

Section by Section Analysis
Federal Public Transportation Act of 2005
Manager's Amendment for Markup
March 17, 2005

SEC. 6001. SHORT TITLE.

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

SEC. 6002. UPDATED TERMINOLOGY; AMENDMENTS TO TITLE 49, UNITED STATES CODE.

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

SEC. 6003. POLICIES, FINDINGS, AND PURPOSES.

Section 5301(a) currently states that it is in the national interest to encourage and promote the development of transportation systems because they maximize mobility and minimize transportation-related fuel consumption and air pollution. This provision highlights the positive impact on the Nation's economy as a result of the development and revitalization of public transportation systems.

The finding in section 5301(b)(1) would be updated to reflect the 2000 census as the old census data referenced in the original section is not current.

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

SEC. 6004. DEFINITIONS.

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

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only found in section 5321 of Title 49, U.S.C. This section has never received direct appropriations and, therefore, is repealed.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

The term "capital project" is expanded to include a debt service reserve to allow transit agencies to borrow money less expensively.

Section 5307 would be amended to allow grantees to use their urbanized area formula grants for "mobility management." Therefore, section 5302, "Definitions," would be amended to define the term "mobility management." This term refers to an activity or project that tailors public transportation services to specific markets and manages demand for public transportation. Such goals could be accomplished by coordinating transportation service provider strategies and enhancing ridership growth in a cost-effective and efficient manner. Mobility management functions would involve managing public transportation travel logistics and would focus on resolving consumer mobility issues. Mobility managers could serve as transportation travel agents, consumer advocates, and service coordinators.

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

The definition of "urbanized area" is revised to = reflect more accurately the Department of Commerce's role in designating urbanized areas.

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

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

SEC. 6005. METROPOLITAN PLANNING

Section 6005 would rewrite section 5303 as a single section on Metropolitan Planning, to put all of these provisions in a single section identical to that in Title 23, U.S.C.. Because transit and highways are authorized in separate Senate Committees, this is accomplished in section 5303 and in section 5304 for Statewide Planning. Since the entire section is rewritten most of the language is repeated, but changes are not made unless where expressly noted.

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

Section 5303(b) provides general requirements for the planning process. Section 5303(b)(1) would revise existing law by substituting the word "metropolitan" for "urbanized." Metropolitan is a more accurate representation of the terms used this section since term better represents urbanized areas and the areas that are anticipated to become urbanized over a twenty-year period.

Section 5303(b)(4) provides that the MPO, the State DOT, and the appropriate public transit provider agree on the approaches that will be used in the metropolitan decision making process

regarding complex transportation improvements. This section indicates that planning and sponsoring organizations are jointly responsible for the planning and development of projects.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5303(k) specifies how transportation management areas are identified and the planning processes required in such areas. The section modifies existing law to provide clarification to the meaning of transportation management areas. The term "designation" is replaced by "identification" to reduce confusion between institutional change and geographic area identification. The section allowing a request to designate an area below 200,000 in population is eliminated because it has seldom been used, and has no direct funding implications. The term "metropolitan planning organization serving" is added to highlight the fact that a TMA is a geographic area, not an institution that conducts planning

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

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

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

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

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

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

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

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

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

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

SECTION 6006. STATEWIDE PLANNING.

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

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

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

"Non-metropolitan local officials" is defined in a new section 5303(a)--Definitions.

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

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

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

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

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

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

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

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

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

Section 5304(f)(1) continues to allow the States to determine how often the plan should be updated.

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

The term "representatives of transportation agency employees," is replaced in Section 5304(f)(3) by "representatives of public transportation employees," and the term "representatives of users of public transit," is replaced by "representatives of users of public transportation" to provide greater consistency with the definitions in section 5303(a). The term "representatives of users of pedestrian walkways and bicycle transportation facilities," is inserted after the term "users of public transportation" to identify the importance of this class of users. In addition, new requirements are added to ensure adequate opportunity for public participation.

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

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

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

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

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

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

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

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

SEC. 6007. TRANSPORTATION MANAGEMENT AREAS.

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

SEC. 6008. PRIVATE ENTERPRISE PARTICIPATION

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

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

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

section 5307 (urbanized area formula) program. Finally, the intercity bus portion of intermodal terminals would be made eligible for FTA funding. This will facilitate linkages between local public transportation and intercity bus transportation (which is provided by private operators). In the area of funding, bus capital funding in the amount of \$75 million per year would be set aside for intermodal terminals. In light of these changes, Section 5306 is amended to require the Secretary to publish a formal rule on how these provisions would be implemented.

SEC. 6009. URBANIZED AREA PUBLIC TRANSPORTATION FORMULA GRANTS PROGRAM.

Currently, subsection 5307(h) requires streamlines administrative procedures for track and signal improvements. This subsection is deleted because provisions for all grants have now been streamlined and no separate treatment for track and signal projects is needed.

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

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

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

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

Currently, urbanized areas over 200,000 may not use funds from the urbanized areas formula program for operating assistance. A number of urbanized areas status changed unexpectedly as a result of the 2000 census, due to changes in the Census Bureau's definitions and procedures for defining urbanized areas. These areas were allowed to continue to use funds for operating assistance by the 2002 Appropriations Act, for 2003 by P.L. 107-232, for 2004 by the Surface Transportation Extension Act of 2003, and for the first eight months of 2005 by the Surface Transportation Extension Act of 2004, Part V. These provisions would be extended for the remainder of 2005 as currently enacted. For 2006 and 2007, these provisions would be phased out. Urbanized areas covered by these provisions would be allowed to use 50 percent of their current limits on operating assistance in 2006 and 25 percent in 2007. This should provide these areas with sufficient time to develop and implement transition plans.

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

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

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

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

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

SEC. 6010. PLANNING PROGRAMS.

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

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

Current subsection 5303(g) is moved to subsection 5308(a) and is changed from "Transportation Plans and Programs" to "General Authority" for consistency with FTA's other program subsections. Language is added for transportation plans and programs since these are the primary products of the Federally funded transportation planning process. Section 5308(a)(3) explicitly authorizes eligibility for peer exchanges and activities related to peer reviews. Subsection 5303(h) moves to subsection 5308(b) and is renamed from "Balanced and Comprehensive Planning" to "Purpose." Existing section 5303(h)(4) is eliminated since it is obsolete with the addition of new urbanized areas in the 2000 decennial.

Section 5303(h)(2) is moved to section 5308(c)(2), and modified by directing States to make allocations of planning funds to MPOs promptly and eliminating any direct Department role.

FTA retains flexibility with respect to an administrative formula for areas over 1 million population currently added in the apportionments to States on a per capita basis.

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

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

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

Existing section 5303(h)(5) is relocated to a new section 5308(f), "Government's Share of Costs," and applies to both planning programs.

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

SEC. 6011. CAPITAL INVESTMENT PROGRAM.

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

References to "capital investment loans" is deleted from section 5309 since, historically, only capital investment grants have been awarded pursuant to this section.

Both fixed and non-fixed guideway projects which make major improvements to transportation corridors are included in the new starts program for projects under \$75 million, to encourage, among other things, consideration of bus rapid transit options. All projects under the program will be subject to a criteria and evaluation process. Projects over \$75 million will continue to be required to be fixed guideways.

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

Section 5309(a) is amended expressly to allow programs of projects of bus and bus related facilities. The individual agencies included in such a program of projects would be treated as subrecipients. Under current law, private non-profit agencies who receive assistance through a

State's program of projects must be treated as contractors to the State and thus the assembly of such a program is treated as a procurement action, subject to all of the rules normally intended to apply to contractual relationships. This has inhibited State flexibility and added to the administrative burden on States interested in developing programs of projects for assistance under Section 5309.

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

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

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

Section 5309(e) is amended to improve the evaluation of new starts projects. The factors, considerations, and determinations in section 5309(e)(2-4) are essentially those in current law, although new factors were added to ensure that the Secretary assess the reliability of the forecasts of costs and ridership. To often, as projects develop through the New Starts process, costs increase will ridership decreases. In addition, the language requiring the Secretary to assure that New Starts projects are not being implemented at the cost of degradation in the quality of local bus services has been strengthened.

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

As now provided, projects with a Federal share of less than \$25 million are currently exempt from the New Starts rating process. This requires rating of all projects. Current language which exempts projects funded with flexible funds from Title 23 is not continued, because it is unnecessary. This section only applies to projects which are candidates for discretionary funding under the new starts program. Projects with FFGAs executed prior to enactment are exempt from the new requirements.

A new section 5309(e)(1) is added to make clear that all new starts projects with a Federal share of over \$75 million would be implemented under a full funding grant agreement, be subject to

ratings under this section, and authorized in law. A project would have to receive a rating of at least "medium" to receive an FFGA.

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

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

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

A new subsection 5309(e)(8) is added to require periodic publication of the policies and procedures used in rating projects.

The Committee is seeking to identify cost drivers for critical, complex, and capital intensive transit new starts projects. Public Private Partnerships (PPP) may provide an important way to achieve significant savings. These partnerships with qualification-based selection and performance-based contracting integrates risk sharing, streamlines project development, engineering, and construction, and preserves the integrity of the NEPA process resulting in the potential for significant schedule and cost advantages over traditional infrastructure development. The Secretary is directed, in Section 5309(g)(2)(e) to undertake a pilot program in which major investment projects are to be selected for PPPs, during the development phase of the projects, with a goal of demonstrating project cost savings. The Secretary also is directed to work with states and local entities to identify and eliminate existing impediments to successful implementation of PPP's. The Committee expects the Secretary to initiate the pilot program as soon as practicable after enactment, in order that the benefits of PPP's may be understood and applied to other transit new start projects.

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

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

Often there are significant increases in the scope and costs of the projects between time when a locally preferred alternative is selected and other alternatives are dismissed at the end of alternatives analysis and the time when a full funding grant agreement is negotiated. In such cases, the cost-effectiveness of the alternative selected could very well be significantly inferior at

the time of FFGA than when the original LPA was selected. To provide an incentive to local project sponsors to avoid such cost and scope "creep", the Secretary is to take into account the cost and ridership calculation of the project at the end of Alternatives Analysis in establishing the Federal commitment level to a project. The Secretary would be given the discretion to reward project sponsors with a higher proportional share if the cost and benefit analyses at FFGA are within 10% of the original calculation. In this way, more meritorious projects, and those which have better controlled costs can be provided a higher Federal share. As a result of this provision, however, no project would be eligible to receive a total Federal share of greater than 80%.

In addition, the Secretary is given the discretion to allow project sponsors to benefit if an FFGA project is completed under budget. The provision in current law allows the grantee to keep funds left over and this potentially results in a perverse incentive to spend the remaining funds. In such cases, sponsors could retain a portion of the under-run for other eligible public transportation purposes.

The Committee believes that it may be appropriate for the contractors to public transit agencies to share in the cost savings if they have contributed to such under-runs as a result of good performance. Thus, the Committee directs the Department of Transportation to conduct a study on the appropriateness of applying the principles of contractor performance awards contained in the Federal Acquisition Regulations, Section 5309(m)(6).

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

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

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

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

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

The bill changes the new starts reporting requirement to one annual funding report and three status reports as reflected in a new section 5309(q). Currently, rating all projects for the annual report requires grantees not eligible for funding to rush their studies, frequently degrading their quality, so that information can be produced for the report. The annual report would describe only projects receiving funding based on evaluations and ratings and on existing commitments and anticipated funding levels for the next 3 years. Every four months, a report would be

released with FTA ratings of only those projects with significant changes in their summary rating or some other key feature, or those that recently have entered preliminary engineering or final design. Every report would contain a table with summary rating information for all projects currently in the new starts pipeline.

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

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

SEC. 6012. FORMULA GRANTS FOR NEW FREEDOM FOR ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES.

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

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

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

Consistent with existing section 5310, grants would be made for capital public transportation projects planned, designed, and carried out to meet the special needs of this population groups and could include the acquisition of public transportation services as a capital expense. The Federal share would not exceed 80 percent of the net capital costs of the projects, as determined by the Secretary. The remainder of the funds could be derived from the same sources as for the Formula Grants program for other than urbanized areas as proposed under section 3012 of this bill. Specifically, funds could come from a variety of other programs, as well as contract revenue received from human service agencies. This is intended to provide the same incentive to coordination of human service transportation as is now provided in the section 5311 program.

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

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

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

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

SEC. 6013. FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.

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

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

public transportation service projects (including agreements with private providers of public transportation services).

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

Under current law, recipients of grants and contracts for transportation research, technical assistance, training, or related support services, such as those given under the Rural Transportation Assistance Program (RTAP), must compete annually for National Planning and Research funds. Section 5311(b)(3), as redesignated, provides up to two percent of section 5311 funds to carry out RTAP activities. This amendment better correlates funding for RTAP with the amount of funding for rural service overall, thereby stabilizing the program. Since the formula funding level for rural transit increases, a proportionate increase in the level of funding for training and technical assistance delivered at the State level is available. It is expected that no more than the current two percent of the amount available to carry out section 5311 would be needed for RTAP expenses in future fiscal years. New paragraph (4) allows the Secretary to use up to 15 percent of the two percent to sustain ongoing national project activities such as the National Transit Resource Center, production training modules, and occasional rural transit research projects of national interest.

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

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

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

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

SEC. 6014. RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.

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

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

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

SEC. 6015. COOPERATIVE RESEARCH GRANT PROGRAM.

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

SEC. 6016. NATIONAL RESEARCH PROGRAMS.

Section 5314 would be amended to delete the word "Planning" from the heading, since the focus of the section is on research, and planning has been provided for elsewhere in Chapter 53. Amendments to section 5314(a)(1) would provide the correct funding authorization citation and reflect the fact that the University Transportation Centers program in existing section 5317 has been moved to section 5505 of Title 49.

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

Operational demonstration projects involving public transportation have had to comply with the Department of Labor's transit employee protection requirements under section 5333(b). These new technologies are tested for short periods of time on single vehicles rather than on entire fleets. In such situations, compliance with section 5333(b) has created unwarranted delays and risks that have had a chilling effect on the development and deployment of new technology. Moreover, these types of operational projects do not create an employee protective risk, the purpose for which section 5333(b) was enacted. Therefore, section 5314(a)(3) is amended to relieve this compliance requirement.

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

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

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

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

SEC. 6017. NATIONAL TRANSIT INSTITUTE.

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

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

SEC. 6018. BUS TESTING FACILITY.

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

SEC. 6019. BICYCLE FACILITIES

Currently all bicycle facilities, have a Federal share of 90 percent, unless they are funded as transit enhancements which are eligible for a Federal share of 95 percent. Because the enhancement program is being continued as a certification rather than a set-aside, a technical correction was needed.

SEC. 6020. SUSPENDED LIGHT RAIL TECHNOLOGY PILOT PROJECT.

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

SEC. 6021. CRIME PREVENTION AND SECURITY

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

SEC. 6022. GENERAL PROVISIONS ON ASSISTANCE.

Subsection 5323(a) is amended to include the term "private company engaged in public transportation" rather than "private mass transportation company" to utilize more current terminology and to comport with changes made to the term throughout Chapter 53.

The provisions of section 5323(b) are edited to mesh the statutory requirements of Federal transit law more closely with current practice under the National Environmental Policy Act (NEPA). FTA does not depend on the "certificate of the applicant" that the environmental review was properly performed. Rather, NEPA makes consideration of a proposed project's environmental record a direct Federal responsibility. Accordingly, FTA participates directly in the environmental process for a proposed project and reviews the final environmental record before accepting it.

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

This section eliminates the two-step process for announcing a hearing. Under the current process, the applicant announces the opportunity for a hearing and then waits for a response. The amendment would provide that a hearing be held whenever the project affects significant social, economic, or environmental interests in the community, regardless of whether one has been requested.

Section 5323(c), which allows the obligation or expenditure of funds to acquire a new bus model only if a bus of the model has been tested is stricken as noted above.

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

Section 5323(e) requires the Secretary to issue a bus passenger seat functional specification based on a finding by State and local Governments of "local requirements for safety, comfort, maintenance, and life cycle costs." Industry has adopted an effective standard, the Secretary has issued a specification, and if the need were to arise again, the National Highway Traffic Safety

Administration would be the more appropriate agency to address the matter. Therefore, this subsection is deleted.

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

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

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

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

Subsection (h) is revised to provide for the transfer of lands or interests in lands owned by the United States. The Department of Defense regulations (32 CFR Parts 90 and 91) provide for the disposition of surplus land resulting from the Defense Base Closure and Realignment Act to be transferred free to "grantees" that have Federal sponsors with Federal land transfer statutes. However, within the Department of Transportation, only the Federal Highway Administration and the Federal Aviation Administration have such authority. By amending chapter 53 to include a Federal land transfer statute under section 5323(h), FTA grantees will be eligible to receive surplus Government land for authorized public transportation projects, under certain terms and conditions, but at no cost, just as other agencies would.

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

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

Section 5323(m) provides that an independent pre-award review and a post-delivery review must be conducted when a grantee purchases rolling stock. These reviews must show compliance with the Buy America requirements, the motor vehicle safety requirements, and the bid specifications. In addition to reviewing and documenting the origin of each component and subcomponent and

the location and cost of final assembly, the grantee must use an on-site inspector when it purchases more than 10 vehicles. As a result, the grantee must have someone on site at the assembly plant to review and observe the actual manufacture of the vehicle. This is costly and burdensome on smaller grantees that may not have the staff or sophistication to devote to such audits. Therefore, section 5323(m) would be amended to eliminate these requirements for private non-profits organizations and grantees serving urbanized areas fewer than one million people. All manufacturers and suppliers would have to continue to certify compliance with Buy America during the bidding process, and they would remain bound by their original certification. However, these grantees will not have to certify twice in order for the vehicles to comply with Buy America. Further, the vast majority of vehicles purchased will still undergo the audits

SEC. 6023. SPECIAL PROVISIONS FOR CAPITAL PROJECTS.

Currently, section 5324 contains relocation program requirements as a condition of receipt of Federal assistance. The Secretary must make an affirmative finding that two of the numerous conditions contained in the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Act), 42 U.S.C. 4601 et seq., have been fulfilled. All State agencies, defined in the Act as covering entities that would be FTA grantees, must comply with these two provisions of the statute to be eligible for Federal transit assistance. Therefore, in order to ensure that grantees are complying with the applicable requirements, section 5324(a) is amended to reference the relevant sections of the Act directly.

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

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

Existing section 5324(b), which is redesignated as section 5324(d), and meshes the statutory requirements of Federal transit law more closely with current FTA practice under NEPA, and 49 U.S.C. 303 (commonly called "section 4(f)"), and other environmental laws. Of the Secretaries listed in current transit law, only the Secretary of the Interior frequently has an interest in FTA projects and routinely consults with FTA on those projects. Reference to the Secretaries of Agriculture, Health and Human Services, and Housing and Urban Development are removed

since these agencies rarely have any interest in transit projects and the requirement for routine consultation with their Departments has not proven to be necessary or productive. FTA grant applicants are required by NEPA regulations to identify the Federal interests and parties affected by a proposed transit project, in the very rare case that a transit project does affect one of the Departments that is from the list.

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

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

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

SEC. 6024. CONTRACT REQUIREMENTS.

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

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

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

TEA-21 allowed for turnkey system projects, also known as design-build contracting, in Federally funded public transportation projects, including demonstration projects. Section 5325(d) (existing section 5326(a)), replaces the term "turnkey" with the more commonly used term "design-build." Also, this section is amended to delete any reference to "demonstration projects," since design-build contracting has matured beyond the demonstration phase. In addition, design-build

contracting does not necessarily result in lower project costs or new technologies and, as a result, this concept, which appears in existing section 5326(a)(2), is removed.

Current provisions on multiyear rolling stock procurements now included in section 5326(b) are included as section 5325(e). Current provisions on acquiring rolling stock using a variety of procurement methods now included in section 5325(c) are included in section 5325(f).

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

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

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

A new provision is added to Section 5325(i) to strengthen the requirements that contractors to public transportation agencies must have adequate technical and financial capacity to carry out a proposed contract. This elevates an already existing FTA and OMB's requirement on third-party contracting to a statutory requirement. Grantees must refer to the Contractor Performance Assessment Reports required under section 5309 when selecting contractors to do work on major capital investments.

SEC. 6025. PROJECT MANAGEMENT OVERSIGHT AND REVIEW.

Given the new security concerns -- and in keeping with actual practice in the field -- section 5327(a) is revised to require that a project management oversight (PMO) plan include "safety and security management."

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

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

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

SEC. 6026. PROJECT REVIEW.

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

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

SEC. 6027. INVESTIGATIONS OF SAFETY AND SECURITY RISK.

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

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

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

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

SEC. 6028. WITHHOLDING AMOUNTS FOR NON-COMPLIANCE WITH STATE SAFETY OVERSIGHT.

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

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

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

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

SEC. 6029. TERRORIST ATTACKS AND OTHER ACTS OF VIOLENCE AGAINST PUBLIC TRANSPORTATION.

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

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

SEC. 6030. CONTROLLED SUBSTANCES AND ALCOHOL MISUSE TESTING.

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

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

SEC. 6031. EMPLOYEE PROTECTIVE ARRANGEMENTS.

Current law provides for 6 years of severance pay in the case that public transportation employees' jobs are lost as a result of a grant. The bill would change the length of severance pay required under section 5333(b) to 4 years. The Committee notes that this change does not change requirements for severance pay for workers covered under other laws, such as those governing the rights of railroad workers.

The bill codifies a recent Department of Labor decision which found that a change in contractor would not produce obligations under section 5333(b).

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

SEC. 6032. ADMINISTRATIVE PROCEDURES.

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

Current section 5324(c), "Prohibitions Against Regulating Operations and Charges," is moved to section 5334, "Administrative Provisions," as a new subsection (b). It is appropriate to house this prohibition in the "Administrative Provisions" section and make it applicable chapter-wide, rather than on capital projects only. Also, this provision is amended to specify that the Secretary is prohibited from regulating a recipient's routes, schedules, rates, fares, tolls, and rentals, just as this provision had specified prior to the recodification of the Federal Transit Act into 49 U.S.C. Chapter 53 in 1994. In light of the September 11 terrorist attacks, this provision is further amended to allow the Secretary of Transportation, under direction by the President, to regulate the operation of and charges for public transportation systems for purposes of national defense or in the event of a national or regional emergency.

SEC. 6033. REPORTS AND AUDITS.

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

SEC. 6034. APPORTIONMENTS OF APPROPRIATIONS FOR FORMULA GRANTS.

The formula in section 5336 sees the addition of a new "Small Transit Intensive Cities" tier. Under current law, funds are allocated to urbanized areas with a population of less than 200,000 only on the basis of urbanized area population and population density. Fund allocations do not reflect the amount of transit service provided. Thus, certain small areas which sometimes have more transit service than areas with more than 200,000 people do not get funding sufficient to recapitalize their transit systems. The "Small Transit Intensive Cities" tier would allocate funds to small urbanized areas with transit service levels (represented by bus revenue vehicle miles) per capita greater than the per capita service levels in areas with population of 200,000 to 1,000,000 on the basis of transit service levels. Funds from this tier are available for capital purposes only.

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

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

The provision in section 5336(k) which referred to treatment of former urbanized areas in fiscal year 1993 is to be deleted.

A provision is added to require a study of incentives which might be added to the urbanized area and other-than-urbanized area formula programs.

SEC. 6035. FIXED GUIDEWAY MODERNIZATION APPORTIONMENTS.

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

SEC. 6036. AUTHORIZATIONS.

Section 5338 authorizes amounts from the General Fund, and makes available amounts from the Mass Transit Account of the Highway Trust Fund to carry out Federal public transportation programs in fiscal years 2005 through 2009. Funds from the Mass Transit Account will represent a contractual obligation of the Government.

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

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

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

Throughout the life of TEA-21, planning funds to carry out 49 U.S.C. 5303-5305 and 5313(b) were authorized and made available pursuant to 49 U.S.C. 5338(c). Grants for both planning programs, are mainstreamed into 49 U.S.C. 5308. Funding for the planning programs are authorized as a takedown from the Urbanized Area Public Transportation Formula Grants program under section 5307.

The bill provides that 1.75 percent of the funds are available for planning in fiscal years 2005 through 2009. This percentage represents a minimal increase over previous fiscal years. The amount proposed in fiscal year 2004 takes into account that this fiscal year will be the first year of reauthorization.

The bill provides funding for the National Transit Database (NTD) authorized under section 5335 in fiscal years 2005 through 2009. The NTD workload has increased substantially with the advent of monthly reporting on safety and security and the phasing in of rural and asset condition reporting.

SEC. 6037. APPORTIONMENTS BASED ON GROWING AND HIGH DENSITY STATES FORMULA FACTORS.

A new section 5340 is added to allocate funds to growing and high states. For this section, the term "State" is defined to mean only the 50 States. With respect to Growing States, the current formulas in Title 53 all look back to population in the most recent decennial census; to the most recent transit service level data in the national transit database; or to the most recent information about transit system extent. While this is helpful in assuring that funds are allocated based on need, they focus on existing needs, not the potential needs which exist in growing areas. Thus, it is very difficult for areas which foresee the need for expanded transit services to use funds allocated by the current formulas to address those needs. The new section 5340 allocates funds based on the share of population forecast for fifteen years after the date of that census. Forecasts are based on the trend between the most recent decennial census and Census Bureau population estimates. Funds allocated to the States are allocated to urbanized and non-urbanized areas based on forecast population, where available. Funds allocated to urbanized areas are included in their section 5307 apportionment. Funds allocated to for non-urbanized areas are included in the states' section 5311 apportionments.

Similarly, other States are of extremely high density, and have needs in excess of average. For States with population densities in excess of 370, funds are allocated based on the amount by which their population exceeded the product of their land area, multiplied by the percentage of total state population in urbanized areas.

SEC. 6038. JOB ACCESS AND REVERSE COMMUTE.

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

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

Section 3037(b) is amended to expand the definition of eligible low-income individual to allow States the flexibility to use JARC funds to assist the same individuals as assisted under the State-administered Temporary Assistance to Needy Families program. At present, the JARC program sets up a nationwide definition at 150 percent of the poverty line, while some states may choose to define eligibility differently. The bill allows the continuation of current eligibility as well as the new eligibility tied to the TANF program within the State.

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

SEC. 6039. OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM.

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

SEC. 6040 TRANSIT IN PARKS

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

SEC. 6041. OBLIGATION CEILING

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

SEC. 6042. ADJUSTMENTS FOR THE SURFACE TRANSPORTATION EXTENSION ACT OF 2004

This Section provides that the amounts for fiscal year 2005 are in lieu of, and not in addition to, the amounts authorized for the first eight months of fiscal year 2005 by the Surface Transportation Extension Act of 2003. In addition, the Section provides for an adjustment to the calculations of apportionments for the fixed-guideway modernization program, since that formula assumes a full year of funding.

SEC. 6043. DISADVANTAGED BUSINESS ENTERPRISE

This Section continues Disadvantaged Business Enterprise requirements.