a feasibility study of a proposed rail link between North Station and South Station in Boston, Massachusetts.

(jj) BUFFALO, NEW YORK.—No later than April 30, 1992, the Secretary shall enter into a grant agreement with the Niagara Frontier Transportation Authority for $2,000,000 for fiscal year 1992 from funds made available under section 3(k)(1)(C) of the Federal Transit Act to provide for the construction of metro bus transit centers in the service area of such transportation authority.

(kk) STATE OF MICHIGAN.—No later than June 30, 1992, the Secretary shall enter into a multiyear grant agreement with the State of Michigan for $10,500,000 for fiscal year 1992, and not less than $10,000,000 for each of fiscal years 1993 through 1997 from funds made available under section 3(k)(1)(C) of the Federal Transit Act for the purchase of buses and bus-related equipment to be distributed among local transit operators. Of the grant amount for fiscal year 1992, $500,000 shall

be made available for a study of the feasibility of consolidation of transit services.

(ll) ANN ARBOR, MICHIGAN.—No later than April 30, 1992, the Secretary shall enter into a grant agreement with the Ann Arbor Transportation Authority for $1,500,000 for fiscal year 1992 from funds made available under section 3(k)(1)(C) of the Federal Transit Act for the purchase of equipment and software for advanced fare collection technology.

(mm) BAY AREA RAPID TRANSIT DISTRICT PARKING.—Not later than April 30, 1992, the Secretary shall negotiate and enter into a multiyear grant agreement with the San Francisco Bay Area Rapid Transit District which includes, from funds made available under section 3(k)(1)(C) of the Federal Transit Act, $12,600,000 for construction of a parking area for the planned East Dublin/Pleasanton BART station.

(nn) BALTIMORE-WASHINGTON TRANSPORTATION IMPROVEMENTS PROGRAM.—The Secretary shall carry out the Baltimore-Washington Transportation Improvements Program as follows:

(1) BALTIMORE-CENTRAL LIGHT RAIL EXTENSION.—By entering into a full funding grant agreement with the Mass Transit Administration of the Maryland Department of Transportation to carry out construction of locally preferred alternatives for the Hunt Valley, Baltimore-Washington International Airport and Penn Station extensions to the light rail line in Baltimore, Maryland. The grant agreement under this paragraph shall provide that the Federal share shall be paid from amounts provided under section 3(k)(1)(B) of the Federal Transit Act as follows:

(A) Not less than $30,000,000 for fiscal year 1993.

(B) Not less than $30,000,000 for fiscal year 1994.

(2) MARC EXTENSIONS.—By entering into a full funding grant agreement with the Mass Transit Administration of the Maryland Department of Transportation for service extensions and other improvements, including extensions of the MARC commuter rail system to Frederick and Waldorf, planning and engineering, purchase of rolling stock and station improvements and expansions. The grant agreement under this paragraph shall be paid from amounts provided under section 3(k)(1)(B) of the Federal Transit Act as follows:

(A) Not less than $60,000,000 for fiscal year 1993.

(B) Not less than $50,000,000 for fiscal year 1994.

(C) Not less than $50,000,000 for fiscal year 1995.

(3) LARGO EXTENSION.—By entering into a full funding grant agreement with the State of Maryland or its designee to provide alternative analysis, the preparation of an environmental impact statement and preliminary engineering for a proposed rail transit project to be located in the corridor between the Washington Metropolitan Area Transit Authority Addison Road rail station and Largo, Maryland. The grant agreement under this paragraph shall provide that the Federal share shall be paid from amounts provided under section 3(k)(1)(B) of the Federal Transit Act in an amount not less than $5,000,000 for fiscal year 1993.

(oo) MILWAUKEE EAST-WEST CORRIDOR PROJECT.—The Secretary shall negotiate and sign a multiyear grant agreement with the State of Wisconsin which includes $200,000,000 from funds made available under section 3(k)(1)(B) of the Federal Transit Act to carry out the construction of the initial segment of the locally preferred alternative as identified in the alternatives analysis of the Milwaukee East-West Corridor Project.

(pp) BOSTON TO PORTLAND TRANSPORTATION CORRIDOR.—If the State of Maine or an agency thereof decides to initiate commuter rail service in the Boston to Portland transportation corridor, $30,000,000 under section 3(k)(1)(B) is authorized to be appropriated for capital improvements to allow such service.

(qq) NORTHEAST PHILADELPHIA COMMUTER RAIL STUDY.—No Later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Southeastern Pennsylvania Transportation Authority, which includes $400,000 from funds made available to the Philadelphia urbanized area under section 3(k)(1)(B) of the Federal Transit Act to provide for a study of the feasibility of instituting commuter rail service as an alternative to automobile travel to Center City Philadelphia on I–95.

(rr) ATLANTA COMMUTER RAIL STUDY.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Atlanta Regional Commission which includes, from funds made available to the Atlanta urbanized area under section 3(k)(1)(B) of the Federal Transit Act, $100,000 to study the feasibility of instituting commuter rail service in the Greensboro corridor.

(ss) PITTSBURGH LIGHT RAIL REHABILITATION PROJECT.—No later than 90 days after the date of the enactment of this Act, the Secretary shall negotiate and sign a multiyear grant agreement with the Port Authority of Allegheny County which includes $5,000,000 from funds made available to the Pittsburgh urbanized area under section 3(k)(1)(B) of the Federal Transit Act to complete preliminary engineering for Stage II LRT rehabilitation in Allegheny County, Pennsylvania.

(tt) ATLANTA NORTH LINE EXTENSION.—Not later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Metropolitan Atlanta Rapid Transit Authority which includes $329,000,000 from funds made available under section 3(k)(1)(B) of the Federal Transit Act to carry out the construction of the locally preferred alternative for a 3.1 mile extension of the North Line of the heavy rail rapid transit system in Atlanta, Georgia.

(uu) HOUSTON PRIORITY CORRIDOR FIXED GUIDEWAY PROJECT.—Provided that a locally preferred alternative for the Priority Corridor fixed guideway project has been selected by March 1, 1992, no later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Metropolitan Transit Authority of Harris County which includes $500,000,000 from funds made available under section 3(k)(1)(B) of the Federal Transit Act to carry out the construction of such locally preferred alternative.

(vv) JACKSONVILLE AUTOMATED SKYWAY EXPRESS EXTENSION.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Jacksonville Transportation Authority which includes $71.2 million from funds made available under section 3(k)(1)(B) of the Federal Transit Act to carry out the construction of the locally preferred alternative for a 1.8 mile extension to the Automated Skyway Express starter line.

(ww) HONOLULU RAPID TRANSIT PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the City and County of Honolulu which includes $618,000,000 from funds made available under section 3(k)(1)(B) of the Federal Transit Act to carry out the construction of the locally preferred alternative of a 17.3 mile fixed guideway system.

(xx) SACRAMENTO LIGHT RAIL PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Sacramento Regional Transit District which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, $26,000,000 to provide for the completion of alternatives analysis, preliminary engineering, and final design on proposed extensions to the light rail system in Sacramento, California.

(yy) PHILADELPHIA CROSS-COUNTY METRO RAIL PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Southeastern Pennsylvania Transportation Authority which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, $2,400,000 to provide for the completion of alternatives analysis and preliminary engineering for the Philadelphia Cross-County Metro Rail Project.

(zz) CLEVELAND BLUE LINE LIGHT RAIL EXTENSION.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the Greater Cleveland Regional Transit Authority which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, $1,200,000 to provide for the completion of alternatives analysis and preliminary engineering for an extension of the Blue Line to Highland Hills, Ohio.

(aaa) DULLES CORRIDOR RAIL PROJECT.—No later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the State of Virginia, or its assignee, which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, $6,000,000 to provide for the completion of alternatives analysis and preliminary engineering for a rail corridor from the West Falls Church Washington Metropolitan Area Transit Authority rail station to Dulles International Airport.

(bbb) PUGET SOUND CORE RAPID TRANSIT PROJECT.—Not later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the municipality of metropolitan Seattle, Washington, which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, $300,000,000 for the Puget Sound Core Rapid Transit Project.

(ccc) SEATTLE-TACOMA COMMUTER RAIL.—Not later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the municipality of metropolitan Seattle, Washington, which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, $25,000,000 for the Seattle-Tacoma Commuter Rail Project.

(ddd) ALTOONA PEDESTRIAN CROSSOVER.—Not later than April 30, 1992, the Secretary shall negotiate and sign a multiyear grant agreement with the city of Altoona, Pennsylvania, which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, $3,200,000 for construction of the 14th Street Pedestrian Crossover in Altoona, Pennsylvania.

(eee) MULTI-MODAL TRANSIT PARKWAY.—Not later than April 30, 1992, the Secretary shall negotiate and enter into a multiyear grant agreement with the State of California which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, $15,000,000 for construction of a multi-modal transit parkway in western Los Angeles, California.

(fff) CANAL STREET CORRIDOR LIGHT RAIL, NEW ORLEANS, LOUISIANA.—No later than April 30, 1992, the Secretary shall negotiate and sign a grant agreement with the city of New Orleans, Louisiana, which includes, from funds made available under section 3(k)(1)(B) of the Federal Transit Act, $4,800,000 to provide for the completion of alternatives analysis, preliminary engineering, and an environmental impact statement for the Canal Street Corridor Light Rail System in New Orleans, Louisiana.

SECTION 3036. Unobligated M Account Balances.

Notwithstanding any other provision of law, any obligated M account balances remaining available for expenditure as of August 1, 1991, under "Urban Discretionary Grants" and "Interstate Transfer Grants-Transit" of the Federal Transit Administration program shall be exempt from the application of the provisions of section 1405 (b)(4) and (b)(6) of Public Law 101–510 and section 1552 of title 31, United States Code, and shall be available until expended.

SECTION 3037. Technical Accounting Provisions.

Notwithstanding any other provision of law, any funds appropriated before October 1, 1983, under section 6, 10, 11, or 18 of the Act, or section 103(e)(4) of title 23, United States Code, in effect on September 30, 1991, that remain available for expenditure after October 1, 1991, may be transferred to and administered under the most recent appropriation heading for any such section.

SECTION 3038. Reduction in Authorizations for Budget Compliance.

If the total amount authorized by this Act (including amendments made by this Act) out of the Mass Transit Account of the Highway Trust Fund exceeds $1,900,000,000 for fiscal year 1992, or exceeds

$13,800,000,000 for fiscal years 1992 through 1996, then each amount so authorized shall be reduced proportionately so that the total equals $1,900,000,000 for fiscal year 1992, or equals $13,800,000,000 for fiscal years 1992 through 1996, as the case may be.

SECTION 3039. Petroleum Violation Escrow Account Funds.

Notwithstanding any other provision of law, the Federal Transit Administration shall allow petroleum violation escrow account funds spent by the New Jersey Transit Corporation on transit improvements to be applied as credit towards the non-Federal match for any transit project funded under the Federal Transit Act. The New Jersey Transit Corporation shall demonstrate that the use of such a credit does not result in the reduction in non-Federal funding for transit projects within the fiscal year in which the credit is applied.

SECTION 3040. Charter Services Demonstration Program.

(a) ESTABLISHMENT.—Notwithstanding any provision of law, the Secretary shall implement regulations, not later than 9 months after the date of the enactment of this Act, in not more than 4 States to permit transit operators to provide charter services for the purposes of meeting the transit needs of government, civic, charitable, and other community activities which otherwise would not be served in a cost effective and efficient manner.

(b) CONSULTATION.—In developing such regulations, the Secretary shall consult with a board that is equally represented by public transit operators and privately owned charter services.

(c) REPORT.—Not later than 3 years after the date of the enactment of this Act, the Secretary shall transmit to Congress a report containing an evaluation of the effectiveness of the demonstration program regulations established under this section and make recommendations to improve current charter service regulations.

SECTION 3041. GAO Report on Charter Service Regulations.

The Comptroller General shall submit to the Congress, not later than 12 months after the date of the enactment of this Act, a report evaluating the impact of existing charter service regulations. The report shall—

(1) assess the extent to which the regulations promote or impede the ability of communities to meet the transportation needs of government, civic, and charitable organizations in a cost-effective and efficient manner;

(2) assess the extent to which the regulations promote or impede the ability of communities to carry out economic development activities in a cost-effective and efficient manner;

(3) analyze the extent to which public transit operators and private charter carriers have entered into charter service agreements pursuant to the regulations; and

(4) analyze the extent to which such agreements enable private carriers to profit from the provision of charter service by public transit operators using federally subsidized vehicles.

The report shall also include an assessment of the factors specified in the preceding sentence within the context of not less than 3 communities selected by the Comptroller General.

SECTION 3042. 1993 World University Games.

Notwithstanding any other provision of law, before apportionment under section 9 of the Federal Transit Act of funds provided under section 21(a)(1) of such Act for fiscal year 1993, $4,000,000 of such funds shall be made available to the State of New York or to any public body to which the State further delegates authority, as the designated recipient for the purposes of this section, to carry out projects by contracts with private or public service providers to meet the transportation needs associated with the staging of the 1993 World University Games in the State of New York. Such funds shall be available for any purpose eligible under section 9 of such Act without limitation. The matching requirement for operating assistance under section 9(k)(1) of such Act shall not apply to funds made available under this section.

SECTION 3043. Operating Assistance Limitation for Staten Island Ferry.

The limitation of operating assistance which, but for this section, would apply to the Staten Island Ferry for fiscal year 1993 under section 9(k)(2)(A) of the Federal Transit Act shall be increased by $2,700,000.

SECTION 3044. Forgiveness of Certain Outstanding Obligations.

Notwithstanding the fifth sentence of section 4(a) of the Federal Transit Act, the outstanding balance on grant agreement number NC–05–0021 made to the Fayetteville Transit Authority, North Carolina is forgiven.

SECTION 3045. Forgiveness of Loan Repayment.

Notwithstanding any other provision of law (including any regulation), the outstanding balances on the following loan agreements do not have to be repaid:

(1) Loan agreement number PA–03–9002 made to the Southeastern Pennsylvania Transit Authority.

(2) Loan agreement number PA–03–9003 made to the Southeastern Pennsylvania Transit Authority.

SECTION 3046. Modified Bus Service to Accommodate the Needs of Students.

Nothing in the Federal Transit Act, including the regulations issued to carry out such Act, shall be construed to prohibit the use of buses acquired or operated with Federal assistance under such Act to provide tripper bus service in New York City, New York, to accommodate

the needs of students, if such buses carry normal designations and clear markings that such buses are open to the general public. For the purposes of this section, the term "tripper bus service" shall have the meaning such term has on the date of the enactment of this Act in regulations issued pursuant to the Federal Transit Act and shall include the service provided by express buses operating along regular routes and as indicated in published route schedules.

SECTION 3047. Eligibility Determinations for Disability.

(a) STUDY.—The Secretary shall conduct a study of procedures for determining disability for the purpose of obtaining off peak reduced fares under section 5(m) of the Federal Transit Act. The study should review different requirements, degree of uniformity, and degree of reciprocity between transit systems.

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall report to Congress on the results of the study conducted under this section.

SECTION 3048. Milwaukee Alternatives Analysis Approval.

No later than January 15, 1992, the Secretary shall enter into an agreement with the Wisconsin Department of Transportation giving approval to undertake an alternatives analysis for the East-West Central Milwaukee Corridor. The alternatives analysis shall be funded entirely from non-Federal sources.

* * *

TITLE VI—RESEARCH

* * *

PART C—ADVANCED TRANSPORTATION SYSTEMS AND ELECTRIC VEHICLES

SECTION 6071. Advanced Transportation System and Electric Vehicle Research and Development Consortia.

(a) GENERAL AUTHORITY.—

(1) PROPOSAL.—Not later than 3 months after the date of the enactment of this Act, an eligible consortium may submit to the Secretary a proposal for receiving grants made available under this section for electric vehicle and advanced transportation research and development.

(2) CONTENTS OF PROPOSAL.—A proposal submitted under paragraph (1) shall include—

(A) a description of the eligible consortium making the proposal;

(B) a description of the type of additional members targeted for inclusion in the consortium;

(C) a description of the eligible consortium's ability to contribute significantly to the development of vehicles, transportation systems, or related subsystems and equipment, that are competitive in the

commercial market and its ability to enable serial production processes;

(D) a description of the eligible consortium's financing scheme and business plan, including any projected contributions of State and local governments and other parties;

(E) assurances, by letter of credit or other acceptable means, that the eligible consortium is able to meet the requirement contained in subsection (b)(6); and

(F) any other information the Secretary requires in order to make selections under this section.

(3) GRANT AUTHORITY.—Except as provided in paragraph (4), not later than 6 months after the date of the enactment of this Act, the Secretary shall award grants to not less than 3 eligible consortia. No one eligible consortium may receive more than one-third of the funds made available for grants under this section.

(4) EXTENSION.—If fewer than 3 complete applications from eligible consortia have been received in time to permit the awarding of grants under paragraph (3), the Secretary may extend the deadlines for the submission of application and the awarding of grants.

(b) ELIGIBILITY CRITERIA.—To be qualified to receive assistance under this section, an eligible consortium shall—

(1) be organized for the purpose of designing and developing electric vehicles and advanced transportation systems, or related systems or equipment, or for the purpose of enabling serial production processes;

(2) facilitate the participation in the consortium of small- and medium-sized businesses in conjunction with large established manufacturers, as appropriate;

(3) to the extent practicable, include participation in the consortium of defense and aerospace suppliers and manufacturers;

(4) to the extent practicable, include participation in the consortium of entities located in areas designated as nonattainment areas under the Clean Air Act;

(5) be designed to use State and Federal funding to attract private capital in the form of grants or investments to further the purposes stated in paragraph (1); and

(6) ensure that at least 50 percent of the costs of the consortium, subject to the requirements of subsection (a)(3), be provided by non-Federal sources.

(c) SERVICES.—Services to be performed by an eligible consortium using amounts from grants made available under this part shall include—

(1) obtaining funding for the acquisition of plant sites, conversion of plant facilities, and acquisition of equipment for the development or manufacture of advanced transportation systems or electric vehicles, or other related systems or equipment, especially for environmentally benign and cost-effective manufacturing processes;

(2) obtaining low-cost, long-term loans or investments for the purposes described in paragraph (1);

(3) recruiting and training individuals for electric vehicle- and transit-related technical design, manufacture, conversion, and maintenance;

(4) conducting marketing surveys for services provided by the consortium;

(5) creating electronic access to an inventory of industry suppliers and serving as a clearinghouse for such information;

(6) consulting with respect to applicable or proposed Federal motor vehicle safety standards;

(7) creating access to computer architecture needed to simulate crash testing and to design internal subsystems and related infrastructure for electric vehicles and advanced transportation systems to meet applicable standards; and

(8) creating access to computer protocols that are compatible with larger manufacturers' systems to enable small- and medium-sized suppliers to compete for contracts for advanced transportation systems and electric vehicles and other related systems and equipment.

SECTION 6072. Definitions.

For purposes of this part, the following definitions apply:

(1) ADVANCED TRANSPORTATION SYSTEM.—The term "advanced transportation system" means a system of mass transportation, such as an electric trolley bus or alternative fuels bus, which employs advanced technology in order to function cleanly and efficiently;

(2) ELECTRIC VEHICLE.—The term "electric vehicle" means a passenger vehicle, such as a van, primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electric current, and that may include a nonelectrical source of supplemental power; and

(3) ELIGIBLE CONSORTIUM.—The term "eligible consortium" means a consortium of—

(A) businesses incorporated in the United States;

(B) public or private educational or research organizations located in the United States;

(C) entities of State or local governments in the United States; or

(D) Federal laboratories.

SECTION 6073. Funding.

Funds shall be made available to carry out this part as provided in section 21(b)(3)(E) of the Federal Transit Act.

OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT OF 1991

(Public Law 102–143, Oct. 28, 1991)

SECTION 1. Short Title.

Short title. This title may be cited as the "Omnibus Transportation Employee Testing Act of 1991".

SECTION 2. Findings.

Findings. The Congress finds that—

(1) alcohol abuse and illegal drug use pose significant dangers to the safety and welfare of the Nation;

(2) millions of the Nation's citizens utilize transportation by aircraft, railroads, trucks, and buses, and depend on the operators of aircraft, trains, trucks, and buses to perform in a safe and responsible manner;

(3) the greatest efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs, whether on duty or off duty, by those individuals who are involved in the operation of aircraft, trains, trucks, and buses;

(4) the use of alcohol and illegal drugs has been demonstrated to affect significantly the performance of individuals, and has been proven to have been a critical factor in transportation accidents;

(5) the testing of uniformed personnel of the Armed Forces has shown that the most effective deterrent to abuse of alcohol and use of illegal drugs is increased testing, including random testing;

(6) adequate safeguards can be implemented to ensure that testing for abuse of alcohol or use of illegal drugs is performed in a manner which protects an individual's right of privacy, ensures that no individual is harassed by being treated differently from other individuals, and ensures that no individual's reputation or career development is unduly threatened or harmed; and

(7) rehabilitation is a critical component of any testing program for abuse of alcohol or use of illegal drugs, and should be made available to individuals, as appropriate.

* * *

SECTION 6. Testing to Enhance Mass Transportation Safety.

(a) As used in this section, the term—

(1) "controlled substance" means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary has determined has a risk to transportation safety;

(2) "person" includes any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States, or any State, territory, district, or possession thereof, or of any foreign country;

(3) "Secretary" means the Secretary of Transportation; and

(4) "mass transportation" means all forms of mass transportation except those forms that the Secretary determines are covered adequately, for purposes of employee drug and alcohol testing, by either the Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) or the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.).

(b)(1) The Secretary shall, in the interest of mass transportation safety, issue regulations within twelve months after the date of enactment of this Act. Such regulations shall establish a program which requires mass transportation operations which are recipients of Federal financial assistance under section 3, 9, or 18 of the Urban Mass Transportation Act of 1964 (49 App. U.S.C. 1602, 1607a, or 1614) or section 103(e)(4) of title 23, United States Code, to conduct preemployment, reasonable suspicion, random, and post-accident testing of mass transportation employees responsible for safety-sensitive functions (as determined by the Secretary) for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Secretary may also issue regulations, as the Secretary considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such employees for such use in violation of law or Federal regulation.

(2) In issuing such regulations, the Secretary shall require that post-accident testing of such a mass transportation employee be conducted in the case of any accident involving mass transportation in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

(c) The Secretary shall issue regulations setting forth requirements for rehabilitation programs which provide for the identification and opportunity for treatment of mass transportation employees referred to in subsection (b)(1) who are determined to have used, in violation of law or Federal regulation, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such employees shall be required to participate in such program. Nothing in this subsection shall preclude a mass transportation operation from establishing a program under this section in cooperation with any other such operation.

(d) In establishing the program required under subsection (b), the Secretary shall develop requirements which shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

(2) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict

procedures governing the chain of custody of specimen samples collected for controlled substances testing;

(B) establish the minimum list of controlled substances for which individuals may be tested; and

(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

(4) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within three days after being advised of the results of the confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(e)(1) No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations issued under this section, except that the regulations issued under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to mass transportation employees, or to the general public.

(2) Nothing in this section shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any regulations governing the use of alcohol or controlled substances

by mass transportation employees issued before the date of enactment of this Act.

(3) In issuing regulations under this section, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries.

(f)(1) As the Secretary considers appropriate, the Secretary shall require—

(A) disqualification for an established period of time or dismissal of any employee referred to in subsection (b)(1) who is determined to have used or to have been impaired by alcohol while on duty; and

(B) disqualification for an established period of time or dismissal of any such employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law or any regulations.

(2) Nothing in this section shall be construed to supersede any penalty applicable to a mass transportation employee under any other provision of law.

(g) A person shall not be eligible for Federal financial assistance under section 3, 9, or 18 of the Urban Mass Transportation Act of 1964 (49 App. U.S.C. 1602, 1607a, or 1614) or section 103(e)(4) of title 23, United States Code, if such person—

(1) is required, under regulations prescribed by the Secretary under this section, to establish a program of alcohol and controlled substances testing; and

(2) fails to establish such a program in accordance with such regulations.

SURFACE TRANSPORTATION AND UNIFORM RELOCATION ASSISTANCE ACT OF 1987 (Public Law 100–17, April 2, 1987)

* * *

TITLE I—FEDERAL-AID HIGHWAY ACT OF 1987

* * *

SECTION 141. Transfer of Interstate Lanes.

(a) ELIGIBILITY OF INTERSTATE LANE PROJECT.—Any project to construct eligible interstate lanes, as defined in subsection (f), shall be eligible for funds authorized under section 108(b) of the Federal-Aid Highway Act of 1956 and shall be included as an eligible project in any future interstate cost estimate unless the costs of such project are made not eligible for such funds by subsection (c).

(b) APPROVAL OF SUBSTITUTE TRANSIT PROJECT.—Notwithstanding any other provision of law, upon the joint request of the Governor of the State of California and the local governments concerned, the Secretary may approve a substitute transit project for construction

of a fixed guideway system in lieu of construction of any eligible interstate lanes if such substitute project is in or adjacent to the proposed right-of-way for such lanes.

(c) ELIGIBILITY FOR FEDERAL ASSISTANCE.—Upon approval of any substitute transit project under subsection (b), the costs of construction of the eligible interstate lanes for which such project is substituted shall not be eligible for funds authorized under section 108(b) of the Federal-Aid Highway Act of 1956 and a sum equal to the Federal share of such costs, as included in the latest interstate cost estimate approved by Congress, shall be available to the Secretary to incur obligations under section 103(e)(4) of title 23, United States Code, for the Federal share of the costs of such substitute project.

(d) LIMITATION ON ELIGIBILITY.—By September 30, 1989, any substitute transit project approved under subsection (b) (for which the Secretary finds that sufficient Federal funds are available) must be under contract for construction or construction must have commenced. If any such substitute transit project is not under contract for construction or construction has not commenced by such date, then immediately after such date, the Secretary shall withdraw approval of such project and no funds shall be appropriated under the authority of section 103(e)(4) of title 23, United States Code, for any such project.

(e) ADMINISTRATIVE PROVISIONS.—

(1) STATUS OF SUBSTITUTE PROJECT.—A substitute transit project approved under subsection (b) shall be deemed to be a substitute transit project for purposes of section 103(e)(4) of title 23, United States Code (other than subparagraphs (C) and (O)).

(2) REDUCTION OF UNOBLIGATED INTERSTATE APPORTIONMENTS.—Unobligated apportionments for the Interstate System in the State of California shall, on the date of approval of a substitute transit project under subsection (b), be reduced in the proportion that the Federal share of the costs of the construction of the eligible interstate lanes for which such project is substituted bears to the Federal share of the total cost of all interstate routes in such State as reflected in the latest cost estimate approved by Congress.

(3) ADMINISTRATION THROUGH FHWA.—The Secretary shall administer this section through the Federal Highway Administration.

(f) ELIGIBLE INTERSTATE LANES DEFINED.—For purposes of this section, the term "eligible interstate lanes" means any high occupancy vehicle lanes and other lanes—

(1) which are to be constructed on any highway in Los Angeles County, California, designated as a part of the National System of Interstate and Defense Highways by section 140 of the Federal-Aid Highway Act of 1978; and

(2) the costs of construction of which are included in the interstate cost estimate for 1985.

SECTION 142. Substitute Transit Project in Oregon.

(a) APPROVAL OF PROJECT.—Notwithstanding any other provision of law, upon the joint request of the Governor of the State of Oregon

and the local governments concerned, the Secretary may approve a substitute transit project for construction of a light rail transit system in lieu of construction of any eligible interstate lanes if such substitute project is in or adjacent to the proposed right-of-way for such lanes.

(b) ELIGIBILITY FOR FEDERAL ASSISTANCE.—Upon approval of any substitute transit project under subsection (a), the costs of construction of the eligible interstate lanes for which such project is substituted shall not be eligible for funds authorized under section 108(b) of the Federal-Aid Highway Act of 1956 and a sum equal to the Federal share of such costs, as included in the latest interstate cost estimate approved by Congress, shall be available to the Secretary to incur obligations under section 103(e)(4) of title 23, United States Code, for the Federal share of the costs of such substitute project.

(c) LIMITATION ON ELIGIBILITY.—By September 30, 1989, any substitute transit project approved under subsection (a) (for which the Secretary finds that sufficient Federal funds are available) must be under contract for construction or construction must have commenced. If any such substitute transit project is not under contract for construction or construction has not commenced by such date, then immediately after such date, the Secretary shall withdraw approval of such project and no funds shall be appropriated under the authority of section 103(e)(4) of title 23, United States Code, for such project.

(d) ADMINISTRATIVE PROVISIONS.—

(1) STATUS OF SUBSTITUTE PROJECT.—A substitute transit project approved under subsection (a) shall be deemed to be a substitute transit project for purposes of section 103(e)(4) of title 23, United States Code (other than subparagraphs (C) and (O)).

(2) REDUCTION OF UNOBLIGATED INTERSTATE APPORTIONMENT.—Unobligated apportionments for the Interstate System in the State of Oregon shall, on the date of approval of a substitute transit project under subsection (a), be reduced in the proportion that the Federal share of the costs of the construction of the eligible interstate lanes for which such project is substituted bears to the Federal share of the total cost of all interstate routes in such State as reflected in the latest cost estimate approved by Congress.

(3) ADMINISTRATION THROUGH FHWA.—The Secretary shall administer this section through the Federal Highway Administration.

(e) ELIGIBLE INTERSTATE LANES DEFINED.—For purposes of this section, the term "eligible interstate lanes" means any bus lanes which are to be constructed on Interstate Route I–205 in Oregon.

* * *

TITLE III—FEDERAL MASS TRANSPORTATION ACT OF 1987[249]

SECTION 301. Short Title.

This title may be cited as the "Federal Mass Transportation Act of 1987."

* * *

SECTION 317. Bus Testing.[249A]

* * *

(b) BUS TESTING FACILITY.—

(1) ESTABLISHMENT.—The Secretary shall establish a facility for testing new bus models for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise. Such facility shall be established by renovation of a facility constructed with Federal assistance for the purpose of training rail personnel.

(2) OPERATION.—The Secretary shall enter into a contract with a qualified person to operate and maintain the facility established under paragraph (1) for testing new bus models for maintainability, reliability, safety, performance, structural integrity, fuel economy, and noise. Such contract may provide for the testing of rail cars and other vehicles at such facility.

(3) COLLECTION OF FEES.—Under the contract entered into under paragraph (2), the person operating and maintaining the facility shall establish and collect fees for the testing of vehicles at the facility. Such fees shall be subject to the approval of the Secretary.

(4) NEW BUS MODEL DEFINED.—For purposes of this subsection, the term "new bus model" has the meaning such term has under section 12(h)(2) of the Urban Mass Transportation Act of 1964.

(5) FUNDING.—There shall be available to the Secretary out of the Mass Transit Account of the Highway Trust Fund for establishment of the facility under paragraph (1) $200,000 for fiscal year 1987 and $3,000,000 for fiscal year 1988, for expansion of such facility $1,500,000 for fiscal year 1992, and for establishment of a revolving fund under paragraph (6) $2,500,000 for fiscal year 1992. Funds made available by this paragraph shall remain available until expended and shall not be subject to any obligation limitation.

(6) REVOLVING LOAN FUND.—The Secretary shall establish a bus testing revolving loan fund with amounts authorized for such purpose under paragraph (5). The Secretary shall make available as repayable

[249] The primary provisions of Title III of the Surface Transportation and Relocation Assistance Act of 1987 amended the Urban Mass Transportation Act of 1964. Changes to the UMT Act have been incorporated into the text in Part I. The sections that follow are provisions which did not amend the UMT Act of 1964 or other acts set out in this part.

[249A] Subsection (a) of section 317 added subsection (h) to section 12 of the Federal Transit Act.

advances amounts from the fund to the person described in paragraph (3) for operating and maintaining the facility.

* * *

SECTION 329. Increased Operating Assistance During Construction of Interstate Project.

Upon request of the State of Florida and the designated recipients under section 9 of the Urban Mass Transportation Act of 1964 for the urbanized areas of Fort Lauderdale and Miami, Florida, the amount of funds apportioned after September 30, 1987, under such section with respect to such urbanized areas which may otherwise be used for operating assistance under such section shall be increased by $4,400,000 for each fiscal year. The increased operating assistance may only be used for commuter rail service.

SECTION 330. Bus Service Deterioration.

The Congress finds and declares that there has been a serious problem involving the deterioration of bus service for people residing in the small communities and rural areas of the several States, and recognizes the need to consider the best ways and means to remedy such problem.

* * *

SECTION 331. Bart Study.

(a) STUDY.—The Secretary, in cooperation with the San Francisco Bay Area Rapid Transit District and the Metropolitan Transportation Commission, shall undertake a comprehensive study of the future of the Bay Area Rapid Transit System. The study shall focus on the development of financing alternatives for the first phase rail extensions identified in the Regional Transportation Plan.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study described in subsection (a).

SECTION 332. Tactile Mobility Aids.

(a) STUDY.—The Secretary shall conduct a study of the feasibility of developing and implementing standards for the use, in transportation facilities and equipment constructed or acquired with assistance under the Urban Mass Transportation Act of 1964, title 23, United States Code, or other laws administered by the Department of Transportation, of tactile mobility aids in order to facilitate the safe access to and use of such facilities and equipment by visually impaired and legally blind persons.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary shall transmit a report to the Congress on the results of such study, including such recommendations for legislation as may be necessary to implement such standards.

SECTION 334. Feasibility Study of Abandoned Trolley Service.

(a) STUDY.—The Secretary, in cooperation with the city of Philadelphia, Pennsylvania, shall conduct a study of the feasibility of restoring trolley service to corridors on which trolley service has been abandoned in such city.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study conducted under subsection (a).

SECTION 335. Comprehensive Transit Plan for the Virgin Islands.

(a) STUDY.—The Secretary, in cooperation with the Virgin Islands Department of Public Works, shall study and analyze the mass transportation needs of the Virgin Islands for the purpose of developing a comprehensive mass transportation plan for the Virgin Islands.

(b) REPORT AND PLAN.—Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study and analysis conducted under subsection (a) together with a copy of the mass transportation plan which the Secretary recommends for the Virgin Islands.

SECTION 336. Transfer of Section 9 Funds.

The Governor of Nevada, after consultation with all urbanized areas within Nevada, may transfer not to exceed $10,000,000 of unused apportionments under sections 9A and 9 of the Urban Mass Transportation Act of 1964 for use for urban mass transportation purposes in Santa Clara County, California.

SECTION 338. Multi-Year Contract for Metro Rail Project.

(a) SUPPLEMENTAL EIS.—Not later than 10 days after the date of the enactment of this Act and in accordance with the National Environmental Policy Act of 1969, the Secretary shall begin the preparation of a supplemental environmental impact statement necessary as a result of alignment changes within the Minimum Operable Segment-2 portion of the Downtown Los Angeles to San Fernando Valley Metro Rail Project. The Secretary shall publish a notice of the completion of the final supplemental environmental impact statement in the Federal Register. If the Secretary has not published such notice within 5 months after the date of the enactment of this Act, the Secretary shall report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the status of the completion of such final supplemental environmental impact statement. The Secretary shall continue to report to those committees every 30 days on the status of the completion of the final supplemental environmental impact statement, including any proposed revisions to the statement, until a notice of the completion of such statement is published in the Federal Register.

(b) AMENDMENT TO EXISTING CONTRACT.—Notwithstanding any other provision of law, not later than 30 days after the publication of a notice of completion of a final supplemental environmental impact statement under subsection (a), the Secretary shall—

(1) issue a record of decision which approves the construction of the locally preferred Minimum Operable Segment-2 alternative, and

(2) execute an amendment to the existing full-funding contract under section 3 of the Urban Mass Transportation Act of 1964 with the Southern California Rapid transit District (or its successor) for the construction of Minimum Operable Segment-1 of such project, in order to include the construction of such Minimum Operable Segment-2 alternative in such contract.

(c) PAYMENT OF FEDERAL SHARE.—

(1) FEDERAL SHARE.—The amended contract under subsection (b) shall provide that the Federal share of the cost of construction of the Minimum Operable Segment-1 portion of the Downtown Los Angeles to San Fernando Valley Metro Rail Project shall be $605,300,000 and that the Federal share of the cost of construction of the Minimum Operable Segment-2 portion of such project shall be $667,000,000.

(2) PAYMENT.—The amended contract under subsection (b) shall provide that the Federal share of the cost of such project shall be paid by the Secretary from amounts provided under section 3 of the Urban Mass Transportation Act of 1964 for construction of new fixed guideway systems and extensions to fixed guideway systems, as follows:

(A) not to exceed $107,900,000 for fiscal year 1987;

(B) not to exceed $300,000,000 for fiscal years 1987 and 1988;

(C) not to exceed $490,000,000 for fiscal years 1987, 1988, and 1989;

(D) not to exceed $680,000,000 for fiscal years 1987, 1988, 1989, and 1990; and

(E) not to exceed $870,000,000 for fiscal years 1987, 1988, 1989, 1990, and 1991.

(d) ADVANCE CONSTRUCTION.—

(1) UNDER THE CONTRACT.—The amended contract under subsection (b) shall provide that the Southern California Rapid Transit District (or successor) may construct any portion of the Downtown Los Angeles to San Fernando Valley Metro Rail Project in accordance with section 3(l) of the Urban Mass Transportation Act of 1964, except that such district (or successor) shall not be required to apply to and receive approval of the Secretary before carrying out any such construction.

(2) ON MOS–1 BEFORE EXECUTION OF CONTRACT.—At any time after the date of the enactment of this section, the Southern California Rapid Transit District (or successor) may construct any portion of the Minimum Operable Segment-1 portion of such project in accordance with section 3(l) of the Urban Mass Transportation Act of 1964, except that such district (or successor) shall not be required to apply

to and receive approval of the Secretary before carrying out any such construction.

(3) REIMBURSEMENT SCHEDULE.—The amended contract under subsection (b) shall provide that the Secretary shall reimburse the Southern California Rapid Transit District (or successor), from any amounts provided under section 3 of the Urban Mass Transportation Act of 1964 for fiscal years 1992 through 1994, for the Federal share of the net project costs incurred by such district (or successor) under paragraphs (1) and (2) (including the amount of any interest earned and payable on bonds as provided in section 3(l)(2) of the Urban Mass Transportation Act of 1964), as follows:

(A) not later than September 30, 1992, the Secretary shall reimburse such district (or successor) a total of $467,100,000 (plus such interest), less amounts provided under subsection (c)(2) for fiscal years 1988 through 1990;

(B) not later than September 30, 1993, the Secretary shall reimburse such district (or successor) a total of $622,100,000 (plus such interest), less amounts provided under subsection (c)(2) for fiscal years 1988 through 1991; and

(C) not later than September 30, 1994, the Secretary shall reimburse such district (or successor) a total of $762,100,000 (plus such interest), less amounts provided under subsection (c)(2) for fiscal years 1988 through 1991.

(4) DELAYS IN PUBLICATION OF NOTICE OF SUPPLEMENTAL EIS.—If the Secretary does not publish a notice of the completion of the final supplemental environmental impact statement in the Federal Register under subsection (a) on or before September 30, 1988, each date or year listed in paragraph (3) of this subsection shall be delayed one year. For each full year after such date in which such notice is not published, each such date or year shall be delayed one more year.

SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982

(Public Law 97–424, Jan. 6, 1983)

* * *

TITLE I—HIGHWAY IMPROVEMENT ACT OF 1982

* * *

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 [250]

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, iron,[251] 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;

(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 and subcomponents [252] which are produced in the United States is more than 50 [253] 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;

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[250] This section was inserted by section 165 of Public Law 97–424 repealed section 401 of Public Law 95–599, the prior Buy America provision.

[251] Section 1048(a) of Public Law 102–204 amended subsection (a) by adding the word "iron".

[252] Section 337(b) of Public Law 100–17 amended section 165 by adding "and subcomponents". Section 337(d) provides the amendment does not apply to any contract awarded pursuant to bids which were outstanding on the date of enactment, April 2, 1987.

[253] Section 337(a)(1)(A) of Pubic Law 100–17 changed the 50 percent cost limit of section 165(b)(3) to 55 percent as of Oct. 1, 1989. Section 337(a)(1)(B) of Public Law 100–17 changes the 55 percent cost limit to 60 percent as of Oct. 1, 1991. Section 337(a)(2) of Public Law 100–17 provides that the new limits shall apply only to contracts entered into on or after their respective effective dates, except that the new limits shall not apply "with respect to any supplier or contractor or any successor in interest or assignee which qualified under the provisions of section 165(b)(3) of the Surface Transportation Assistance Act of 1982 prior to the date of enactment of this Act under a contract entered into prior to April 1, 1992." The date of enactment referred to is April 2, 1987.

(4) that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.[254]

(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)[255] REPORT ON WAIVERS.—By January 1, 1995, the Secretary shall submit to Congress a report on the purchases from foreign entities waived under subsection (b) in fiscal years 1992 and 1993, indicating the dollar value of items for which waivers were granted under subsection (b).

(f) INTENTIONAL VIOLATIONS.—If it has been determined by a court or Federal agency that any person intentionally—

(1) affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any product used in projects to which this section applies, sold in or shipped to the United States that was not made in the United States; or

(2) represented that any product used in projects to which this section applies, sold in or shipped to the United States that was not produced in the United States, was produced in the United States;

that person shall be ineligible to receive any contract or subcontract made with funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991 pursuant to the debarment, suspension, and ineligibility procedures in subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations.

(g) LIMITATION ON APPLICABILITY OF WAIVERS TO PRODUCTS PRODUCED IN CERTAIN FOREIGN COUNTRIES.—If the Secretary, in consultation with the United States Trade Representative, determines that—

(1) a foreign country is a party to an agreement with the United States and pursuant to that agreement the head of an agency of the United States have waived the requirements of this section, and

(2) the foreign country has violated the terms of the agreement by discriminating against products covered by this section that are produced in the United States and are covered by the agreement,

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[254] Section 337(c) of Public Law 100–17 amended section 165(b)(3) by striking "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." and inserting "25 percent." Section 337(d) of Public Law 100–17 provided the amendment does not apply to any contract awarded pursuant to bids which were outstanding on the date of enactment, April 2, 1987.

[255] Section 1048(b) of Public Law 102–240 added subsections (e)–(g).

the provisions of subsection (b) shall not apply to products produced in that foreign country.

* * *

TITLE III—FEDERAL PUBLIC TRANSPORTATION ACT OF 1982[256]

SECTION 301. Short Title.

This title may be cited as the "Federal Public Transportation Act of 1982."

* * *

SECTION 310. Performance Reports.[257]

* * *

49 U.S.C. § 308. Reports.

(e)(1) The Secretary shall submit a report to Congress in January of each even-numbered year of estimates by the Secretary on the current performance and condition of public mass transportation systems with recommendations for necessary administrative or legislative changes.

(2) In reporting to Congress under this subsection, the Secretary shall prepare a complete assessment of public transportation facilities in the United States. The Secretary also shall assess future needs for those facilities and estimate future capital requirements and operation and maintenance requirements for 1-year, 5-year, and 10-year periods at specified levels of service.

SECTION 311. Construction Condition.[258]

Hartsfield International Airport will be constructed simultaneously in usable segments so that revenue passenger service to Doraville and

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[256] The primary provisions of Title III of the Surface Transportation Assistance Act of 1982 amended the Urban Mass Transportation Act of 1964. Changes to the UMT Act have been incorporated into the text in Part I. The sections that follow are provisions which did not amend the UMT Act.

[257] Public Law 98–216, Feb. 14, 1984, repealed and recodified section 310 at 49 U.S.C. 308(e). The recodified text is set out above. Section 310 read as follows:

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 system 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 1-, 5-, and 10-year periods at specified levels of service."

[258] Section 311 was repealed by Public Law 98–6, March 16, 1983, 97 Stat. 11. Section 311 read as follows:

Construction Condition

"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 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

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)[259] Upon request of a local public body eligible to receive a grant under the Urban Mass Transportation Act of 1964, the Secretary of Transportation shall make a grant to such public body to conduct a feasibility study to examine the possibility of constructing and operating an electric bus line with the advanced and environmentally sound electric bus technology that is being developed in the State of California for the Santa Barbara transit system.

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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."

[259] Section 333 of Public Law 100–17 substantially amended Section 314(a). The former subsection (a) read as follows:

"(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 Transportation 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.

* * *

TITLE V—HIGHWAY REVENUE ACT OF 1982

* * *

SUBTITLE D—HIGHWAY TRUST FUND; MASS TRANSIT ACCOUNT

SECTION 531. Establishment of Mass Transit Account.

* * *

(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".

SURFACE TRANSPORTATION ASSISTANCE ACT OF 1978[260]

(Public Law 95–599, November 11, 1978)

* * *

TITLE III—FEDERAL PUBLIC TRANSPORTATION ACT OF 1978

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.

(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.

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[260] The primary provisions of Title III of the Surface Transportation Assistance Act of 1978 amended the Urban Mass Transportation Act of 1964. Changes to the UMT Act have been incorporated into the text in Part I. The sections that follow are provisions which did not amend the UMT Act.

NATIONAL MASS TRANSPORTATION ASSISTANCE ACT OF 1974

(Public Law 93–503, November 26, 1974) [261]

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

SECTION 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;

(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.[262]

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[261] The primary provisions of the National Mass Transportation Assistance Act of 1974 amended the Urban Mass Transportation Act of 1964. Changes to the UMT Act have been incorporated into the text in Part I. The sections that follow are provisions which did not amend the UMT Act.

[262] 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.

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 the operating costs and the amortization of capital costs for any fiscal year for which such contract or other arrangement is in effect.

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;

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.

(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.

* * *

FEDERAL-AID HIGHWAY AMENDMENTS OF 1974

(Public Law 93–643, January 4, 1975)

* * *

SECTION 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.

* * *

FEDERAL-AID HIGHWAY ACT OF 1973[263]

(Public Law 93–87, August 13, 1973)

* * *

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 poten-

[263] The primary provisions of the Federal-Aid Highway Act of 1973 amended title 23 of the United States Code. The provisions that follow are those which did not amend title 23, but are of interest to UMTA.

tial 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.[264]

* * *

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

[264] As amended by Federal-Aid Highway Amendments of 1974 (Pub. L. 93–643. Section 103. January 4, 1975).

The text of section 147 as it read prior to amendments is as follows:

Section 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.

of buses under the provisions of title 23, United States Code, referred to in clauses (1) and (2) of this sentence.[265]

(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 operations 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 cri-

[265] 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:

"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)."

teria 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 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 wheelchairbound 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.[266]

URBAN MASS TRANSPORTATION ASSISTANCE ACT OF 1970[267]

(Public Law 91–453, October 15, 1970)

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

[266] As amended by Federal-Aid Highway Amendments of 1974 (Pub. L. 93–643, § 105, January 4, 1975).

(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 illness, 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.

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

[267] The primary provisions of the Urban Mass Transportation Assistance Act of 1970 amended the Urban Mass Transportation Act of 1964. Changes to the UMT Act have been incorporated into the text in Part 1. The provisions that follow did not amend the UMT Act.

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 at 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,[268] 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): "(103) 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."

TITLE 23, UNITED STATES CODE, HIGHWAYS

* * *

[268] Reorganization Plan No. 2 of 1968 is set out in Part IV.

23 U.S.C § 101. Definitions and Declaration of Policy.

(a) * * *

The term "transportation enhancement activities" means, with respect to any project or the area to be served by the project, provision of facilities for pedestrians and bicycles, acquisition of scenic easements and scenic or historic sites, scenic or historic highway programs, landscaping and other scenic beautification, historic preservation, rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals), preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails), control and removal of outdoor advertising, archaeological planning and research, and mitigation of water pollution due to highway runoff.

* * *

23 U.S.C. § 103. Federal-aid Systems.

* * *

(e)(4) * * *

(4) INTERSTATE SUBSTITUTE PROGRAM.—

(A) WITHDRAWAL OF APPROVAL.—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 the Secretary determines that such route or portion thereof is not essential to completion of a unified and connected Interstate System and if the Secretary 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.

(B) SUBSTITUTE PROJECTS.—When the Secretary withdraws 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 highway construction projects on any public road, 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. Each project constructed under this paragraph not on a Federal-aid system shall be subject to the provisions of this title applicable to projects on the Federal-aid secondary system.

(C) DEADLINE FOR WITHDRAWAL.—The Secretary shall not approve any withdrawal of a route under this paragraph after September 30, 1983—

(i) except that with respect to any route which on November 6, 1978, is under judicial injunction prohibiting its construction the Secretary may approve withdrawals until September 30, 1986, and

(ii) 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.

(D) PROJECT APPROVAL; FEDERAL SHARE.—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.

(E) AVAILABILITY OF FUNDS FOR SUBSTITUTE PROJECTS.—

(i) TIME PERIOD.—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. In the case of funds authorized to be appropriated for substitute transit projects under this paragraph for fiscal year 1993 and for substitute highway projects under this paragraph for fiscal year 1995, such funds shall remain available until expended.

(ii) REAPPORTIONMENT OR REALLOCATION.—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 the period of availability established by clause (i) shall be apportioned or allocated, as the case may be, among those states which have obligated all sums (other than such an amount) apportioned or allocated, as the case may be to them. Such reapportionments shall be in accordance with the latest approved or adjusted estimate of the cost of completing substitute projects, and such reallocations shall be at the discretion of the Secretary.

(F) ADMINISTRATION OF TRANSIT FUNDS.—The sums obligated for mass transit projects under this paragraph shall become part of, and be administered through, the Urban Mass Transportation Fund.

(G) AUTHORIZATION OF APPROPRIATIONS FOR HIGHWAY PROJECTS.—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. There shall be available, out of the Highway Trust Fund (other than the Mass Transit Account), to the Secretary for expenditure under this paragraph for projects under highway assistance programs $700,000,000 per fiscal year for each of fiscal years 1984 and 1985, $693,825,000 for fiscal year 1986, $704,000,000 per fiscal year for each of fiscal years 1987, 1988, 1989, 1990, and 1991, $240,000,000 per fiscal year for each of fiscal years 1992, 1993, 1994, and 1995. Such sums may be obligated for transit substitute projects under this paragraph.

(H) DISTRIBUTON OF SUBSTITUTE HIGHWAY FUNDS.—

(i) BETWEEN DISCRETIONARY AND APPORTIONED PROGRAMS.—Subject to section 149(d) of the Federal-Aid Highway Act of 1987, 25 percent of the funds made available by subparagraph (G) for each of fiscal years 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991 for substitute highway projects under this paragraph shall be distributed at the discretion of the Secretary. The remaining 75 percent of such funds shall be apportioned in accordance with cost estimates approved by Congress or adjusted by the Secretary. For each of fiscal years 1992, 1993, 1994, and 1995, all funds made available by subparagraph (G) shall be apportioned in accordance with cost estimates adjusted by the Secretary.

(ii) FISCAL YEARS 1985, 1986, AND 1987 APPORTIONMENTS.—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 10 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 fiscal years 1985, 1986, and 1987.

(iii) FISCAL YEARS 1988–1995 APPORTIONMENTS.—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 as soon as practicable after the date of the enactment of the Federal-Aid Highway Act of 1987. 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 year 1988. If such estimate is not approved by Congress by September 30, 1987, the Secretary shall adjust such estimate in accordance with this clause

and use the Federal share of the adjusted estimate in making apportionments for fiscal year 1988. The Secretary shall adjust such estimate annually thereafter in accordance with this clause and shall use the Federal share of such adjusted estimate in making apportionments for substitute highway projects for fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995. The adjustments required by this clause shall reflect previous withdrawals of interstate segments, changes in State estimates in the division of funds between substitute highway and transit projects, amounts made available in prior fiscal years, and the availability and reapportionment of funds under subparagraph (E).

(I) AUTHORIZATION OF APPROPRIATIONS FOR TRANSIT PROJECTS.—There are authorized to be appropriated for liquidation of obligations incurred for substitute transit projects under this paragraph the sums provided in section 4(g) of the Urban Mass Transportation Act of 1964.

(J) DISTRIBUTION OF SUBSTITUTE TRANSIT FUNDS.—

(i) BETWEEN DISCRETIONARY AND APPORTIONED PROGRAMS.—Fifty percent of the funds appropriated for each fiscal year beginning after September 30, 1983, and ending before October 1, 1991 for carrying out substitute transit projects under this paragraph shall be distributed at the discretion of the Secretary. The remaining 50 percent of such funds shall be apportioned in accordance with cost estimates approved by Congress or adjusted by the Secretary. 100 percent of funds appropriated for each of fiscal years 1992 and 1993 shall be apportioned in accordance with cost estimates adjusted by the Secretary.

(ii) FISCAL YEARS 1985, 1986, AND 1987 APPORTIONMENTS.—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 10 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 fiscal years 1985, 1986, and 1987.

(iii) FISCAL YEARS 1988–1993 APPORTIONMENTS.—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 as soon as practicable after the date of the enactment of the Federal-Aid Highway Act of 1987. Upon approval by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute transit projects for fiscal year 1988. If such estimate is not approved by Congress by September 30, 1987, the Secretary shall adjust such estimate in accordance with this clause and use the Federal share of the adjusted estimate in making apportionments for fiscal year 1988. The Secretary shall adjust such estimate annually thereafter in accordance with this clause and shall use the Federal share of such

adjusted estimate in making apportionments for substitute transit projects for fiscal years 1989, 1990, 1991, 1992, and 1993. The adjustments required by this clause shall reflect previous withdrawals of Interstate segments, changes in State estimates in the division of funds between substitute highway and transit projects, amounts made available in prior fiscal years, and the availability and reapportionment of funds under subparagraph (E).

(K) REDUCTION OF INTERSTATE APPORTIONMENT.—

(i) IN GENERAL.—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.

(ii) EXCEPTION.—In any State where the withdrawal of an interstate route or portion thereof has been approved under this section prior to the date of the enactment of the Federal-Aid Highway Act of 1976, the unobligated apportionments for the Interstate System in that State on such date of enactment shall be reduced in the proportion that the Federal share of the cost to complete such route or portion thereof, as shown in 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 in such cost estimate; except that the amount of such proportional reduction shall be credited with the amount of any reduction in such State's Interstate apportionment which was attributable to the Federal share of any substitute project approved under this paragraph before such date of enactment.

(L) APPLICABILITY OF UMTA.—

(i) SUPPLEMENTARY FUNDS.—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.

(ii) LABOR PROTECTION.—The provisions of section 3(e)(4) of the Urban Mass Transportation Act of 1964 shall apply in carrying out this paragraph.

(M) LIMITATION ON INTERSTATE DESIGNATIONS.—After the date of enactment of the Federal-Aid Highway Act of 1978, 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.

* * *

(i) ELIGIBLE PROJECTS FOR NHS.—Subject to project approval by the Secretary, funds apportioned to a State under section 104(b)(1)

for the National Highway System may be obligated for any of the following:

(1) Construction, reconstruction, resurfacing, restoration, and rehabilitation of segments of such system.

(2) Operational improvements for segments of such system.

(3) Construction of, and operational improvements for, a Federal-aid highway not on the National Highway System and construction of a transit project eligible for assistance under the Federal Transit Act—

(A) if such highway or transit project is in the same corridor as, and in proximity to, a fully access controlled highway designated to the National Highway System;

(B) if the construction or improvements will improve the level of service on the fully access controlled highway and improve regional travel; and

(C) if the construction or improvements are more cost effective than an improvement to the fully access controlled highway that has benefits comparable to the benefits which will be achieved by the construction of, or improvements to, the highway not on the National Highway System.

(4) Highway safety improvements for segments of the National Highway System.

(5) Transportation planning in accordance with sections 134 and 135.

(6) Highway research and planning in accordance with section 307.

(7) Highway-related technology transfer activities.

(8) Startup costs for traffic management and control if such costs are limited to the time period necessary to achieve operable status but not to exceed 2 years following the date of project approval, if such funds are not used to replace existing funds.

(9) Fringe and corridor parking facilities.

(10) Carpool and vanpool projects.

(11) Bicycle transportation and pedestrian walkways in accordance with section 217.

(12) Development and establishment of management systems under section 303.

(13) In accordance with all applicable Federal law and regulations, participation in wetlands mitigation efforts related to projects funded under this title, which may include participation in wetlands mitigation banks; contributions to statewide and regional efforts to conserve, restore, enhance and create wetlands; and development of statewide and regional wetlands conservation and mitigation plans, including any such banks, efforts, and plans authorized pursuant to the Water Resources Development Act of 1990 (including crediting provisions). Contributions to such mitigation efforts may take place concurrent with or in advance of project construction. Contributions toward these efforts may occur in advance of project construction only if

such efforts are consistent with all applicable requirements of Federal law and regulations and State transportation planning processes.

* * *

23 U.S.C. § 104. Apportionment

* * *

(c) TRANSFERABILITY OF NHS APPORTIONMENTS.—A State may transfer not to exceed 50 percent of the State's apportionment under subsection (b)(1) to the apportionment of the State under subsection (b)(3). A State may transfer not to exceed 100 percent of the State's apportionment under subsection (b)(1) to the apportionment of the State under subsection (b)(3) if the State requests to make such transfer and the Secretary approves such transfer as being in the public interest, after providing notice and sufficient opportunity for public comment. Section 133(d) shall not apply to funds transferred under this subsection.

* * *

23 U.S.C. § 119. Interstate Maintenance Program.

* * *

(f) TRANSFER OF FUNDS FOR SURFACE TRANSPORTATION PROGRAM PROJECT.—

(1) UPON CERTIFICATION ACCEPTANCE.—If a State certifies to the Secretary that any part of the sums apportioned to the State under section 104(b)(5)(B) of this title are in excess of the needs of the State for resurfacing, restoring, or rehabilitating Interstate Systems routes and the State is adequately maintaining the Interstate System and the Secretary accepts such certification, the State may transfer such excess part to its apportionment under sections 104(b)(1) and 104(b)(3).

(2) UNCONDITIONAL.—Notwithstanding paragraph (1), a State may transfer to its apportionment under sections 104(b)(1) and 104(b)(3) of this title—

(A) in fiscal year 1987, an amount not to exceed 20 percent of the funds apportioned to the State under section 104(b)(5)(B) which are not obligated at the time of the transfer; and

(B) in any fiscal year thereafter, an amount not to exceed 20 percent of the funds apportioned to the state under section 104(b)(5)(B) for such fiscal year.

* * *

23 U.S.C. § 133. Surface Transportation Program.

(a) ESTABLISHMENT.—The Secretary shall establish a surface transportation program in accordance with this section.

(b) ELIGIBLE PROJECTS.—A State may obligate funds apportioned to it under section 104(b)(3) for the surface transportation program only for the following:

(1) Construction, reconstruction, rehabilitation, resurfacing, restoration, and operational improvements for highways (including Interstate highways) and bridges (including bridges on public roads of all functional classifications), including any such construction or reconstruction necessary to accommodate other transportation modes, and including the seismic retrofit and painting of and application of calcium magnesium acetate on bridges and approaches thereto and other elevated structures, mitigation of damage to wildlife, habitat, and ecosystems caused by a transportation project funded under this title.

(2) Capital costs for transit projects eligible for assistance under the Federal Transit Act and publicly owned intracity or intercity bus terminals and facilities.

(3) Carpool projects, fringe and corridor parking facilities and programs, and bicycle transportation and pedestrian walkways in accordance with section 217.

(4) Highway and transit safety improvements and programs, hazard eliminations, projects to mitigate hazards caused by wildlife, and railway-highway grade crossings.

(5) Highway and transit research and development and technology transfer programs.

(6) Capital and operating costs for traffic monitoring, management, and control facilities and programs.

(7) Surface transportation planning programs.

(8) Transportation enhancement activities.

(9) Transportation control measures listed in section 108(f)(1)(A) (other than clauses (xii) and (xvi)) of the Clean Air Act.

(10) Development and establishment of management systems under section 303.

(11) In accordance with all applicable Federal law and regulations, participation in wetlands mitigation efforts related to projects funded under this title, which may include participation in wetlands mitigation banks; contributions to statewide and regional efforts to conserve, restore, enhance and create wetlands; and development of statewide and regional wetlands conservation and mitigation plans, including any such banks, efforts, and plans authorized pursuant to the Water Resources Development Act of 1990 (including crediting provisions). Contributions to such mitigation efforts may take place concurrent with or in advance of project construction. Contributions toward these efforts may occur in advance of project construction only if such efforts are consistent with all applicable requirements of Federal law and regulations and State transportation planning processes.

(c) LOCATION OF PROJECTS.—Except as provided in subsection (b)(1), surface transportation program projects (other than those described in subsections (b) (3) and (4)) may not be undertaken on roads functionally classified as local or rural minor collectors, unless such roads are on a Federal-aid highway system on January 1, 1991, and except as approved by the Secretary.

(d) ALLOCATIONS OF APPORTIONED FUNDS.—

(1) FOR SAFETY PROGRAMS.—10 percent of the funds apportioned to a State under section 104(b)(3) for the surface transportation program for a fiscal year shall only be available for carrying out sections 130 and 152 of this title. Of the funds set aside under the preceding sentence, the State shall reserve in such fiscal year an amount of such funds for carrying out each such section which is not less than the amount of funds apportioned to the State in fiscal year 1991 under such section.

(2) FOR TRANSPORTATION ENHANCEMENT ACTIVITIES.—10 percent of the funds apportioned to a State under section 104(b)(3) for a fiscal year shall only be available for transportation enhancement activities.

(3) DIVISION BETWEEN URBANIZED AREAS OF OVER 200,000 POPULATION AND OTHER AREAS.—

(A) GENERAL RULE.—Except as provided in subparagraphs (C) and (D), 62.5 percent of the remaining 80 percent of the funds apportioned to a State under section 104(b)(3) for a fiscal year shall be obligated under this section—

(i) in urbanized areas of the State with an urbanized area population of over 200,000, and

(ii) in other areas of the State,

in proportion to their relative share of the State's population. The remaining 37.5 percent may be obligated in any area of the State. Funds attributed to an urbanized area under clause (i) may be obligated in the metropolitan area established under section 134 which encompasses the urbanized area.

(B) SPECIAL RULE FOR AREAS OF LESS THAN 5,000 POPULATION.—Of the amounts required to be obligated under subparagraph (A)(ii), the State shall obligate in areas of the State (other than urban areas with a population greater than 5,000) an amount which is not less than 110 percent of the amount of funds apportioned to the State for the Federal-aid secondary system for fiscal year 1991.

(C) SPECIAL RULE FOR CERTAIN STATES.—In the case of a State in which—

(i) greater than 80 percent of the population of the State is located in 1 or more metropolitan statistical areas, and

(ii) greater than 80 percent of the land area of such State is owned by the United States,

the 62.5 percentage specified in the first sentence of subparagraph (A) shall be 35 percent and the percentage specified in the second sentence of subparagraph (A) shall be 65 percent.

(D) NONCONTIGUOUS STATES EXEMPTION.—Subparagraph (A) shall not apply to any State which is noncontiguous with the continental United States.

(E) DISTRIBUTION BETWEEN URBANIZED AREAS OF OVER 200,000 POPULATION.—The amount of funds which a State is required to obligate under subparagraph (A)(i) shall be obligated in urbanized areas described in subparagraph (A)(i) based on the relative popu-

lation of such areas; except that the State may obligate such funds based on other factors if the State and the relevant metropolitan planning organizations jointly apply to the Secretary for the permission to do so and the Secretary grants the request.

(4) APPLICABILITY OF PLANNING REQUIREMENTS.—Programming and expenditure of funds for projects under this section shall be consistent with the requirements of sections 134 and 135 of this title.

(e) ADMINISTRATION.—

(1) NONCOMPLIANCE.—If the Secretary determines that a State or local government has failed to comply substantially with any provision of this section, the Secretary shall notify the State that, if the State fails to take corrective action within 60 days from the date of receipt of the notification, the Secretary will withhold future apportionments under section 104(b)(3) until the Secretary is satisfied that appropriate corrective action has been taken.

(2) CERTIFICATION.—The Governor of each State shall certify before the beginning of each quarter of a fiscal year that the State will meet all the requirements of this section and shall notify the Secretary of the amount of obligations expected to be incurred for surface transportation program projects during such quarter. A State may request adjustment to the obligation amounts later in each of such quarters. Acceptance of the notification and certification shall be deemed a contractual obligation of the United States for the payment of the surface transportation program funds expected to be obligated by the State in such quarter for projects not subject to review by the Secretary under this chapter.

(3) PAYMENTS.—The Secretary shall make payments to a State of costs incurred by the State for the surface transportation program in accordance with procedures to be established by the Secretary. Payments shall not exceed the Federal share of costs incurred as of the date the State requests payments.

(4) POPULATION DETERMINATIONS.—The Secretary shall use estimates prepared by the Secretary of Commerce when determining population figures for purposes of this section.

(f) ALLOCATION OF OBLIGATION AUTHORITY.—A State which is required to obligate in an urbanized area with an urbanized area population of over 200,000 under subsection (d) funds apportioned to it under section 104(b)(3) shall allocate during the 6-fiscal year period 1992 through 1997 an amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction for use in such area determined by multiplying—

(1) the aggregate amount of funds which the State is required to obligate in such area under subsection (d) during such period; by

(2) the ratio of the aggregate amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction during such period to the total sums apportioned to the State for Federal-aid highways and highway safety construction (ex-

cluding sums not subject to an obligation limitation) during such period.

23 U.S.C. § 134. Metropolitan Planning.

(a) GENERAL REQUIREMENTS.—It is in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner which will efficiently maximize mobility of people and goods within and through urbanized areas and minimize transportation-related fuel consumption and air pollution. To accomplish this objective, metropolitan planning organizations, in cooperation with the State, shall develop transportation plans and programs for urbanized areas of the State. Such plans and programs shall provide for the development of transportation facilities (including pedestrian walkways and bicycle transportation facilities) which will function as an intermodal transportation system for the State, the metropolitan areas, and the Nation. The process for developing such plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems.

(b) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

(1) IN GENERAL.—To carry out the transportation planning process required by this section, a metropolitan planning organization shall be designated for each urbanized area of more than 50,000 population by agreement among the Governor and units of general purpose local government which together represent at least 75 percent of the affected population (including the central city or cities as defined by the Bureau of the Census) or in accordance with procedures established by applicable State or local law.

(2) MEMBERSHIP OF CERTAIN MPO'S.—In a metropolitan area designated as a transportation management area, the metropolitan planning organization designated for such area shall include local elected officials, officials of agencies which administer or operate major modes of transportation in the metropolitan area (including all transportation agencies included in the metropolitan planning organization on June 1, 1991) and appropriate State officials. This paragraph shall only apply to a metropolitan planning organization which is redesignated after the date of the enactment of this section.

(3) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on the date of the enactment of this section, of a public agency with multimodal transportation responsibilities to—

(A) develop plans and programs for adoption by a metropolitan planning organization; and

(B) develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

(4) CONTINUING DESIGNATION.—Designations of metropolitan planning organizations, whether made under this section or other provisions of law, shall remain in effect until redesignated under paragraph (5) or revoked by agreement among the Governor and units of general

purpose local government which together represent at least 75 percent of the affected population or as otherwise provided under State or local procedures.

(5) REDESIGNATION.—

(A) PROCEDURES.—A metropolitan planning organization may be redesignated by agreement among the Governor and units of general purpose local government which together represent at least 75 percent of the affected population (including the central city or cities as defined by the Bureau of the Census) as appropriate to carry out this section.

(B) CERTAIN REQUESTS TO REDESIGNATE.—A metropolitan planning organization shall be redesignated upon request of a unit or units of general purpose local government representing at least 25 percent of the affected population (including the central city or cities as defined by the Bureau of the Census) in any urbanized area (i) whose population is more than 5,000,000 but less than 10,000,000, or (ii) which is an extreme nonattainment area for ozone or carbon monoxide as defined under the Clean Air Act. Such redesignation shall be accomplished using procedures established by subparagraph (A).

(6) TREATMENT OF LARGE URBAN AREAS.—More than 1 metropolitan planning organization may be designated within an urbanized area as defined by the Bureau of the Census only if the Governor determines that the size and complexity of the urbanized area make designation of more than 1 metropolitan planning organization for such area appropriate.

(c) METROPOLITAN AREA BOUNDARIES.—For the purposes of this section, the boundaries of a metropolitan area shall be determined by agreement between the metropolitan planning organization and the Governor. Each metropolitan area shall cover at least the existing urbanized area and the contiguous area expected to become urbanized within the 20-year forecast period and may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census. For areas designated as nonattainment areas for ozone or carbon monoxide under the Clean Air Act, the boundaries of the metropolitan area shall at least include the boundaries of the nonattainment area, except as otherwise provided by agreement between the metropolitan planning organization and the Governor.

(d) COORDINATION IN MULTISTATE AREAS.—

(1) IN GENERAL. The Secretary shall establish such requirements as the Secretary considers appropriate to encourage Governors and metropolitan planning organizations with responsibility for a portion of a multi-State metropolitan area to provide coordinated transportation planning for the entire metropolitan area.

(2) COMPACTS.—The consent of Congress is hereby given to any 2 or more States to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as such activities pertain to interstate areas and localities within such

States and to establish such agencies, joint or otherwise, as such States may deem desirable for making such agreements and compacts effective.

(e) COORDINATION OF MPO'S.—If more than 1 metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act, each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans and programs required by this section.

(f) FACTORS TO BE CONSIDERED.—In developing transportation plans and programs pursuant to this section, each metropolitan planning organization shall, at a minimum, consider the following:

(1) Preservation of existing transportation facilities and, where practical, ways to meet transportation needs by using existing transportation facilities more efficiently.

(2) The consistency of transportation planning with applicable Federal, State, and local energy conservation programs, goals, and objectives.

(3) The need to relieve congestion and prevent congestion from occurring where it does not yet occur.

(4) The likely effect of transportation policy decisions on land use and development and the consistency of transportation plans and programs with the provisions of all applicable short- and long-term land use and development plans.

(5) The programming of expenditure on transportation enhancement activities as required in section 133.

(6) The effects of all transportation projects to be undertaken within the metropolitan area, without regard to whether such projects are publicly funded.

(7) International border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation areas, monuments and historic sites, and military installations.

(8) The need for connectivity of roads within the metropolitan area with roads outside the metropolitan area.

(9) The transportation needs identified through use of the management systems required by section 303 of this title.

(10) Preservation of rights-of-way for construction of future transportation projects, including identification of unused rights-of-way which may be needed for future transportation corridors and identification of those corridors for which action is most needed to prevent destruction or loss.

(11) Methods to enhance the efficient movement of freight.

(12) The use of life-cycle costs in the design and engineering of bridges, tunnels, or pavement.

(13) The overall social, economic, energy, and environmental effects of transportation decisions.

(14) Methods to expand and enhance transit services and to increase the use of such services.

(15) Capital investments that would result in increased security in transit systems.

(g) DEVELOPMENT OF LONG RANGE PLAN.—

(1) IN GENERAL.—Each metropolitan planning organization shall prepare, and update periodically, according to a schedule that the Secretary determines to be appropriate, a long range plan for its metropolitan area in accordance with the requirements of this subsection.

(2) LONG RANGE PLAN.—A long range plan under this section shall be in a form that the Secretary determines to be appropriate and shall, at a minimum:

(A) Identify transportation facilities (including but not necessarily limited to major roadways, transit, and multimodal and intermodal facilities) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions. In formulating the long range plan, the metropolitan planning organization shall consider factors described in subsection (f) as such factors relate to a 20-year forecast period.

(B) Include a financial plan that demonstrates how the long-range plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any innovative financing techniques to finance needed projects and programs, including such techniques as value capture, tolls and congestion pricing.

(C) Assess capital investment and other measures necessary to—

(i) ensure the preservation of the existing metropolitan transportation system, including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit facilities; and

(ii) make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods.

(D) Indicate as appropriate proposed transportation enhancement activities.

(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas which are in nonattainment for ozone or carbon monoxide under the Clean Air Act, the metropolitan planning organization shall coordinate the development of a long range plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

(4) PARTICIPATION BY INTERESTED PARTIES.—Before approving a long range plan, each metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, and

other interested parties with a reasonable opportunity to comment on the long range plan, in a manner that the Secretary deems appropriate.

(5) PUBLICATION OF LONG RANGE PLAN.—Each long range plan prepared by a metropolitan planning organization shall be—

(i) published or otherwise made readily available for public review; and

(ii) submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

(h) TRANSPORATTION IMPROVEMENT PROGRAM.—

(1) DEVELOPMENT.—The metropolitan planning organization designated for a metropolitan area, in cooperation with the State and affected transit operators, shall develop a transportation improvements program for the area for which such organization is designated. In developing the program, the metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, other affected employee representatives, private providers of transportation, and other interested parties with a reasonable opportunity to comment on the proposed program. The program shall be updated at least once every 2 years and shall be approved by the metropolitan planning organization and the Governor.

(2) PRIORITY OF PROJECTS.—The transportation improvement program shall include the following:

(A) A priority list of projects and project segments to be carried out within each 3-year period after the initial adoption of the transportation improvement program.

(B) A financial plan that demonstrates how the transportation improvement program can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any innovative financing techniques to finance needed projects and programs, including value capture, tolls, and congestion pricing.

(3) SELECTION OF PROJECTS.—Except as otherwise provided in subsection (i)(4), project selection in metropolitan areas for projects involving Federal participation shall be carried out by the State in cooperation with the metropolitan planning organization and shall be in conformance with the transportation improvement program for the area.

(4) MAJOR CAPITAL INVESTMENTS.—Not later than 6 months after the date of the enactment of this section, the Secretary shall initiate a rulemaking proceeding to conform review requirements for transit projects under the National Environmental Policy Act of 1969 to comparable requirements under such Act applicable to highway projects. Nothing in this section shall be construed to affect the applicability of such Act to transit or highway projects.

(5) INCLUDED PROJECTS.—A transportation improvement program for a metropolitan area developed under this subsection shall include projects within the area which are proposed for funding under this

title and the Federal Transit Act and which are consistent with the long range plan developed under subsection (g) for the area. The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

(6) NOTICE AND COMMENT.—Before approving a transportation improvement program, a metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, and other interested parties with reasonable notice of and an opportunity to comment on the proposed program.

(i) TRANSPORTATION MANAGEMENT AREAS.—

(1) DESIGNATION.—The Secretary shall designate as transportation management areas all urbanized areas over 200,000 population. The Secretary shall designate any additional area as a transportation management area upon the request of the Governor and the metropolitan planning organization designated for such area or the affected local officials. Such additional areas shall include upon such a request the Lake Tahoe Basin as defined by Public Law 96–551.

(2) TRANSPORTATION PLANS AND PROGRAMS.—Within a transportation management area, transportation plans and programs shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and transit operators.

(3) CONGESTION MANAGEMENT SYSTEM.—Within a transportation management area, the transportation planning process under this section shall include a congestion management system that provides for effective management of new and existing transportation facilities eligible for funding under this title and the Federal Transit Act through the use of travel demand reduction and operational management strategies. The Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section.

(4) SELECTION OF PROJECTS.—All projects carried out within the boundaries of a transportation management area with Federal participation pursuant to this title (excluding projects undertaken on the National Highway System and pursuant to the bridge and Interstate maintenance programs) or pursuant to the Federal Transit Act shall be selected by the metropolitan planning organization designated for such area in consultation with the State and in conformance with the transportation improvement program for such area and priorities established therein. Projects undertaken within the boundaries of a transportation management area on the National Highway System or pursuant to the bridge and Interstate maintenance programs shall be selected by the State in cooperation with the metropolitan planning organization designated for such area and shall be in conformance with the transportation improvement program for such area.

(5) CERTIFICATION.—The Secretary shall assure that each metropolitan planning organization in each transportation management area

is carrying out its responsibilities under applicable provisions of Federal law, and shall so certify at least once every 3 years. The Secretary may make such certification only if (1) a metropolitan planning organization is complying with the requirements of this section and other applicable requirements of Federal law, and (2) there is a transportation improvement program for the area that has been approved by the metropolitan planning organization and the Governor. If after September 30, 1993, a metropolitan planning organization is not certified by the Secretary, the Secretary may withhold, in whole or in part, the apportionment under section 104(b)(3) attributed to the relevant metropolitan area pursuant to section 133(d)(3) and capital funds apportioned under the formula program under section 9 of the Federal Transit Act. If a metropolitan planning organization remains uncertified for more than 2 consecutive years after September 30, 1994, 20 percent of the apportionment attributed to that metropolitan area under section 133(d)(3) and capital funds apportioned under the formula program under section 9 of the Federal Transit Act shall be withheld. The withheld apportionments shall be restored to the metropolitan area at such time as the metropolitan planning organization is certified by the Secretary. The Secretary shall not withhold certification under this section based upon the policies and criteria established by a metropolitan planning organization or transit grant recipient for determining the feasibility of private enterprise participation in accordance with section 8(o) of the Federal Transit Act.

(j) ABBREVIATED PLANS AND PROGRAMS FOR CERTAIN AREAS.—For metropolitan areas not designated as transportation management areas under this section, the Secretary may provide for the development of abbreviated metropolitan transportation plans and programs that the Secretary determines to be appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems, including transportation related air quality problems, in such areas. In no event shall the Secretary provide abbreviated plans or programs for metropolitan areas which are in nonattainment for ozone or carbon monoxide under the Clean Air Act.

(k) TRANSFER OF FUNDS.—Funds made available for a highway project under the Federal Transit Act shall be transferred to and administered by the Secretary in accordance with the requirements of this title. Funds made available for a transit project under the Federal-Aid Highway Act of 1991 shall be transferred to and administered by the Secretary in accordance with the requirements of the Federal Transit Act.

(l) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—Notwithstanding any other provisions of this title or the Federal Transit Act, for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be programmed in such area for any highway project that will result in a significant increase in carrying

capacity for single-occupant vehicles unless the project is part of an approved congestion management system.

(m) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project not eligible under this title or the Federal Transit Act.

(n) REPROGRAMMING OF SET ASIDE FUNDS.—Any funds set aside pursuant to section 104(f) of this title that are not used for the purpose of carrying out this section may be made available by the metropolitan planning organization to the State for the purpose of funding activities under section 135.

23 U.S.C. § 135. Statewide Planning.

(a) GENERAL REQUIREMENTS.—It is in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner that will serve all areas of the State efficiently and effectively. Subject to section 134 of this title, the State shall develop transportation plans and programs for all areas of the State. Such plans and programs shall provide for development of transportation facilities (including pedestrian walkways and bicycle transportation facilities) which will function as an intermodal State transportation system. The process for developing such plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems.

(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—In carrying out planning under this section, a State shall coordinate such planning with the transportation planning activities carried out under section 134 of this title for metropolitan areas of the State and shall carry out its responsibilities for the development of the transportation portion of the State implementation plan to the extent required by the Clean Air Act.

(c) STATE PLANNING PROCESS.—Each State shall undertake a continuous transportation planning process which shall, at a minimum, consider the following:

(1) The results of the management systems required pursuant to subsection (b).

(2) Any Federal, State, or local energy use goals, objectives, programs, or requirements.

(3) Strategies for incorporating bicycle transportation facilities and pedestrian walkways in projects where appropriate throughout the State.

(4) International border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation and scenic areas, monuments and historic sites, and military installations.

(5) The transportation needs of nonmetropolitan areas through a process that includes consultation with local elected officials with jurisdiction over transportation.

(6) Any metropolitan area plan developed pursuant to section 134.

(7) Connectivity between metropolitan areas within the State and with metropolitan areas in other States.

(8) Recreational travel and tourism.

(9) Any State plan developed pursuant to the Federal Water Pollution Control Act.

(10) Transportation system management and investment strategies designed to make the most efficient use of existing transportation facilities.

(11) The overall social, economic, energy, and environmental effects of transportation decisions.

(12) Methods to reduce traffic congestion and to prevent traffic congestion from developing in areas where it does not yet occur, including methods which reduce motor vehicle travel, particularly single-occupant motor vehicle travel.

(13) Methods to expand and enhance transit services and to increase the use of such services.

(14) The effect of transportation decisions on land use and land development, including the need for consistency between transportation decisionmaking and the provisions of all applicable short-range and long-range land use and development plans.

(15) The transportation needs identified through use of the management systems required by section 303 of this title.

(16) where appropriate, the use of innovative mechanisms for financing projects, including value capture pricing, tolls, and congestion pricing.

(17) Preservation of rights-of-way for construction of future transportation projects, including identification of unused rights-of-way which may be needed for future transportation corridors, and identify those corridors for which action is most needed to prevent destruction or loss.

(18) Long-range needs of the State transportation system.

(19) Methods to enhance the efficient movement of commercial motor vehicles.

(20) The use of life-cycle costs in the design and engineering of bridges, tunnels, or pavement.

(d) ADDITIONAL REQUIREMENTS.—Each State in carrying out planning under this section shall, at a minimum, consider the following:

(1) The coordination of transportation plans and programs developed for metropolitan areas of the State under section 134 with the State transportation plans and programs developed under this section and the reconciliation of such plans and programs as necessary to ensure connectivity within transportation systems.

(2) Investment strategies to improve adjoining State and local roads that support rural economic growth and tourism development, Federal

agency renewable resources and management, and multipurpose land management practices, including recreation development.

(3) The concerns of Indian tribal governments having jurisdiction over lands within the boundaries of the State.

(e) LONG-RANGE PLAN.—The State shall develop a long-range transportation plan for all areas of the State. With respect to metropolitan areas of the State, the plan shall be developed in cooperation with metropolitan planning organizations designated for metropolitan areas in the State under section 134. With respect to areas of the State under the jurisdiction of an Indian tribal government, the plan shall be developed in cooperation with such government and the Secretary of the Interior. In developing the plan, the State shall provide citizens, affected public agencies, representatives of transportation agency employees, other affected employee representatives, private providers of transportation, and other interested parties with a reasonable opportunity to comment on the proposed plan. In addition, the State shall develop a long-range plan for bicycle transportation and pedestrian walkways for appropriate areas of the State which shall be incorporated into the long-range transportation plan.

(f) TRANSPORTATION IMPROVEMENT PROGRAM.—

(1) DEVELOPMENT.—The State shall develop a transportation improvement program for all areas of the State. With respect to metropolitan areas of the State, the program shall be developed in cooperation with metropolitan planning organizations designated for metropolitan areas in the State under section 134. In developing the program, the Governor shall provide citizens, affected public agencies, representatives of transportation agency employees, other affected employee representatives, private providers of transportation, and other interested parties with a reasonable opportunity to comment on the proposed program.

(2) INCLUDED PROJECTS.—A transportation improvement program for a State developed under this subsection shall include projects within the boundaries of the State which are proposed for funding under this title and the Federal Transit Act, which are consistent with the long-range plan developed under this section for the State, which are consistent with the metropolitan transportation improvement program, and which in areas designated as nonattainment for ozone or carbon monoxide under the Clean Air Act conform with the applicable State implementation plan developed pursuant to the Clean Air Act. The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for such project within the time period contemplated for completion of the project. The program shall also reflect the priorities for programming and expenditures of funds, including transportation enhancements, required by this title.

(3) PROJECT SELECTION FOR AREAS LESS THAN 50,000 POPULATION.—Projects undertaken in areas of less than 50,000 population (excluding projects undertaken on the National Highway System and pursuant to the bridge and Interstate maintenance programs) shall be selected

by the State in cooperation with the affected local officials. Projects undertaken in such areas on the National Highway System or pursuant to the bridge and Interstate maintenance programs shall be selected by the State in consultation with the affected local officials.

(4) BIENNIAL REVIEW AND APPROVAL.—A transportation improvement program developed under this subsection shall be reviewed and approved no less frequently than biennially by the Secretary.

(g) FUNDING.—Funds set aside pursuant to section 307(c)(l) of title 23, United States Code, shall be available to carry out the requirements of this section.

(h) TREATMENT OF CERTAIN STATE LAWS AS CONGESTION MANAGEMENT SYSTEMS.—For purposes of this section, section 134, and section 8 of the Federal Transit Act, United States Code, State laws, rules or regulations pertaining to congestion management systems or programs may constitute the congestion management system under this Act if the Secretary finds that the State laws, rules or regulations are consistent with, and fulfill the intent of, the purposes of this section, section 134 or section 8 of such Act, as appropriate.

* * *

23 U.S.C. § 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 Federal-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 approve as a project on the surface transportation program for payment from sums apportioned under section 104(b)(3) for carrying out any capital transit project eligible for assistance under the Federal Transit Act, capital improvement to provide access and coordination between intercity and rural bus service, and construction of facilities to provide connections between highway transportation and other modes of transportation.

(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 preferential 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 this title.

(c) ACCOMMODATION OF OTHER MODES OF TRANSPORTATION.—The Secretary may approve as a project on any Federal-aid system for payment from sums apportioned under section 104(b) (other than section 104(b)(5)(A)) modifications to existing highway facilities on such system necessary to accommodate other modes of transportation if such modifications will not adversely affect automotive safety.

(d) METROPOLITAN PLANNING.—Any project carried out under this section in an urbanized area shall be subject to the metropolitan planning requirements of section 134.

(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 surface transportation program, 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) AVAILABILITY OF RIGHTS-OF-WAY.—In any case where sufficient land or air space exists within the publicly acquired rights-of-way of any highway, constructed in whole or in part with Federal-aid highway funds, to accommodate needed passenger, commuter, or high speed rail, magnetic levitation systems, and highway and nonhighway public mass transit facilities, the Secretary shall authorize a State to make such lands, air space, and rights-of-way available with or without charge to publicly or privately owned authority or company or any other person for such purposes if such accommodation will not adversely affect automotive safety.

(g) The provision of assistance under subsection (a)(2) 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.

(h) Funds available for expenditure to carry out the purposes of subsection (a)(2) 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.

(i) 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) of this section.

* * *

23 U.S.C. § 149. Congestion Mitigation and Air Quality Improvement Program.

(a) ESTABLISHMENT.—The Secretary shall establish a congestion mitigation and air quality improvement program in accordance with this section.

(b) ELIGIBLE PROJECTS.—Except as provided in subsection (c), a State may obligate funds apportioned to it under section 104(b)(2) for the congestion mitigation and air quality improvement program only for a transportation project or program—

(1)(A) if the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines, on the basis of information published by the Environmental Protection Agency pursuant to section 108(f)(1)(A) of the Clean Air Act (other than clauses (xii) and (xvi) of such section), that the project or program is likely to contribute to the attainment of a national ambient air quality standard; or

(B) in any case in which such information is not available, if the Secretary, after such consultation, determines that the project or program is part of a program, method, or strategy described in such section;

(2) if the project or program is included in a State implementation plan that has been approved pursuant to the Clean Air Act and the project will have air quality benefits; or

(3) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the project or program is likely to contribute to the attainment of a national ambient air quality standard, whether through reductions in vehicle miles traveled, fuel consumption, or through other factors.

No funds may be provided under this section for a project which will result in the construction of new capacity available to single occupant vehicles unless the project consists of a high occupancy vehicle facility available to single occupant vehicles only at other than peak travel times.

(c) STATES WITHOUT A NONATTAINMENT AREA.—If a State does not have a nonattainment area for ozone or carbon monoxide under the Clean Air Act located within its borders, the State may use funds apportioned to it under section 104(b)(2) for any project eligible for assistance under the surface transportation program.

(d) APPLICABILITY OF PLANNING REQUIREMENT.—Programming and expenditure of funds for projects under this section shall be consistent with the requirements of sections 134 and 135 of this title.

* * *

23 U.S.C. § 303. Management Systems.

(a) REGULATIONS.—Not later than 1 year after the date of the enactment of this section, the Secretary shall issue regulations for State development, establishment, and implementation of a system for managing each of the following:

(1) Highway pavement of Federal-aid highways.

(2) Bridges on and off Federal-aid highways.
(3) Highway safety.
(4) Traffic congestion.
(5) Public transportation facilities and equipment.
(6) Intermodal transportation facilities and systems.

In metropolitan areas, such systems shall be developed and implemented in cooperation with metropolitan planning organizations. Such regulations may include a compliance schedule for development, establishment, and implementation of each such system and minimum standards for each such system.

(b) TRAFFIC MONITORING.—Not later than 1 year after the date of the enactment of this section, the Secretary shall issue guidelines and requirements for the State development, establishment, and implementation of a traffic monitoring system for highways and public transportation facilities and equipment.

(c) STATE REQUIREMENTS.—The Secretary may withhold up to 10 percent of the funds apportioned under this title and under the Federal Transit Act for any fiscal year beginning after September 30, 1995, to any State and any recipient of assistance under such Act in the State unless, in the preceding fiscal year, the State was implementing each of the management systems described in subsection (a) and, before January 1 of the preceding fiscal year, the State certified, in writing, to the Secretary, that the State was implementing each of such management systems in the preceding fiscal year.

(d) PROCEDURAL REQUIREMENTS.—In developing and implementing a management system under this section, each State shall cooperate with metropolitan planning organizations for urbanized areas of the State and affected agencies receiving assistance under the Federal Transit Act and shall consider the results of the management systems in making project selection decisions under this title and under such Act.

(e) INTERMODAL REQUIREMENTS.—The management system required under this section for intermodal transportation facilities and systems shall provide for improvement and integration of all of a State's transportation systems and shall include methods of achieving the optimum yield from such systems, methods for increasing productivity in the State, methods for increasing use of advanced technologies, and methods to encourage the use of innovative marketing techniques, such as just-in-time deliveries.

(f) ANNUAL REPORT.—Not later than January 1 of each calendar year beginning after December 31, 1992, the Secretary shall transmit to Congress a report on the progress being made by the Secretary and the States in carrying out this section.

(g) FUNDING.—Subject to project approval by the Secretary, a State may obligate funds apportioned after September 30, 1991, under subsections (b)(1), (b)(2), and (b)(3) of section 104 of this title for developing and establishing management systems required by this section and funds apportioned under section 144 of this title for developing and establishing the bridge management system required by this section.

(h) REVIEW OF REGULATIONS.—Not later than 10 days after the date of issuance of any regulation under this section, the Secretary shall transmit a copy of such regulations to Congress for review.

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PART III
OTHER FEDERAL LAWS AFFECTING FEDERAL MASS TRANSPORTATION PROGRAMS

AMERICANS WITH DISABILITIES ACT OF 1990

(Public Law 101-336, July 26, 1990; 42 U.S.C. 12101)

* * *

TITLE II—PUBLIC SERVICES

Subtitle A—Prohibition Against Discrimination and Other Generally Applicable Provisions

SECTION 201. Definition.

As used in this title:

(1) PUBLIC ENTITY.—The term "public entity" means—

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

(2) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

SECTION 202. Discrimination.

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

SECTION 203. Enforcement.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be the remedies, procedures, and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202.

SECTION 204. Regulations.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an

accessible format that implement this subtitle. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 223, 229, or 244.

(b) RELATIONSHIP TO OTHER REGULATIONS.—Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) shall be consistent with this Act and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under such section 504.

(c) STANDARDS.—Regulations under subsection (a) shall include standards applicable to facilities and vehicles covered by this subtitle, other than facilities, stations, rail passengers cars, and vehicles covered by subtitle B. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504(a) of this Act.

SECTION 205. Effective Date.

(a) GENERAL RULE.—Except as provided in subsection (b), this subtitle shall become effective 18 months after the date of enactment of this Act.

(b) EXCEPTION.—Section 204 shall become effective on the date of enactment of this Act.

Subtitle B—Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

PART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

SECTION 221. Definitions.

As used in this part:

(1) DEMAND RESPONSIVE SYSTEM.—The term "demand responsive system" means any system of providing designated public transportation which is not a fixed route system.

(2) DESIGNATED PUBLIC TRANSPORTATION.—The term "designated public transportation" means transportation (other than public school transportation) by bus, rail, or any other conveyance (other than transportation by aircraft or intercity or commuter rail transportation (as defined in section 241)) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(3) FIXED ROUTE SYSTEM.—The term "fixed route system" means a system of providing designated public transportation on which a

vehicle is operated along a prescribed route according to a fixed schedule.

(4) OPERATES.—The term "operates", as used with respect to a fixed route system or demand responsive system, includes operation of such system by a person under a contractual or other arrangement or relationship with a public entity.

(5) PUBLIC SCHOOL TRANSPORTATION.—The term "public school transportation" means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

(6) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

SECTION 222. Public Entities Operating Fixed Route Systems.

(a) PURCHASE AND LEASE OF NEW VEHICLES.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or lease a new bus, a new rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system, if the solicitation for such purchase or lease is made after the 30th day following the effective date of this subsection and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) PURCHASE AND LEASE OF USED VEHICLES.—Subject to subsection (c)(1), it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or lease, after the 30th day following the effective date of this subsection, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) REMANUFACTURED VEHICLES.—

(1) GENERAL RULE.—Except as provided in paragraph (2), it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system—

(A) to remanufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins (or for which the solicitation is made) after the 30th day following the effective date of this subsection; or

(B) to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended.

unless, after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) EXCEPTION FOR HISTORIC VEHICLES.—

(A) GENERAL RULE.—If a public entity operates a fixed route system any segment of which is included on the National Register of Historic Places and if making a vehicle of historic character to be used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of paragraph (1) and which do not significantly alter the historic character of such vehicle.

(B) VEHICLES OF HISTORIC CHARACTER DEFINED BY REGULATIONS.—For purposes of this paragraph and section 228(b), a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection.

SECTION 223. Paratransit as a Complement to Fixed Route Service.

(a) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs, that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

(b) ISSUANCE OF REGULATIONS.—Not later than 1 year after the effective date of this subsection, the Secretary shall issue final regulations to carry out this section.

(c) REQUIRED CONTENTS OF REGULATION.—

(1) ELIGIBLE RECIPIENTS OF SERVICE.—The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section—

(A)(i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;

(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not being used to provide designated public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system;

(B) to one other individual accompanying the individual with the disability; and

(C) to other individuals, in addition to the one individual described in subparagraph (B), accompanying the individual with a disability provided that space for these additional individuals is available on the paratransit vehicle carrying the individual with a disability and that the transportation of such additional individuals will not result in a denial of service to individuals with disabilities.

For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

(2) SERVICE AREA.—The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service.

(3) SERVICE CRITERIA.—Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

(4) UNDUE FINANCIAL BURDEN LIMITATION.—The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial burden on the public entity, the public entity, notwithstanding any other provision of this section (other than paragraph (5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

(5) ADDITIONAL SERVICES.—The regulations issued under this section shall establish circumstances under which the Secretary may require a public entity to provide, notwithstanding paragraph (4), paratransit and other special transportation services under this sec-

tion beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

(6) PUBLIC PARTICIPATION.—The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult with individuals with disabilities in preparing its plan under paragraph (7).

(7) PLANS.—The regulations issued under this section shall require that each public entity which operates a fixed route system—

(A) within 18 months after the effective date of this subsection, submit to the Secretary, and commence implementation of, a plan for providing paratransit and other special transportation services which meets the requirements of this section; and

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

(8) PROVISION OF SERVICES BY OTHERS.—The regulations issued under this section shall—

(A) require that a public entity submitting a plan to the Secretary under this section identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity submitting the plan does not have to provide under the plan such service for individuals with disabilities.

(9) OTHER PROVISIONS.—The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the objectives of this section.

(d) REVIEW OF PLAN.—

(1) GENERAL RULE.—The Secretary shall review a plan submitted under this section for the purpose of determining whether or not such plan meets the requirements of this section, including the regulations issued under this section.

(2) DISAPPROVAL.—If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefor.

(3) MODIFICATION OF DISAPPROVED PLAN.—Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of this section and shall submit to the Secretary, ad commence implementation of, such modified plan.

(e) DISCRIMINATION DEFINED.—As used in subsection (a), the term "discrimination" includes—

(1) a failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7);

(2) a failure of such entity to submit, or commence implementation of, a modified plan in accordance with subsection (d)(3);

(3) submission to the Secretary of a modified plan under subsection (d)(3) which does not meet the requirements of this section; or

(4) a failure of such entity to provide paratransit or other special transportation services in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

(f) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as preventing a public entity—

(1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,

(2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or

(3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section.

SECTION 224. Public Entity Operating a Demand Responsive System.

If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such entity to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.

SECTION 225. Temporary Relief Where Lifts Are Unavailable.

(a) GRANTING.—With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 222(a) or 224 to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary—

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts

to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(b) DURATION AND NOTICE TO CONGRESS.—Any relief granted under subsection (a) shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

(c) FRAUDULENT APPLICATION.—If, at any time, the Secretary has reasonable cause to believe that any relief granted under subsection (a) was fraudulently applied for, the Secretary shall—

(1) cancel such relief if such relief is still in effect; and

(2) take such other action as the Secretary considers appropriate.

SECTION 226. New Facilities.

For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to construct a new facility to be used in the provision of designated public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SECTION 227. Alterations of Existing Facilities.

(a) GENERAL RULE.—With respect to alterations of an existing facility or part thereof used in the provision of designated public transportation services that affect or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to make such alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations. Where the public entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) SPECIAL RULE FOR STATIONS.—

(1) GENERAL RULE.—For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it

shall be considered discrimination for a public entity that provides designated public transportation to fail, in accordance with the provisions of this subsection, to make key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) RAPID RAIL AND LIGHT RAIL KEY STATIONS.—

(A) ACCESSIBILITY.—Except as otherwise provided in this paragraph, all key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 3-year period beginning on the effective date of this paragraph.

(B) EXTENSION FOR EXTRAORDINARILY EXPENSIVE STRUCTURAL CHANGES.—The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail or light rail system which stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following the date of the enactment of this Act at least ⅔ of such key stations must be readily accessible to and usable by individuals with disabilities.

(3) PLANS AND MILESTONES.—The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection—

(A) that reflects consultation with individuals with disabilities affected by such plan and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection.

SECTION 228. Public Transportation Programs and Activities in Existing Facilities and One Car per Train Rule.

(a) PUBLIC TRANSPORTATION PROGRAMS AND ACTIVITIES IN EXISTING FACILITIES.—

(1) IN GENERAL.—With respect to existing facilities used in the provision of designated public transportation services, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to operate a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(2) EXCEPTION.—Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 227(a) (relating to alterations) or section 227(b) (relating to key stations).

(3) UTILIZATION.—Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchairs services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities.

(b) ONE CAR PER TRAIN RULE.—

(1) GENERAL RULE.—Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by a light or rapid rail system, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to have a least 1 vehicle per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

(2) HISTORIC TRAINS.—In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of historic character which is to be used on a segment of a light or rapid rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 222(c)(1) and which do not significantly alter the historic character of such vehicle.

SECTION 229. Regulations.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this part (other than section 223).

(b) STANDARDS.—The regulations issued under this section and section 223 shall include standards applicable to facilities and vehicles covered by this subtitle. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of this Act.

SECTION 230. Interim Accessibility Requirements.

If final regulations have not been issued pursuant to section 229, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons

with disabilities as required under sections 226 and 227, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

SECTION 231. Effective Date.

(a) GENERAL RULE.—Except as provided in subsection (b), this part shall become effective 18 months after the date of enactment of this Act.

(b) EXCEPTION.—Sections 222, 223 (other than subsection (a)), 224, 225, 227(b), 228(b), and 229 shall become effective on the date of enactment of this Act.

PART II—PUBLIC TRANSPORTATION BY INTERCITY AND COMMUTER RAIL

SECTION 241. Definitions.

As used in this part:

(1) COMMUTER AUTHORITY.—The term "commuter authority" has the meaning given such term in section 103(8) of the Rail Passenger Service Act (45 U.S.C. 502(8)).

(2) COMMUTER RAIL TRANSPORTATION.—The term "commuter rail transportation" has the meaning given the term "commuter service" in section 103(9) of the Rail Passenger Service Act (45 U.S.C. 502(9)).

(3) INTERCITY RAIL TRANSPORTATION.—The term "intercity rail transportation" means transportation provided by the National Railroad Passenger Corporation.

(4) RAIL PASSENGER CAR.—The term "rail passenger car" means, with respect to intercity rail transportation, single-level and bi-level coach cars, single-level and bi-level dining cars, single-level and bi-level sleeping cars, single-level and bi-level lounge cars, and food service cars.

(5) RESPONSIBLE PERSON.—The term "responsible person" means—

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulation by the Secretary of Transportation.

(6) STATION.—The term "station" means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops.

SECTION 242. Intercity and Commuter Rail Actions Considered Discriminatory.

(a) INTERCITY RAIL TRANSPORTATION.—

(1) ONE CAR PER TRAIN RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides intercity rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 244, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act.

(2) NEW INTERCITY CARS.—

(A) GENERAL RULE.—Except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(B) SPECIAL RULE FOR SINGLE-LEVEL PASSENGER COACHES FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Single-level passenger coaches shall be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and

(iv) have a restroom usable by an individual who uses a wheelchair,

only to the extent provided in paragraph (3).

(C) SPECIAL RULE FOR SINGLE-LEVEL DINING CARS FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Single-level dining cars shall not be required to—

(i) be able to be entered from the station platform by an individual who uses a wheelchair; or

(ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

(D) SPECIAL RULE FOR BI-LEVEL DINING CARS FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Bi-level dining cars shall not be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheel chair can transfer, or a space to fold and store such passenger's wheelchair; or

(iv) have a restroom usable by an individual who uses a wheelchair.

(3) ACCESSIBILITY OF SINGLE-LEVEL COACHES.—

(A) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides intercity rail transportation to fail to have on each train which includes one or more single-level rail passenger coaches—

(i) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 5 years after the date of enactment of this Act; and

(ii) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 10 years after the date of enactment of this Act.

(B) LOCATION.—Spaces required by subparagraph (A) shall be located in single-level rail passenger coaches or food service cars.

(C) LIMITATION.—Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

(D) OTHER ACCESSIBILITY FEATURES.—Single-level rail passenger coaches and food service cars on which the spaces required by subparagraph (A) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

(4) FOOD SERVICE.—

(A) SINGLE-LEVEL DINING CARS.—On any train in which a single-level dining car is used to provide food service—

(i) if such single-level dining car was purchased after the date of enactment of this Act, table service in such car shall be provided to a passenger who uses a wheelchair if—

(I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

(II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in subclause (I) without the necessity of the train being moved within the station; and

(III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a dining car described in clause (i) through which an individual who uses a wheelchair may enter.

(B) BI-LEVEL DINING CARS.—On any train in which a bi-level dining car is used to provide food service—

(i) if such train includes a bi-level lounge car purchased after the date of enactment of this Act, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

(b) COMMUTER RAIL TRANSPORTATION.—

(1) ONE CAR PER TRAIN RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides commuter rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 244, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act.

(2) NEW COMMUTER RAIL CARS.—

(A) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(B) ACCESSIBILITY.—For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), a requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require—

(i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;

(ii) space to fold and store a wheelchair; or

(iii) a seat to which a passenger who uses a wheelchair can transfer.

(c) USED RAIL CARS.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease a used rail passenger cars for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to purchase or lease a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(d) REMANUFACTURED RAIL CARS.—

(1) REMANUFACTURING.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to remanufacture a rail passenger car for use in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(2) PURCHASE OR LEASE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease a remanufactured rail passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

(e) STATIONS.—

(1) NEW STATIONS.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(2) EXISTING STATIONS.—

(A) FAILURE TO MAKE READILY ACCESSIBLE.—

(i) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a responsible person to fail to make existing stations in the intercity rail transportation system, and existing key stations in commuter rail transportation systems, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(ii) PERIOD FOR COMPLIANCE.—

(I) INTERCITY RAIL.—All stations in the intercity rail transportation system shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after the date of enactment of this Act.

(II) COMMUTER RAIL.—Key stations in commuter rail transportation systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years after the date of enactment of this Act in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

(iii) DESIGNATION OF KEY STATIONS.—Each commuter authority shall designate the key stations in its commuter rail transportation system, in consultation with individuals with disabilities and organizations representing such individuals, taking into consideration such factors as high ridership and whether such station serves as a transfer or feeder station. Before the final designation

of key stations under this clause, a commuter authority shall hold a public hearing.

(iv) PLANS AND MILESTONES.—The Secretary of Transportation shall require the appropriate person to develop a plan for carrying out this subparagraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this subparagraph.

(B) REQUIREMENT WHEN MAKING ALTERNATIONS.—

(i) GENERAL RULE.—It shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), with respect to alterations of an existing station or part thereof in the intercity or commuter rail transportation systems that affect or could affect the usability of the station or part thereof, for the responsible person, owner, or person in control of the station to fail to make the alternations in such a manner that, to the maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations.

(ii) ALTERATIONS TO A PRIMARY FUNCTION AREA.—It shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(C) REQUIRED COOPERATION.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for an owner, or person in control, of a station governed by subparagraph (A) or (B) to fail to provide reasonable cooperation to a responsible person with respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation required by this subparagraph shall not be a defense to a claim of discrimination under this Act.

SECTION 243. Conformance of Accessibility Standards.

Accessibility standards included in regulations issued under this part shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 504(a) of this Act.

SECTION 244. Regulations.

Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this part.

SECTION 245. Interim Accessibility Requirements.

(a) STATIONS.—If final regulations have not been issued pursuant to section 244, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 242(e), except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required, under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(b) RAIL PASSENGER CARS.—If final regulations have not been issued pursuant to section 244, a person shall be considered to have complied with the requirements of section 242 (a) through (d) that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 504(a) of this Act) governing accessibility of such cars, to the extent that such laws and regulations are not inconsistent with this part and are in effect at the time such design is substantially completed.

SECTION 246. Effective Date.

(a) GENERAL RULE.—Except as provided in subsection (b), this part shall become effective 18 months after the date of enactment of this Act.

(b) EXCEPTION.—Sections 242 and 244 shall become effective on the date of enactment of this Act.

* * *

SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

(Public Law 93–112, September 26, 1973; 29 U.S.C. 794)

29 U.S.C. § 794. Nondiscrimination Under Federal Grants and Programs; Promulgation of Rules and Regulations

(a) PROMULGATION OF RULES AND REGULATIONS.—No otherwise qualified individual with handicaps in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or 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.

(b) "PROGRAM OR ACTIVITY" DEFINED.—For the purposes of this section, the term "program or activity" means all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 2891(12) of Title 20) system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case

of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(c) SIGNIFICANT STRUCTURAL ALTERATIONS BY SMALL PROVIDERS; EXCEPTION.—Small providers are not required by subsection (a) of this section to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

(As amended Pub.L. 99–506, Title I, § 103(d)(2)(B), Title X, § 1002(e)(4), Oct. 21, 1986, 100 Stat. 1810, 1844; Pub.L. 100–259, § 4, Mar. 22, 1988, 102 Stat. 29; Pub.L. 100–630, Title II, § 206(d), Nov. 7, 1988, 102 Stat. 3312.)

EXCERPTS FROM TITLES VI AND VII OF THE CIVIL RIGHTS ACT OF 1964

(Public Law 88–352, July 2, 1964; 42 U.S.C. 2000d)

42 U.S.C. § 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin

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.

42 U.S.C. § 2000d-1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

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 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent

with 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 noncompliance 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.

42 U.S.C. § 2000d-2. Judicial review; administrative procedure provisions

Any department or agency action taken pursuant to section 2000d-1 of this title shall be subject to such judicial review as may otherwise be provided by 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 2000d-1 of this title, any person aggrieved (including a State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of Title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that chapter.

42 U.S.C. § 2000d-3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

Nothing contained in this subchapter[269] shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agen-

[269] This subchapter refers to Title VI of the Civil Rights Act of 1964.

cy, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

42 U.S.C. § 2000d-4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guaranty

Nothing in this subchapter 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.

42 U.S.C. § 2000d–4a. "Program or activity" defined

For the purposes of this subchapter, the term "program or activity" and the term "program" mean all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 2854(a)(10) of Title 20, system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

TITLE VII—Equal Employment Opportunity

42 U.S.C. § 2000e-16. Employment by Federal Government

Discriminatory practices prohibited; employees or applicants for employment subject to coverage

(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, in executive agencies as defined in section 105 of Title 5 (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.

Enforcement powers of Commission; issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress

(b) Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) of this section 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 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 pro-

gram 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.

Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

(c) Within 90 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.

Section 2000e-5(f) through (k) of this title applicable to civil actions

(d) The provisions of section 2000e-5(f) through (k) of this title, as applicable, shall govern civil actions brought hereunder, and their same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.

Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

(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.

42 U.S.C. § 2000e-17. Procedure for denial, withholding, termination, or suspension of government contract subsequent to acceptance by Government of affirmative action plan of employer; time of acceptance of plan

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 section 554 of Title 5, 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.

DAVIS-BACON ACT

(Act of March 3, 1931, C. 411; 40 U.S.C § 476a)

40 U.S.C. § 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 subse-

quent 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 enforceable 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 and 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 enforceable 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.

40 U.S.C. § 276a-1. Termination of work on failure to pay agreed

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.

40 U.S.C. § 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.

40 U.S.C. § 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.

40 U.S.C. § 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.

40 U.S.C. § 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.

PROTECTION OF PUBLIC LANDS

"Section 4(f)"[270]

49 U.S.C. § 303. Policy on lands, wildlife and waterfowl refuges, and historic sites

(a) It is the policy of the United States Government that special effort should be made to preserve the natural beauty of the country-

[270] Public Law 97–449 repealed section 4(f) of the Department of Transportation Act of 1966 and recodified it without substantive change at section 303 of title 49. However, because a whole body of Departmental policy and case law has been developed and referred to as "Section 4(f) Law" the U.S. Department of Transportation, the Urban Mass Transit Administration, and the Federal Highway Administration, continue to use the "Section 4(f)" reference in agency regulations when referring to actions under section 303 of title 49.

Section 4(f) of the Department of Transportation Act of 1966 read as follows:

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, 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

side and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.

(b) The Secretary of Transportation shall cooperate and consult with the Secretary of the 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 lands crossed by transportation activities or facilities.

(c) The Secretary may approve a transportation program or project (other than any project for a park road or parkway under section 204 of title 23) requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if—

(1) there is no prudent and feasible alternative to using that land; and

(2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use. (Added Pub. L. 97–449, Jan. 12, 1983, 96 Stat. 2419, and amended Pub. L. 100–17, Title I, § 133(d), Apr. 2, 1987, 101 Stat. 173.)

EXCERPTS FROM THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

(Public Law 91–190, Jan. 1, 1970)

* * *

42 U.S.C. § 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 sys-

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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.

The effective date of the Federal-Aid Highway Act of 1968 was August 23, 1968.

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.

tems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

Subchapter I.—POLICIES AND GOALS

42 U.S.C. § 4331. Congressional declaration of national environmental policy

Creation and maintenance of conditions under which man and nature can exist in productive harmony

(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.

Continuing responsibility of Federal government to use all practicable means to improve and coordinate Federal plans, functions, programs, and resources

(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.

Responsibility of each person to contribute to preservation and enhancement of environment.

(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.

42 U.S.C. § 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 and 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 irretrievable 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 Chapter; 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 initiatives, 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.

42 U.S.C. § 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 than 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.

42 U.S.C. § 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.

42 U.S.C. § 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.

SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT OF 1966

(Public Law 89–665, Oct. 15, 1966; 16 U.S.C. § 470f)

16 U.S.C. § 470f. Effect of Federal undertakings upon property listed in National Register; comment by Advisory Council on Historic Preservation

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 470v of this title a reasonable opportunity to comment with regard to such undertaking.

(Pub.L. 89–665, Title I, § 106, Oct. 15, 1966, 80 Stat. 917; Pub.L. 94–422, Title II, § 201(3), Sept. 28, 1976, 90 Stat. 1320.)

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS
EXECUTIVE ORDER 12372[271]

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 Intergovernmental 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.

Section 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.

[271] Executive Order 12372, issued July 14, 1982 (47 Federal Register 30959), revokes OMB Circular A-95.

(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.

Section 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.

Section 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.

Section 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.

Section 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.

Section 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.

Section 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.

EXCERPT FROM FEDERAL RAILROAD SAFETY ACT OF 1970[272]

(Public Law 91–458, Oct. 16, 1970; 45 U.S.C. § 431 et. seq.)

45 U.S.C. & 431. Promulgation of rules, regulations, orders, and standards

* * *

(e) "Railroad" defined

The term "railroad" as used in this subchapter means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

* * *

(As amended Pub. L. 100–342, §§ 4(a), 7, 9, 10, 19(a), 21, 22, 23, June 22, 1988, 102 Stat. 625, 628, 629, 637, 638, 639.)

[272] 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).

SECTIONS 176 AND 219 OF THE CLEAN AIR ACT

(Public Law 95–95, Aug. 7, 1977; 42 U.S.C. § 7401 et. seq.)

42 U.S.C. § 7506. Limitations on Certain Federal Assistance.

[Subsections (a) and (b), repealed by P.L. 101–549, sec. 110(4), 104 Stat. 2470.]

(c)(1) No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan after it has been approved or promulgated under section 110. No metropolitan planning organization designated under section 134 of title 23, United States Code, shall give its approval to any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 110. The assurance of conformity to such an implementation plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality. Conformity to an implementation plan means—

(A) conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and

(B) that such activities will not—

(i) cause or contribute to any new violation of any standard in any area;

(ii) increase the frequency or severity of any existing violation of any standard in any area; or

(iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel and congestion estimates as determined by the metropolitan planning organization or other agency authorized to make such estimates.

(2) Any transportation plan or program developed pursuant to title 23, United States Code, or the Urban Mass Transportation Act shall implement the transportation provisions of any applicable implementation plan approved under this Act applicable to all or part of the area covered by such transportation plan or program. No Federal agency may approve, accept or fund any transportation plan, program or project unless such plan, program or project has been found to conform to any applicable implementation plan in effect under this Act. In particular—

(A) no transportation plan or transportation improvement program may be adopted by a metropolitan planning organization designated under title 23, United States Code, or the Urban Mass Transportation Act, or be found to be in conformity by a metropolitan planning organization until a final determination has been made that emissions expected from implementation of such plans and programs are consist-

ent with estimates of emissions from motor vehicles and necessary emissions reductions contained in the applicable implementation plan, and that the plan or program will conform to the requirements of paragraph (1)(B);

(B) no metropolitan planning organization or other recipient of funds under title 23, United States Code, or the Urban Mass Transportation Act shall adopt or approve a transportation improvement program of projects until it determines that such program provides for timely implementation of transportation control measures consistent with schedules included in the applicable implementation plan;

(C) a transportation project may be adopted or approved by a metropolitan planning organization or any recipient of funds designated under title 23, United States Code, or the Urban Mass Transportation Act, or found in conformity by a metropolitan planning organization or approved, accepted, or funded by the Department of Transportation only if it meets either the requirements of subparagraph (D) or the following requirements—

(i) such a project comes from a conforming plan and program;

(ii) the design concept and scope of such project have not changed significantly since the conformity finding regarding the plan and program from which the project derived; and

(iii) the design concept and scope of such project at the time of the conformity determination for the program was adequate to determine emissions.

(D) Any project not referred to in subparagraph (C) shall be treated as conforming to the applicable implementation plan only if it is demonstrated that the projected emissions from such project, when considered together with emissions projected for the conforming transportation plans and programs within the nonattainment area, do not cause such plans and programs to exceed the emission reduction projections and schedules assigned to such plans and programs in the applicable implementation plan.

(3) Until such time as the implementation plan revision referred to in paragraph (4)(C) is approved, conformity of such plans, programs, and projects will be demonstrated if—

(A) the transportation plans and programs—

(i) are consistent with the most recent estimates of mobile source emissions;

(ii) provide for the expeditious implementation of transportation control measures in the applicable implementation plan; and

(iii) with respect to ozone and carbon monoxide nonattainment areas, contribute to annual emissions reductions consistent with sections 182(b)(1) and 187(a)(7); and

(B) the transportation projects—

(i) come from a conforming transportation plan and program as defined in subparagraph (A) or for 12 months after the date of the enactment of the Clean Air Act Amendments of 1990, from a transportation program found to conform within 3 years prior to such date of enactment; and

(ii) in carbon monoxide nonattainment areas, eliminate or reduce the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.

With regard to subparagraph (B)(ii), such determination may be made as part of either the conformity determination for the transportation program or for the individual project taken as a whole during the environmental review phase of project development.

(4)(A) No later than one year after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate criteria and procedures for determining conformity (except in the case of transportation plans, programs, and projects) of, and for keeping the Administrator informed about, the activities referred to in paragraph (1). No later than one year after such date of enactment, the Administrator, with the concurrence of the Secretary of Transportation, shall promulgate criteria and procedures for demonstrating and assuring conformity in the case of transportation plans, programs, and projects. A suit may be brought against the Administrator and the Secretary of Transportation under section 304 to compel promulgation of such criteria and procedures and the Federal district court shall have jurisdiction to order such promulgation.

(B) The procedures and criteria shall, at a minimum—

(i) address the consultation procedures to be undertaken by metropolitan planning organizations and the Secretary of Transportation with State and local air quality agencies and State departments of transportation before such organizations and the Secretary make conformity determinations;

(ii) address the appropriate frequency for making conformity determinations, but in no case shall such determinations for transportation plans and programs be less frequent than every three years; and

(iii) address how conformity determinations will be made with respect to maintenance plans.

(C) Such procedures shall also include a requirement that each State shall submit to the Administrator and the Secretary of Transportation within 24 months of such date of enactment, a revision to its implementation plan that includes criteria and procedures for assessing the conformity of any plan, program, or project subject to the conformity requirements of this subsection.

(d) Each department, agency, or instrumentality of the Federal Government having authority to conduct or support any program with air-quality related transportation consequences shall give priority in the exercise of such authority, consistent with statutory requirements for allocation among States or other jurisdictions, to the implementation of those portions of plans prepared under this section to achieve and maintain the national primary ambient air quality standard. This paragraph extends to, but is not limited to, authority exercised under the Urban Mass Transportation Act, title 23 of the United States Code, and the Housing and Urban Development Act.

* * *

42 U.S.C. § 7554. Urban Bus Standards.

(a) STANDARDS FOR MODEL YEARS AFTER 1993.—Not later than January 1, 1992, the Administrator shall promulgate regulations under section 202(a) applicable to urban buses for the model year 1994 and thereafter. Such standards shall be based on the best technology that can reasonably be anticipated to be available at the time such measures are to be implemented, taking costs, safety, energy, lead time, and other relevant factors into account. Such regulations shall require that such urban buses comply with the provisions of subsection (b) of this section (and subsection (c) of this subsection, if applicable) in addition to compliance with the standards applicable under section 202(a) for heavy-duty vehicles of the same type and model year.

(b) PM STANDARD.—

(1) 50 PERCENT REDUCTION.—The standards under section 202(a) applicable to urban buses shall require that, effective for the model year 1994 and thereafter, emissions of particulate matter (PM) from urban buses shall not exceed 50 percent of the emissions of particulate matter (PM) allowed under the emission standard applicable under section 202(a) as of the date of the enactment of the Clean Air Act Amendments of 1990 for particulate matter (PM) in the case of heavy-duty diesel vehicles and engines manufactured in the model year 1994.

(2) REVISED REDUCTION.—The Administrator shall increase the level of emissions of particulate matter allowed under the standard referred to in paragraph (1) if the Administrator determines that the 50 percent reduction referred to in paragraph (1) is not technologically achievable, taking into account durability, costs, lead time, safety, and other relevant factors. The Administrator may not increase such level of emissions above 70 percent of the emissions of particulate matter (PM) allowed under the emission standard applicable under section 202(a) as of the date of the enactment of the Clean Air Act Amendments of 1990 for particulate matter (PM) in the case of heavy-duty diesel vehicles and engines manufactured in the model year 1994.

(3) DETERMINATION AS PART OF RULE.—As part of the rulemaking under subsection (a), the Administrator shall make a determination as to whether the 50 percent reduction referred to in paragraph (1) is technologically achievable, taking into account durability, costs, lead time, safety, and other relevant factors.

(c) LOW-POLLUTING FUEL REQUIREMENT.—

(1) ANNUAL TESTING.—Beginning with model year 1994 buses, the Administrator shall conduct annual tests of a representative sample of operating urban buses subject to the particulate matter (PM) standard applicable pursuant to subsection (b) to determine whether such buses comply with such standard in use over their full useful life.

(2) PROMULGATION OF ADDITIONAL LOW-POLLUTING FUEL REQUIREMENT.—(A) If the Administrator determines, based on the testing under paragraph (1), that urban buses subject to the particulate matter (PM) standard applicable pursuant to subsection (b) do not

comply with such standard in use over their full useful life, he shall revise the standards applicable to such buses to require (in addition to compliance with the PM standard applicable pursuant to subsection (b)) that all new urban buses purchased or placed into service by owners or operators of urban buses in all metropolitan statistical areas or consolidated metropolitan statistical areas with a 1980 population of 750,000 or more shall be capable of operating, and shall be exclusively operated, on low-polluting fuels. The Administrator shall establish the pass-fail rate for purposes of testing under this subparagraph.

(B) The Administrator shall promulgate a schedule phasing in any low-polluting fuel requirement established pursuant to this paragraph to an increasing percentage of new urban buses purchased or placed into service in each of the first 5 model years commencing 3 years after the determination under subparagraph (A). Under such schedule 100 percent of new urban buses placed into service in the fifth model year commencing 3 years after the determination under subparagraph (A) shall comply with the low-polluting fuel requirement established pursuant to this paragraph.

(C) The Administrator may extend the requirements of this paragraph to metropolitan statistical areas or consolidated metropolitan statistical areas with a 1980 population of less than 750,000, if the Administrator determines that a significant benefit to public health could be expected to result from such extension.

(d) RETROFIT REQUIREMENTS.—Not later than 12 months after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations under section 202(a) requiring that urban buses which—

(1) are operating in areas referred to in subparagraph (A) of subsection (c)(2) (or subparagraph (C) of subsection (c)(2) if the Administrator has taken action under that subparagraph);

(2) were not subject to standards in effect under the regulations under subsection (a); and

(3) have their engines replaced or rebuilt after January 1, 1995, shall comply with an emissions standard or emissions control technology requirement established by the Administrator in such regulations. Such emissions standard or emissions control technology requirement shall reflect the best retrofit technology and maintenance practices reasonably achievable.

(e) PROCEDURES FOR ADMINISTRATION AND ENFORCEMENT.—The Administrator shall establish, within 18 months after the enactment of the Clean Air Act Amendments to 1990, and in accordance with section 206(h), procedures for the administration and enforcement of standards for buses subject to standards under this section, testing procedures, sampling protocols, in-use compliance requirements, and criteria governing evaluation of buses. Procedures for testing (including, but not limited to, certification testing) shall reflect actual operating conditions.

(f) DEFINTIONS.—For purposes of this section—

(1) URBAN BUS.—The term "urban bus" has the meaning provided under regulations of the Administrator promulgated under section 202(a).

(2) LOW-POLLUTING FUEL.—The term "low-polluting fuel" means methanol, ethanol, propane, or natural gas, or any comparably low-polluting fuel. In determining whether a fuel is comparably low-polluting, the Administrator shall consider both the level of emissions of air pollutants from vehicles using the fuel and the contribution of such emissions to ambient levels of air pollutants. For purposes of this paragraph, the term "methanol" includes any fuel which contains at least 85 percent methanol unless the Administrator increases such percentage as he deems appropriate to protect public health and welfare.

APPENDIX 1
TRANSFER OF FUNCTIONS FROM HUD TO DOT

Reorganization Plan No. 2 of 1968[273]

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.[274]

(2) Other functions of the Secretary of Housing and Urban Development, and functions of the Department of Housing and Urban

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[273] Reorganization Plan No. 2 of 1968 (33 Federal Register 6965, 82 Stat 1369) 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.

[274] 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."

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 Urban Development under (i) title II of the Housing amendments of 1955 (69 Stat. 635),[275] 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).[276]

(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).[277]

(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,

[275] 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 actual transferred to the Secretary by Reorganization Plan No. 2 of 1968 were those necessary to administer loans which had been made previously.

[276] 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.

[277] 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.

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.—

(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 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.

APPENDIX 2

Public Law	Statutes at Large	Date	Short Title
88–365	78 STAT 302 ...	07/09/64	Urban Mass Transportation Act, 1964.
89–562	80–715	09/08/66	
90–19	81 STAT 17	05/25/67	
(*)	82 STAT 1369 ..	02/26/68	*Reorganization Plan, 1968.
90–448	.....	.....	
91–168	STAT 454, 485 .	12/26/69	DOT and Related Agencies Appropriations Act, 1970.
91–453	84 STAT 962 ...	10/15/70	Urban Mass Transportation Assistance Act, 1970.
91–645	84 STAT 1893 ..	01/02/71	
92–18	85 STAT 40, ...	05/25/71	Second Supplemental Appropriations Act, 1971.
92–74	85 STAT 201 ...	08/10/71	DOT and Related Agencies Appropriations Act, 1972.
92–398	86 STAT 580, 680.	02/22/72	DOT and Related Agencies Appropriations Act, 1973.
93–87	87 STAT 250, 346.	08/13/73	Federal Aid Highway Act, 1973.
93–98	87 STAT 329 ...	08/16/73	DOT and Related Agencies Appropriations Act, 1974.
93–383	88 STAT 633 ...	08/22/74	Housing and Community Development Act, 1974.
93–391	88 STAT 768, 884.	08/28/74	DOT and Related Agencies Appropriations Act, 1975.
93–503	88 STAT 1565 ..	11/26/74	National Mass Transportation Assistance Act, 1974.
94–34	89 STAT 173, 191.	06/12/75	Second Supplemental Appropriations Act, 1975.
95–187	91 STAT 1385 ..	11/16/77	Urban Mass Transportation Act, 1964—Federal Operating Aid.
95–335	92 STAT 435, 443.	08/04/78	DOT and Related Agencies Appropriations Act, 1979.
95–473	92 STAT 1337 ..	10/13/78	Revised Interstate Commerce Act.
95–599	92 STAT 2689, 2735.	11/06/78	Surface Transportation Act, 1978.
96–106	93 STAT 796, 799.	11/09/79	Surface Transportation Assistance Act, 1978.
96–131	93 STAT 1023, 1031.	11/30/79	DOT and Related Agencies Appropriations Act, 1980.
96–400	STAT 1681, 1689.	10/09/80	DOT and Related Agencies Appropriations Act, 1981.
97–35	95 STAT 357, 627.	03/13/81	Omnibus Budget Reconciliation Act, 1981.
97–102	95 STAT 357, 627.	12/23/81	DOT and Related Agencies Appropriations Act, 1982.
97–257	96 STAT 818, 867.	09/10/82	Supplemental Appropriations Act, 1982.
97–424	96 STAT 2097, 2141.	01/06/83	Surface Transportation Assistance Act, 1982.
97–449	96 STAT 2413, 2417.	01/12/83	Revision of Title 49, U.S.C.
98–6	97 STAT 11	03/16/83	Atlanta Hartsfield International Airport, Railway Assistance.
98–63	97 STAT 301, 340.	07/30/83	Supplemental Appropriations Act, 1983.
98–216	98 STAT 3	02/14/84	Revision, Titles 31 & 49, U.S.C. Miscellaneous Amendments.
98–396	98 STAT 1369, 1400.	02/22/84	Second Supplemental Appropriations Act, 1984.
99–190	99 STAT 1185, 1281.	12/19/85	Further Continuing Appropriations.

Public Law	Statutes at Large	Date	Short Title
100–17	101 STAT 32 ...	04/02/87	Surface Transportation and Uniform Relocation Assistance Act, 1987.
100–17	101 STAT 134 ..	04/02/87	Title I—Federal-Aid Highway Act, 1987.
100–17	101 STAT 233 ..	04/02/87	Title III—Federal Mass Transportation Assistance Act, 1987.
100–457	102 STAT 2125	09/30/88	DOT and Related Agencies Appropriations Act, 1989.
101–164	103 STAT 1099	11/21/89	DOT and Related Agencies Appropriations Act, 1990.
101–516	104 STAT 2155	11/05/90	DOT and Related Agencies Appropriations Act, 1991.
102–143	105 STAT 719 ..	10/28/91	DOT and Related Agencies Appropriations Act, 1992.
102–143	105 STAT 952 ..	10/28/91	Title V—Omnibus Transportation Employee Testing Act of 1991.
102–240	105 STAT 1914	12/18/91	Intermodal Surface Transportation and Efficiency Act of 1991.

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☆ U.S. GOVERNMENT PRINTING OFFICE: 1992 312-687/75761